COVER PAGE

OVERVIEW OF THE NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT ACT

BY

MUSA IBRAHIM MOHAMMED

NSU/LLM/LAW/0336/17/18

LLM NATURAL RESOURCES AND ENERGY LAW

DECEMBER, 2018

TITLE PAGE

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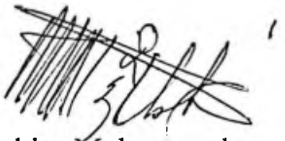
NSU/LLM/LAW/0336/17/18

A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, NASARAWA STATE UNIVERSITY KEFFI, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS (LL.M) DEGREE, IN FACULTY OF LAW, NASARAWA STATE UNIVERSITY, KEFFI, NIGERIA.

DECEMBER, 2018

DECLARATION

I hereby declare that this thesis is been written by me and it is a report of my research work. It has not been presented in any previous application for Masters of Law (LL.M). All quotations are indicated and sources of information specifically acknowledged by means of references.



Musa Ibrahim Mohammed

NSU/LLM/LAW/0336/17/18

16/1/2020

Date

CERTIFICATION

The Dissertation, **Overview of the National Environmental Standards and Regulations Enforcement Act,** meets the regulations governing the award of Masters of Laws of the School of Postgraduate Studies, Nasarawa State University, Keffi, and is approved for its contribution to knowledge.

DR. Y. Isa	16-1-2020
Name Chairman Supervisor Committee	Date
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Name External Examiner	Date
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DEDICATION

This research work is dedicated to Almighty Allah SWT and humanity.

ACKNOWLEDGEMENT

I am very grateful to Almighty Allah SWT for giving me the wisdom and ability to successfully execute this research work to its logical conclusion.

The efforts of the National Environmental Standards and Regulations Enforcement Agency's (NESREA) Director General/CEO and his top management team is hereby acknowledged with immense gratitude, specific to mention is the Director of the Legal Services Department of the Agency, Mrs. Bola Braimoh Tokura and her supporting staff for helping me with the needed materials and information used in this research work and the guidance.

I wish to express profound gratitude to my erudite supervisor Associate Professor Y. Isa of the Faculty of Law, Nasarawa State University, for his corrections, professional advice, valuable suggestions and supervisory contribution in the conduct of this work and to the development of this field of law, I cherish you sir. Worthy to mention here too, is the erudite Professor of Law of international repute, Muhammad Tawfiq Ladan (Ph.D.) of the Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria, Kaduna State, now Director General/CEONigerian Institute of Advance Legal Studies (NIALS), Supreme Court Headquarters, Abuja, your mentorship and scholarly advice is recognized too.

I am also grateful to my humble mother Hajiya Zainab Musa, loving wife Hauwa Haladu as well as my siblings and children for their cooperation, understanding, prayers and encouragement throughout this period of my studies. Not to be left out too, are my friends whom space and time will not allow me to mention their names, I say a big thank you to each and every one of you.

ABSTRACT

This research work overviewedthe threshold of environmental law in Nigeria, which is the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.This is aimed at enhancing the understanding of the provisions and application of environmental law. The scope of this work is grounded in environmental laws, standards and policies and more particularly focused on NESREA Act which is the hallmark of environmental legislation in Nigeria. This work also analyzed the enforcement powers and functions of the Agency under the Act which is to enforce compliance with environmental laws, regulations, guidelines, standards, international conventions, treaties and protocols to which Nigeria is a signatory; and to also prohibit the process and use of technology that undermines environmental quality. The work went further and discussed the mandate of the Agency under the Act which among others is to evolve regulations through the Minister, and the Agency has so far officially gazetted thirty-three Regulations dealing with different sector of the economy raging from, sanitation and waste, telecommunication and broadcasting facilities, air quality, noise standards, chemicals and pharmaceuticals, footwear and leather apparel, surface and ground water, ozone layer protection, erosion and flood control, desertification and drought mitigation, hazardous substances, energy sector,wetland and water shed conservation etc. The method adopted by the researcher is empirical, that is library based method. The research work found out that there is plethora of law on the environment in Nigeria, but there is poor information or awareness on the existence of these laws and where there is knowledge about the existence, there is poor understanding of this laws; lack of capacity building of the personnel; poor synergy among relevant stakeholders; lack of data base, poor funding of the regulatory Agencies. To this end, this work recommended the creation of continuous public awareness on this laws through public enlightenment, radio and television jingles, print media advocacy, there should be proper funding of the Agencyto carry out her mandate effectively, training and retraining of the personnel, and enhancing synergy among relevant stakeholders.

LIST OF CASES

1. ATTORNEY GENERAL OF THE FEDERATION v LIANG ZULI, FHC/L/81c/2012
2. ATTORNEY GENERAL OF THE FEDERATION v DIARRA FOUSSEYNNI, FHC/110/20/2013
3. AXXARI HOTELS AND SUITEv NESREA, FHC/CA/CS/1/2016
4. ATTORNEY GENERAL FEDERATION v DEEKAY AND SONS NIGERIA LTD & ANOR, FHC/1/115c/13
5. HELIOS TOWERS v NESREA & KADUNA STATE ENVIRONMENTAL PROTECTION BOARD (KASEPA), CA/K/123/2010

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1) Animal Diseases (Control) Act Cap. A17 Laws of the Federation of Nigeria 2004
2) Endangered Species Act Cap. E9Laws of the Federation of Nigeria 2004
3) Environmental Impact Assessment Act Cap. E12 Laws of the Federation of Nigeria 2004
4) Federal Environmental Protection Act Cap F10 Laws of the Federation of Nigeria 2004
5) Constitution of the Federal Republic of Nigeria 1999
6) Criminal Code Act Cap. C38Laws of the Federation of Nigeria 2004
7) Harmful Waste (Special Criminal Provisions Act etc.) Cap. H1 Laws of the Federation of Nigeria 2004
8) Live Fish (Control of Importation) Act Cap. L14 Laws of the Federation of Nigeria 2004
9) Nigeria Mineral and Mining Act Cap M12Laws of the Federation of Nigeria 2004
10) National Environmental Standards and Regulations Enforcement Agency (Establishment) Act Cap. N164 Laws of the Federation Nigeria 2010
11) National Environmental Standards and Regulations Enforcement (Establishment) (Amendment) Act 2018
12) National Oil Spill, Detection and Response Agency ActLaws of the Federation of Nigeria 2010
13) National Park Services Act Cap. N65Laws of the Federation of Nigeria 2004
14) National Agency for the Great Green Wall (Establishment)Act No. 23 of 2015
15) National Environmental (Wetlands River Banks and Lake Shores Protection) Regulation S.I 26 of 2009Federal Republic of Nigeria Gazette No. 26 Vol. 30th September, 2009.
16) National Environmental (Watershed, Mountainous, Hilly and Catchment Area) Regulations, S.I 27 of 2009.Federal Republic of Nigeria Gazette No. 27 Vol. 96 of 5th October, 2009

17) National Environmental (Sanitation and Waste Control) Regulation, S.I 28 of 2009Federal Republic of Nigeria Gazette No. 28 Vol. 96, 2009.

18) National Environmental (Permitting and Licensing System) Regulation, S.I. 29 of 2009Federal Republic of Nigeria Gazette No. 29 Vol. 96, 7th October, 2009.

19) National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, S.I 30 of 2009Federal Republic of Nigeria Gazette No. 30 Vol. 96 of 9th October, 2009.

20) National Environmental (Mining and Processing of Cool, Ores and Industrial Minerals) Regulation S.I. 31 of 2009Federal Republic of Nigeria Gazette No. 31 Vol. 96, of 12th October, 2009.

21) National Environmental (Ozone Layer Protection) Regulations, S. I. 32 of 2009 Federal Republic of Nigeria Gazette No. 32 Vol. 96, of 13th October, 2009.

22) National Environmental (Food, Beverages & Tobacco Sector) Regulations, S. I. 33 of 2009Federal Republic of Nigeria Gazette No. 33 Vol. 96, of 14th October, 2009.

23) National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, S. I. 34 of 2009, Federal Republic of Nigeria Gazette No. 34 Vol. 96, of 16th October, 2009

24) National Environmental (Noise Standards and Control) Regulations), S. I. 35 of 2009Federal Republic of Nigeria Gazette No. 35 Vol. 96, of 19th October, 2009

25) National Environmental (Chemicals, Pharmaceuticals, Soap and Detergent Manufacturing Industries) Regulations, S.I. 36 of 2009Federal Republic of Nigeria Gazette No. 36 Vol. 96 of 20th October, 2009.

26) National Environmental (Standard for Telecommunications/Broadcasting Facilities) Regulations S.I 11 of 2011Federal Republic of Nigeria Gazette No. 38 Vol. 98 of 29th April, 2011

27) National Environmental (Soil Erosion and Flood Control) Regulations S.I 12 of 2011Federal Republic of Nigeria Gazette No. 39 vol.98 of 2nd May, 2011.

28) National Environmental (Desertification Control and Drought Mitigation) Regulations S.I 13 of 2011Federal Republic of Nigeria Gazette No. 40 vol.98 of 3rd May, 2011

29) National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries) Regulations, S.I 14 of 2011 Federal Republic of Nigeria Gazette No. 41 vol.98 of 4th May, 2011.

30) National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations, S.I 15 of 2011Federal Republic of Nigeria Gazette No. 42 vol.98 of 6th May, 2011.

31) National Environmental (Protection of Endangered Species in International Trade) Regulations, S.1 16 of 2011Federal Republic of Nigeria Gazette No. 43 vol.98 of 6th May, 2011

32) National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulations, S.I 17 of 2011Federal Republic of Nigeria Gazette No. 44 vol.98 of 10th May, 2011.

33) National Environmental (Coastal and Marine Area Protection) Regulations, S.I 18 of 2011Federal Republic of Nigeria Gazette No. 45 vol.98 of 13th May, 2011.

34) National Environmental (Construction Sector) Regulations S.1 19 of 2011 Federal Republic of Nigeria Gazette No. 46 vol.98 of 17th May, 2011.

35) National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations S.I 20 of 2011Federal Republic of Nigeria Gazette No. 47 vol.98 of 17th May, 2011.

36) Notional Environmental (Non-Metallic Minerals Manufacturing Industries Sector) Regulations S.I 21 of 2011Federal Republic of Nigeria Gazette No. 48 vol. 98 of 23rd May, 2011.

37) National Environmental (Surface and Groundwater Quality Control) Regulations S.I 22 of 2011 Federal Republic of Nigeria Gazette No. 49 vol. 98 of 24th May, 2011.

38) National Environmental (Electrical/Electronic Sector) Regulations, S.I 23 of 2011Federal Republic of Nigeria Gazette No. 50 vol. 98 of 25th May, 2011.

39) National Environmental (Control of Alien and Invasive Species) Regulations, S.I 32 of 2013 Federal Republic of Nigeria Gazette No. 96 Vol. 100 of 29th October, 2013

40) National Environmental (Pulp Paper, Wood and Wood Products Sector) Regulations S.I. 34 of 2013Federal Republic of Nigeria Gazette No. 98 vol. 100 of 1st November, 2013.

41) National Environmental (Motor Vehicle & Miscellaneous Assembly Sector) Regulation S.I. 35 2013Federal Republic of Nigeria Gazette No. 99 Vol. 100 of 4th November, 2013.

42) National Environmental (Quarrying and Blasting Operations) Regulations, S.I. 33 of 2013Federal Republic of Nigeria Gazette No. 97 Vol. 100 of 30 October, 2013.

43) National Environmental (Control of Charcoal Production and Export) Regulations S.I 62 of 2014Federal Republic of Nigeria Gazette No. 140 Vol. 101 of 17th December, 2014.

44) National Environmental (Energy Sector) Regulations, S.I. 63 of 2014Federal Republic of Nigeria Gazette No. 141 Vol. 102 of 2nd December, 2014.

35) National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations S.I 20 of 2011Federal Republic of Nigeria Gazette No. 47 vol.98 of 17th May, 2011.

36) Notional Environmental (Non-Metallic Minerals Manufacturing Industries Sector) Regulations S.I 21 of 2011Federal Republic of Nigeria Gazette No. 48 vol. 98 of 23rd May, 2011.

37) National Environmental (Surface and Groundwater Quality Control) Regulations S.I 22 of 2011 Federal Republic of Nigeria Gazette No. 49 vol. 98 of 24th May, 2011.

38) National Environmental (Electrical/Electronic Sector) Regulations, S.I 23 of 2011Federal Republic of Nigeria Gazette No. 50 vol. 98 of 25th May, 2011.

39) National Environmental (Control of Alien and Invasive Species) Regulations, S.I 32 of 2013 Federal Republic of Nigeria Gazette No. 96 Vol. 100 of 29th October, 2013

40) National Environmental (Pulp Paper, Wood and Wood Products Sector) Regulations S.I. 34 of 2013Federal Republic of Nigeria Gazette No. 98 vol. 100 of 1st November, 2013.

41) National Environmental (Motor Vehicle & Miscellaneous Assembly Sector) Regulation S.I. 35 2013Federal Republic of Nigeria Gazette No. 99 Vol. 100 of 4th November, 2013.

42) National Environmental (Quarrying and Blasting Operations) Regulations, S.I. 33 of 2013Federal Republic of Nigeria Gazette No. 97 Vol. 100 of 30 October, 2013.

43) National Environmental (Control of Charcoal Production and Export) Regulations S.I 62 of 2014Federal Republic of Nigeria Gazette No. 140 Vol. 101 of 17th December, 2014.

44) National Environmental (Energy Sector) Regulations, S.I. 63 of 2014Federal Republic of Nigeria Gazette No. 141 Vol. 102 of 2nd December, 2014.

45) National Environmental (Air Quality Control) Regulations, S.I. 64 of 2014Federal Republic of Nigeria Gazette No. 142 Vol. 101 of 26th December, 2014.

46) National Environmental (Hazardous Chemicals and Pesticides) Regulations, S.I 65 of 2014Federal Republic of Nigeria Gazette No. 143 Vol. 101 of 30th December, 2014.

47) National Environmental (Dams and Reservoirs) Regulations, S.I. 66 of 2014Federal Republic of Nigeria Gazette No. 144 Vol. 101 of 31st December, 2014.

48) Pest (Control of Produce) Act Cap P9 Laws of the Federation of Nigeria 2004

49) Public Health Act Cap P40Laws of the Federation of Nigeria 2004

50) Quarantine Act Cap. Q2Laws of the Federation of Nigeria 2004

51) Water Resources Act Cap. W2Laws of the Federation of Nigeria 2004

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CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Over the last 100 years the developments of new technologies have driven environmental change in positive and negatives ways and this has increased the quest for natural resources.Their applications have impacted on the integrity of ecosystem and they have offered an opportunity for more efficient use of natural resources, cleaner production techniques and improved environmental management. However, some of these technologies have also posed new challenges to human, and environmental health, thereby making the government to put in place institutional and legal frameworks.

Over the years, Nigeria as a country has sought to consolidate its efforts towards environmental protection and sustainable development. The nation has accepted access to a clean and healthy environment as fundamental human right for its citizens. A clean and healthy environment is seen as critical to the succors of the country's developmental growth and key to achieving other various goals.

Nigeria has responded to these challenges posed by sustainable development by committing to among others,formulating policies and putting in place legislative frameworks for better environmental governance and sustainability, notwithstanding the fact that much needs to be done to achieving the full objectives.

