

DEMOCRATIC REPUBLIC OF TIMOR-LESTE



REGULATION NO. 2 /2012, of 3 of September 2012

ON

DOWNSTREAM ACTIVITIES' INSPECTION DIVISION

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DOWNSTREAM ACTIVITIES' INSPECTION DIVISION

Under Decree-Law No. 1/2012, of 1 February 2012, the Autoridade Nacional do Petróleo (ANP) has generic powers to approve the internal regulations necessary for the pursuance of its supervisory and regulatory activities, which include, namely, the supervision and inspection of facilities, equipment and documentation of entities operating in the petroleum, natural gas and derivatives industry and other regulated sectors. In furtherance of said generic powers, Article 64 of the Decree-Law on the Downstream Sector entitles the ANP to create the Downstream Activities' Inspection Division to carry out its supervision and inspection powers respecting to the downstream sector, which it does by means of this Regulation.

The Inspection Division is comprised of an Inspection Manager, Inspection Officers and Inspection Assistants (collectively the "Inspectors") with specific powers to conduct investigations to determine the existence of violations of the rules and requirements contained in the Decree-Law on the Downstream Sector and ancillary regulations, the offenders and their respective liability.

Under this Regulation, the ANP may conduct 3 different types of inspections. The first type of inspection, foreseen in Article 11, takes place prior to the granting, transfer or renewal of a license for the performance of downstream activities, when the ANP conducts mandatory preliminary inspections. The second type of inspection, foreseen in Article 12, occurs whenever, irrespective of the existence of an offence report, the ANP in the exercise of its inspection and supervisory powers decides to randomly examine locations and facilities where downstream activities are performed. The third and final type of inspection or investigation, foreseen in Article 13 and Articles 16 through 19, takes place following the presentation of a Notice of Offence or an offence report, in which case the ANP shall conduct an offence investigation in order to verify the facts described in the notice or report.

Now therefore, under the terms of Articles 1.2, 3.4, 4.1 (a), 4.2 and 8.1 (c) of Decree-Law No. 20/2008, of 19 June 2008 and Articles 7.2 (l) and 64 of Decree-Law No. 1/2012, of 1 February 2012, the Board of Directors of the ANP approves the following Regulation:

CHAPTER I – GENERAL PRINCIPLES

Article 1

Object

This Regulation sets forth the legal framework applicable to the ANP's inspection activities and auditing and supervision powers in respect of the downstream sector, and creates the Downstream Activities' Inspection Division.

Article 2

Nature and purpose

1. The Downstream Activities' Inspection Division, or Inspection Division, is the ANP department, integrated under the Downstream Directorate, responsible for inspecting, auditing, supervising and investigating downstream activities.
2. The Inspection Division is an integrated department of the ANP with specialized technical competence, under the direct supervision of the Director of Downstream.

Article 3

Scope of intervention

1. The Inspection Division is, namely but not limited to, responsible for:
 - (a) Performing preliminary, random and offence inspections and investigations and drafting the respective reports and recommendations with their findings, as well as carrying out other actions aimed at supervising entities engaged in downstream activities;
 - (b) Performing technical actions to coordinate, articulate and assess the reliability of internal control systems, proposing measures aimed at improving the structure, organization and operation of said systems, and monitoring their respective implementation and evolution;
 - (c) Undertaking investigations, inquiries and appraisals of the entities subject to its supervisory powers, as well as proposing to the Downstream Director administrative sanctions for breach of the Decree-Law on the Downstream Sector and ancillary regulations;
 - (d) Undertaking auditing procedures so as to review and examine records and activities carried out, so as to assess the adequacy of system controls, ensure compliance with established policies and operational procedures and to recommend necessary changes in controls, policies or procedures, as well as to make sure that all record keeping obligations are being complied with and handled properly;
 - (e) Performing any other functions and exercising other powers attributed to it by law or regulations, as well as other functions and powers deriving from or in furtherance of the above powers and responsibilities.

2. As a technical support department specialized in the supervision, verification and control of downstream activities, the Inspection Division is responsible for the following tasks:
 - (a) Implementing programs aimed at promoting and socializing activities related with good practices in the downstream oil and gas industry;
 - (b) Preparing for submittal to the ANP's Management Committee by the Downstream Director opinions, recommendations and draft conviction decisions pertaining to the sanctioning of administrative offences arising out of the performance of downstream activities;
 - (c) Ensuring, within the scope of its mission, articulation and connection with its international counterparts;
 - (d) Performing any other specialized functions within the scope of its attributions.
3. In the performance of its inspection and supervision powers, the Inspection Division has powers to, amongst other actions:
 - (a) Interview, question and collect statements from purported offenders and witnesses;
 - (b) Collect specimens and samples of products or other goods produced as a result of downstream activities, and carry out or order the carrying out of any required analysis thereon;
 - (c) Photograph, film, record, or otherwise collect evidence of administrative offenses to the Decree-Law on the Downstream Sector and ancillary regulations;
 - (d) Draft notices of offense respecting administrative offenses verified by it;
 - (e) Prepare and undertake all actions required for the investigation and punishment of administrative offenses referred in offense reports or notices of offense;
4. The Inspection Division's activities shall cover all entities and individuals undertaking downstream activities in the Territory of Timor-Leste, regardless of the nationality or headquarters of the offender, and on board of Timorese flagged or registered aircraft, trains, ships and motor vehicles.

