

**LEGAL NOTICE NO.**

**THE PETROLEUM ACT, 2019**

**(No. 2 of 2019)**

In exercise of the powers conferred by section 101 of the Petroleum Act, 2019 the Cabinet Secretary for Petroleum and Mining makes the following Draft Regulations for public comments: —

**THE DRAFT PETROLEUM (JETTIES) REGULATIONS, 2022**

- Citation 1. These Regulations may be cited as the Draft Petroleum (Jetties) Regulations, 2022.
- Application 2. (1) Unless otherwise stated by the Authority, these Regulations shall apply to all petroleum jetty operations.
- Interpretation In these Regulations, unless the context otherwise requires —
- “Authority” means the Energy and Petroleum Regulatory Authority established under Section 9 of the Energy Act No. 1 of 2019;
- “Authorised Person” means a person who is competent to carry out duties connected with a marine petroleum jetty or a person who is authorised by or on behalf of such a person to carry out these duties;
- “Back Loading” means petroleum delivery ex-shore-tank into a vessel;
- “berthing” means the process of bringing a petroleum vessel alongside a Marine petroleum jetty and securing it thereto;
- “booms” means devices for containing or preventing, so far as practicably possible, the spread of petroleum on water;
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for Petroleum;
- “certificate of entry” means an instrument given by a competent person to certify that he has, in an adequate and suitable manner, tested the atmosphere in the place or places specified in the certificate and that, in his opinion having regard to all the circumstances of the case, including the likelihood or otherwise of the

atmosphere being or becoming dangerous, persons may, at such times as are specified in the certificate, be permitted to enter such place(s);

“Competent Person” means an authorizing entity or individual possessing adequate knowledge, training and ability to perform his duties or work in such a manner as to prevent, so far as practically possible, risk of injury;

“confined space” means an enclosed area in which dangerous concentration of vapours may reasonably be expected to be present;

“dangerous concentration of vapours” means accumulation of vapours of petroleum greater than the lower flammable limit and which is capable of ignition or causing bodily injury;

“dangerous substance” means a product which by reason of being explosive, flammable, toxic, asphyxiating, corrosive, oxidizing, reducing, an irritant, liable to spontaneous combustion or decomposition or being otherwise harmful, is likely to injure a person;

“Designated Marine Jetty Operator” or “DMJO” means an entity who uses the Marine Jetty and is responsible for the management of the jetty operations and maintenance of the surface equipment;

“Energy Act” means the Energy Act, No. 1 of 2019;

“Firm Date Range” means confirmed dates within which a vessel must arrive and tender its Notice of Readiness;

“harbour” is an area at the coast which is partly enclosed by land or strong walls, so that vessels can safely dock;

“harbour authority” means a state agency responsible for the management of harbours in Kenya and for the time being is the Kenya Ports Authority;

“harbour master” is an official responsible for enforcing the regulations of a particular harbour or port, in order to ensure the safety of navigation, the security of the harbour and the correct operation of the port facilities;

“Handling and Discharge Agreement” A contract setting the requirements for the use of jetty as well as the tariffs and relationship between the DJMO and users;

“KPA” means the Kenya Ports Authority;

“Laycan” means the period of time in days during which a scheduled vessel must discharge cargo;

“Line-stripping” means the process of clearing a multi-product pipeline of one grade of petroleum product to allow for the use in transporting a different grade;

“Mainline Schedule” means the programme of product batching in the Mombasa to Nairobi Kenya Pipeline Company Limited’s pipeline.

“Marine petroleum jetty” means a jetty, dock, pier, quay, wharf or offshore terminal for loading or unloading of petroleum;

“oil interceptor” includes a separator, chamber or other device designed, located, constructed and maintained so as to retain, as far as practicable, for recovery and for safe disposal of any petroleum conveyed to it by a drainage system;

“Oil Marketing Company” means a company licensed by the Authority to import petroleum into the country and is eligible to participate in the open tender system;

“Open Tender System” or “OTS” has the same meaning as in the Petroleum Act;

“Purging” means displacement of explosive gas mixtures or petroleum vapours with inert gases, normally nitrogen or any other approved gases;

“Restricted Area” means the region contiguous to a petroleum ship berthed for the purposes of loading or unloading operations and which is provided to facilitate adequate control by the marine petroleum jetty;

“Scheduled User” means a User who has been properly programmed to deliver a parcel or cargo;

“Scheduled Vessel” means a vessel that has been nominated for product discharge/ loading date range and ullage access at the shore petroleum terminal;

“slop storage tank” means a tank used for the storage of a mixture of petroleum, water and sediment;