The reawakening to the consciousness of environmental protection in Nigeria came as a result ofdiscovery of five shiploads of toxic and hazardous waste of about 3,888 tonesdumped at Koko Port in Bendel State, present day Delta State, 1988, which was said to

have being shipped from Italy. Consequent upon that the Federal Government came up with various environmental policies, legal and institutional frameworks to protect the Nigerian environment. Laws such as the Harmful Waste (Special Criminal Provisions Act etc.)[1], Environmental Impact Assessment Act[2] and the Federal Environmental Protection (FEPA) Act[3], which was repealed in 2007 with the coming into force of the National Environmental Standards and Regulations Enforcement (Establishment) Act[4], which is the legislation under consideration, were enacted.

As we are aware that, there cannot be an effective environmental protection in any society without a robust environmental laws, hence an insight into the threshold of environmental law in Nigeria, which is the National Environmental Standards and Regulations Enforcement Act, 2007.

1.2 Statement of the Problem

Environmental law governance in Nigeria has seen a lot of policies formulations and legislative frameworks with the major consciousness happening in 1988 with the promulgation of the Federal Environmental protection Agency Act (FEPA) which was repealed by the enactment of NESREA Act in 2007.

The enactment of the NESREA Act came up as a result of the legislative inadequacies in the defunct FEPA Act and also the absence of an enforcement institution under the Federal Ministry of Environment after the Federal Environmental Protection Agency metamorphosed into a

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[1]. Cap. H1 LFN 2004
[2].Cap. E12 LFN 2004
[3]. Cap. FIO LFN 1990
[4].Cap. N164 LFN 2010

Ministry with the coming in of thecivil rule in 1999.

The NESREA Act and Regulations made therefrom is a new beginning in both purpose and form, which is aimed at addressing the obsolete environmental legislations and the compliance monitoring and enforcement mechanisms[5] discovered in the repealed FEPA Act.

This research therefore, seek to have an overview of the Act with a view of dissecting the Act so as to bring to bare a better understanding of its provisions to the regulated community and practitioners. And to help the reader in understanding in clear and simple language devoid of the idiosyncrasies of legal language the power and functions provided under the Act in regulating environmental activities in our society. It will also provide the needed information about the recent amendment done to the Act.

1.3 Research Questions

To better understand the research topic, this thesis will be considering some salient questions, viz:

a. What brought about the enactment of the Act?
b. What are the areas that the Act came to address that hitherto was not in the repealed law?
c. What were the areas amended and what necessitated the amended of the Principal Act?

[5]. Muhammed TawfiqLadan, Sustainable Development Goals, Climate Change and Extractive Resources Management in Africa, Ahmadu Bello University Publishers, Zaria, 2017.

1.4 Objectives of the Study

The objectives of this research is to have general insight into the National Environmental Standards and Regulations Enforcement Act and its effect as a new legislative mechanism in addressing the myriad of environmental challenges we have and to give the citizenry a better and more robust understanding of the provisions of the enabling law. Therefore my objectives include inter-alia:-

1. To engage in an overview of the Act with the aim of creating awareness on the content and purpose of the enabling law.
2. To analyze the enforcement powers provided under the Act for better understanding of the legislative framework put in place by the Federal Government in the enforcement of environmental laws, regulation, standards and policies.
3. To also have an appraisal on the reasons behind the recent amendment of the Principal Act and those keys sections that were amended.

1.5 Significance of the Study

Notwithstanding the fact that ignorance of the law is not an excuse, one of the key factors in achieving effective environmental compliance monitoring and enforcement is the creation of environmental consciousness and awareness of the regulated community. Therefore the significance of the study is to provide an in-depth understanding of the Act, with the sole aims of achieving voluntary compliance with environmental law.

This research work is of immense benefit to policy makers, the regulated community, activist, academia, Non-Governmental Organization, Civil Society Organization, Community Based Organization, students and anyone interested in environmental governance.

1.6 Scope of the Study

The scope of this research is grounded in environmental law, standards, policies and regulations and is particularly focused on the National Environmental Standards and Regulations Enforcement Act. As well as other local legislations and international commitments that promote environmental law governance and sustainability.

In respect of geographical or territorial scope, this research work will concentrate basically on the threshold of environmental legislation in Nigeria, which is the National Environmental Standards and Regulations Enforcement Agency Act 2007[6] and the NESREA (Establishment) Amendment) Act 2018.However, as at when appropriate other illustration in other environmental legislation may be made recourse to.

1.7 Definition of Operational Terms and Acronyms

Some of the keywords operational terms in this work are: **Environment, Compliance, Enforcement, Regulations, Environment Law,NESREA, FEPA.**

Environment: The Black Law Dictionary defines it as, the totality of physical, economic, cultural, aesthetic and social circumstance and factors which surround and affect the desirability and value of property and which also affect the quality of people lives.[7]It is also defined as the component of the earth and includes land, water and air, including all layers of the atmosphere and all organic and inorganic matter and living organism.[8]

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[6]. Cap N164 LFN 2010
[7].6th Edition
[8]. EIA Cap. E12 LFN 2004

Also in another view, environment is defined to include water, air, land and all plants and human beings or animals living therein and the inter-relationship which exist among these or any of them.[9]

The National Environmental (Energy Sector) Regulation[10] defined it to mean the sum of all external conditions affecting the life development and survival of an organisms.

According to Albert Einstein "the environment is everything that isn't me". While the Principle 2 of the Stockholm Convention defines it as, natural resources of the earth includes air, water, land flora and fauna and natural ecosystems.

To this end, there seem to be no singular definition, it is a relational concept, depending on context, definition will be general or specific.

Enforcement: This is the act or process of compelling compliance with a law, directive, instruction, mandate, command, decree or agreement.[11] It could also means actions to obtain compliance with environmental laws, rules,regulations or agreement or obtain penalties or criminal sanctions for violation.[12]

Enforcement itself is a set of actions that government or other statutory bodies use in achieving compliance within the regulated community and to correct or halt situations that endanger the environment/public health. The purpose of enforcement is thus to ensure preventive and/or remedial action is taking to protect the environment.

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[9]. NESREA Act Cap.N164 LFN 2010
[10].S.I No 63 Vol. 162 s. 52
[11]. Black's Law Dictionary 9th Edition (West Publishing Company)
[12]. National Environmental (Energy Sector) Regulations 2014 S.I. No 63, s. 52

Regulations: This can be defined as a set of rule which helps maintain certain standards and expectation from the regulated community. In this work however it means the Regulations made pursuant to the NESREA Act 2007 Amended in 2018.

Environmental law: This can generally be described as the body of laws which contains elements to regulate and control natural and human impact on the environment.[13] While another author[14] defined it as that branch of public law, which contains rules and regulation, which have as their object or effect the protection of the environment.

NESREA: Here means: National Environmental Standards and Regulations Enforcement Agency. This is the institutional framework established under the National Environmental Standards and Regulations Enforcement (Establishment) Act, 2007.

The Agency is charged with responsibility for theprotection and development of the environment,biodiversity conservation and sustainabledevelopment of Nigeria's natural resources as wellas environmental technology[15].

The Agency has the mandate to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria, and to prohibit processes and the use of equipment or technology that undermines environmental quality. It also has responsibility to enforce compliance with provisions of international agreements, protocols, conventions and treaties to which Nigeria is signatory[16].

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[13] Bola Odugbesan Esq., Presentation on 'Environmental Laws, Standards and Regulation', at the South-West Zonal Workshop for NGOs and NESREA Green Corps, Ibadan 15th March, 2011.
[14]. Muhammed TawfiqLadan, Sustainable Development Goals Climate Change and Extractive Resources Management in Africa Ahmadu Bello University Press, Ltd, Zaria, 2017.
[15]. NESREA Act . s. 2
[16]. Ibid s. 7 and 8

FEPA: means the Federal Environmental Protection Act[17]which establishes the Federal Environmental Protection Agency.

[17] . Cap F10 LFN 2004

CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Framework

This dissertation aims at overviewing the threshold legislation enacted by the federal government which is, the National Environmental Standards and Regulations Enforcement Act 2007, to regulate the environment which include land, water and air. This legislation is put in place to provide for an enforcement arm to the Federal Ministry of Environment for the purposes of environmental enforcement and compliance monitoring of Nigeria[18].

Over the last two decades, environmental governance has been central to government's efforts to implement variety of environmental policies and programmes designed to protect air, water natural resources, wildlife and public health. Environmental governance has become a major instrument used by the government to help checkmate environmental challenges. Environmental governance involves an integrated approach that takes into consideration some basic elements, inter-alia: selection of appropriate management approach, development of legal framework; information exchange and public awareness and implementation of compliance and enforcement exercises.

Law emerges from the cultural traditions, moral and religious values of each society. These traditions and values continue to impact on the development of legal norms, in the context of environmental protection, cultures, religions and legal system

[18] Ibid note 5 Ladan.

throughout the world contain element that respect and seek to conserve the natural bases of life[19].

The basic rational for the existence of laws is; to guide inter-personal interactions for the purposes of peace and harmony.

Environmental law can therefore be generally described as the body of laws which contains elements to regulate and control natural and human impact on the environment[20]

2.2 Review of Previous Studies

Most of the available writings or works on the NESREA Act mainly focuses on the objective of the Act, mandate of the Agency under the Act, enforcement powers under the Act and discussion on other sections of the Act.

All these taken together will dictate our approach in which we will aim not only to examine and appreciate what others have done in this area and of course to benefit from their work, but also to develop and improve the quality of research and environmental awareness in this area of study.

The central themes of some of our consulted books as stated below will be highlighted thus:

a. Muhammed TawfiqLadan, in his book,"Sustainable Development Goals, Climate Change and Extractive Resources Management in Africa",[21] The writer discussed the mandate and powers of the Agency under the Act, wherein he made an appraisal of one

[19] Bola BriamohTokura "Understanding the NESREA Act and Regulation" Presented by the Legal Department, on the Occasion of the Technical and Administrative Training for NESREA Staff, Abuja, 2017
[20] Ibid
[21]. 335 -345 (Ahmadu Bello University Press Ltd, 2017)

of the most vital function of the Agency which has to do with the enforcement of compliance with laws guidelines, policies and standards on environmental law which is contained under S. 7 of the NESREA Act[22]. Furthermore, the writer went ahead to discuss on the enforcement powers of the Agency bearing in mind the powers of a personnel of the Agency armed with a warrant from a court to enter, conduct, inspects, search and seal an erring facility or property.

However, in his discussion the writer did not have a breakdown of thechapterization of the provision in the Act, only spoke on the most salient sections of the Act, and more to that, the book did not take into cognizance of the amendmentsdone to the Act[23]. In addition to the powers under the Act, there is also the powers to charge administrative fees[24], which were not discussed based on the simple fact that his work was done before the amendment to the Establishment Act under consideration, which was done 2018. This work aims at having a general overview of the Establishment Act and in addition, discuss the recent amendment done to the Act which added more powers to the Agency under the Act as this will help in enhancing the understanding of the efforts of the government in addressing environmental governance in the country.

b. Muhammed TawfiqLadan, in his book, "Natural Resources and Environmental Law and Polices for Sustainable Development in Nigeria, 2013". The book, gave an insight of the Act by discussing the powers, functions and mandate of the Agency as provided by the Establishment law in the same manner he overviewed the Act in his 2017 publication highlighted above. The books discussed one of the notable provisions of the NESREA Act which is section 7(c) which mandate the Agency to enforce compliance

[22] Cap N164 LFN 2010
[23] NESREA (Amendment) Act, 2018 s. 13
[24] Ibid s. 4

with the provisions of international agreement, protocols, conventions and treaties of the environment and such other agreement as may from time to time come into force and in elaborating the provisions of section 7(c)[25], the writer also considered the provision of section 12(1)[26] that placed a requirement of domesticating a treaty or convention by the National Assembly before it can be enforce as a legislation in Nigeria. The book concluded with discussions on the twenty-eight regulations made pursuant to the provision of the Act.

Finally the writer in the text under review discussed the enforcement powers of the Agency under the Act which is the power of the officer of the Agency to suspend activities, seal and close down premises which must be done only when the officer is armed with a Court Order[27]. However there is a new twist to the requirement under section 30(1) of the Act which will be discussed subsequently. This work intends to elaborate more on section 30 of the Establishment Act and also discuss the additional section 30 (4A) provided under the amendment,which gives the personnel the power to seal or suspend polluting facility activities, where there is imminent danger to life and property while an application for a Court order is being sought.

c. Muhammed TawfiqLadan in another of his book titled, "Review of NESREA Act 2007 and Regulations 2009 – 2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria"[28]. The writer made an exhaustive discussion on the NESREA Act, looking at the development of environmental law in Nigeria, which according to the book the protection of the environment was never a priority during the colonial era,

[25] Cap N164 LFN 2010
[26] CFRN (1999) as amended
[27] NESREA Act s. 30(1)
[28] . http://www.researchgate.net/publication (2012) SSRN Electronic Journal access on the 15th August, 2019 at 1:48pm or http://www.lead –journal .org/content/12116.pdf

hence there was no policy put in place. Environmental issues were viewed as private nuisance. According to the book major development of our environmental law happened between 1980s and 1990s, this period saw a more systematic development of the environment basically because of the country's ratification of international treaties on the environment.

The book further states that the main national law on environmental governance was enacted during this period and this laws are still operational till date for example the FEPA Act. The writer went ahead to discuss the weakness of the defunct FEPA Act and the reasons behind why it was repealed in 2007 by the NESREA Act.

The writer went further to discuss why the NESREA Act was enacted and the Agency created therefrom, the book took a look at the establishment, mandate and powers of the Agency. In discussing the mandate and powers of NESREA, he made a general discussion of Part II of the Act that deals with the functions of the Agency, most importantly discussed was section 7 (c, e, g, h,i ,j k and l).

The book also looked at the enforcement powers of the Agency under section 30 of the Act which has to do with the powers of an officer of the Agency to seal, suspend and close-down facility found to be polluting the environment, provided the personnel is armed with a warrant or Court Order from a Federal or State High Court, the Article concluded by overviewing the rational and objective for the gazette of the 24 Regulations made between 2009 – 2011by the Agency.

However, it is observed that the paper in discussing the functions or mandate of the Agency did not highlight some of the additional powers conferred on the Agency under sections 20, 22, 23 and 25 of the Act, and also the paper did not bring to bare

those acts or omissions that constitute an offence and the penalties,which is provided for under section 20 – 27 of the Act, and this is part of what this work seeks to address for the benefit of the regulated community to understand those activities that are prohibited by the Act.

More so, the provision of Section 30 which the paper addressed on the requirement of a warrant or court order before an officer can suspend, seal or close-down a polluting facility has a new dimension now based on the recent amendment done to the Act, which added a new section 30 (4A) which this work will discuss.

Also the Article only discussed those regulations made from 2009 – 2011, in essence the paper only highlighted only 24 as against 33 officially gazetted regulations.

In conclusion, this work will also look at some judicial interpretations made on the Act in course of operationalizing it by the Agency.

d). S. GozieOgbodo in his book, "Handbook on the National Environmental Standards and Regulations Enforcement Agency Act (NESREA) 2007"[29]. The writer started by reproducing the entire provisions of the Act and thereafter made brief commentaries on the most salient parts of the provision. Majorly the author took time to compare and contrast the provisions in FEPA Act with the new NESREA Act. The commentaries were basically comparatively analysis between the two Acts, with a view of bringing out areas of similarities and contrast.

The writer also talked about the exclusion of the mandate of the Agency in enforcing compliance in the oil and gas sector, which to the writer is totally unacceptable for the government to grant such immunity to a major source of environmental pollution.

[29]. Ambik Press, Benin City, Edo State 2010.

Therefore this work intend to explain further why the exclusion of the powers of the Agency to enforce in the oil and gas sector which is simply because of the existence of a sister Agency[30] and this work will discuss exhaustively the powers and functions under the Act.