Article 4

Duties of cooperation by persons under investigation and by government bodies

1. All legal or physical persons, irrespective of their public or private nature, or nationality, that wish to carry out or are presently carrying out one or more downstream activities, including all members of international organizations or missions present in the territory of Timor-Leste, irrespective of their mandate, subject to investigation, are bound by duties of information and cooperation towards the Inspection Division. The referred duties shall include, namely but not limited to, providing all information and right of access necessary to allow the Inspection Division to carry out its inspection activities, in the form, and with the frequency and urgency required by the ANP's inspectors.

2. All officers, representatives and employees of inspected legal persons have the duty to provide, within the prescribed time-frame, all information, opinions, and cooperation requested by the Inspection Division.
3. Subject to the terms set forth herein, in the performance of the Inspection Divisions' mission, the Inspectors may request the cooperation of government services and bodies, in whatever form they deem necessary, including the allocation of technical personnel to monitor inspection actions, and collect and analyze samples and specimens.
4. Whenever there is a risk or threat to the safety of the Inspection Division's staff, or risk or threat of impairment of the Inspection Division's activities, the Inspectors may request the intervention and assistance of the police forces.

Article 5

Professional identification

1. The Inspection Manager, Inspection Officers and Inspection Assistants shall have the right to bear a professional identification card or badge, which shall grant them free-access to all businesses, locations, Downstream Infrastructure and vehicles, in the performance of their duties. The professional identification card or badge must be shown prior to the performance of all inspection activities.
2. The identification card or badge shall, amongst other information, contain the following elements:
 - (a) A recent photograph of the card-holder;
 - (b) Identification of the Inspection Division;
 - (c) Typed name and signature of the respective holder;
 - (d) Identification of the person's specific rank;
 - (e) Signature of the ANP's President; and
 - (f) Digital seal aimed at preventing counterfeiting of the identification card or badge.
3. The form and specifications of the identity card referred in Article 5.1 are set forth in Annex III to these Regulations which is deemed an integral part hereof.
4. The Inspection Manager, Inspection Officers and Inspection Assistants may also be identified by presenting or displaying a badge, containing ANP's insignia.
5. The identification card shall be renewed whenever there is a change in the professional situation of its respective holder.
6. A person who ceases to be an Inspection Manager, Inspection Officer or Inspection Assistant must return his or her identity card to the ANP as soon as practicable after being released from his/her duties, although not exceeding twenty (20) working days. Should the identity card not be returned to the ANP within said deadline, the President of the ANP may request its judicial apprehension before the competent District Court.

Article 6

Duties of secrecy and withholding of information

1. All Inspection Division staff has a special duty to keep the utmost professional secrecy regarding all issues they become aware of during or because of the exercise of their functions as ANP staff.
2. The Inspection Division staff may not make any public or private statements or comments regarding any proceedings they are involved in, except when dully authorized by the Downstream Director and solely for the purposes of defending their honor or for the fulfillment of another legitimate interest or for the purpose of any legal proceedings arising out of the implementation or enforcement of these Regulations or another statute, when so requested by a Court of law.
3. All Inspection Division and other ANP staff that have access to confidential data and information, including of Licensees and other private parties, as a result of the performance of their inspection, supervision and offense-related functions shall keep all such information strictly confidential and subject to professional secrecy.
4. Information not covered by professional secrecy may be freely disclosed to the general public.

Article 7

Adversarial principle

1. Without prejudice to the guarantees of defense set forth in the law, the Inspection Division shall conduct its interventions in respect of the adversarial principle.
2. Amongst other procedural rules, the ANP must advise the entity or individual subject to investigation in advance of the draft inspection or control report, so that such entity or individual may have the opportunity of freely providing all explanations that it deems necessary or desirable before the final report is drafted, except when such a procedure might compromise the purposes of the control.

Article 8

Proportionality

In the performance of their control and investigation powers and activities, the Inspectors shall conduct themselves by using and implementing procedures that are balanced and proportional considering the aim of the actions undertaken.