“Ullage” means available capacity at the shore petroleum tank;

“Unscheduled Vessel” means a vessel that has not been nominated for product discharge/ loading at the shore petroleum terminal;

“User” means a company that has signed a transportation and storage agreement with Kenya Pipeline Company Limited, or otherwise has a license to import petroleum into Kenya;

Application 3. (1) These Regulations shall apply to –

(a) Every petroleum ship which–

(i) is in any harbour for the purpose of or in connection with the carrying out of loading or unloading operations,

(ii) is moored or berthed at a marine petroleum jetty for the purpose of or in connection with the carrying out of such operations,

(b) any loading or unloading operations carried on within the functional area of a harbour authority.

(2) The provisions of these Regulations are in addition to and not in substitution for the provisions of any requirement of the—

(a) Kenya Ports Authority Act CAP 391,

(b) Merchant Shipping Act,

(c) Kenya Maritime Authority Act,

(d) Environment Management and Coordination Act,

(e) Occupational Safety and Health Act, and

(g) Detailed provisions of the International Marine Organization and any Maritime Treaty entered into by the Republic of Kenya as guided by the Kenya Maritime Authority.

Responsibilities 4. (1) In these Regulations, the responsibilities of KPA are to—

(a) Own and maintain the jetty facilities; and

(b) Provide for berthing and un-berthing of vessels at the jetties.

(2) The responsibilities of Designated Marine Jetty Operator are to —

(a) Own, operate and maintain the petroleum handling loading arms, pipelines and associated infrastructure;

(b) Carry out safety checks for ships prior to discharge at the marine petroleum jetty;

(c) Coordinate personnel entry and exit at the Restricted Area; and

(d) Carry out discharge operations of marine tankers to the designated petroleum shore terminal.

Designated Marine Jetty Operator

(1) Every petroleum marine jetty shall have a DMJO.

(2) Where there is more than one user, the operator in sub-regulation (1) shall be selected from amongst the users.

(3) The designated marine jetty operator shall be responsible for —

(a) Operating and maintaining the petroleum handling loading arms, pipelines and associated infrastructure;

	<ul style="list-style-type: none"> <li>(b) Carrying out safety checks for ships prior to discharge at the petroleum marine jetty;</li> <li>(c) Coordinating personnel entry and exit at the jetty area;</li> <li>(d) Employing and training competent staff to carry out operations at the jetty; and</li> <li>(e) Carrying out discharge operations of marine tankers to the designated petroleum shore terminal.</li> </ul> <p>(4) The designated marine terminal operator shall not discriminate between users or classes of users regarding access, tariffs, prices and conditions of service, except on grounds that are objectively justifiable and identifiable and approved by the Authority.</p>
Access to Marine Petroleum Jetties	<p>5. (1) Licensed Oil Marketing Companies shall access the jetty through a Handling and Discharge Agreement.</p> <ul style="list-style-type: none"> <li>(2) Priority shall be given to a vessel carrying OTS cargo.</li> <li>(3) The agreement in sub-regulation (1) shall be approved by the Authority.</li> </ul>
Title and Risk of Petroleum	<p>6. (1) Subject to the DMJO's right of lien under these regulations, the ownership of petroleum imported through a marine petroleum jetty and terminal shall at all times remain vested with the importing companies.</p> <p>(2) The DMJO shall have custody and be responsible for an importing company's petroleum, from the time of reception at the petroleum marine jetty to evacuation to a petroleum shore terminal at which point custody changes from the DMJO to the Transporter.</p>
Obligations of Designated Marine Jetty Operator	<p>7. The DMJO shall –</p> <ul style="list-style-type: none"> <li>(a) Maintain the marine jetty and terminal facilities in fully operational condition and in compliance with health, safety and environment laws.</li> <li>(b) Provide facilities for the reception and back loading of petroleum that have the capacity and scope to meet in a cost-effective manner the needs and requirements of petroleum business licensees.</li> <li>(c) Operate and maintain the jetty in accordance with the requirements of the Petroleum Act, regulations and guidelines that may be prescribed by the Authority and any other written law;</li> <li>(d) Keep records of the operational costs for the petroleum marine jetty.</li> <li>(e) Prepare budget for the annual operations and maintenance of the petroleum marine jetty.</li> <li>(f) Supervise and coordinate works involving the interconnection to the common-user manifolds at the boundary of the marine jetty operational area.</li> <li>(g) Be responsible for the safety and general house-keeping of the marine jetty operational area.</li> </ul>

(h) Ensure all users comply with the requirement to obtain valid import and export licences from the Authority.

