

## **BUNKERING OF THE LEGAL KIND**

"If you want to avoid bunker mentality,  
Leave the bunker."  
-- Robert Vaughn --

Bunkering is an age-old activity – dating back to when ships were first powered by means other than manpower (oars) or wind (sails). Some reports have it that the term “bunkering” came into use when coal was the fuel of choice for powering steam ships. The “bunker” was the dump in which the coal was stored for firing the boilers of steam ships. Coal as a fuel for the powering of ships has long since been abandoned in favour of more efficient oil & gas based fuels, but the term “bunker tank” was retained for the storage tanks of such marine fuels. The most commonly used fuel for shipping today is Fuel Oil (a crude oil fraction) and, to a much lesser extent, Liquefied Natural Gas (LNG).

Bunkering, in the sense to which this article refers, is related to the storage of petroleum products in tanks, and the provision of such products to ships for the purposes of refueling. Such ships can be on the high seas, inland waterways, and in ports.

Bunkering operations are normally located at seaports, and they include the storage of "bunker" (ship) fuels and their provision to vessels. Traditionally bunkering was carried out in the main ports, but today it may be done in all ports. It provides fuels such as marine diesel; LPFO (Low Pour Fuel Oil), lubricants, LNG, water and other supplies to vessels operating in the country's territorial waters.

In Nigeria, oil bunkering is often erroneously associated with the theft of crude oil and its products, as well as trading in such illegally acquired products. It is thus pertinent to differentiate bunkering (which is a specialized and necessary activity) from oil theft, pipeline vandalism, and other antisocial activities in the oil industry. Like any other legitimate business, oil bunkering is completely legal if all the necessary permits and licenses are obtained, and all relevant laws are complied with. Lawful bunkering is the process by which a duly licensed operator provides fuels, water and lubricants (bunkering services) for marine services on request.

Lawful bunkering promotes activities in ship acquisition, leasing, project financing etc., and thus engenders capacity building in Nigeria . This is because bunkering is a technical and capital-intensive business. Legal aspects of bunkering include contracts, defaults, ship arrest and dispute resolution.

The petroleum industry consists of upstream and downstream sectors; the bunkering industry belongs to the downstream sector.

All interested companies must apply to the Department of Petroleum Resources (DPR) for a license to carry out the bunkering business and

participate in downstream activity on water. Illegal bunkering means running bunkering operations without the required licenses from the Department of Petroleum Resources.

Bunkering operators need to comply with the requirements of the Nigerian Navy, Nigerian Maritime Administration and Safety Agency (NIMASA), Nigerian Customs Service and Federal Ministry of Fisheries before commencing operations. Regulatory compliance (which require substantial resources in time and money) is a crucial factor in any shipping based business, with little scope for cutting corners.

## **GUIDELINES FOR BUNKERING OPERATIONS IN NIGERIA**

### **Department of Petroleum Resources**

#### **INTRODUCTION**

These guidelines are made pursuant to Sections 9(1)(e) and 4(1) of the Petroleum Act 1969 (CAP P10 LFN 2004) and Section 48(7) of the Petroleum Regulations 1967 (CAP P10 LFN 2004) and shall apply to all vessels engaged in bunker fuel business/trade within the territorial and internal waters of Nigeria.

The Petroleum Industry is regulated and monitored by the Ministry of Petroleum Resources, through the Department of Petroleum Resources, in all matters related to petroleum exploration, production, processing and marketing.

Oil Companies, both producing and marketing, operate under licenses, permits or leases granted by the Ministry pursuant to the provisions of the Petroleum Act and specific regulations for activities that include, exploration, production, processing and marketing including transportation and bunkering of petroleum products.

The approval of the Honorable Minister of Petroleum Resources is therefore required for the granting of a Bunkering License to a successful applicant as provided for under Section 48 (7) of the Petroleum Regulations 1967.

The DPR will monitor fuel/oil transfer operations based on the level of risk, both personnel and environmental, volume amount of fuel/oil, familiarity with company operations, procedures, quality and track record. DPR may stop any bunkering operations or prohibit planned operations due to safety concerns or unacceptable risk.

The purpose of these guidelines shall be to regulate, in an orderly and effective manner, all aspects relating to bunkering activities in Nigeria.

## **DEFINITIONS**

1. Bunkering means the process of supplying fuels, including but not limited to, Automotive Gas Oil (AGO), Fuel Oil, Liquefied Natural Gas (LNG) & Lubricating Oils to users in the marine environment.
2. Licensed Bunker Supply Vessel refers to bunker vessel, ship, or barge licensed by the Department of Petroleum Resources to deliver or dispense bunker fuels and /or lubricating oils to ocean-going vessels.
3. Bunker Receiving Vessel refers to the vessel receiving bunker fuels and lubricating oils.
4. Bunker Fuels include but not limited to Fuel Oils, Automotive Gas Oil (AGO), Liquefied Natural Gas (LNG), and lubricating oils used in the marine environment.
5. Licensed Bunker Supplier or Bunkerer refers to a company licensed by the Department of Petroleum Resources to supply bunker fuels to end-users within Nigerian waters.

## **GENERAL REQUIREMENTS**

Applicants shall be eligible to be licensed under these Guidelines upon satisfying the following requirements:

- i. Applications for license to engage in bunker fuel supply and trading shall be made in the manner described in Section 1.3 below and in the form prescribed in Appendix I.