CHAPTER II

INVESTIGATIVE ACTIVITIES, INSPECTIONS AND INVESTIGATIONS

Article 9

Types of investigative activities

1. The ANP Downstream Inspection Division may undertake the following types of investigative activities:

- (a) Preliminary inspections under Article 11;
 - (b) Random inspections under Article 12;
 - (c) Investigations, under Articles 16 through 19, including offense inspections under Article 13.
2. The provisions of Part V of Decree-Law No. 1/2012 shall apply to all activities carried out by the ANP Inspection Division under these Regulations.

Section I

Inspections

Article 10

Types of inspection

The Inspection Division may conduct inspections of the following nature:

- (a) Preliminary inspections;
- (b) Random inspections; and
- (c) Offence inspections.

Article 11

Preliminary inspection

1. A preliminary inspection, as foreseen in Article 18 of ANP Regulations No. 1/2012, of 3rd of September 2012, aimed at assessing whether companies wishing to carry out or which have been carrying out downstream activities comply with the minimum requirements set forth in applicable law and regulations, shall be mandatorily conducted whenever the ANP receives an application for the granting of a downstream activities license, or for its respective renewal, amendment or transfer.
2. The ANP shall notify the applicant or Licensee of the time and date of the inspection in writing, with at least three (3) working days' notice.
3. In the case of issuance of new licenses or amendment thereof, the preliminary inspection shall mandatorily include tests to the proposed facilities and equipment to be used in the Downstream Activities to be carried out. Such tests shall be aimed at evaluating the capacity, safety and suitability of the facilities and equipment to the activities intended to be carried out.
4. In case of renewal of licenses, upon receipt of the notice mentioned in Article 11.2, the applicant shall immediately advise ANP if it considers the inspection would unduly interfere with its activities or if its key personnel cannot be available on the proposed inspection date. The inspection may be postponed once in such situation.
5. The ANP may conduct surprise preliminary inspections and tests, whenever there is duly grounded suspicion that the applicant or Licensee is conducting activities which would be deemed an administrative offense, in which case the rules for offense inspections shall apply.

6. Within twenty (20) working days of the performance of the inspection the Inspection Officer shall prepare a report with the respective findings, to be approved or amended by the Inspection Manager. The applicant or Licensee shall be served notice of the report, containing a draft decision, within five (5) working days of its approval by the Inspection Manager.
7. Within ten (10) working days from receiving the Inspection Manager's report and draft decision, the applicant or Licensee may offer its comments and/or propose any changes thereto.
8. Upon receiving the applicant's or Licensee's comments and/or proposed changes , if any, the Inspection Manager shall issue within five (5) working days the final report and forward it to the Downstream Director for the issuance of a final decision, under the terms set forth in Article 12.2 of Regulations No. 1/2012, of 3rd of September 2012, which approved the Administrative Procedures, Requirements and Fees for the Granting, Renewal and Modification of Downstream Activities' Licenses.
9. The final report mentioned in Article 11.8 shall contain, as a minimum, the findings of the inspection and tests performed, and a conclusion as to whether or not the facilities and operations meet all the Downstream Sector statutory and regulatory requirements, as well as those imposed by other applicable legislation, for the respective license to be issued, renewed or transferred. If such requirements are not met, and whenever possible, the report shall also mention what corrective measures, if any, must be undertaken by the applicant or Licensee and the maximum deadline to implement the same. The Licensee may also propose corrective measures to the ANP for such purpose.

Article 12

Random inspections

1. A random inspection consists of an *ad hoc* verification, ordered without prior notice by the Downstream Director or by the Inspection Manager according to his/her complete discretion, to licensed businesses, locations, Downstream Infrastructure, and vehicles where or through which downstream activities are carried out or are suspected of being carried out.
2. Random inspections are not dependent on the existence of an offence report or Notice of Offence.
3. The purpose of a random inspection is to arbitrarily assess the existence of any unlawful activities being carried out at businesses, locations, Downstream Infrastructure and vehicles where or through which downstream activities are being performed or are suspected of being performed.
4. The Inspection Officers and Inspection Assistants, who during the inspection verify any events or circumstances capable of resulting in liability for administrative offences, or suspicion thereof, shall draw up the corresponding Notice of Offence, using the template attached to these Regulations as Annex I, for further investigation within five (5) working days.
5. The Notice of Offence mentioned in Article 12.4 shall be confirmed by the Inspection Manager for purposes of ordering the opening of an investigation to be conducted under Articles 16 through 19 below.

6. Within twenty (20) working days of the performance of the inspection the Inspector shall prepare a report with the respective findings, to be approved by the Inspection Manager. The report may recommend that further investigative activities be undertaken, including but not limited to, the performance of an offence inspection, gathering of samples, interviewing of witnesses and purported offenders, and testing of equipment.