(j) Allow interconnections with the facilities of another licensee, provided that the interconnection is technically feasible and the company requesting the interconnection bears the incremental costs occasioned thereby.

(k) Publish a list of qualified Users, who shall be oil marketing companies licensed by the Authority.

(l) Publish a detailed tariff sheet that specifies tariffs for vessel reception, cargo unloading and onward evacuation to the petroleum marine terminal.

(m) Issue invoices and collect fees for vessel reception, loading and unloading of petroleum at the petroleum marine terminal.

Obligations of the  
Petroleum marine Jetty  
Users

8. (1) The Users of a petroleum marine jetty shall be required to –

(a) Comply with the Handling and Discharge Agreement; and

(b) Ensure validity of licences required under the Petroleum Act and any other written law.

Jetty Handling and  
Discharge Tariffs

9. (1) Every petroleum marine jetty shall only apply tariffs approved by the Authority.

(2) The tariffs in sub-regulation (1) shall take into account all prudently incurred costs.

(4) Billing of Users by the DMJO for marine terminal logistical services shall be based on the Tariff(s) set or approved by the Authority.

(5) The User shall pay the invoice issued by the DMJO in accordance to the terms of the Handling and Discharge Agreement approved by the Authority.

Information and Statistics

10. Licensed DMJOs shall provide the Authority with all information and data prescribed by the Petroleum Act and any Regulations made thereunder.

Health Safety and  
Environment

11. (1) Licensed DMJOs shall adhere at all times to the health, safety, and environmental standards required by the Authority as prescribed under the Petroleum Act and any Regulations made thereunder and as prescribed in any other written law.

(2) The DMJO shall put in place an oil spill response plan.

(3) The DMJO shall ensure that the petroleum marine jetty has adequate personnel and safety equipment.

(4) The DMJO shall enforce the use of the safety equipment provided for in sub-regulation 11(1) by people accessing the jetty.

(5) No vessel contracted by an Importer will be allowed to berth at a marine petroleum jetty in Kenya if it does not meet the vessel vetting criteria set out by the DMJO and approved by the Kenya Maritime Authority.

(6) The DMJO shall on a continuing basis sample the discharging vessels randomly to verify conformity with the set criteria.

(7) A person who contravenes sub-regulation (1) commits an offence and shall on conviction be liable to the penalties set out in the First Schedule.

Security 12. Licensed DMJOs shall adhere to the strategic security standards required by the Authority, as prescribed by the Petroleum Act and any Regulations made thereunder, and as prescribed in any other written law.

Line-fill 13. (1) The DMJO shall ensure that the common-use jetty pipeline has line-fill.  
(2) It shall be the duty of every User to contribute to the required line-fill.  
(3) The line-fill requirement and entitlement shall be adjusted and re-shared pro-rata where a new User has connected to the common-user manifold.  
(4) Where the pipeline requires line-stripping or purging, the last user shall be responsible.  
(5) The DMJO shall maintain physical and book balance of the line-fill stocks.  
(6) The DMJO shall have the line-fill audited at his cost three (3) months after end of each calendar year.

Vessel scheduling 14. (1) There is established a Vessel Scheduling Committee comprising of representatives of the Ministry for the time being responsible for petroleum, KPA, Kenya Revenue Authority, KPC, Users, DMJOs and Supply Coordination.  
(2) The functions of the Vessel Scheduling Committee shall be to:  
(i) Provide berthing priority for vessels which have been awarded tenders under the Open Tender System;  
(ii) Provide updated date ranges for the arrival of the vessels; and  
(iii) Notify the DMJO of any changes in the vessel schedules.  
(3) The DMJO shall on a weekly basis provide a list of the berthing schedule based on the advice from the Vessel Scheduling Committee.  
(4) The User shall submit Notice of Readiness to the DMJO not more than one hour after receipt of such notice from the Vessel Master.  
(5) Users shall be required to adhere to the Handling and Discharge Agreement in regard to priority berthing rules which shall consider availability of ullage, date of arrival and security of supply for the country.  
(6) The DMJO shall allocate unused jetty schedule time on a first come first serve basis in accordance with these Regulations.

(7) If there is a foreseen delay in scheduled vessel arrival, the Vessel Scheduling Committee may substitute it with a different vessel based on the available ullage.

(8) The DMJO shall at the first day of the calendar month issue to all parties a Jetty Schedule incorporating all the vessels nominated to berth at the petroleum marine jetty.

(9) The Jetty Schedule in sub-regulation 14(8) shall give priority of inclusion in order of nomination.