In addition this work will try to look at the attitudes of the Courts vis-à-vis the powers of the Agency under the Act. In his book also the writer only listed and reproduced the eleven gazetted Regulations without discussing the content of the Regulations.

And also he only considered the eleven Regulations as against the thirty-three Regulations in place. In this work the research will highlight each of the thirty-three gazetted Regulations, bringing out the thrust or objective of each of them and an in-depth analysis of each. More so this work will go further to discuss the recent amendment done to the Act and the rationale behind the amendment.

e) The Article, The Role of NESREA Act 2007 in Ensuring Environmental Awareness and Compliance in Nigeria[31]. The paper gave an appraisal of the NESREA Act in its role in ensuring environmental awareness and compliance in Nigeria. It started by giving a background to the evolution of environmental governance in Nigeria which according to the paper commenced from the pre-colonial era to the Koko dump era and also looked at the mandate, vision, functions and key activities of the Agency. The Article discussed what necessitated the creation of the Agency which according to the write up is for the protection of the environment, enforcing environmental laws, regulations, maintaining environmental standards and creating environmental awareness. The Article gave a brief discussion on the mandate, powers of the Agency and crowned it with the role of the Agency in ensuring environmental awareness and

[30]. National Oil Spill Detection and Response Agency (Establishment) Act, Cap. N157, LFN 2010.
[31] V.E Agbazue; E.K. Anih and B.U Ngang, IOSR Journal of Applied Chemistry e-ISSN Vol. 10 Issue 9 Version III, September, 2017 (www.iosrjournals.org) accessed 5.20pm 12/9/2019

compliance in Nigeria. Here the researcher intends to look at the powers, mandate and functions provided under the Act extensively, discussing each and every sections of the Act most especially the enforcement powers of the Agency under the Act. The work will also go extra miles to discuss the powers of the Minister to make regulations and the Regulations made so far by virtue of that powers and not to be left out also is to look at what has been the attitude of the judiciary in terms of enforcing compliance with the Act. In addition to the above, the research work will discuss the thirty-three Regulations made by virtue of the Act looking at the provisions of each and the objective behind gazetting each of them.

2.3 Development of Environmental Laws in Nigeria

Protection of the environment during the colonial era was never a priority, hence there was no policy geared towards the presentation and protection of the environment. Environmental issues were not considered as public matters demanding state intervention[32]. There were few environmental laws that criminalize some activities that can degrade the environment[33]. Nuisance happens to be one of the major environmental offence provided for under the Criminal Code during that period.

After the enactment of the Criminal Code that has somewhat provisions on environmental consideration, the Public Health Act[34] was enacted with a broader scope that provided for the regulation of land air and water pollution though not dealt with in a comprehensive manner, it is view basically from the point of environmental sanitation[35].

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[32].Muhammed TawfiqLadan, Natural Resources and Environmental Law and Policies for Sustainable Development in Nigeria, Ahmadu Bello University Press Ltd, 2014, 331

[33]. Criminal Code Act of 1916. s 245 and 247

[34]. Cap P40 LFN 2004

[35]. Muhammed TawfiqLadan., Sustainable Development Goals, Climate Change Extractive Resources Management in Africa, Ahmadu Bello University Press Ltd, Zaria, 2017, pg. 331- 332

Owing to the discovery of oil in large quality during the post-independence in 1960, it becamecrystal clear that legislation on environment was grossly inadequate. Provisions on environmental protection were not codified in a single document rather scattered in different laws on range of issues or subject matter.

During the 1970, the industrial growth as a result of the oil boom brought above the enactment of numerous environmental laws, particularly those relating to the discharge of oil in navigable waters and environmental degradation as a result of petroleum activities. However, note that most of the laws enacted were spontaneous response to emergency situation[36].The 1980s-1990s saw to a considerable extend the passage and enactment of some systematic laws on the environment. Some international conventions on the environment were signed and this led to domestication of a number of laws for the country such as the Annual Disease(Control) Act[37]. The Endangered Species Act[38], Live Fish (Control of Importation) Act[39], Pests (Control of Produce) Act[40], Quarantine Act[41], Harmful Waster Act[42], Mineral Act[43]; Criminal Code Act[44], Federal Environmental Protection Agency Act[45] etc. the laws and decrees enacted between this periods are still in operation today.

Upon the coming back of the civilian regimes in 1999 the Federal Environmental Protection Agency metamorphosed into the Federal Ministry of Environment and this

[36]Ibid at 332
[37] Cap A17 LFN 2004
[38] Cap E9 LFN 2004
[39] Cap L14 LFN2004
[40] Cap P9 LFN 2004
[41] Cap Q2 LFN 2004
[42] Cap H1 LFN 2004
[43] Cap M12 LFN2004
[44] Cap C38 LFN 2004
[45] Cap F10 LFN 2004

was put in place base on the clear provision of section 20[46], which provided to the effect the "state shall protect and improve the environment and safeguard the water air and land, forest and wildlife of Nigeria". However, it was later discovered that there was the absence of an enforcement arm that will help in promoting environmental sustainability through enforcement of those environmental laws this led to the passage of the threshold of environmental legislation in Nigeria which is, the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007[47].

The NESREA Act 2007 repealed the erstwhile Federal Environmental protection Agency (FEPA) Act[48].The NESREA enabling Act came into being on the 30th July, 2007. It was one of the Bills that the then, President Umaru Musa Yar-adua signed into law on assumption of office. The establishment Act was a child of necessity birthed to fill the vacuum created by the coalescence of the erstwhile FEPA with the newly created Federal Ministry of Environment.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 created the National Environmental Standards and Regulations Enforcement Agency (NESREA) and charged it with the responsibility enforcing all environmental laws, guidelines, policies, standards and regulations in Nigeria; and to prohibit processes and the use of equipment or technology that undermine environmental quality. It also has the responsibility to enforce compliance with provisions of international agreements, protocols, conventions and treaties on the environment, with the aim of protecting and ensuring sustainable development of the country based on proper management of the environment through

[46] CFRN 1999 (as amended)
[47] Cap N164 LFN 2010.
[48] ibid s.36

effective legal and institutional framework with appropriate compliance monitoring and enforcement tools[49].

2.4 Major Draw Backs of the Default FEPA Act

Serious environmental governance commenced in Nigeria in 1988 with the enactment of the Federal Environmental Protection Act [50] (FEPA),owing to the illegal dumping of about 3,888 tons of toxic waste from Italy in Koko port in the present day Delta State.

The FEPA Act became the enabling law that was used for environmental governance in Nigeria, and this legislation was in use up till 1999 when it metamorphosed into the Federal Ministry of Environment, Housing and Urban Development. However note, that, the Federal Environmental Protection Agency (FEPA) Act created the Federal Environmental Protection Agency which happens to be the institutional framework regulating environmental issues for the Country.

However as time goes on it was discovered that the Agency was not carrying out its mandate effectively. Some of the weaknesses include the following:

i. The compliance monitoring and enforcement strategies were found to be out of date or obsolete in tackling emerging environmental issues[51].

ii. The regulatory institution visit facilities to find out reasons for non-compliance and this is done via walk-through compliance monitoring and examining records

[49]. Cap N164 LFN 2010s. 2, 7 and 8
[50] Cap F10 LFN 1990 repealed by the provision of NESREA Act 2007 s. 36
[51]Ladan, note 32 above

and make necessary findings with the manager of the facility and proffer necessary advice or action[52].

iii. The poor or weak enforcement action brought about in the operationalization of the Act brought about challenges in the environment and human health in the country and this include:[53]

a) Pollution of the surface water in the urban cities thereby affecting the aquatic lives[54].

b) There was serious issue of health related disease such as typhoid fever owing to exposure to pollutant from the poor regulated community.[55]

In conclusion despite some of the challenges or weakness discovered in the implementation of this law, some lessons were actually learnt, include among others:

The rationale behind the established of the agency cannot be sustained if it will continue with the outdated or weak enforcement strategy[56].

To promote voluntary compliance by the facilities there is a need to copy best practices from other climes by providing incentives such as tax holidays and exemptions.[57]

There cannot be an effective population control and prevention without a strong inter-agency collaboration which includes information sharing among relevant stakeholder.

[52] Ibid, at 332
[53] Ibid, at 334
[54] ibid
[55] ibid
[56] Ibid at 335
[57] Ibid

CHAPTER THREE

UNDERSTANDING THE NESREA ACT AND REGULATIONS

3.1 Appraisal of the Act

The Act is divided into six parts for the purposes of readability and comprehension, encompassing 38 sections including one schedule.

Part 1 covers section 1-6 which spelt out the objectives of the Agency[58], establishment and composition of the Governing Council[59], Tenure of office is provided for under section 4, Cessation of membership under section 5, part one concluded with emolument of members[60].

Part II encapsulates section 7-9 which provides for Functions of Agency, Powers and Functions of the Council.

Part III covers only section 10 which provides for the organizational structure of the Agency divided into directorates.

Part IV covers from section 11-12, which provides for appointment of the Director General and other staff of the Agency under section 11, while section 12 provide for Pensions.

Part V extends from section 13-29 and covers sections dealing with financial provision such as Fund of the Agency under section 13, Expenditure section 14, Exemption from income tax section 15, Annual estimate section 16, Accounts and Audits section 17, Annual report is provided for under section 18, 19 talks about investment,

[58]. NESREA Act s. 2
[59] Ibid s. 3
[60] Ibid s. 6

while the remaining section 20-29 bothers on environmental concerns such as air quality and atmospheric protection, ozone layer protection, noise pollution, water quality standards, efficient limitations, environmental sanitation, land resources and watershed quality, discharge of hazardous substances and related offences, removal methods and finally cooperation with appropriate authorities respectively.

Part VI, under this part the Act confers powers on the personnel of the Agency to enter search, close-down and seal premises, this is evidenced under section 30, while section 31 provides for what constitute offence and penalties thereunder. Section 32 provides to the effect on how to initiate legal proceedings against the Agency, under section 33 the minister of environment has the power to give directives, and section 34 talks about his powers to make regulations. The saving provision and repeal is provided for under section 35 and 36 respectively while interpretation and citation is covered by section 37 and 38 of the Act[61].

In conclusion, the Act has only one schedule which provides on the proceedings of the Council whose functions is provided for under Section 9 paragraph (a-e) of the Act.

[61] Cap N164 LFN 2010

3.2 Functions and Powers of the Agency under the Act.

As earlier stated supra,the functions and powers conferred on the Agency by the Act is provided for under Part II. By virtue of the provisions of the Act[62], the Agency is mandated to enforce compliance with laws, guideline, policies and standards on the environment. This is to the effect that the Agency is empowered to enforce compliance with the laws on the environment in Nigeria and this include polices, standards, guidelines and regulations on the environment. Some of this laws that the Agency enforces by virtue of this provision are; the Environmental Impact Assessment[63]; Harmful Waste (Special Criminal Provision etc.) Act[64]; Endangered Species Act; guidelines and policy; standards on effluent limitation; officially gazetted regulations etc.

The Act also mandate the Agency to coordinate and liaise with stakeholder, within and outside Nigeria on matters of environmental standards, regulations and enforcement.[65] In the light of this, the Agency liaise with organized Civil Society Organization, Community Based Organizations, Non-Governmental Organization, relevant stakeholders in Ministries, Department, Agencies for the purposes of ensuring environmental good practices.

In discharging this mandate the Agency also liaises with international bodies or institution like the United Nations Environment Programme (UNEP), UK Environment Agency (UKEA) and the US Environment Protection Agency (USEPA) for the promotion of environmental sustainability and effective governance.In discharging her collaborative mandate, the Agency in 2010 got a technical support from the United Nations Development Programme(UNDP) and developed her first Environmental Enforcement Policy, which was later

[62].Cap N164 LFN 2010. s. 7
[63] Cap. E12 LFN 2004
[64] Cap H1 LFN 2004
[65]. Ibid note 59 s. 7 (b)

reviewed in 2016 with a collaboration this time around from the United Nations Environment Programme.[66]

The Agency is empowered to enforce compliance with the provision of international agreements, protocols, conventions and treaties on the environment, and such other environmental agreements as may from to time come into force.[67] Nigeria is a signatory to so many conventions and international agreements dealing with issues on ozone depleting substances, hazardous waste and chemicals, marine life protection, pollution, climate change, biodiversity, conservation etc. The provision of section 7 (c)of the Act stand to mean that the Agency is empowered to enforce treaty, protocol and convention which the Country has ratified. However the Constitution of the Federal Republic of Nigeria precludes the enforcement of any treaty to which Nigeria is a signatory unless and until such a treaty is domesticated by the National Assembly and ratified by majority of the States House of Assembly of the federation.[68]

NESREA is mandated to also enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement.[69]

The Agency isalso empowered to enforce compliance with guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources[70]. By virtue of this mandate the Agency is to enforce the provisions of the Endangered Species Act (Control of International Trade and Traffic) Act[71]. This is to protect and regulate the biodiversity of flora and fauna in the Country. In the course of ensuring

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[66]. The revised edition is now Environmental Enforcement Guidelines, 2017.
[67]. NESREA Act s. 7 (c)
[68] CFRN 1999 s. 12(1-3)
[69] NESREA Act s. 7 (d)
[70]. Ibid s. 7 (e)
[71]. Cap E9 LFN 2004

compliance with its mandate the Agency has instituted so many environmental cases against persons that engages in illegal trade of regulated animal and animal part, for example dealing in rhino horn, elephant tusk, worked ivory, pangolin scales, chimpanzee and parrots. The rationale behind this is to preserve the endangered animal and plants from getting extinct and to enhance biodiversity conservation.

Another notable functions of the Agency, is to enforce compliance with regulation, on importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector[72]. As part of this mandate the Agency is to enforce compliance with the provision of the Harmful Waste (Special Criminal Provision etc.) Act[73] and any other legislation that promote sound use of hazardous chemical.The Harmful Waste Act, prohibit the carrying, deposition and dumping of harmful waste on any land, territorial waters and matters relating thereto.

The law goes further to state that any person who carries, deposits, dumping or causes to be carried, deposited or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways orimports or causes to be imported or negotiates for the purpose of importing any harmful waste orsells, offers for sale, buys or otherwise deals in any harmful waste, without any lawful authority shall be guilty of a crime under this Act[74]. Nigeria being a party to the international treaties, protocols and conventions on

[72]. NESREA Act s.7 (g)
[73].Cap H1 LFN 2004
[74] Ibid s. 2 (a- c)

hazardous chemicals and waste[75], it therefore behooves on the Agency to also enforce compliance with this international commitment as a member country.

Enforcement of compliancethrough monitoring of the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector is also a function of the Agency as provided under section 7 (h) of the Act. To effectively carry out this mandate the Agency must have to come up with programmes and strategies of controlling or reducing atmospheric pollution in our environment. And in so doing the Agency conceptualized some key programmes to curb air pollution in Nigeria and this projects are, the National Vehicular Emission Control Programme (NVEP) which was developed in 2012 and the National Generator Emission Control Programme which came up in 2015. The aim of this projects is to checkmate emission level from our vehicles on the road and power generating sets of 10kv and above, so as to reduce the level of emission that is released into the air, thereby ensuring good atmospheric condition. Reducing emission level is part of Nigeria's Nationally Determine Contribution (NDC) towards reducing greenhouse gaseous emission as a party to the United Nation Framework Convention on Climate Change.