Article 13

Offence inspection

1. An offence inspection consists of an investigation, without prior notice, to licensed businesses, locations, Downstream Infrastructure and vehicles where or through which downstream activities are carried out or are suspected of being carried out.
2. An offence inspection is a physical investigation of the scene of the alleged offence, including of any documents, goods or equipment used to commit the same or produced as a result thereof.
3. An offence inspection may only take place during an investigation procedure performed by the ANP, after express order from the Inspection Manager.
4. The offence inspection is mandatory in any investigation process commenced as a result of an Offence Report.
5. The offence inspection is optional in any investigation process grounded on a Notice of Offence and, in this case, shall take place whenever the Inspection Manager, upon suggestion of the Inspection Officer responsible for the investigation, determines that further evidence is required.
6. Within twenty (20) working days of the conclusion of the inspection the Inspection Officer shall prepare a final report with the respective findings, for approval by the Inspection Manager. The report may recommend the application of administrative fines and/or additional sanctions under the applicable law or regulations, as well as list the corrective measures to be implemented by the offender.
7. Should the ANP have reasonable grounds to believe that criminal activities may be ongoing at the businesses, locations, or Downstream Infrastructure or being conducted through the vehicles subject to inspection, the ANP may advise the police authorities so the latter may accompany the inspection.

Article 14

Preventative measures

1. When the requirements set forth in Article 41 of Decree-Law no. 1/2012 are met, the ANP President, upon request of the Downstream Director, may submit an application for the necessary preventative measures before the competent District Court.
2. The powers mentioned in Article 14.1 may be delegated to the Downstream Director by written decision of the ANP President, the former being prevented from further delegating such powers.

Article 15

Sanctioning decision

1. Upon approval of the final report by the Inspection Manager, the same, accompanied by the explanations, if any, provided by the offender, shall be forwarded to the Downstream Director so that he/she may present it to the ANP Management Committee for discussion at the latter's next meeting.
2. The offender shall be served notice of the approval of the final report by the ANP's President as a conviction (the "Sanctioning Decision"), within five (5) working days of the date of approval of the same.
3. The Sanctioning Decision shall comply with all requirements set forth in the applicable legislation and regulations, notably Article 50 of Decree-Law 1/2012.

Section II

Investigations

Article 16

Scope and purpose of an investigation

1. An investigation comprises all the necessary actions and procedures aimed at determining the existence of an administrative offence, its perpetrating agents, and their respective liability, and at discovering and collecting evidence capable of substantiating the decision to be taken in the respective offense proceedings, including the application of a penalty or additional sanction when an offense is confirmed, or the dismissal of the proceedings when an offense is not confirmed.
2. An investigation may only be ordered by the Inspection Manager as a result of an Offence Report or a Notice of Offence.

Article 17

Supervision of the investigation

1. The investigation shall be directed by the Inspection Manager, which may be assisted by the competent police authorities or any other administrative authorities with expertise, know-how or technical means required by the ANP. The ANP may also contract the services of private entities with the referred know-how, expertise and technical means whenever the same are not available from public entities or administrative authorities.
2. Unless otherwise provided for in these Regulations, in the procedures aimed at applying an administrative fine and/or additional sanctions, the ANP shall be entitled to the same rights and is subject to the same duties as the entities engaged in criminal procedure.
3. The rights and duties mentioned in Article 17.2 include, namely but not limited to:
 - (a) hearing witnesses and collecting statements;
 - (b) gathering evidence of physical or other types;

- (c) collecting samples;
- (d) requesting the assistance of all public and private entities and individuals in the performance of the investigation;
- (e) apprehending goods and equipment;
- (f) maintaining absolute professional secrecy in respect of information and details gathered as a result of the investigative activities;
- (g) respecting the fundamental rights of witnesses and offenders.

Article 18

Admissibility and treatment of evidence

1. Any evidence not prohibited by law is admissible in an administrative procedure.
2. Evidence that can be used in an administrative procedure includes, namely but not limited to, all the evidence listed in the Criminal Procedure Code.
3. All evidence and/or samples collected by the Inspection Division and which substantiated a conviction decision must remain unaltered, kept safe and sealed and available for examination by other administrative or judicial authorities, until the deadline for the filing of any administrative or judicial appeals of the conviction decision to which such evidence pertains has elapsed, or until the decision of any such appeal becomes *res iudicata*.

Article 19

Writ of investigation

1. All actions and procedures concerning the collection, processing and maintenance of evidence shall be recorded in writing, which may consist of a brief summary of the elements so gathered and any respective treatment or processing.
2. Evidence deemed irrelevant by the Inspection Division may be destroyed and is not subject to the requirements set forth in Articles 18.3 and 19.1.