Liability – Demurrage  
and/or Other Claims

15. (1) Time allowed by a marine jetty operator for discharge of a vessel shall be a maximum of forty-eight (48) hours at KOT, and sixty (60) hours at SOT, commencing six (6) hours after a written notice of readiness to discharge has been given to the jetty operator, subject to the following exceptions:

(a) if discharge of the vessel takes longer, and it is not as a result of vessel inadequacies/equipment failures, the marine jetty operator will be responsible for any demurrage related to the excess discharge time as per the Charter Party Terms subject to sub-regulation (1)(b);

(b) if the excess discharge time is the result of a fire, explosion or breakdown of machinery at the shore terminal, the demurrage related to the excess discharge time will be charged to the marine jetty operator at half the demurrage rate as per the Charter Party Terms;

(c) if the excess discharge time is because of vessel's inadequacies/equipment failures, the User will be responsible for any demurrage related to the excess discharge time; and

d) if the vessel discharge is suspended for vessel's purposes, the User shall be liable for demurrage in respect of such excess time.

(2) Where a scheduled vessel arrives outside its firm date range and occupies the jetty causing demurrage to a subsequent vessel arriving within its firm date range, then the User of the vessel arriving outside its date range shall be liable for demurrage incurred on the scheduled vessel but limited to the extent caused by the vessel that arrived outside its firm date range.

(3) Where a scheduled vessel arrives within its firm date range, and after berthing at the petroleum marine jetty does not discharge all or part of its cargo due to lack of sufficient ullage, then the shore terminal operator responsible for creating the shortage of ullage will be liable for consequential costs and demurrage to the vessel(s), if any.

(4) Where a scheduled User contaminates the product in the shore terminal tank(s) and pipelines and causes delay to a vessel arriving within its scheduled date range, such User that occasioned the contamination shall be



liable for any costs and demurrage incurred to the User whose discharge was so delayed.

(5) Where a scheduled vessel arrives within its firm date range but continues to occupy the jetty into another scheduled vessel's firm date range then liability for demurrage incurred to the second scheduled vessel that arrives within its firm date will be for the account of the first vessel that continues to occupy the jetty.

(6) Where Users having requested and been granted ullage at petroleum shore terminal and they do not take it up, thereby denying other Users ullage as well as business to the shore terminal operator(s) then the operator will be free to allocate the User's ullage to other parties.

(7) Under the circumstance listed in sub-regulation 15(6), the User will be liable for payment of a penalty as determined by the Handling and Discharge Agreement as compensation for lost business.

(8) Demurrage arising from the circumstances defined in sub-regulations 15(2), 15(4), 15(5) and 15(6) shall not be eligible as a prudently incurred cost to be borne by consumers in the price regulated regime.

Petroleum Product  
Quality

16. The shore terminal operator shall ensure that the petroleum product at the vessel and the shore terminal are tested for conformity to Kenya Standards.

Complaints and Disputes

17. (1) A person who is aggrieved by a decision or action of the DMJO shall endeavor to have the complaint resolved within the provisions of the Handling and Discharge Agreement.

(2) Any unresolved complaint shall be escalated to a dispute and may be lodged with the Authority

(3) A dispute contemplated under sub-regulation 17(2) shall be submitted in the form and manner prescribed by the Authority and shall be accompanied by:

(a). Any information in support of the dispute; and

(b). A description of efforts made to resolve the dispute before tabling it to the Authority.

(4) In pursuance to sub-regulation (1) the Authority shall investigate and may, for that purpose, summon witnesses to appear before it.

(5) At the conclusion of the investigation, the Authority shall make determination and give reasons for its decision.

(6) The Authority shall, within seven (7) days of making a decision, communicate in writing such decision to the parties involved.

(7) A person aggrieved by the decision of the Authority on a complaint may appeal to the Energy and Petroleum Tribunal within thirty (30) days of such a decision.

Penalties 18. A person who contravenes the provisions of these Regulations where no express penalty has been provided commits an offence and shall on conviction be liable to the fines and penalties prescribed in the First Schedule.

**FIRST SCHEDULE**  
**Regulation 11(7) and 18**  
**FINES AND PENALTIES**

<b>Regulations</b>	<b>Offence</b>	<b>Fine or Penalty (Amount in Kshs)</b>
11(7)	Failure to institute proper environmental, health and safety measures in the operation of a petroleum marine jetty	Not Less than KShs10,000,000
18	General penalty for non-compliance with the Regulations	Not less than Kshs5,000,000

Made on this day.....of 2022

Cabinet Secretary for Petroleum and Mining