

STATUTORY INSTRUMENTS

2006 No. 12.

THE NATIONAL ENVIRONMENT (AUDIT) REGULATIONS, 2006

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The National Environment (Audit) Regulations, 2006.

(Under section 107 of the National Environment Act, Cap 153)

IN EXERCISE of the powers conferred upon the Minister responsible for the National Environment Act by section 107 of the National Environment Act and on the recommendation of the Policy Committee on the Environment and the Board of Directors of the National Environment Management Authority, these Regulations are made this 8th day of October 2004.

PART I—PRELIMINARY.

1. Title

These Regulations may be cited as the National Environment (Audit) Regulations, 2006.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the National Environment Act, Cap 153;

“Authority” means the National Environment Management Authority established by section 4 of the Act;

“enforcement environmental audit” means a compulsory environmental audit required by these Regulations;

“environmental audit” means a systematic, documented, periodic and objective evaluation carried out to determine how well a facility and its management and equipment are performing in conserving the environment and its resources; and to determine the compliance status with environmental regulatory requirements, the environmental management system and the overall environmental risk of the facility;

“environmental auditor” means a person certified and registered to conduct environmental audits in accordance with the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003;

“environmental audit report” means a report made on an environmental audit and includes an enforcement environmental audit report and a voluntary environmental audit report;

“environmental compliance agreement” means an agreement between the owner and the Authority as provided for by Part VI of these Regulations;

“environmental inspector” means an inspector appointed under section 79 of the Act;

“environment management system” means a documented system that defines the manner in which a facility manages its environmental activities by developing, implementing, reviewing and monitoring compliance to environmental regulations and requirements;

“Executive Director” has the meaning given to it by the Act and includes, for the purpose of these Regulations, an environmental inspector or any person who is duly authorised by the Executive Director to act on his or her behalf, or who has been delegated to perform the functions of the Authority under section 6(2) of the Act;

“facility” includes any activity or part of an activity, field, farm, garden, place, premises, project, vessel, ship, motor vehicle, aeroplane, means of communication, storage facility, factory, production-process or consumption-method which is the subject or potential subject of an environmental audit;

“operator” means any person operating or responsible for supervising or in charge of an activity or operation of a facility;

“owner” means, the proprietor, chief executive officer or overall manager of a facility;

“voluntary environmental audit” means an audit carried out by the owner or operator without the demand or direction of the Authority, a lead agency, a third party or an order of a court of law;

“voluntary environmental audit privilege” has the meaning given to it in regulation 21.

3. Application of Regulations

These Regulations apply to—

- (a) the enforcement of section 3(3)(c) of the Act;
- (b) all environmental audits required by section 22 of the Act;
- (c) all environmental audits required by the National Environment (Environmental Impact Assessment) Regulations;
- (d) voluntary environmental audits;
- (e) such other environmental audits as may be required or prescribed.

PART II—ENVIRONMENTAL AUDIT REPORTS

4. Registered environmental auditors to conduct audit

S.I. No. 85 of 2003

(1) A person shall not carry out an environmental audit unless that person has been duly certified and registered in accordance with the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003.

(2) Notwithstanding subregulation (1), an environmental inspector may carry out an enforcement environmental audit in the manner provided by regulation 14.

5. Preparation of environmental audit report

(1) An environmental audit report shall be prepared under the general direction of an environmental auditor who shall head a team of environmental auditors.

(2) Any changes in the scope of work during the preparation of the environmental audit report shall be agreed upon by the parties to the environmental audit.

6. Content of environmental audit report

(1) An environmental audit report shall include the following—

- (a) the identity of the facility to be audited and its physical location;
- (b) the identity of the owner or operator or of his or her representatives who will take part in the environmental audit and their specific roles;
- (c) the person commissioning the environmental audit;
- (d) the criteria, objectives, scope and methodology of conducting the environmental audit;
- (e) the period covered by the environmental audit and the dates on which the audit was conducted;
- (f) the names and composition of the environmental audit team, including their qualifications, specific skills and relevance to specific subject matter;

- (g) a description of the client and the audited facility and the conditions pertaining in the facility before the environmental audit; including the control procedures and environmental compliance mechanisms in place;
- (h) a summary of the environmental audit process and any obstacles encountered in conducting the audit;
- (i) a description of the observable effects of the audited facility, including the exhibits;
- (j) a description of the environmental management system in place at the facility and the manner in which it operates;
- (k) consultations made with the members of the public affected or likely to be affected by the activities of the audited facility;
- (l) a statement of the confidential nature if any, of the contents of the information obtained or parts of the information;
- (m) a statement as to how far, in the opinion of the environmental audit team, the operation of the audited facility complies with the Act and with other relevant laws of Uganda, and the identity of persons liable for any violation;
- (n) the recommended remedial measures for restoring, eliminating or minimising the undesirable environmental impacts of the audited facility, including documents analysing any portions of the report;
- (o) identification of the gaps in knowledge and other limitations;
- (p) the resources required and the optimum time for introduction, monitoring and implementing the recommended remedial measures;
- (q) the findings of the environmental audit and a summary of any references to supporting evidence;
- (r) an implementation plan that addresses the correction of past environmental non-compliance, the improvement of current environmental compliance and prevention of future non-compliance; and
- (s) any other matter which may be identified in the terms of reference agreed between the owner or operator of the facility and the environmental audit team and, where relevant—
 - (i) any matter determined by the environmental inspector, in the case of an environmental enforcement audit.