CHAPTER III

GUARANTEES ON THE PERFORMANCE OF INSPECTION ACTIVITIES

Article 20

Guarantees pertaining to inspections

1. The Inspectors shall collect samples of any petroleum products or derivatives sold, offered, or presented for sale in the territory of Timor-Leste for further analysis.
2. Evidence collected by Inspection Officers and Inspection Assistants shall be considered *prima facie* evidence in any court of law in the territory of Timor-Leste.
3. In the performance of their duties, the Inspection Division's staff shall have, amongst others, the following rights:

- (a) Right of access to businesses, locations, Downstream Infrastructure and vehicles of any public or private entity where or through which Downstream Activities are carried out or are suspected of being carried out, at the time and for a period deemed convenient for the performance of their duties of inspection, monitoring and supervision;
- (b) Examine, consult and include in proceedings any books, documents, records, files and any other information deemed relevant by the Inspection Officers and Inspection Assistants, held by the entities or individuals subject to inspection;
- (c) Conduct examinations on any traces of infringements;
- (d) Conduct inspections to locations where downstream operations are being performed, in order to obtain evidence of unlawful activities under the terms prescribed in Chapter II;
- (e) Perform tests to the facilities and equipment to be used or in use in the performance of downstream activities, in order to assess their suitability to the proposed activities to be carried out or to existing operations;
- (f) Seal off any premises and seize documents and items from the inspected entities or their personnel, which may constitute evidence and be deemed essential to the investigation, in which case the inspector shall draw up the corresponding report;
- (g) Request the cooperation of the police authorities in case of denial of access or obstruction to the inspection, or danger to the health or safety of inspectors;
- (h) Request the adoption of preventative measures considered essential to ensure the evidence is not tampered with, whenever deemed necessary, under the terms set forth in the Criminal Procedure Code and Decree-Law No. 1/2012;
- (i) Obtain, for the support of ongoing inspection activities, any material, equipment and collaboration of the inspected entity's personnel;
- (j) Make the necessary use of the inspected locations whenever required to carry out the inspection;
- (k) Promote, by themselves or with the assistance of police or administrative authorities, the notifications required to carry out the inspection; and
- (l) Take any other measures deemed necessary or adequate to ensure that the operator of the facilities or equipment avoids, ceases or performs a certain action, or in any other way avoid a breach of Decree-Law no. 1/2012 or ancillary regulations, under the terms of applicable law.

Article 21

General Powers upon access

For purposes of monitoring and enforcing compliance with these Regulations, upon access to the respective location, the Inspection Officer or Inspection Assistant may:

- (a) Search any part thereof;
- (b) Inspect, measure, test, photograph or film any part thereof or any object found therein;

- (c) Take an object, or a sample found at the location for analysis or testing purposes;
- (d) Copy documents;
- (e) Take into or onto the location any persons, equipment and materials the Inspection Officer or Inspection Assistant reasonably requires for exercising any power under these Regulations;
- (f) Require that any person found on the location give the Inspection Officer or Inspection Assistant reasonable assistance to exercise the inspector or officer's powers under Article 20;
- (g) Interview any person found on the location and collect the respective statements necessary to assist the Inspection Officer or Inspection Assistant in ascertaining whether an administrative offence was, is being or will be committed;
- (h) Take any necessary measures to prevent the disappearance or destruction of evidence.

Article 22

Limitation of the right of access

An Inspection Officer or Inspection Assistant who enters a business, location, downstream infrastructure or vehicle, must not unnecessarily impede production or operation thereof.

Article 23

Securing seized objects

1. After seizing an object, an Inspection Officer or Inspection Assistant may opt to:
 - (a) Move it from its original location; or
 - (b) Leave it in place ensuring reasonable action to restrict future access to it.
2. To enable seizure of an object, an Inspection Officer or Inspection Assistant may require the person in control of it to:
 - (a) Move it to a disclosed location within a reasonable time-frame; and, or
 - (b) Remain in control of it for a reasonable period, if deemed necessary.
3. In the case referred in Article 23.1 (b), no person may tamper or attempt to tamper with said object, nor with the measures which have been implemented by the Inspection Officer or Inspection Assistant to restrict access thereto.
4. In the case referred in Article 23.2 (b), the Inspection Officer or Inspection Assistant shall serve written notice on the holder of the object, failing which an oral request may suffice, provided that subsequent written notice is served in a timely fashion.
5. The holder of the object must comply with the Inspection Officer's or Inspection Assistant's request, at the holder's own expense.

6. The Inspection Officer or Inspection Assistant shall always prepare a writ of seizure which shall serve as proof of receipt of the seized object by the Inspection Officer or Inspection Assistant, or of the measures undertaken or ordered pursuant to this Article 23.

Article 24

Forfeiture of Seized Objects

The forfeiture of seized objects shall follow the provisions set forth in criminal law, duly adapted.

Article 25

Inspection Procedures

Every Interested Person, including applicants or Licensees, shall recognize, as a duly authorized representative of the ANP, any person bearing the Inspection Division's badge or identification card to whom the Inspection Manager or Downstream Director has provided written or electronic authorization to conduct inspection activities on specified dates.