- ii. All companies shall be duly incorporated and registered for Bunkering business in Nigeria.
- iii. Applicants for Bunkering Licenses may have Memorandum of Understanding (MOU) with reputable Bunker Fuel trade partners, locally or internationally.
- iv. Applicants for Bunkering Licenses must show evidence of technical and financial capabilities, which will be verified by the DPR.
- v. Bunkering license applicants shall have functional offices with technically efficient communication equipment/ facilities capable of supplying operational data in real time to a portal created by DPR in a format to be specified by the Department.
- vi. All bunkering companies shall have a well-equipped laboratory for quality control of their products.
- vii. Applicants shall submit an Oil Spill Contingency Plan.
- viii. Applicants shall submit an Emergency Response Plan.
- ix. Vessels owned or leased for operations must meet applicable International Bunkering Safety Standards.
- x. Ship/ Vessels to be utilized for mobile Bunkering Operations in Nigeria MUST BE listed in the Lloyds, Bureau-Veritas or any of the internationally recognized Classification, and the applicant shall provide evidence of such registration.
- xi. Design of static or jetty based bunkering facility including architectural, engineering, foundation, safety and all other designs that would assist the DPR in determining the suitability of the facility.
- xii. Motorized barges to be utilized for Bunkering Operations must be registered with the Nigerian Maritime Administration and the applicant shall provide Safety Agency (NIMASA) and evidence of such registration.
- xiii. Only double-hull vessels shall be used in bunkering operations.
- xiv. All bunkering companies shall have tracking and automatic sampling devices installed on their vessel(s).

## **PROCEDURE FOR LICENSING BUNKERING COMPANIES**

Licenses issued under these guidelines shall have a validity of one calendar year and all fees paid herein are non-refundable.

### **NEW APPLICATION**

Applicants shall be required to make a presentation to the DPR on planned bunkering operations. This shall include, but not limited to, a comprehensive Health, Safety and Environment (HSE) plan, proposed business plan, and Nigerian Content plan for next three years. The following shall apply to new applications:

- a. Application for a NEW License shall be made on the prescribed form (Appendix I) issued by the DPR.
- b. Application fee of US\$ 10,000 (or equivalent in Naira), Accreditation fee of US\$ 50,000 (or equivalent in Naira) and Vessel/ Motorized Barge License fee of US\$ 10,000 (or equivalent in Naira). All these fees should be made payable to Federal Government of Nigeria - DPR Fees Account.
- c. Administrative fee of US\$ 5,000 (or equivalent in Naira) payable to the Department of Petroleum Resources.
- d. Bunkering Vessel Inspection/ Verification fee of US\$ 1,000.00 (or equivalent in Naira) per vessel payable to the Department of Petroleum Resources.
- e. The following documents shall accompany the application form:
  - i. Evidence of payment of taxes in the last three (3) years (tax clearance certificate).
  - ii. List of approved communication equipment installed in the various offices and business premises with proof of ownership.
  - iii. Certificate of Incorporation, Memorandum & Article of Association and form CAC 07 & CAC 02.
  - iv. Locations, addresses and capacities of facilities to be used for storage. The minimum requirement is 5,000 MT.

- v. Full description of vessel owned/ leased by applicant, including name, age, tonnage, flag, etc. The maximum deadweight of a bunkering vessel allowed is 5,000 MT.
- vi. Request for vessels tank calibration shall be made to DPR. DPR representative(s) shall mandatorily witness the calibration exercise, and the table generated shall be forwarded to the DPR for approval. The calibration exercise shall be carried out every five (5) years.
- vii. Current fire fighting certification of vessels by the relevant regulatory agencies.
- viii. Certification of inspection of the vessel by NIMASA.
- ix. Nigerian Ports Authority (NPA) Certification or Permit for every vessel.
- x. An annual report on state of the vessel from a DPR accredited inspector (surveyor).
- xi. Copy of certificate of insurance for pollution liability with coverage of a minimum of twenty million US dollar (US\$ 20 million) or equivalent in Naira.
- xii. Evidence of competence in bunkering operations relating to trained personnel and equipment by NIMASA.
- xiii. Bunkering operations procedure manual.

## **RENEWAL APPLICATION**

The following shall apply to renewal applications:

- a. Application for renewal of license shall be made on the prescribed form (Appendix 1) issued by DPR.
- b. Renewal fee of US\$ 25,000 (or equivalent in Naira) per annum and Vessel/ Motorised Barge License fee of \$10,000 (or equivalent in Naira) per annum payable to Federal Government of Nigeria - DPR Fees Account.
- c. Administrative fee of US\$10,000 (or equivalent in Naira) payable to the Department of Petroleum Resources.
- d. Bunkering Vessel Inspection/ Verification fee of US\$ 500 (or equivalent in Naira) per vessel to the Department of Petroleum Resources.

- e. Every licensee shall file an application for the renewal of a license at least one calendar month before the expiry date of the current license. Failure to comply shall attract penalty as specified in Section 5.0.
- f. All licensed bunkering companies will be required to submit evidence of the quantities of bunker fuels supplied in the last twelve months (by presentation of copies of bunker receipts with corresponding distribution data for each delivery).
- g. The following documents shall accompany the renewal application form:
  - i. Copy of the expired license.
  - ii. Annual returns of bunker fuels volumes, locations/positions with bills of lading for all cargoes loaded.
  - iii. Evidence of payment of taxes in the past three (3) years (tax clearance certificate).
  - iv. Current fire-fighting certification of vessels by the relevant regulatory agencies.
  - v. Certification of vessel's inspection by NIMASA.
  - vi. Nigerian Ports Authority (NPA) Certification or Permit for every vessel.
  - vii. An annual report on the state of the vessel from a DPR accredited inspector (surveyor).
  - viii. Copy of certificate of insurance for pollution liability.
  - ix. Copy of vessel re-certification if due.