(ii) any matter agreed between the owner or operator of the facility and the Executive Director, in the case of a voluntary environmental audit; or

(2) Where these Regulations require the owner or operator to prepare and submit an environmental audit report to the Executive Director, the operator or owner shall prepare and submit the report in quadruplicate.

(3) An environmental audit shall be conducted in accordance with best available practices, taking into account advances in science and technology.

(4) An environmental audit report shall—

(a) be dated and signed by all the members of the environmental audit team;

(b) contain a declaration, dated and signed by all the members of the environmental audit team, stating that the audit was conducted in compliance with the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003, these Regulations and other relevant laws.

(5) An environmental auditor shall ensure that the environmental audit report contains all the matters required by subregulation (1).

(6) An environmental auditor who fails to comply with subregulation (1) shall be in breach of the Code of Practice and Professional Ethics prescribed by the National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003, and shall be subject to disciplinary action as prescribed by those regulations.

(7) An environmental auditor is under a duty to disclose all facts pertinent to the environmental performance of the audited facility and to disclose the state of affairs found in the facility in the course of the audit.

7. Submission of environmental audit report

An environmental audit report shall be submitted to the owner or operator of the facility within fourteen days after the completion of the audit.

PART III—ENVIRONMENTAL MANAGEMENT SYSTEMS.

8. Establishment of environmental management systems

(1) Every owner or operator of a facility whose activities are likely to have a significant impact on the environment shall establish an environmental management system in accordance with these Regulations.

(2) An environmental management system shall include, among other matters that the Executive Director may prescribe—

- (a) a corporate environmental management policy, which shall include a commitment by the owner or operator of the facility to implement it;
- (b) a plan for the implementation of the corporate environmental management policy;
- (c) a mechanism for developing capabilities and support systems necessary to achieve the objectives of the corporate environmental management policy; and
- (d) a mechanism for reporting, reviewing, monitoring and evaluating the environmental performance of the facility.

(3) A copy of the environmental management policy shall be displayed in a conspicuous place in the facility to which it applies.

(4) An owner or operator of a facility who fails to establish an environmental management system commits an offence and is liable, on conviction, to a fine of not less than three million shillings and not more than thirty million shillings, or to imprisonment for a term of not less than twelve months, or both.

9. Facilities to have environmental management systems

(1) Without prejudice to regulation 8(1), the Executive Director may, from time to time, publish, by notice in the *Gazette* and in a newspaper with national circulation in Uganda, a list of categories or types of facilities that are required to have environmental management systems.

(2) The Executive Director may, in the notice referred to in subregulation (1), specify the name and location of every facility required to have an environmental management system, and the time frame for the establishment of the system.

10. Powers of inspectors in relation to environmental management systems

An environmental inspector, acting within the powers prescribed by section 80 of the Act, may enter any facility to determine whether the facility has an environmental management system and whether it is functioning well.

11. Guidelines for development of environmental management systems

The Executive Director may issue guidelines for the development of environmental management systems.

PART IV—ENFORCEMENT ENVIRONMENTAL AUDITS.

12. Petition for enforcement environmental audit.

(1) Any person desiring an enforcement environmental audit to be carried out on a facility may petition the Executive Director in writing to determine whether an enforcement environmental audit should be carried out.

(2) The petition referred to in subregulation (1) shall contain—

- (a) the name, signature and address of the petitioner;
- (b) the signatures of at least twenty persons in support of the petition, from persons who may or are likely to be affected by the operations of the facility;
- (c) the location of the facility complained of;
- (d) the reasons why the petitioner requires the facility to be the subject of an enforcement environmental audit; and
- (e) any other matter relevant to the petition.

(3) The Executive Director shall, upon receiving the petition, consult with the owner or operator and relevant lead agencies to determine whether an enforcement environmental audit should be carried out on the facility.

(4) The owner or operator, and each lead agency shall respond to the consultation required by subregulation (3) within twenty-one days after the date of communication by the Executive Director.

(5) This regulation does not affect the right of a person under the Constitution, to petition a court of law or the right to bring an action under the Act.