Article 26

Rights of inspected entities or individuals during an inspection

While being subject to an inspection, inspected entities or individuals are entitled to the following rights:

- (a) The applicant, Licensee or purported offender has the right to contact the ANP, including by telephone, within one hour, to confirm the credentials of any person who claims to be an ANP representative and shall accept verbal, written or electronic confirmation of such credentiation by ANP;
- (b) Each applicant, Licensee or purported offender may accompany the ANP representative who inspects or accesses the facility or location;
- (c) Oppose to any actions or measures restrictive of fundamental rights.

Article 27

Dismissal of administrative procedure

1. The Inspection Division shall dismiss administrative procedures:
 - (a) Whenever, beyond reasonable doubt, the evidence collected demonstrates that no offence took place;
 - (b) Whenever, beyond reasonable doubt, it considers that the agent did not commit said offence, with willful misconduct or negligence;
 - (c) If the proceedings are legally inadmissible; or

- (d) If from the evidence gathered it is not possible to conclude that an administrative offence occurred or to establish the identity of the perpetrating agents.
2. The Downstream Director, upon proposal of the Inspection Manager, shall be responsible for determining the dismissal of the administrative proceedings.
3. The agent and the person or persons whose complaint gave rise to the investigation, if applicable, shall be served notice of the dismissal-decision within ten (10) working days.

Article 28

Hierarchical appeal

Within twenty (20) working days as of the date of service of notice of the decision to dismiss the administrative proceedings, the President of the ANP may, at its sole discretion or subject to the duly grounded request of an Interested Person, order the continuation of the investigation, thereby determining the actions and proceedings to take place and the time-frame within which they should be executed.

CHAPTER IV

STRUCTURE OF THE INSPECTION DIVISION

Article 29

Inspectors

Inspectors are divided, as follows:

- (a) Inspection Manager;
- (b) Inspection Officer; and
- (c) Inspection Assistant.

Article 30

Inspection Manager

1. The Inspection Manager shall have the following powers and competences:
 - (a) Managing the Downstream Activities' Inspection Division, subject to the instructions of the Downstream Director;
 - (b) Coordinating supervision activities;
 - (c) To organize and coordinate with any administrative bodies or public agencies the surveillance of suspicious activities;
 - (d) To promote preventative measures to safeguard public health and the environment;

- (e) Study, develop, adopt or implement methods and processes of a technical or scientific nature, relating to matters of interest to the ANP within the scope of the Inspection Division's Activities;
 - (f) Collaborate with other entities supervising hydrocarbons and quality control;
 - (g) Coordinate and manage its superintended staff, including Inspection Officers and Inspection Assistants;
 - (h) Cooperate in training sessions promoted by the ANP;
 - (i) Regularly audit, analyze and evaluate activities under the supervision of the ANP;
 - (j) Provide support and consultation on Downstream-related issues to the ANP President, the Downstream Director or the Board of Directors;
 - (k) Request from other government services, the allocation of technical personnel to monitor inspection actions;
 - (l) Refer to the Downstream Director, for presentation to the Board of Directors any situations that suggest criminal behavior, of which the Inspection Division becomes aware as a result of its activities, so that the ANP President may provide same information to the Public Prosecutor or to any other legally competent entity;
 - (m) Carry out any residual control activities, as determined by the Downstream Director, in order to fully exercise its powers and responsibilities;
 - (n) Prepare and submit to the Downstream Director, on a regular basis, a brief containing a summary of the Inspection Division's activities. The ANP Downstream Director shall keep the Management Committee up-to-date on the activities of the Inspection Division. A consolidated version of the information so provided shall be included in the ANP's public reports;
 - (o) Decide on the outcome of the investigations, by suggesting to the Downstream Director the application of a penalty or the dismissal of the administrative proceedings.
2. The exercise of the power referred in Article 30.1(k) is dependent upon written delegation from the Downstream Director.
 3. The brief mentioned in Article 30 (n) must, amongst others, contain the following information:
 - (a) Offence procedures carried out;
 - (b) Fines applied;
 - (c) Obstacles met during the performance of its functions;
 - (d) Areas in which more offences were detected;
 - (e) Recommendations to improve the downstream sector; and
 - (f) Other relevant information.
 4. In the absences of the Inspection Manager the same shall be replaced by an Inspection Officer appointed by the Downstream Director for such purpose.

5. The Inspection Manager shall be responsible before the Downstream Director for all actions carried out in the performance of his/her duties.