The Agency is to also ensure that environmental projects funded by the donor organizations and external support agencies adhered to regulations in environmental safety and protection[76];enforce environmental control measures through registration, licensing and permitting systems other than in the oil and gas sector[77]. It is an undeniable fact the industries or facilities must discharge effluent into the environment based on their production or manufacturing process, however as an enforcement institution the Agency is under obligation to

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[75]. Basel Convention on the Control of Trans-boundary Movements of Hazardous Waste and their disposal;Rotterdam Convention on the Prior informed consent (PIC) procedure for certain Hazardous Chemicals and Pesticides in International Trade

[76]. NESREA Act s. 7 (i)

[77] . ibid 7 (j)

adopt environmental control measure against this discharges. The Agency therefore uses the registration, permitting and licensing scheme to regulate and ensure that facilities do not discharge effluent with high concentration of heavy metals into our water bodies or the ecosystem by setting standards, which must be complied with by the facilities.

The Agency has the mandate to conduct environmental audit and established data bank on regulation and enforcement mechanisms of environmental standards other than in the oil and gas sector[78]. This is to effectively conserve the environment and to promote environmental sustainability, because the conduct of an environmental audit on an operating facility will help in knowing the impact of that activity on the surrounding environment, and the measures to take where the impact is negatively affecting it. By the policy of the Agency and best practices, environmental audit is to be conducted after every three years by the Agency's accredited consulted and the audit report submitted to the Agency for certification of compliance.

Finally the Act mandated the Agency to create public awareness on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions and carryout such activities as are necessary or expedient for the performance of its functions[79]. The Agency carries out this mandate through TV and radio jingles; wearing of customized T-shirt and khaki every Thursdays; Regulatory Dialogue with key stakeholders every middle of the year and organizing a National Stakeholders' Forum with a specific theme every year.

[78] Ibid s. 7 (k)
[79]. NESREA Act s. 7 (l and m)

Having looked at the functions as provided under section 7 of the Act, it will be pertinent to now consider the Powers of the Agency, which is provided for under section 8[80].

One of the major powers confers on the Agency by the Act is the power to prohibit the processes and use of equipment or technology that undermine environmental quality[81]. In the course of exercising her powers, the Agency conduct field follow-up compliance monitoring[82] to facilities from time to time and issue out compliance concerns letter to address certain concerns where it is discovered, and also ensures that the technology use by facilities are environmentally friendly, for example telecommunication facilities are encouraged to use renewable or green technology sources of energy in powering her Base transmission station, andfacilities to use primary and secondary Effluent Treatment Plant (ETP)in treating their effluent before discharging to the water bodies. Also the Act gave the Agency the power to in collaboration with relevant judicial authorities establish mobile courts[83] to adjudicate over environmental issues, this is in consideration of the sensitive nature of environmental pollution to the ecosystem.

In furtherance of this powers the Agency liaised with the Chief Judge of the Federal High Court, to assign some judges to handle environmental casesfiled by the Agency or against the Agency as this will lead to the expeditious dispensation of cases.

The Agency is also empowered to submit a proposal to the Minister of Environment for the evolution and review of existing regulations and standards on environment other than in the oil and gas[84]. It is by virtue of this powers and the provisions of section 34 of the Act that the Agency uses in evolving regulations, and so far it has officially gazetted 33 Regulations dealing with different sector of the economy, ranging fromair pollution, ozone layer protection,noise

[80] Ibid s. 8(a-s)
[81]. NESREA Act s.8 (d)
[82] Ibid s. 8(e)
[83] Ibid s. 8 (f)
[84] Ibid s. 8 (k)

standards,surface and ground water,erosion and flood control,watershed management,deforestation and desertification; alien and evasive species, surface and ground water, hazardous chemical, trade in endangered Species, bush burning etc. Exhaustive discussions will be made on these regulations in the subsequent chapter.

Another salient power conferred on the Agency is the power to collaborate with other relevant agencies and with the approval of the Minister, establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources.[85] The Agency is empowered to evolve programmes that will help in curbing pollution and any other kind of environmental issues and over the years the Agency did came up with programmes geared toward promoting a clean and healthier environment. In a bid to eliminate air pollution in the Country, the Agency conceptualized the National Vehicular Emissions Control Programme (NVECP) in 2012 and the National Generator Emission Control Programme (NGECP), 2015, which is being implemented under the Public Private Partnership (PPP) arrangement. The aim is to improved Nigerian air quality by reducing the emission of gaseous pollutants and improved environment and health for the populace and this can be achieved through testing the emission from vehicles and generating set of 10kv and above.

Also the Agency in collaboration with the Manufacturing Association of Nigeria (MAN) came up with the Extended Producer Responsibility (EPR) Programme and developed a Guideline for it in 2014. This is an environmental policy approach in which a producer's responsibility, physical and/or financial, for a product is extended to the post-consumer stage of a product's life cycle, thereby promoting the Circular Economy concept.More so in 2019 the

[85]. NESREA Act s. 8(0)

Agency in collaboration with UN Environment/Global Environment Facility (UNEP/GEF) is operationalizing the Extended Producer Responsibility program in the electronic sector, which was launched in June with the foreign partners.

Paragraph (s) of section 8 of the Act gives the Agency the Omni bus power to do such other things as are necessary for the efficient performance of its functions.It is worthy to note, that despite the powers conferred on the Agency to enforce compliance with environmental laws,regulations, standards, and guidelines, the Act conspicuously restrict the Agency from enforcing anything that has to do with oil and gas.[86]

In addition to the powers granted the Agency by the Act under section 8, it is alsoconferred with powers to make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources, so as to promote the public health or welfare and the national development and productive capacity of the nation's human, animal, marine or plant life[87]. According to the Act, this is done by setting minimum essential air quality standards for human and animal, control of atmospheric pollution originating from energy sources, including that produced by aircraft and other self-propelled vehicles, industries, factories and power generating situations or facilities and also the use of appropriate means to reduce emission to permissible levels.

Nigeria is faced with myriads of environmental problems, one of which is air pollution. Air pollution is the introduction of chemicals, particulate matter, or biological materials/substances into the atmosphere that cause harm or discomfort to humans, other living

[86] . s. 7 and 8 of the Act. The enforcement on oil and gas spillage is carried out by her sister Agency called the National Oil Spill and Response Detection Agency (NOSDRA), 2006 which is created by the National Oil Spill Detection Response Agency (Establishment) Act, CAP. N157, LFN 2010

[87]. s. 20 (1)

Agency to make regulations and the penalties ranges from fine to a term of imprisonment or to both.

Pursuant to the provision of the Act, it is an offence for a person or anybody corporate to violate the air quality regulation[93]. This is to say, any activity done by a person which tend to affect the quality of the air resources in Nigeria is an offence punishable under the Act.

Any violation to the regulation on air quality as contemplated under section 20 (1) attracts a punishment upon conviction to a fine not exceeding #200,000.00 or to a term of imprisonment not exceeding a year or to both fine and imprisonment an and additional fine of #20,000.00 for every day the offence subsist. But where the offence is committed by a body corporate, it shall on conviction be liable to a fine not exceeding #2,000,000.00 and an additional fine of #50,000.00 for every day the offence subsist.

Under the Act, a corporate body will be said to have committed an offence, where it engages in an activity, practices, or process which is anticipated to affect the stratosphere, especially ozone layer and when such effect may reasonably be anticipatedto endanger public health or welfare.[94] This violation attracts a punishment upon conviction, to a fine not exceeding #2,000,000.00 and an additional fine of #50,000.00 for every day the offence subsist. Note that, the Act only penalizes the offence, where it is done by a corporate body only.[95]

By virtue of the provision section 22 of the Act that gives power to the Agency to make regulation on the control of noise originating from industrial, commercial, domestic, transportation or other similar activities, the section went ahead to provide to the effect that any person who violates the regulation made on noise standards commits an offence liable to a fine

[93]. Cap N164 LFN 2010 s. 20 (3)
[94]. Ibid s. 21 (2)
[95] Ibid s. 21 (3)

not exceeding ₦50,000.00 or a term of imprisonment for a period of one year or to both and an additional fine of ₦50,000.00 for every day the offence subsists[96].

Also pursuant to the provision of Act which empowered the Agency to in collaboration with other stakeholders to make regulations for the protection of public health thereby enhancing the quality of water[97]. In the same vein under, it is an offence that attracts a punishment of a fine not exceeding ₦50,000.00 or to a prison term for a period not exceeding one year or to both such fine and imprisonment, and additional fine of ₦5,000.00 for every day the offence subsists, for a person to violate the regulation under this section of the Act. Where the offence is committed by a body corporate, the company shall be liable to a fine not exceeding ₦50,000 and an additional fine of ₦10,000.00 for every day where the offence subsists.

It is also an offence under the Act for a person to violate the provisions of the regulations made by the Agency on effluent limitation for the protection of human, animal, marine and plant life and by virtue of this provision.[98]Based on this powers to make regulation to regulate the activities of the brown environment (industries) on the discharge of effluent, the Agency gazetted some regulations in 2009[99].

The violation of these regulations attracts a fine not exceeding ₦200,000.00 or to imprisonment for a term not exceeding 2years or to both, and an additional fine of ₦5,000.00 for every day the offence subsists, this is where the offence is committed by an individual. Where the offence is committed by a body corporate is shall be liable to a fine not exceeding ₦1,000,000.00 and an additional fine of ₦50,000.00 for every day the offence subsists.[100]

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[96]. ibid s. 22 (3)
[97]. ibid s. 23 (3)
[98]. Ibid s. 24 (4)
[99] . National Environmental (Textile, Wearing, Apparel, Leather and Footwear Industry) Regulation No. 34 Vol. 96 of 16th,October, 2009 and National Environmental (Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, No. 36 vol. 96 of 20th October, 2009
[100]. NESREA Act s. 24 (5).

The Act under section 25 (1) gives the Agency the power to make regulations for the protection of public health and promotion of sound environmental sanitation and equally makes it an offence for a person to violate the provisions of the regulations made by virtue of subsection (1) of Section 25 of the Act.

By the combine effect of Section 8 k and Section 26 (1), the Agency gazetted regulations dealing with watershed, coastal and marine area protection, dams andreservoirs and flood and erosion.[101] The Act criminalizes the violation of the regulations made there under with a punishment, if it is by an individual, a fine not exceeding ₦200,000 or to imprisonment for a term not exceeding one year or to both and an additional fine of ₦10,000 every day the offence subsists. But where the offence is committed by a body corporate, the body shall be liable to fine not exceeding ₦1,000,000.00 and an additional fine of ₦50,000.00 for every day the offence subsists.

The discharge of any harmful quantities of any hazardous substances into or upon land and waters of country is also an offence provided for by the Act.[102] It was in furtherance of this powers that the regulation for the protection of human health and the environment from harmful effects of hazardous chemical and pesticides was gazetted.[103] Based on the imminent dangers pose by hazardous substance when released into the environment, the violation of Section 27 subsection (1) attracts a fine not exceeding N1,000,000 or to imprisonment for a period not exceeding 5 years, when it is committed by a body corporate, every person in charge of that corporate body as at the time of the commission of the offence shall be held liable and be punished accordingly, save if that person can exonerate himself by proving that the offence was

[101] National Environmental (Watershed, Mountainous, Hilly and Catchment Area) Regulations S.I No.27 Vol. 96 of 2009; National Environmental (Coastal and Marine Area Protection) Regulations S.I 18.Vol 98 OF 2011; National Environmental (Dams and Reservoirs) Regulations S.I 66 Of 2014 and National Environmental (Soil Erosion and Flood) Regulation S.I 12, 2011.

[102].NESREA Act s.27.

[103] National Environmental (Hazardous Chemicals and Pesticides) Regulations, S.I 65 of 2014.

committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.[104]

The provision goes further in subsection (5) to provide to the effect that notwithstanding this provision of the Act or any other Section, the Harmful Waste (Special Criminal Provisions etc.) Act[105] shall apply in respect of any hazardous substance constituting harmful waste as interpreted under Section 37 of this Act,[106] Hazardous substance is interpreted to mean any chemical, be it physical or biological radioactive materials that poses a threat to human health and the environment or any substance regulated under international convention to which Nigeria is a party or signatory[107].The provision also consider any substance the President designate as such by order officially gazetted. However the applicability of any convention or treaty in the Nigeria, is subject to its domestication by the National Assembly and ratified by majority of State House of Assembly.[108]

In conclusion, one notable feature in the offences and penalties under the Act covered by Sections 20 to 27, is that the fine and term of imprisonment to be impose by the Court upon conviction has a limitation with a phrase of "not exceeding" in all the punishment Sections. This will definitely restrict the Judge in imposing heavier punishment in a case of environmental violation before him. However, this limitation is been replaced with the phrase "not less than" in the recent amendment done to the Act in 2018.[109] This will go a long way in giving latitude to the Judge to impose deterring punishment on violators and thereby discouraging violation and encouraging voluntary compliance with extant environmental laws.

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[104].NESREA Act s. 27 (3).
[105] Cap H1 LFN 2004.
[106] Cap N164 LFN 2010.
[107]. Example of some Conventions dealing with issues of hazardous substances, to which Nigeria is signatory to are; Basel convention, Rotterdam Convention, Stockholm Convention, Montreal Protocol etc.
[108] . CFRN 1999 s. 12 (1-3)
[109] National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) Act, 2018.

3.4 Enforcement Powers of the Agency under the Act.

Environmental enforcement refers to actions taken by authority of any level of government, national, state and local to ensure that environmental law is respected by the regulated community. Enforcement is to compel violators to comply with extant environmental laws. These provisions generally give a governmental entity authority to impose sanctions, in either administrative, civil or criminal form and require the violator to come into compliance with the law. Some statutes may contain provisions that require a violator to remedy environmental damage caused by the violations or that allow government to clean up the damage and recover the cost from violator.

As part of the enforcement powers of the Agency under the Act,an officer or personnel may in the course of his duty armed with a warrant or court order enter andsearch any premises including land, vehicle, tent, vessel, floating craft except Maritime Tankers, barges or floating production, storages, offload and oil and gas facilities or any inland water and other structures, at all times, for the purposes of conducting, inspection, searching and taking samples for analysis which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation[110]. This power is expected to be exercised where the activity of the facility is found to be detrimental to the environmental or endangering life and property however the officer must be armed with a court order.

Where in the course of carrying out the powers under paragraph (a) the officer finds any article, he has the power to examine same provided he reasonably believes that the article is capable of been injurious to the environment.[111] The enforcement powers of the officer extends to the power to open and examine any container or package which he reasonably believes to

[110]. Ibid note 104 s. 30 (1) (a)
[111]. Ibid 30 (1) (b)

contain anything that may help in his investigation. Apart from the powers to examine anything found he can also examine any book, document or other records found and can even make copies there from[112].

Paragraph (f) and (g) of this section gives the officer the power to seize and detain for such time as may be necessary for the purpose of this Act, any article by means of or in relation to which any provision of this Act or the regulations has been contravened and goes further to say the personnel can obtain an order of court to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water and other structure whatsoever.

3.4.1 What to note about any Article Seized

Where an article or anything other thing is seized in the course of exercising the powers under section 30 subsection (1) (a-g) of the Act, the following is expected to be done by the personnel:

a) A written receipt shall be given for any article or thing seized, and the reason for such seizure shall be stated on such receipt[113]

b) An article seized under this Act shall be kept or stored in such a place as the officer of the Agency may direct and shall be returned to the owner or the person from whom it was seized if the article upon analysis or examination is found to conform with the requirements of this Act or regulation made under it[114] .