13. Determination of enforcement environmental audit

(1) The Executive Director shall, where he or she determines, in accordance with regulation 12(3), that—

- (a) there is sufficient public interest and sufficient cause to believe that a facility has or may have significant adverse impacts on the environment, order an environmental auditor to carry out the enforcement environmental audit, and the owner or operator shall bear the cost of carrying out the audit; and
- (b) there is sufficient public interest, order the owner or operator to carry out an enforcement environmental audit within a specified period determined by the Executive Director;
- (c) there is no sufficient public interest for carrying out the enforcement environmental audit, reject the petition and give reasons in writing for the rejection.

(2) Where it is ordered that an enforcement environmental audit be carried out in accordance with subregulation (1)(a) or (b), the Executive Director shall determine the terms of reference for carrying out the audit.

14. Audits by environmental inspectors

(1) An environmental inspector may conduct or cause to be conducted an enforcement environmental audit on any facility where there is reasonable cause to believe that—

- (a) the activities being carried out at the facility violate or are likely to violate the Act or Regulations made under the Act;
 - (b) the activities being conducted at the facility are likely to cause immediate danger and harm to human health, or have undesirable and irreversible impacts on the environment;
 - (c) a violation of any other law relating to the environment, other than one referred to in paragraph (a), is taking place.
- (2) An environmental inspector shall—
- (a) in the case of subregulation (1)(a) or (b), serve the operator or owner of the facility with notice in writing, at least forty-eight hours before conducting the environmental audit;
 - (b) in the case of subregulation (1)(c), serve the operator or owner of the facility with a notice in writing, requiring the operator or owner of the facility to carry out an environmental audit within a period determined by the inspector.

15. Powers of environmental inspector upon entry of facility

An Environmental Inspector may, upon entering a facility for the purpose of carrying out an enforcement environmental audit, and in addition to the powers prescribed by section 80 of the Act—

- (a) order persons at the facility to assist in the carrying out of the audit;
- (b) have uninterrupted access to, and interview any staff employed at the facility;
- (c) examine, make copies of or retain all or any documents and records relating to the design, performance and effects of the activities conducted in the facility;
- (d) take samples and photographs and make audio or visual recordings; and
- (e) carry out any other activity necessary for the carrying out of the audit.

16. Public involvement in enforcement environmental audits

An environmental inspector may, in the conduct of an enforcement environmental audit, consult the members of the public affected or likely to be affected by the audited facility.

17. Enforcement environmental audit report

(1) An environmental inspector shall on completion of an enforcement environmental audit, submit an enforcement environmental audit report to the Executive Director and the report shall comply with the requirements of regulation 6.

(2) An environmental inspector shall, in making an enforcement environmental audit report—

- (a) discuss with the owner or operator, the environmental issues identified at the facility;
- (b) make available to the owner or operator, a draft report of the audit and require him or her to make written comments within seven days after receipt of the draft report; and
- (c) take into account the comments of the owner or operator and attach the comments as an annex to the final report.

18. Recommendations of environmental inspector

An environmental inspector may, in the environment enforcement audit report, recommend—

- (a) where he or she suspects that the owner or operator has committed a criminal offence, that the owner or operator be prosecuted;
- (b) that the owner or operator enter into an environmental compliance agreement in accordance with regulation 24; or
- (c) that the owner or operator, in addition to entering into an environmental compliance agreement, execute a refundable performance deposit bond to guarantee environmental compliance in accordance with section 94 of the Act.

PART V—VOLUNTARY ENVIRONMENTAL AUDITS.

19. Initiating voluntary environmental audits.

(1) The operator or owner of a facility whose activities are likely to have a significant impact on the environment may, at any time, carry out a voluntary environmental audit of the facility to determine its compliance with the Act, these Regulations and other relevant laws.

(2) The owner or operator may seek technical advice from the Executive Director on how to conduct the voluntary environmental audit and the technical advice may include the scope and terms of reference for the audit.

(3) A voluntary environmental audit shall comply with the requirements of regulation 6.

20. Effect of voluntary environmental audit report.

(1) A voluntary environmental audit report is a confidential document belonging to the owner or operator and the owner or operator is not required to submit it to the Authority or to a lead agency.

(2) Notwithstanding subregulation (1), an owner or operator who wants to benefit from the compliance agreement regime provided for by regulation 24, may submit the voluntary environmental audit report to the Authority in accordance with regulation 23.

21. Privilege of voluntary environmental audit report

(1) A voluntary environmental audit report is a privileged report and is not admissible as evidence in any civil, criminal or administrative proceeding, except as provided by subregulations (2) and (3).