Article 31

Inspection Officers

The Inspection Officers shall have the following powers:

- (a) Carry out inspection and control activities within the ANP's competencies and powers;
- (b) Carry on surveillance activities within the ANP's competencies and powers;
- (c) Collect, study and analyze all elements required to carry out inspections;
- (d) Perform any task required to obtain, provide, transmit and cross-refer information regarding inspection activities;
- (e) Draw up Notices of Offence relating to matters that are likely to constitute administrative offences;
- (f) Collect samples for laboratory analysis;
- (g) Prepare reports on inspection and control activities;
- (h) Assist the Inspection Manager in the pursuance of his/her powers under these Regulations;
- (i) Perform seizures and sealing off of locations;
- (j) Perform nondestructive measurements and sampling;
- (k) Examine records respecting to quantities, origin and disposition of materials to confirm the accuracy of the information provided to ANP;
- (l) Examine relevant production and shipping records; and
- (m) Undertake any residual inspection and control activities, in order to fully exercise his/her powers and responsibilities.

Article 32

Inspection Assistants

Subject to the supervision and guidance of the Inspection Manager and the Inspection Officers, Inspection Assistants shall have the following powers:

- (a) Assist the Inspection Manager and the Inspection Officers in the pursuance of their functions, by performing any such acts of, including but not limited to, an inspective nature, within ANP's powers;
- (b) Assist in collecting samples for laboratory analysis upon instruction of Inspection Manager or Inspection officers;
- (c) Assist in carry out inspection and control activities within the ANP's competencies and powers;
- (d) Assist Inspection Manager and Inspection Officers in drawing up Notices of Offence relating to matters that may constitute administrative offences;

- (e) Assist Inspection Manager and Inspection Officers in performing seizures and sealing off of locations;
- (f) Assist Inspection Manager and Inspection Officers in preparing reports for each investigation he/she participates in;
- (g) Assist Inspection Manager and Inspection Officers in performing nondestructive measurements and sampling;
- (h) Assist Inspection Manager and Inspection Officers in examining records respecting to quantities, origin and disposition of materials to confirm the accuracy of the information provided to the ANP;
- (i) Assist Inspection Manager and Inspection Officers in examining relevant production and shipping records; and
- (j) Undertake any task assigned by Inspection Manager and Inspection Officers in order to fully exercise his/her powers and responsibilities.

CHAPTER V

INCOMPATIBILITIES AND IMPEDIMENTS

Article 33

General principles

The Inspection Division's staff is subject to the general rules applicable to all ANP employees, as set forth in Article 14 of Regulations No. 1/2012, of 3 September 2012, on Administrative Procedures, Requirements and Fees for the Granting, Renewal and Modification of Downstream Activities' Licenses.

Article 34

Conflicts of interest and impediments

1. Inspectors shall not participate in or perform any inspection act or take decisions in respect of any other matter:
 - (a) In which the same has or may have a direct or indirect interest or benefit;
 - (b) That could result in a benefit for their relatives or any other person to whom such member is related by marriage, dowry or a de-facto union.
2. For the purposes of Article 34.1, a relative shall mean:
 - (a) Grandparents, parents, children and grandchildren;
 - (b) Brothers, sisters, aunts and uncles.
3. It is deemed unlawful and therefore prohibited for the Inspectors to be engaged, directly or indirectly, in any Downstream Activity such as supply, processing, storage, transportation, marketing and trading activities, as well as in the construction and operation of pipelines and fuel distribution networks or construction and operation of fuel supply stations and any other activities falling within the scope of the ANP's authority.

4. An Inspection Officer and an Inspection Assistant who performed a specific inspection or inspection act may not subsequently be responsible for determining whether or not an administrative offence occurred, or for proposing the amount of the penalty due as a result of the offence, if any.

Article 35

Incompatibilities

1. The carrying out of any public or private function of a professional nature, other than teaching or scientific research, is incompatible with the functions of Inspection Manager, Inspection Officer and Inspection Assistant.
2. The ANP President may oppose to the performance of teaching or scientific research activities if they are remunerated and/or impair compliance with the individual's official duties.

CHAPTER VI

FINAL PROVISIONS

Article 36

General rule on counting of procedural deadlines

The counting of all procedural deadlines set forth in the present Regulations shall be suspended until the ANP receives all technical advice, information and/or binding opinions which, by law or regulation are required to be issued by other State bodies.

Article 37

Duty of participation

1. The Inspection Division's staff has the duty of reporting to the competent entities any facts it becomes aware of, in or outside the performance of its functions, should they be susceptible of constituting a crime or a breach of laws or regulations within the scope of activity of another Government body.
2. Inspection Officers and Inspection Assistants who learn or are informed of a crime or another breach under Article 37.1 shall refer it to the ANP's President through the Downstream Director, and the ANP President shall, in turn, inform the Public Prosecution's Office or the competent Government body as soon as possible, without prejudice to the adoption of the necessary and urgent temporary measures for securing the evidence, as set forth in criminal procedural law.