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[112]. Ibid (d – e)
[113] Cap N164 LFN 2010 s. 30 subsection (2)
[114] Ibid s. 30(3)

c) An article other than in the oil and gas sector seized by an officer of the Agency in pursuance of this Act or the regulations made under it may be submitted to an analyst for analysis or examination and the analyst upon making such analysis or examination shall, issue a certificate or report in the prescribed form, setting forth the result of such analysis or examination and the officer of the Agency shall, on demand, deliver a copy of such certificate or report to the owner of the article, if the article is to be subject of a proceedings under this Act or regulations thereunder[115].

By the provisions of section 30 subsection (5) of the Act, Article refers to any of the following:

Liquid; soil; vegetation;Biological and chemical sample; Particulate filters; air quality gauges; andsuch other articles or samples as may be determined by the Agency.

In conclusion, it is worthy to note that the enforcement powers provided under section 30 of the Act is far reaching extending to the power of closing, sealing and suspension of earring facilities. However the requirement to obtain a court order is to checkmate executive recklessness or arbitrariness[116].

3.4 Regulations Made Under the Act

By the combine effect of Sections 8 paragraph (k) and 34of the Act, the Minister is empowered by the enabling legislation to make regulations for the purposes of carrying out or giving full effect to the function of the Agency under the Act. Based on the foregoing the Agency has so far evolved and gazetted 33 Regulations and each Regulation focused on specific area/sector of the economy whose activities generate

[115]Ibid S. 30(4)
[116]. Muhammed TawfiqLadan, Natural Resources and Environmental Law and Policies for Sustainable Development in Nigeria, Ahmadu Bello University Press Ltd, Zaria, 2014, 281.

environmental concerns such as land degradation, air pollution, sanitation and waste, telecommunication and broadcasting facilities, energy, chemicals, water, pollution, noise, wetland and watershed, ozone layer protection, hazardous chemicals, access to genetic resources and befit sharing, flood and erosion, desertification and drought mitigation etc. The thirty-three Regulations covers areas in both the green and brown environment. A common thread that runs through these regulations is the establishment of parameters and standards that must be complied with failing which the erring facility or person will be sanctioned.

These Regulations will be highlighted below:

1. National Environmental (**Wetlands River Banks and Lake Shores Protection**) Regulation S.I 26 of 2009[117]. The Regulations is structured and divided into three Parts and four Schedules. Part one deals with applicability of the Regulations and its objectives, which amongst other is to provide for conservation and wise use of wetlands in Nigeria; ensure water catchment conservation and flood control, ensure the sustainable use of wetlands for ecological and tourism purposes for the common good of all citizens, ensure that wetlands are protected as habitats for species of plants and animals and minimize and control pollution; Compilation of all inventory of wetlands for the purposes of conservation; Role of local government in ensuring the sustainability of wetlands; Declaration of specially protected areas;Control of use of wetlands; Wetland resource use permit; Rejection of application for permit for the use of a wetland; Revocation; Conditions for the grant of a temporary permit and duty of a land owner contiguous to a wetland (Regulation 1 – 14). Part two is on protection of River banks and Lake shores; Identification of river banks and lake shores;

[117]. Federal Republic of Nigeria Gazette No. 26 Vol. 30th September, 2009

Registration of degraded river banks and lake shores; Application for permit to use a river bank or lake shore; Revocation of a permit granted; Duty of private land owners and users; Protection zones for lake shores and Protection of lake shores and river banks used for purposes of tourism (Regulations 15 – 27).

Part three of the Regulations covers requirement for an Environmental Impact Assessment; Environmental restoration order; offences and penalty, Right of an appeal against any decision of the Agency; Interpretation, citation and Schedules (Regulations 28 – 33).

2. National Environmental **(Watershed, Mountainous, Hilly and Catchment Area)** Regulations, S.I 27 of 2009.[118]The Regulation is divided into three parts with three schedules. The objective of this Regulation is to ensure that every land owner or occupier, while utilizing land in watershed, mountainous, hilly or catchment are observe and respect the carrying capacity of the land and carry out measures for soil conservation and for the protection of water catchment area. The first Part deals with the objective of the Regulations; Identification of major Watersheds by the Agency in conjunction withStates and Local Government and indicate those at risk of degradation; Registration of Watersheds, Mountainous, Hilly and Catchment Areas within the State with the Agency; Restriction on the use of Watersheds, Mountainous Hilly and Catchment Areas; Delineation of roles between the three tiers of government and the Agency; and finally on this part the Regulation provides on grazing of livestock.[119]Part two of this Regulation makes provisions on miscellaneous matters dealing with issues on offences and penalties which include revocation of permit granted, fines or imprisonment and appeals to the minister where there is any

[118]. Federal Republic of Nigeria Gazette No. 27 Vol. 96 of 5th October, 2009

[119] Ibid Regulations 1-9

administrative decision by the Agency.[120] The third part of the Regulation covers definition or interpretation of some technical terms in the Regulation; Citation and Schedules.

3. National Environmental (**Sanitation and Waste Control**) Regulation, S.I 28 of 2009[121]. This Regulation seeks to promote environmental friendly practices in environmental sanitation and waste management to minimize pollution. The Regulation is divided into seven parts with eighteen Schedules. Part one deals with preliminary provisions covering issues of applicability of the Regulation and its purpose or objectives[122]; Part two talks about general cleanliness dealing with provisions on litter prohibition; waste handlers; cleaning of walk ways; food sanitation, market sanitation, industrial sanitation, compliance with water quality standards, duties of owner and occupants of properties or premises to provide portable water supply for the premises to ensure sound environmental sanitation and personal hygiene, segregation of waste by generator, citizen obligation on disposal of waste and incorporation of environmental care concerns in their day to day activities, provision of waste receptacles, the polluters pay principle , this requires generators of waste and occupiers of premises where waste are generated shall to be responsible for sound and safe disposal of their waste, adoption of sustainable practices, the Extended Producer's Responsibility from manufacturers, provision of sanitary facilities in commercial and public places, prohibition of certain plastic bags most especially those that are less than 80 micrometers are banned, Registration of licensed sewage management operators with relevant authority, provision of public advertisement

[120]. Regulations 10 - 11
[121] Federal Republic of Nigeria Gazette No. 28 Vol. 96, 2009
[122] ibid Regulations 1 - 2

infrastructures, restriction on pasting of public notices and banned pesticides or chemicals for domestic fumigation.[123] Part three of the Regulation covers waste storage; resource conservation on the 3Rs that is re-use, reduce and recycle waste to minimize pollution; waste collection; Waste transportation; Transportation of waste by licensed transporter; licensing procedure; transitional provision for disposal facilities; renewal of license; requirement for environmental audit; product stewardship programme; general obligation to prevent pollution; treatment of industrial waste; discharge of effluent; protection of sources of water; procedures for licensing and permit; bans and restrictions on use of water sources; discharge into the environment of poisonous matter or radioactive waste or other pollutant; discharge into public sewers; use of wastewater for irrigation; definition of hazardous waste; labelling of containers by marking and labelling them; treatment of hazardous or toxic waste; handling of by-products of treated waste; Transit permit and non-transferability of permit; prior consent to transfer and issue of safe disposal and health care waste (HCW) Control[124]. Part four deals with Institutional roles and responsibilitywhich requires the Agency to ensure the implementation of the provision of the National Environmental Sanitation Policy and Guidelines at all levels[125]. Part five makes provisions on approved intervention programmes, programmes like: waste minimization, extended producers responsibility programme, plastic film phase-out programme, hazardous waste management programme, waste management enlightenment programmes, research and development programme on environmental sanitation and national waste or sanitation databank.; enforcement

[123]. ibid Regulations 3 - 22
[124] ibid Regulations 23 - 62
[125] Regulations 63 - 65

actions; offences and penalties[126]. Part Six provides for approved intervention programmes, while Part Seven deals with interpretation of technical terms[127]. The Schedules provide standards for guidelines for food handlers; quality standard for sources of domestic water; guidelines for recommended approved number of toilets; guidelines for septic tank construction; guidelines for integrated pest and vector control; list of banned pesticides; guidelines for waste collection and transportation vehicle; guidelines on permissible limits for waste water discharge.

4. National Environmental (**Permitting and Licensing System**) Regulation, S.I. 29 of 2009[128].The Regulation seeks to enable consistent application of environmental laws, regulations and standards in all sectors of the economy and geographical region. The Regulation is structured into four Parts and a Schedule. Part one provides for the mode of Application for a permit to the Agency; the information to accompany the application; Assessment of application; Approval or refusal of permit.[129] Part two is on the amendment and renewal of permit granted by the Agency. Part three gives the Agency the power to suspend and cancel a permit granted which could be on grounds of failure to fully discharge the functions imposed on the permit, the permit holder defaults in complying with the order or directives issued by the Agency.[130]

   Part four covers issues on re-hearing of appeals where an applicant of a permit is dissatisfied by the decision of the Agency; review or reconsideration of decision and re-application. An applicant who applied for re-hearing of his application may re-apply as a new applicant. The Citation of the Regulation is provided under Regulation

[126].Regulations 66 - 104
[127] Regulations 105 and 106
[128] Federal Republic of Nigeria Gazette No. 29 Vol. 96, 7th October, 2009
[129] Ibid. Regulations 1-12
[130] Ibid regulations 19 - 32

40. The Schedule to the Regulations talks about sample ofparticulars of application for effluent discharge permit.

5. National Environmental (**Access to Genetic Resources and Benefit Sharing**) Regulations, S.I 30 of 2009[131].The purpose of this Regulation is to protect the nation's genetic and biological resources control access to such resources and ensure equitable sharing of the benefit arising from their use. The Regulation prescribes the procedure to access genetic resources in Nigeria, including the development of a comprehensive inventory of threatened, endangered, endemic and rare species.The Regulation is structured and divided into five Parts and three Schedules. The first Part covers conservation monitoring through discouraging people from engaging in any activity that may have adverse impact on the ecosystem; Conservation of threatened species in order to ensure its regeneration and sustainable management; The Regulation oblige the Agency to identify and prepare an inventory of the status of biological diversity in the Country. The inventory should include threatened, endangered, endemic and rare species.[132] Part two talks about Application for access permit which requires any person who intends to access genetic resources in Nigeria to apply to the Agency for access permit.[133] Part three applies to any body seeking access to genetic resources where the Regulation requires the Agency to ensure that the holder of an access permit facilitates the active involvement of Nigerian citizens and institutions. Part four provides for offences and penalties, while Part five deals with those genetic resources where the regulation will not apply, for example derivative products or intangible components associated with them, human genetic

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[131]. Federal Republic of Nigeria Gazette No. 30 Vol. 96 of 9th October, 2009
[132]. Ibid Regulation 1 - 4
[133]. Regulation 5

resources and resources derived from plant breeders; and Interpretation of some terms. The Schedules provides for the forms and contents of an application for an access permit; Guidelines on forms and contents of Prior Informed Consent and sample of an Access Permit Form.

6. National Environmental (**Mining and Processing of Cool, Ores and Industrial Minerals**) Regulation S.I. 31 of 2009[134]. The Regulation seeks to minimize pollution from mining and processing of coal, ores and industrial minerals[135].The Regulations is divided into thirteen Parts and thirteenSchedules. The Regulations requires the application of up-to-date, efficient cleaner production technologies in new development and shall also carry out an Environmental Impact Assessment and approval obtained from the Federal Ministry of Environment, in addition existing facility must conduct and submit an Audit Report every three years (Regulations 2 – 3). Regulation 4 – 9 deals with General Permit, Monitoring Pollution, equality in treating facilities on inspection and enforcement matters, Community relations, control mitigation and enforcement and incentives. Part three covers issues of Treatment of effluent, Management of oil station and fuel dump sites, Permit on discharge of effluent, the Polluters Pays Principle and Emergency Response Plan.[136] Part four covers issues of collection of samples for analysis, preservation and analysis of discharged samples (Regulations 15 – 17). Part five is on Industrial wastewater monitoring and reportingand confidential information and Public access to records (Regulations 18 –22). Part Six is on Enforcement notices, Enforcement notice reminder and Suspension notice. Part Seven and eight provides for offences and

[134]. Federal Republic of Nigeria Gazette No. 31 Vol. 96, of 12th October, 2009
[135] ibid Regulations 1
[136]. ibid Regulations 10 - 14

penalties. Part Nine talks about emission limitations or sources, conventional pollutants, control plan, priority air pollutants guidelines and stack emission monitoring (regulations 25 – 35). Part Ten covers issues of Noise pollution and control, Permissible noise level, noise exposure limit and provision of hearing protectors to employees (Regulations 37 – 41). Part eleven deals with issues of Guidelines and Codes of Practice. Part Twelve requires the employer or operator of a mining site to maintain an audiometric testing programme for his employees whose exposure exceed 8 hour of about 90 decibels and the penalty for violating this obligation (Regulations 44 – 46). Part thirteen is on Interpretations of some technical terms and the Schedules to the regulations which provides for things like, effluent limitation standards for mining and processing of coal ores and industrial minerals, sample of effluent monitoring report, best practices, polluters pays principle, emergency response plan, sample of monthly effluent discharge monitoring report, incident report, guidelines for preparing environmental management plan, fugitive emission sources, national emission quality standards for conventional pollutants, national emission limit for specific pollutants, operating procedure for fugitive emission control plan and lastly permissible noise exposure levels.

7. National Environmental (**Ozone Layer Protection**) Regulations, S. I. 32 of 2009[137]. This Regulation prohibits the importation, manufacture use or otherwise of ozone depleting substances (ODS).The Regulations is divided into three parts and six schedules. Part one provides for prohibition of Ozone depleting substances, prohibition of release, provision on phase out period for working with an ozone depleting substances, prohibition of importation, manufacturing, installing, offering

[137]. Federal Republic of Nigeria Gazette No. 32 Vol. 96, of 13th October, 2009

for sale, sell or buying new fire extinguishers that contains ozone-depleting potential greater than 0.05, importation or sale of pressurized containers, sale of Ozone depleting substances, labelling indicating type of ozone depleting substances, prohibition of manufacturing flexible insulation foams, prohibition of manufacturing or importation of rigid insulation foams and packaging and wrapping materials' that contains ozone depleting substances (Regulations 1 – 10). Part two deals with Powers and Responsibilities of the Agency to enforce compliance with the provisions of the Regulations (Regulation 11). Part three covers issues of Import permit; Permit conditions; Application fees for permit; Report of a permit holder; offences for handling ozone-depleting substances refrigerants; Possession or trading in refrigerant; Application for halon special permit; Application for refrigerators and air conditions industry permits; Offence for penalties; interpretation and citation (Regulations 12 – 24). The Schedule provides for types for permits and entitlements,categories of pre-charged equipment, Ozone depleting substances, Bi-annual report requirements by permit holders, Application for permit, phase out deadline for controlled substances.

8. National Environmental (**Food, Beverages & Tobacco Sector**) Regulations, S.I. 33 of 2009[138]. The Regulations seeks to prevent and maintain provisions from all operationsand ancillary activities of food, beverages and tobacco sector to the Nigerianenvironment. The Regulations is structured and divided into nine parts and thirteen schedules. Part one of the Regulations covers Environmental governance;Planning, Emergency response plan, Installation of anti-pollution equipment, Polluter pays principle, Best practices, management of oil station and fuel dumps site, community relations, effluent limitation standards, pollution control

[138]. Federal Republic of Nigeria Gazette No. 33 Vol. 96, of 14th October, 2009

organizationalsystem, buy back and extended products stewardship, banned restricted chemicals, restriction on the release of toxic effluent, treatment of effluent, sludge disposal, emission standards, emission control, treatment technologies, noise standards, noise abatement , hearing conservation program and noise monitoring (Regulations 1 – 25). Part two deals with sampling procedures, collection and analysis of sample, spot sampling for physical or chemical parameters, composite sampling for physical or chemical parameters, sampling for license classification, sampling for other parameters, sampling for microbiological analysis, air sampling analysis and noise measurements(Regulations 26 – 33). Part three deals with procedure for application for permit including revocation of such permit in accordance with the Permitting and licensing Regulations (Regulations 34). Part four is on industrial effluent monitoring and reporting requirements and confidential information and public access to records (Regulations 35 – 39). Part five deals with issues of enforcement that is duty of the Agency to ensure compliance; service of enforcement notices and suspension permit (Regulations 40 – 43). Part six is on contravention of a permit condition; false statement; failure to comply with abatement measures; failure to report discharges and discharging beyond permissible level (Regulations 44-48). Part seven deals with penalty for violation. Part eight has to do with incentives to be granted by the Agency by complying companies or organization; performance criteria and rating; compliance award and the Agency's green mark; Interpretation and Citation (Regulations 49 – 54). The Regulations has thirteen Schedules annexed to it.