(2) The privilege for a voluntary environmental audit report provided for in subregulation (1) does not apply where—

- (a) it is waived expressly or by implication by the owner or operator of the facility, or by a court;
- (b) the report is released by the owner or operator to any buyer or seller or to a lead agency for purposes of negotiating, arranging or facilitating the sale, lease or financing of the facility, or a portion of the facility;
- (c) information in the report relating to the facility is obtained from a document, communication, data, report or other information required to be collected, developed, maintained, reported or otherwise made available to the Authority or to a lead agency or from an independent source in accordance with any law, permit or order; or
- (d) the information in the report is obtained by observation, sampling or monitoring by a lead agency or the Authority.

(3) A court or administrative tribunal shall require the disclosure of material for which the privilege referred to in subregulation (1) is asserted where the court or administrative tribunal determines that—

- (a) the privilege is asserted for a fraudulent purpose;
- (b) the material is not subject to the privilege;
- (c) the material shows evidence of non-compliance with any law; or
- (d) the material contains, in the case of criminal proceedings, evidence relevant to the commission of an offence under the laws of Uganda.

22. Burden of proof for privilege

(1) A party asserting privilege of the voluntary environmental audit report under regulation 21 has the burden of proving the privilege, including adducing evidence of—

- (a) non-compliance with any law; and
- (b) proof that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence.

(2) A party seeking disclosure of the contents of a voluntary environmental audit report under these Regulations has the burden of proving that the privilege is asserted for a fraudulent purpose.

23. Submission of voluntary environ-mental audit report to Executive Director

(1) An owner or operator who wants to benefit from the compliance agreement regime provided for by regulation 24 shall, within thirty days after completion of the voluntary environmental audit, submit a voluntary environmental audit report to the Executive Director.

(2) In addition to the requirements of regulation 6, a voluntary environmental audit report shall be accompanied by a statement summarising the violations of the Act and of any other law, and an action plan indicating the manner in which the owner or operator proposes to correct the violations.

(3) The action plan referred to in subregulation (2) shall contain—

(a) actual actions and an exact time frame, acceptable to the Executive Director, for correcting the violations; and

(b) an undertaking that the owner or operator shall adopt an improved environmental management system or other measures, to avoid the recurrence of the violations disclosed in subregulation (2).

(4) The Executive Director may verify the contents of a voluntary environmental audit.

PART VI—ENVIRONMENTAL COMPLIANCE AGREEMENTS

24. Environ-mental compliance agreement

(1) Upon the submission of a voluntary environmental audit report and the documents required by regulation 23(2), or where the comments of the owner or operator under regulation 19 indicate an intention by the owner or operator to comply with the law, the Executive Director may enter into an environmental compliance agreement with the owner or operator, specifying—

(a) the measures required to bring the audited facility into compliance with the Act and these Regulations;

(b) the time frame within which the measures will be undertaken;

(c) the compensation to be paid to persons injured by the activities of the audited facility;

(d) the restoration measures that must be undertaken to redress environmental damage in accordance with Part IX of the Act;

(e) a refundable performance bond, if required, and the nature of the bond;

(f) the frequency of periodic reports to be submitted to the Executive Director; and

(g) any other matter which the Executive Director may consider necessary.

(2) An environmental compliance agreement made under this regulation has the same effect as an environmental improvement order within the meaning of sections 80 and 95 of the Act.

(3) Failure by an owner or operator of a facility who has entered into an environmental compliance agreement to comply with the agreement shall constitute a waiver of the voluntary environmental audit privilege provided for by regulation 21.

25. Repeat of violations within two years

Where the owner or operator has entered into an environmental compliance agreement, the occurrence of a repeat violation at the audited facility within a period of two years shall constitute a waiver of the privilege referred to in regulation 21.

PART VII—MISCELLANEOUS

26. Offences

(1) An operator or owner or a member of an environmental audit team who—

- (a) fraudulently utters or presents an environmental audit report;
- (b) fraudulently alters any report made under these Regulations;
- (c) withholds information from an environmental inspector in the course of an audit; or
- (d) knowingly makes a false environmental audit report,

commits an offence contrary to section 97 of the Act and is liable, on conviction, to a fine of not less than one hundred and twenty thousand shillings and not more than twelve million shillings, or to imprisonment for a term of not less than twelve months, or both.

(2) A person who—

- (a) withholds information from an environmental inspector; or
- (b) knowingly gives false information to an environmental inspector or to the Executive Director,

commits an offence contrary to section 95 of the Act and is liable, on conviction, to a fine of not less than one hundred and twenty thousand shillings and not more than twelve million shillings, or to imprisonment for a term of not less than twelve months, or both.

27. Appeals

A person aggrieved by the decision of the Executive Director or an environmental inspector may appeal to the High Court within a period of thirty days after the date on which the decision was communicated to him or her.

Minister of Water, Lands and Environment.

COL. KAHINDA OTAFIIRE,