Article 38

Subsidiary law

Unless otherwise provided in these Regulations, the following statutes shall apply on a subsidiary basis, duly adapted:

- (a) Decree-Law 1/2012, of 1 February 2012, on the Downstream Sector;

- (b) Decree-Law 32/2008, of 27 August 2008, on Administrative Procedure;
- (c) The Criminal Code, the Criminal Procedure Code, and ancillary legislation, in respect of the establishment and determination of administrative offences, investigation procedures, and application of fines and additional sanctions, foreseen in Part V of the Decree-Law on the Downstream Sector.

Article 39

Repeal

All prior regulations contradicting the provisions of these Regulations are hereby repealed.

Article 40

Effective Date

These Regulations shall be effective on the day following their publication in the *Jornal da República*.

Approved by the ANP Board of Directors, on 3rd of September, 2012

Members:

- 1) Gualdino do Carmo da Silva – Chair
- 2) Jorge Martins, Non – Executive
- 3) Emmanuel Angelo Lay - Executive Board Member
- 4) Nelson de Jesus - Executive Board Member

**ANNEX I
NOTICE OF OFFENCE**



NOTICE OF OFFENCE

PLEASE INSERT INFORMATION USING CAPITAL LETTERS

Notice No.

					/	2	0		
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BASIC INFORMATION DETAILS
 On ____, of this month of _____, of the year 20__, at ____:____ am/pm, in this city of _____,
(day) (month) (year) (time) (city)
 District of _____, Suco of _____, Aldeia _____
(District) (suco)
 I _____, as _____,
(Inspection Officer/ Inspection Assistant's name) (job function)
 in the full exercise of my powers, hereby report the following:

<p>For individuals:</p> <p>_____, <small>(name)</small> of _____ nationality, Son of _____ <small>(father's name)</small> and _____, <small>(mother's name)</small> Born on __/__/__, residing at _____, _____ Bearer of _____ <small>(identification document)</small> No. _____, issued on __/__/__, <small>(identification document number) (day/month/year)</small></p>	<p>For companies:</p> <p>_____, <small>(company designation)</small> Registration no. _____, Taxpayer identification no. _____, Representative _____, <small>(name)</small> As _____, <small>(quality)</small> Bearer of _____ <small>(identification document)</small> No. _____, issued on __/__/__, <small>(identification document number) (day/month/year)</small> With headquarters at _____</p>
<p>Other relevant details:</p> 	<p>Other relevant details:</p>

DID COMMIT THE OFFENCE OF
Please describe

IN BREACH OF

Please insert provision(s) breached

WITNESSES

1 _____, holder of _____,
(name) *(identification document)*
No. _____, issued on __/__/____, residing at _____
_____, telf. No. _____;

2 _____, holder of _____,
(name) *(identification document)*
No. _____, issued on __/__/____, residing at _____
_____, telf. No. _____;

3 _____, holder of _____,
(name) *(identification document)*
No. _____, issued on __/__/____, residing at _____
_____, telf. No. _____;

4 _____, holder of _____,
(name) *(identification document)*
No. _____, issued on __/__/____, residing at _____
_____, telf. No. _____;

5 _____, holder of _____,
(name) *(identification document)*
No. _____, issued on __/__/____, residing at _____
_____, telf. No. _____.

OBSERVATIONS

Where applicable

Signature of Inspection Officer/ Inspection Assistant
in charge:

Date of receipt by ANP __/__/____

Signature of the individual in charge:

Signature of Offender: <hr/>	
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Discussed at the ANP Board of Directors, on ____ / ____ /20 ____		
Approved <input type="checkbox"/>	Approved with amendments <input type="checkbox"/>	Rejected <input type="checkbox"/>
<hr/> Signature of ANP President		
Comments/ Amendments:		

WITNESSES

1 _____, holder of _____,
(insert name) *(identification document)*
No. _____, issued on __/__/__, residing at _____,
_____, telf. No. _____;

2 _____, holder of _____,
(insert name) *(identification document)*
No. _____, issued on __/__/__, residing at _____,
_____, telf. No. _____;

3 _____, holder of _____,
(insert name) *(identification document)*
No. _____, issued on __/__/__, residing at _____,
_____, telf. No. _____;

4 _____, holder of _____,
(insert name) *(identification document)*
No. _____, issued on __/__/__, residing at _____,
_____, telf. No. _____.

OTHER EVIDENCE

Please insert type and description

DATA REGARDING THE INFORMER

_____, of _____ nationality, born on __/__/__,
(name) *(day/month/year)*
residing at _____,
bearer of _____ No. _____, issued on __/__/__,
(identification document) *(day/month/year)*

OBSERVATIONS

Signature of Individual in charge:

Date of receipt by ANP __/__/__

Signature of the individual in charge:

ANNEX III

MODEL Identification Card