9. National Environmental (**Textile, Wearing Apparel, Leather and Footwear Industry**) Regulations, S. I. 34 of 2009[139]. The Regulation seeks to prevent and minimize pollution from all operations and ancillary activities from the sector to the Nigeria Environment. The Regulations is divided to nine parts and thirteen schedules annexed to the Regulations. Part one deals with Environmental governance, the need to carry out Environmental Impact Assessment for new industries and major developmental projects prior to commencement, Emergency response plan, Installation of anti-pollution equipment, the Polluters pay principle, Minimization of waste, Pollution control organizational system, Chemical usage, Banned or restricted chemicals, Effluent limitation, restriction on the release of toxic effluent, treatment of effluent, sludge disposal, emission standards, priority air pollutants, treatment technologies for air emission, activities resulting in atmospheric emissions, noise standards, noise abatement, hearing conservation program and noise monitoring (Regulations 1 – 26). Part two deals with collection and analysis of samples, spot sampling for physical chemical parameters, composite sampling for physical or chemical parameters, sampling for license classification, sampling for other parameters, sampling for microbiological analysis, air sampling for analysis and noise measurements (Regulations 27 – 34). Part three is on procedures for permitting and licensing, reporting requirements and confidential information and public access to records (Regulations 35 – 40). Part five deals with issues of enforcement ranging from duty of the Agency to ensure compliance, issuance of enforcement notices, reminder and enforcement notice and suspension of permit (Regulations 41- 44). Part Six is on what constitute an offence under the Regulations, like contravention of

[139]. Federal Republic of Nigeria Gazette No. 34 Vol. 96, of 16th October, 2009

permit condition, failure to comply with abatement measures, failure to maintain records of discharge, discharge of pollutants beyond permissible leveland engaging in some atmospheric emission without license (Regulations 45 – 50). Penalties is dealt with under Part seven regulations 51 (1). Part eight of the Regulations deals with incentives which is recognition of facility that demonstrates environmental leadership, The Agency compliance award and green mark for best environmentally performing organization will be certified by the Agency (Regulations 52 – 55). Interpretations of technical terms used in the regulation and the schedules is covered under Part nine.

10. National Environmental(**Noise Standards and Control) Regulations**, S. I. 35 of 2009[140];The Regulations is divided into five Parts and two schedules. It seeks to ensure maintenance of a healthy environment for all people of Nigeria, the tranquility of their surroundings, and their psychological wellbeing by regulation noise levels arid generally to regulate the standards of the living of the people[141]. Part one covers issues of permissible noise level and noise in excess of permissible level (Regulations 2- 3). Part two deals with control and mitigation of noise (Regulations 4 – 6). Part three covers application for a noise permit in excess of permissible limit, duty to comply with the permit and revocation of a permit (Regulations7-9). Part four has to do with enforcement, looking at matters like general action for noise, noise control order, power to confiscate machinery, restitution of property, guidelines for noise from plant or machinery and code of practice (Regulations10- 15), and Part five deals with offences;Interpretation and Citation and finally schedules to the Regulations (Regulations16 -19).

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[140]. Federal Republic of Nigeria Gazette No. 35 Vol. 96, of 19th October, 2009

[141]. ibid Regulations 1

11. National Environmental (**Chemicals, Pharmaceuticals, Soap and Detergent Manufacturing Industries**) Regulations, S. I. 36 of 2009[142]. This Regulations seeksto prevent and minimize pollution from all operations from the sector on the environment. It has Nine Parts and fourteen Schedules[143]. Part one deals with requirement for an environmental impact assessment, environmental audit and environmental management plan for facility, emergency plan, installation of anti-pollution equipment , application of the polluter pays principle to every facility, adoption of best practices in production, minimization of waste, pollution control system, the buy-back scheme for packaging products, submission of the material safety data sheet, permit for the usage of banned or restricted chemicals, management of chemicals, oil station and fuel dump site, equality in treating facilities during inspection and enforcement, sustainable community relation program, effluent limitation, restriction on the release of toxic effluent, treatment of effluent, sludge disposal into the environment, compliance with emission standards, treatment technologies for air emission, atmospheric emission license, noise standards, noise abatementmeasures, hearing conservation program to be adopted by facility (Regulations 2 – 27). Part two deals with collection and analysis sample, spot sampling for physical or chemical parameters, composite sampling for physical or chemical parameters, sampling for license classification, sampling for microbiological analysis, air sampling for analysis, noise measurement (Regulations 28 – 35). Part three is on procedures for licensing and permit (Regulations 36). Part four is on reporting requirements; fees and confidential information. Part five is on the duty of the Agency to ensure compliance; enforcement notices; enforcement

[142]. Federal Republic of Nigeria Gazette No. 36 Vol. 96 of 20th October, 2009
[143] . ibid Regulations 1

notice reminder and suspension of permit (Regulations 37 – 41). Part Six provides for contravention of permit conditions; making false statement; failure to comply with abatement; failure to report and discharge of pollutants beyond permissible level (Regulations 46 – 50). Part seven provides for penalty for violation of the Regulation and the power of the Agency to enter and seal facility found to be contravening (Regulations 51-52). Part eight deals with recognition for environmental leadership (Regulation 53). Part nine covers interpretations and citation (Regulation 54-55) and lastly the Schedules to the Regulations.

12. National Environmental (**Standard for Telecommunications/Broadcasting Facilities**) Regulations S.I 11 of 2011[144]. The principal thrust of these regulations is to among others, ensure consistent application of Environmental Laws, Regulations and Standards in all sectors of the telecommunications and broadcast industry in Nigeria[145]. The main objectives of the Regulations is to protect the environment and human health, ensure safety and general welfare, eliminate or minimize public and private losses due to activities of the telecommunications and broadcast industry[146]. Other provisions of the Regulation is on, scope to be covered by the Regulations; environmental requirement for siting and installation of telecommunication and broadcast base stations, mast and towers; requirement to conduct an environmental impact assessment prior to the installation or siting; Audit requirement after every three years; 10 meters set back requirement for new facility that is close to a premises be it residential or school; abandonment of base station what needed to be done; environmental monitoring and inspection on telecommunication and or broadcast

[144] Federal Republic of Nigeria Gazette No. 38 Vol. 98 of 29th April, 2011
[145]. ibid regulations 2.
[146]. ibid Regulations 3

facilities; permissible radiation level; guidelines and standards for the use of power generating set; enforcement for non-compliance; sanction; disclaimer liability for any damage; interpretation and schedule (Regulations 4 -13).

13. National Environmental (**Soil Erosion and Flood Control**) Regulations S.I 12 of2011[147]. The Regulations is divided into five Parts and seven Schedules. The Regulations seeks toprotect human life and the environment, minimize losses due to flood and erosion and their effects on vulnerable areas by regulating land-disturbing activities. Part one of the Regulations applies to general information on soil erosion and flood, while part two and three apply to regulated activities to enforce soil erosion and flood control (Regulations 1- 18). Part four deals with offences and penalties while interpretation of terms and citation is covered by Part five. The seven schedules provides for: erosion control plan, condition for approval of erosion control plan, erosion and sediment perimeter control, application form for permit on soil and erosion and flood plain, instruction sheet for the erosion and flood plain permit application for flood plain development, guiding questioner for application and development permit.
14. National Environmental (**Desertification Control and Drought Mitigation**) Regulations S.I 13 of 2011[148].The Regulations is divided into five Parts and seven Schedules. Part one of the Regulations covers general provisions on desertification control such as application of the Regulations; Objectives of theRegulations,which is to provide an effective and pragmatic regulatory framework for the sustainable use of all areas already affected by desertification and the protection of vulnerable lands; Principles to be observed in regulating activities in desert prone areas (Regulations 1-

[147] Federal Republic of Nigeria Gazette No. 39 vol.98 of 2nd May, 2011
[148] Federal Republic of Nigeria Gazette No. 40 vol.98 of 3rd May, 2011

3). Part two deals with duties of the Agency to compile an inventory of all degraded lands and desertification prone areas; roles of state and local government in reforestation, reseeding and afforestation; declaration of specifically protected areas; desertification control guidelines; grant of permit to carry out activities in desert prone areas; duties of land owners and users to prevent deforestation and degradation (Regulation 4 -10). Part three deals with the general provisions on drought mitigation which is a major issue dealt with in the Regulations (Regulations 11-13). Part four has to do with drought mitigation (Regulations 14 – 20). Part five provides for Offences and Penalty; Interpretation and Citation (Regulations 21–23). The Schedules to the Regulations is covered by Part six which consist of composition of the federal enforcement teamof thirty-five members, composition of the state enforcement team and composition of the local enforcement team.

15. National Environmental (**Base Metals, Iron and Steel Manufacturing/Recycling Industries**) Regulations, S.I 14 of 2011[149].The objective of this Regulation is to prevent and minimize pollution from all operations and ancillary activities of the sector in the Nigerian Environment[150].The Regulations is divided into nine Parts and twenty-one Schedules. The first Part has to do with Environmental Governance which requires the Agency to give equal treatment without preference in terms of enforcement of relevant laws and inspections; requirement of carrying out Environmental Impact Assessment (EIA); submission of Environmental Audit Report and Management Plan[151]; Facility to apply up-to-date efficient and cleaner production technologies; putting in place Emergency Response Plan, Pollution Abatement

[149] Federal Republic of Nigeria Gazette No. 41 vol.98 of 4th May, 2011
[150]. ibid Regulations 1
[151]. Regulations 3-4

Equipment, the Polluter pays-principle (Regulations 5-6). The Regulation also requires every facility to ensure the adoption of the 5 Rs which are: Reduce, Repair, Reuse, Recycle and Recover in the management of scraps generated (Regulations 7). Every manufacturer and import is to subscribe to the Extended Producer Responsibility program as contained in the Schedules to the Regulations(Regulations 12). By Regulations 13 restricted chemicals mentioned under Schedules to the Regulation can only be used under a permit granted by the Agency. Part two of the Regulations deals with collection and analysis of sample (Regulations 31 -38). Part three has to do with general provisions on Permit (Regulation 39). Part four deals with Industrial Effluent and Air Emission Monitoring and Reporting (Regulations 45-49). Part five provides for offences such as contravention of a permit condition, false statement, failure to comply with abatement measure, discharge of pollutants beyond permissible level (Regulations 50-55). The penalty for the offences is covered by Regulations 56 under Part seven. Part eight provides for Interpretation and Citation. Concluded with the Schedules I - XXI

16. National Environmental **(Control of Bush/Forest Fire and Open Burning)** Regulations, S.I 15 of 2011[152]. The Regulations is divided into four parts and Schedules. The objective of the Regulations is to prevent and minimize the destruction of ecosystem through fire outbreak and burning of any material that may affect the health of the ecosystem through the emission of hazardous air pollutants; Prohibition of bush and forest burning without a permit[153]. Part two has to do with the power to issue permit by the Agency; obligation of permit holder; application for a permit to burn plant waste; Revocation or cancellation of permit; Range land or

[152] Federal Republic of Nigeria Gazette No. 42 vol.98 of 6th May, 2011
[153]. ibid Regulations 1 -3.

plantation; use of tractors engine and other forms machineries ; Restriction of the use of engines; Conditions for the use of bee smoker device; Use of explosives; Use of fireworks; prohibition on burning of bush or forest for hunting of animals and obligation of an occupier of land to within 7 days of occurrence of a bush or forest fire on the land to send to the nearest office of the Agency a written notice of same (Regulations 4 – 20). Part three deals with acts that constitute an offence under the Regulationsand penalties and exceptions of some activities from the application of the Regulation such as barbecue grills and outdoor cooking device , small cooking and camp fire, ceremonial or celebratory bonfire and open fires to control invasive plant and insects species (Regulations 21-22). Part four provides for Interpretation and Citation. Annexed to the Regulations is the Schedules.

17. National Environmental (**Protection of Endangered Species in International Trade**) Regulations, S.1 16 of 2011[154]. The Regulations is divided into five parts. The main objective of this Regulation is to protect species of endangered wildlife from extinction through the prohibition of trade, importation and exportation etc. Part one is on the aspect covered by the Regulations. The Federal Ministry of Environment is the designated authority for CITES management while the Agency (NESREA) is the enforcement arm (Regulations 1 -2). Part two deals with the prohibition of import, introduction from sea, export, re export and possession; requirement for import, introduction from sea, export and re-export, exemption and special procedure regarding importation, exportation and re-exportation of some specimens of wildlife species. This part also provide for requirement of registration of persons engaged in trading captive breeding and artificial propagation of wildlife (Regulation 3-6).

[154] Federal Republic of Nigeria Gazette No. 43 vol.98 of 6th May, 2011

Part three deals with offences and penalties is covered by Regulations 7. Part four authorizes an officer, if satisfied that there is reasonable evidence of an offence to order an arrest of the person so suspected and seize any item related to CITES offence; custody and disposal of specimen (Regulations 8 -9). Interpretation and Citation is covered by Part V.

18. National Environmental (**Domestic and Industrial Plastic, Rubber and Foam Sector**) Regulations, S.I 17 of 2011[155]. The Regulations is divided into seven Parts and seventeen Schedules.The principal thrust of this Regulation is to prevent and minimize pollution from all operations and ancillary activities of the Domestic and Industrial Plastic, Rubber and Foam Sector to the Nigerian environment[156]. Regulation 3 -30 of Part one deals with issues like requirement for Environmental Impact Assessment, Emergency Response Plan, Pollution Abatement Equipment, preparation of a voluntary action programme to combat global warming, subscription to the Extended Producer Responsibilityprogramme, the list of banned or restricted chemicals, management of chemicals and fuel dumps. There is also provisions on the standards for effluent limitations, treatment of effluent. Emission and Noise standards and control is also provided for under Part one. Part two is a general provision on collection and analysis of samples (Regulations 31 -38). Part three is on procedure for Licenses and Permit (Regulations 39). Industrial Effluent/Air Emission Monitoring and Reporting (Regulations 40 -43). Part five has to do with issuance of Enforcement Notices (Regulations 44 – 48). On what constitute an offence and the penalty Part six provides for that under Regulations 49 – 55. Part seven makes provisions for Interpretation and Citation.

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[155] Federal Republic of Nigeria Gazette No. 44 vol.98 of 10th May, 2011

[156]. Regulations 2

19. National Environmental (**Coastal and Marine Area Protection**) Regulations, S.I 18of 2011[157]. The Regulation has four parts and seven schedules. Part one deals with application of the Regulation; objectives of the regulation; principles, inventory of coastal and marine areas; classification of coastal regulation zone, prohibited activities, regulation of permissible activities; preparation of integrated coastal zone management plan; guidelines for regulating activities, procedure on ballast water control (Regulations1-11). Part two provides for the condition for obtaining permit (Regulations 12-18). Part three: offences and penalties. Part four: interpretation and citation. This Regulation provides for the regulatory framework for the application of preventive, precautionary and anticipatory approaches so as to avoid degradation of the coastal and marine environment.

20. National Environmental (**Construction Sector**) Regulations S.1 19 of 2011[158]. It has seven Parts and ten Schedules.The main thrust of the Regulations is to prevent and minimize pollution from Construction, Decommissioning and Demolition Activities to the Nigerian Environment.Part one is the general provision dealing with Citation; the thrust of the Regulation; planning best practices; Emergency Response Plan (Regulations 1-5). Part two deals with the Site waste management plans;Storm water discharge permit; Control of dust and fugitive emission; Noise control; Monitoring avoiding nuisance; hazardous substances prohibition of Asbestos; Spent oil prevention and control of explosion hazards, exposure to radiation, Polluters Pays Principles;Community relation and close-out or phase out plan (Regulations 6-20). Part three has to do with permit (Regulations 21). Part four is generally on enforcement (Regulations 22-26). Offence and penalties is covered under part five

[157] Federal Republic of Nigeria Gazette No. 45 vol.98 of 13th May, 2011
[158] Federal Republic of Nigeria Gazette No. 46 vol.98 of 17th May, 2011

and six (Regulations 27-28). Interpretation is provided for under Regulation 29. The schedules provide for: Best Practices, guide template for emergency procedure in construction industry. Guidelines for preparing Environmental Management Plan (EMP), Organizational system and functions of pollution control managers; incidenceReport Form; Recommended Personal Protective Equipment (PPE) in according to hazard type; noise limit for various working environments; minimum limits for workplace illumination intensity; blasting guidelines and close-out guidelines.

21. National Environmental (**Control of Vehicular Emissions from Petrol and Diesel Engines**) Regulations S.I 20 of 2011[159]. The purpose of these regulations is to restore, preserve and improve the quality of air.The standards contained herein provide for the protection of the air from pollutants from vehicular emission. The Regulation is divided into five and eleven schedules. Part one deals with control of Vehicular Emission from petrol engine which covers issues of applicability, restriction on installation or replacing of engine units, ban on two stroke engines and motor vehicles with no emission reduction technology, test to be conducted by assembler manufacturers or importer, certification by assembler manufacturer or importer (Regulations 1-5). Part two is on gaseous emission control from petrol engine. The Regulation provides that every petrol engine shall not emit gaseous pollutant exceeding the emission standard provided in the schedules to the Regulations; prohibition order on vehicle that is in contravention of acceptable conditions; fleet operator to maintain licensed facility (Regulations 6-15). Part three deals with new motor vehicles registered after 28th April, 2011 and to a motor vehicle whose engine

[159] Federal Republic of Nigeria Gazette No. 47 vol.98 of 17th May, 2011

has been replaced; requirement of vehicle to undergo emission test at a license facility; ban on diesel engine with no emission reduction technology, certification by assembler manufacturer or importer prior to delivery of a new motor vehicle to its owner; provision on the maximum concentration of smoke, maximum density of smoke permitted, power of an authorized officer to issue a prohibition order prohibiting the operation of vehicle whose test result exceed 50 HSU or equivalent smoke unit, maintaining a log book to record tests done (Regulations 16-29). Part four deals with offences and penalties, interpretation and citation (Regulations 30-32), the schedules provide for emission standards of pollutants for petrol engines, emission standards of pollutants for new models of petrol engine on or before 1st January 2015, emission standards for petrol engines in use, motor vehicles emissions test certificate for petrol engine in use in any format, prohibition order for motor vehicles emission and smoke test (petrol and diesel) and emission standard of pollutants for new models of diesel engines on or after 1st January, 2015. Free accelerationtest and motor vehicles emission test certificate for diesel engines in use.

22. Notional Environmental (**Non-Metallic Minerals Manufacturing Industries Sector**) Regulations S.I 21 of 2011[160]. The Regulation is divided into eight parts and twenty-two Schedules. Part one has to do with the general provisions covering issues such as the thrust of regulationwhich is to prevent and minimize pollution from all operations and ancillary activities in the sector to the Nigerian environment; Environmental Governance; Emergency Response Plan; Provision of Pollution Abatement Equipment; Polluter Pays Principle; Best Practices/Waste Minimization; Pollution Abatement; Global Warming; volatile organic compound; Minimization of

[160] Federal Republic of Nigeria Gazette No. 48 vol. 98 of 23rd May, 2011

Waste/Pollution; Pollution Control Organization Systems, Extended Producers Responsibility; Chemical Usage; Banned/Restricted Chemicals; Grant of Permit for Operation; Management of Chemicals; Oil Station and Fuel Dumpsite; Effluent Limited Standards; Restriction on the Release of Effluent; Effluent Treatment; Sludge Disposal; Prevention and Control Techniques to Reduce Sulphur in Ceramics Industries; Management Strategies for Greenhouse Gases Control; Abatement Technologies; Noise Standards; Community Relations (Regulations 1-37). The Second Part has to do with collection and analysis of samples; Spot Sampling for physical or Chemical parameters; composite sampling for Physical or Chemical parameters; sampling for license classification; sampling for Microbiological analysis and noise measurement (Regulations 30-45). Part Three has to do with permitting and licensing (Regulations 46). Part Four is on industrial effluent, air emission monitoring and reporting (Regulations 47-51). Part Five enforcement.Part Six and Seven is on offences and penalty (Regulations 57-62). Part eight is on Interpretation.

23. National Environmental (**Surface and Groundwater Quality Control**) Regulations S.I 22 of 2011[161]. The Regulation is divided in an alphabetical order A-E and Six Schedules. Part A deals with purpose which is to restore, enhance and preserve the physical, chemical and biological integrity of the nation's surface waters; its applicability; General provisions for surface waters; Water Quality Standards; Activities in violation of water quality standards; activities in further degradation of low quality waters; anti-degradation activities; restriction to new discharges; prohibited discharges; approval and permit required for regulated activities; application for permit; obligation of a permit holder; modification, suspension or

[161] Federal Republic of Nigeria Gazette No. 49 vol. 98 of 24th May, 2011

revocation of approval (1-18). Part B is on Ground Water Quality Control (19-31). Part C is on enforcement of compliance by the Agency. Part D is on offences and penalties. Part E has to do with Interpretation,Citation and finally the Schedules.

24. National Environmental (**Electrical/Electronic Sector**) Regulations, S.I 23 of 2011[162]. The Regulation is divided into Nine Parts and seventeen Schedules. The first Part is the general provision which provides for issues like the citation of the Regulation; the main thrust of the Regulationis to prevent and minimizepollution from all operations and ancillary activities of theElectrical/Electronic Sector. This Regulation covers both new and usedElectrical/Electronic Equipment (EEE/UEEE); Conditions for the interpretation of Electrical Electronic Equipment (EEE); EEE facility requirement; Emergency Response Plan to combat pollution hazard and maintenance equipment in case of emergency; Installation of anti-pollution equipment; adoption of Polluters Pays Principles; Pollution Control Organizational system to be put in places; Subscription to the Extended Producer Responsibility; application for permit; Corporate Social Responsibility Agreement; compliance with the effluent limitation standards; restriction on the release of toxic effluent treatment; having in place an effective effluent treatment plant; prohibition of sludge disposal without a permit; emission standard; putting in place and treatment technologies; a pollution abatement for air emission; facility to comply with the noise standard regulations (Regulation 1-26). Part Two has to do with Sampling Procedures. Part Three deals with handling of electronic waste by importer and technicians. However, the Regulation bans the importation of end-of-life unusable or unserviceable EEE and importation of Cathode Ray Tubes; requirement for registration for establishment of

[162] Federal Republic of Nigeria Gazette No. 50 vol. 98 of 25th May, 2011

recycling plant; citizen obligation; establishment of collection / recycling center(Regulations 27-42). Part Four is the general provision on permit; application on grant such as the import permit, export permit, collection center permit, e-waste, recycling permit, installation/operation permit, industrial/commercial discharge permit and sludge disposal permit (Regulations 43-52). Part Five is on industrial effluent and air emission monitoring and reporting (Regulations 53-56). Part Six deals with enforcement generally to be carried out by the Agency (Regulations 57-61). Offences and penalty is covered by part sevenand eight (Regulations 62-68). Part Nine is on recognition for environmental leadership and Interpretation of terms (Regulations 69-70). Attached to the Regulation is the Schedule.

25. National Environmental (**Control of Alien and Invasive Species**) Regulations, S.I 32 of 2013[163]. The Regulation is divided into Seven Parts with Six Schedules thereto. Part one gives an insight to the purpose of the regulation. Part two outlines restricted activities and prohibited activities, responsibilities of an occupier of land (Regulations2-6). Part threedeals with permit application and risk assessment (Regulations7-8). Part Four of the Regulation considered who is the competent authority for alien and invasive species (Regulations9-11); Issuingauthority for a permit cancellation and registration is dealt with in Part Five of the Regulation (Regulations12-15). Compliance and enforcement; offences, penalty is Part Six and finally interpretation and citation is covered by Part Seven, and then the schedules for the Regulations. This Regulations seeks to prevent the decline, minimize the modification and destruction of ecosystem, economy and human health caused by Alien and Invasive Species by:

[163] Federal Republic of Nigeria Gazette No. 96 vol. 100 of 29th October, 2013

(a) regulating the raising, planting, storing, carrying, importing, or other handling of the species;

(b) taking measures, such as mitigation, with the aim of stabilizing and improving national life through contributions to conservation of biodiversity, human safety and sound development of agriculture, forestry and fisheries;

(c) developing a national database for the proactive management of fauna and flora of the species for the mitigation of existing invasions and the prevention of future occurrences;

(d) facilitating the integration of regional and global initiatives on trans-boundary movement of the species within the overall national framework; and

(e) building capacity and skills for the species management

26. National Environmental (**Pulp Paper, Wood and Wood Products Sector**) Regulations S.I. 34 of 2013[164]. The Regulation has Eight Parts with Twenty Schedules. The first Part deals with the purpose or thrust of the Regulations, which is to prevent and minimize pollution from all operations and ancillary activities from the sector in the Nigerian Environment; submission of Environmental Impact Statement; Audit Report after three years by an accredited consultant to the Agency; Precautionary Principle; Emergency Response Plan to combat pollution hazard; pollution abatement equipment; Polluters Pay Principles; Waste Management; Waste utilization and disposal; Pollution prevention and control techniques; Measure to address global warming; Pollution control organizational system; Wood and Wood product handling and processing; Occupational risk control and safety measures; Extended Producer Responsibility programme; Requirement for the submission of list

[164] Federal Republic of Nigeria Gazette No. 98 vol. 100 of 1st November, 2013

of chemicals including Material Safety Data Sheet; Community Relation Program in form of Corporate Social Responsibility; Effluent limitation standards; Restriction on the release of toxic effluent; Sludge disposal; Emission standards; Abatement Technology and Treatment; application for air quality control permit; noise standards to be installed; hearing conservation programme and noise monitoring (Regulations 1-35). Part Two covers sampling procedure generally (Regulations 36-43). Part Three is on procedure for licensing and permit (Regulations 44). Part four deals with industrial effluent and air quality monitoring reporting (Regulations 45-49). Part five is on enforcement generally (Regulations 50-61). Interpretation and Citation is covered by part eight and lastly the schedules (I-XX).

27. National Environmental (**Motor Vehicle & Miscellaneous Assembly Sector**) Regulation S.I. 35 2013[165]. The Regulation is divided into eleven parts and fifteen schedules. Part One deals with the general provisions, providing for issues such as purpose of the Regulation which is to prevent and minimize pollution & wastes from all activities of the Motor Vehicle (MV) and Miscellaneous Assembly sector to the Nigerian environment. The Regulations shall cover new, Used Vehicle and End-of-life Motor Vehicles and is based on life cycle approach and shall cover all the aspects of the Motor Vehicle & Miscellaneous Assembly from "cradle to cradle; Emergency Response Plan pollution abatement equipment; Polluter Pays Principle; pollution control organizational system; conditions for the importation of vehicle into Nigerian which must be certified as free from POPs, BDE polymer or hazardous chemicals; vehicles value chain to adopt the Extended Producers Responsibility; provision on community relation programme such as the Corporate Social Responsibility (CRS);

[165] Federal Republic of Nigeria Gazette No. 99 Vol. 100 of 4th November, 2013

effluent limitation standards to be observed; restriction on the release of toxic effluent, disposal of sludge not to be done directly into any water body or the environment except with a permit; a facility to treat gaseous substances to permissible limit; noise standards in vehicle to be in compliance with the Noise Standards and Regulations(Regulations 1-23). Part Two deals with collection and analysis of samples in accordance with the standards operating procedure as developed by the Agency (Regulations 24-30). Part Three deals with servicing and maintenance of vehicles (Regulations 31-32). Part Four provides for the issue of End of Life vehicles generally (Regulations 33-40). Part Five covers the general provisions on Permits application, establishment of end of life vehicle treatment facility, management of end of life vehicle (Regulations 41-43). Part Six is on industrial effluent monitoring and reporting (Regulations 44-47). Part Seven addresses the issue of enforcement (Regulations 48-52). Part Eight provides for offences as stated in Regulations 53-58 and penalties outlined in Regulation 59. Part Nine provides for theinterpretation of terms.

28. National Environmental (**Quarrying and Blasting Operations**) Regulations, S.I. 33 of 2013[166]. The quarrying and blasting Regulations is divided into eight parts and seven schedule. Part one has the general provisions of the regulation specifically providing for things like: Objectives of the Regulations which is to control the effects of quarrying and blasting operations on the environment and human health. Specifically, the Regulations aim to prevent environmental degradation; ensure the use of environment-friendly technologies in quarrying operations; sustain the carrying capacity of the Nigerian Land in particular and the environment in general; prevent

[166] Federal Republic of Nigeria Gazette No. 97 Vol. 100 of 30 October, 2013

the contamination of both surface and ground water; encourage the wise use and exploitation of natural resources and the protection of the ecosystem; prevent air and noise pollution; ensure control and the safe use of commercial (blasting) explosives; avoid any interference or obstruction of the natural drainage channel; ensure the safety of workers in the quarry and the public in general; principles to be observed regulating all quarrying and blasting operations; conduct of environmental impact statement and audit; the duty of the Agency to compile an inventory of all quarries and mines in Nigeria (Regulations 1-5.) Part Two deals with quarrying operation plan which is an integral part of EIA; scope of the plan; mitigation measures; (Regulations 6-8). Part three deals with guidelines for quarrying operation (Regulations 9-16). Part four deals with blasting operation plan and blasting below ground level which must be done with a permit duly obtained (Regulations 17-18). Part Five covers operating mechanism and guideline for blasting (Regulations 19-23). Part Six provides for the obligation of every quarry operator to design a post quarrying plan concurrently with a reclamation plan; perimeter fencing of close quarry; closure and restoration plan (Regulations 24-34). Part Seven covers the issue of application for permit which should be done in accordance with the Permitting and Licensing Regulation; serving of enforcement notice and what it should contain; Offence and Penalties. While, Part Eight is on Interpretation and Citation, attached is also the Schedules (I-VII).

29. National Environmental (**Control of Charcoal Production and Export**) Regulations S.I 62 of 2014[167]. This Regulations is divided into eight Parts and schedules. The first part of the regulation deals with the objective and applicability (Regulation 1-2)The objectives of the Regulations is to protect Nigeria's ecosystem from further depletion

[167] Federal Republic of Nigeria Gazette No. 140 Vol. 101 of 17th December, 2014

arising from charcoal production and handling including its export, and in particular to regulate the export of charcoal or charcoal products; regulate felling of trees for charcoal production; ensure improved domestic charcoal production systems; and regulate inter and intra State trade in charcoal or charcoal products. The second part provides to the effect that a person cannot export charcoal out of Nigeria without an approval from the Federal Department of Forestry (Regulation 3). The third part covers issue on procedure for application for charcoal export permit. An application made under this regulation must be considered by the federal department of forestry and if approved, issue a permit (Regulation 4). Part four is on control of commercial production and handling of charcoal or charcoal products. The Regulation states that a person can only be granted a permit for charcoal production, where such a person presents a reforestation and rehabilitation plan for the area where the charcoal products will be produced. Charcoal and charcoal products can only be transported from one place to another in Nigeria where there is a valid charcoal handling or transport permit. A charcoal permit can be cancelled or revoked under this Regulation (Regulation 5-12). Part five provides for delineation of roles between federal, state and the enforcement Agency (Regulation 13). Part six deals with the enforcement procedures generally considering power to enter, search and seal; enforcement notice; failure to comply with the notice; and delivery of notice (Regulation 14-18). Part seven deals with offences and penalties (Regulation 19). Part eight provides for the miscellaneous provision; interpretation and citation. The schedules provide for format of prescribed forms.

30. National Environmental (**Energy Sector**) Regulations, S.I. 63 of 2014[168]. The Regulation is structured and divided into nine parts and schedules. The purpose of these Regulations is to prevent or minimize pollution and encourage energy efficiency in all operations and ancillary activities of the energy sector in achieving sustainable economic development in Nigeria.The first part is on the purpose and scope of the regulations such as the guiding principles; statutory requirement; transmission and distribution lines and control of PCB- containing materials or units (Regulations 1-6). Part Two covers general provisions like emergency response plan, pollution control organizational system, restricted chemical, effluent limitation standard, discharge of hazardous waste, sludge disposal pollution abatement for air emission, EPR programme, noise and vibration control and CSR (Regulations7-29). Part Three is collection and analysis of samples (Regulations27-29). Part Four provides for specific requirements for power plant like hydro, nuclear, fossil fuel, renewable energy and efficiency of electrical power equipment (Regulations30-34). Part Five is on permit, industrial effluent monitoring and reporting (Regulations35-39). Part Six is on enforcement (Regulations40-41). Part Eight provides for offences and penalties (Regulations44-57). Miscellaneous is provided for under Part Nine.
31. National Environmental (**Air Quality Control**) Regulations, S.I. 64 of 2014[169]. The Regulation has eleven parts. Part one is on general provisions such as scope, purpose and applicability of the Regulation (Regulations1-3). Part two talks about prohibition of installation in some residential zones; what to do in terms of accidental discharge; maximum air contaminant; prohibition of purporting fuel combustion equipment with two stroke engine; pollution abatement technologies; prohibition of burning biomass

[168] Federal Republic of Nigeria Gazette No. 141 Vol. 102 of 2nd December, 2014
[169]. Federal Republic of Nigeria Gazette No. 142 Vol. 101 of 26th December, 2014

within premises; conduct of Environmental Impact Assessment for new projects and submission of Environmental Audit (Regulations 4-12). Part three deals with emission from mobile services (Regulations 14-17). Part Four provides on how to control indoor air pollution in offices, public places and homes which must confirm to the limit provided under the schedules to the Regulations (18-24). Part Five is on emission from other sources of fuel, additives, control of fugitive particulate matter, Agro-Chemical handling and renewable energy (Regulations 25-31). Part Six deals with ambient air quality standards (Regulations 32-33). Part seven ison therelease, course of the emission of malodorous substance beyond the threshold (Regulation34-35). Part eight provides issues on enforcement generally (Regulation 36-38). Part nine is on application and grant of permit (Regulation 39). Part ten covers the aspect of offences and penalty (Regulation 40). Part eleven covers aspect of interpretation and citation.The purpose of these Regulations is to provide for improved control of the nation's air quality to such an extent that would enhance the protection of flora and fauna, human health, and other resources affected by air quality deteriorations

32. National Environmental (**Hazardous Chemicals and Pesticides**) Regulations, S.I 65 of 2014[170]. Part one of the Regulation covers the objectives, scope and exemption (Regulation1-3). The objectives of these Regulations is to protect human health and the environment from harmful effects of hazardous chemicals and pesticides including other agrochemicals. Part two deals with hazardous chemical and pesticides; importation or exportation of restricted chemical and pesticide; labelling hazardous chemicals and pesticides in accordance with the globally harmonized systems; transportation permit and requirement; waste classification and labelling;

[170]. Federal Republic of Nigeria Gazette No. 143 Vol. 101 of 30th December, 2014

handling and treatment of hazardous chemicals and pesticides in an environmentally sound manner and permit to import or export or transport hazardous waste to be obtained from the Federal Ministry of Environment (Regulation 4-14). Part three covers issues of registration and issuance of permit; requirements for issuance of import or export permit; and permit procedure (Regulation 15-18). Part four deals with emergency preparedness and response plan, obligation placed on a transporter of hazardous chemicals for notification of accident and emergencies (Regulation 19-20). Part five provides for general code of practice for the safe use of pesticides and other agrochemicals (Regulation 21). Part six provides for enforcement procedures; power of an officer of the Agency to enter and search premises, and what constitute violation of enforcement notice and the penalties thereunder. Part seven provides for Interpretation.

33. National Environmental (**Dams and Reservoirs**) Regulations, S.I. 66 of 2014[171]. The Regulation has ten parts and schedules. The first part deals with the objectives and application (Regulation 1-2). The objectives of these regulations is to control the effects of Dams and Reservoirs on the environment and human health. Part two is on registration with the Agency and classification of dams (Regulation 3-4). Part three has to do with guiding principle; EIA (Regulation 5-7). Part four provides for prohibited activities like fishing and boating cannot be carried out without obtaining permit; sanitation and waste control (Regulation 8-9). Part five has to do with restricted activities in storage area such as grazing, livestock watering and tourist will be regulated by facility to minimize pollution; industrial and commercial activities such as mining, lumbering and processing of wood shall not be carried out within a

[171]. Federal Republic of Nigeria Gazette No. 144 Vol. 101 of 31st December, 2014

distance of 750 meters from storage area (Regulation 10). Part six provides for guidance and standards for facility operation; standards for design and construction of new dam; protection of biodiversity; emergency plan (Regulation 11-15). Part seven has to do with permit and interpretation (Regulation 16-18). Part eight is on enforcement generally (Regulation 19-23). Part nine has to do with offences and penalties (Regulation 24-25). Part ten covers issues of miscellaneous interpretation and citation.

CHAPTER FOUR

ANALYSIS OF JUDICIAL ATTITUDE TOWARDS ENFORCEMENT OF THE ACT

In the course of enforcing the provision of the enabling Act, some of its enforcement action were given judicial pronouncement by the Courts, ranging from issues of wildlife crimes, trading in endangered species of fauna and flora, failure to conduct Environmental Impact Assessment on projects, non-compliance with the Agency's directives on conduct of Environmental Audit by facilities, pollution crimes, dealing in ozone depleting substances or other environmental concerns that degrade the ecosystem. .

In **ATTORNEY GENERAL OF THE FEDERATION V LIANG ZULI**[172],the accused person a Chinese national was on the 4th March, 2012 intercepted bythe National Drug Law Enforcement Agency (NDLEA) as she prepared to board Qatar airways and was discovered to have worked Ivory concealed in a teddy bear. The matter was later transferred by the NDLEA and the Nigeria Custom services to NESREA and the accused person was subsequently charged before the Federal High Court Lagos under the Endangered Species Act[173] for having in her possession prohibited item under the said Act.

The accused person pleaded guilty and was convicted and sentenced to 6 months imprisonment on each court, with an option of fine in the sum of one hundred thousand naira for each court. The Court further ruled that the Ivory found on the convict should be forfeited to the federal government.

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[172]. FHC/L/81c/2012, Lagos Federal High Court Judgment delivered 22nd May, 2012. Sourced 2019
[173] Cap E9 LFN 2004

ATTORNEY GENERA OF THE FEDERATION V DIARRA FOUSSEYNNI[174], the accused person a Malian National was arrested on the 8th of May, 2013, during a routine examination of packages by officers of the Nigerian Customs Services at the export Unit of the Murtala Mohammed International Airport Ikeja, Lagos.

The package en-route to Liberia was discovered to contain 90 pieces of worked Ivory. The accused and the items were handed over to NESREA office in Lagos.

A criminal charge was filed against the accused person at the Federal High Court Lagos. The accused person pleaded guilty to the charges. The court convicted the accused person and then sentenced him to 6 months imprisonment on each court, with an option of fine in the sum of one hundred thousand naira for each court. The court further ruled that the Ivory found on the convict should be forfeited to the federal government.

HELIOS TOWERS V NESREA & 1 ANOR[175]. The Agency received a petition from one ambassador Musa Bello in May 2009 over the construction of a gigantic mast installed by Helios Towers at 12AKeffi Road, Kaduna State. Upon a meeting with both parties the Agency discovered that the Environmental Impact Assessment Certificate issued to Helios Towers was by the Kaduna State Environmental, Protection Agency. The Agency by way of originating summons approached the Federal High Court for the determination of the following:

a. A declaration that EIA permit issued by KASEPA is illegal, unlawful and void.
b. An order directing Helios Towers to dismantle and remove the huge telecommunication mast erected and installed in a residential area immediately.

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[174]. FHC/110/20/2013, Lagos Federal High Court Judgment delivered 2nd July, 2013. Sourced 2019
[175]. CA/K/123/2010, Kaduna Court of Appeal Judgment delivered 10th December, 2014. Sourced 2019

c. An order declaring the EIA issued by KASEPA to the appellant as illegal and void.

The Federal High Court sitting in Kaduna granted all the reliefs sought by the Agency in a considered judgment delivered on the 1st December, 2009.

Being dissatisfied with the judgment the appellant (Helios Towers Ltd) appealed to the Court of Appeal (Kaduna Division) on the 3rd December, 2009.

The Court of Appeal delivered its judgment on the 10th December, 2014, dismissing the appeal and affirmed the judgment of the Federal High Court. The Court of Appeal held that all reference to the Agency in section 61 of the EIA shall now be construed as reference to the NESREA Act by virtue of section 36 of the NESREA Act. Therefore NESREA is the statutory body established by law to replace the Federal Environmental Protection Agency(FEPA) and the only Agency entrusted with the enforcement of all environmental laws, standards and regulations in Nigeria.

By this judgment, therefore State Environmental Agency have no power to issue EIA Certificates.

AXXARI HOTELS AND SUITE V NESREA[176]. The applicant in this suit instituted an action against the agency claiming inter-alia before the court:

i. A declaration that by virtue of the interpretation of section 30(g) of the National Environmental Standards and regulations Enforcement Agency Act 2007 the defendant cannot close down and/or seal the applicants construction site without a valid court order.

[176]. FHC/CA/CS/1/16, Calabar Federal High Court, judgment delivered 28th February, 2018. Sourced 2019

ii. A declaration that by the virtue of interpretation of paragraph 7 of the schedule of the Environmental Impact Assessment (EIA) Act, Cap E 12 LFN 2004 an EIS duly issued by the Nigerian Institute of Town Planners/Town Planners Registration Council of Nigeria is the proper and correct environmental impact statement to be issued in respect of building construction in a fully developed urban area on land less than 50 hectares.

iii. A declaration that the closure and sealing of the Applicant Construction Site without a valid and subsisting court order from 12th October, 2015 to 6th December, 2016 is illegal, null and void and outside the mandate of the defendant as envisage by its establishment law.

The Court in a well detailed judgment delivered on the 28th February, 2018 held among others that a careful perusal of the respondent enabling law revealed to the court that the respondent can only seal a facility in the course of carrying out her mandate only and only when it sought and obtained a valid court order.

However, on the issue of the EIS Certificate issued by the Nigeria Institute of Town Planners/Town Planners Registration Council of Nigeria is invalid and of no effect. And that it is only the Federal Government through the Federal ministry of Environment that has the absolute power to issue an Environmental Impact Act Assessment Certificate.

The court went further to hold that the applicant is denied his claim for damages reason been that the applicant cannot flout the extant environmental law to which the respondent is established to enforce by not obtaining a valid EIA certificate from the appropriate authority and go behind to seek monetary reliefs against the respondent.

AGF V. DEEKAY AND SONS NIGERIA LTD & ANOR[177]. The Agency instituted a criminal action against the accused person on the 3rd March, 2013 at the Federal High Court Lagos for importing into the Country on ozone depleting substances contrary to the National Environmental (Ozone Layer Protection) Regulation 2009, which bans the use importation, manufactory and selling of Ozone Depleting Substances (ODS) for the protection of the Ozone Layer.

However, the matter could not go on based on the fact that the accused opted for settlement of the matter out of court, wherein the company was ask to forfeit the goods to federal government and make a payment of one million naira into the Agency's coffers and the matter was withdrawn on the 16th September, 2013.

4.2 Recent Amendment to the Act

The National Environmental Standards and regulations Enforcement (Establishment) Act[178] created the National Environmental Standards and Regulation Enforcement Agency (NESREA) in July 2007, as an enforcement arm of the Federal Ministry of Environment.

The Agency in the course of operationalizing or enforcing the Act noticed some obstacles which have continued to stall the operations of the Agency and weaken her enforcement measures. In 2018 the Agency amended some part of the Principal Act, so as to redress certain legislative inadequacies and noticeable drafting errors in the enabling Act and also widen her enforcement scope and strategy.

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[177]. FHC/1/115c/2013, Lagos Federal High Court Judgment delivered 16th September 2013. Sourced 2019
[178].Cap N164 LFN 2010

The Amended Act[179] amended eighteen sections of the Principal Act. One of the major changes made by the amendment is the inclusion of the Federal Ministry of Health in the composition of the governing council of the Agency[180]. This is considered to be very critical and strategies in public health and environment matters, hence the need to include her in the governing council of the Agency.

Also section 7 of the Principal Act is amended by deleting the phrase "oil and gas" in paragraph (c) of section 7 to bring it in tandem with other provisions of the Act which preclude the Agency from enforcing matters that relates to oil and gas[181].

Before the amendment, the Principal Act did not confer powers on the Agency to charge administrative fees over not too severe infraction. However, with this amendment of section 8(q) of the Principal Act, the Agency is empowered to not only charge fees for tests, investigation and other services rendered, but also to be able to establish and enforce administrative penalties[182]. This will in no small measures strengthen its enforcement measures and gives the Agency the powers to deal with minor administrative issues that does not necessarily requires civil or criminal actions.

Also section 20 of the Principal Act is amended in subsection (3) by substituting for the word "exceeding" in line 3 the word "less than" and for the words "exceeding one year" in line 3, the word "less than six months" and also by substituting for subsection (4) a new subsection (4)[183].

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[179]. National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) Act, 2018, Federal Republic of Nigeria Official Gazette No. 146 vol. 105 November, 2018

[180]. ibid s. 2

[181] Ibid s.3

[182] Ibid s.4

[183].ibid s.7

The provisions on penalties was discovered not deterrent enough as the hands of the judges are tied to the operational word "not exceeding" under section 22 , 23, 24, 26, and 27 of the Principal Act dealing with offences and penalties. Under the Amended Act the judge is now given the latitude to use his discretion in sentencing a violator by replacing the phrase "not exceeding" with the word "not less than"[184] wherever it appears in the Principal Act.The issues on wrong cross-referencing was also addressed in the amendment. This will help in doing away with ambiguity and inconsistencies in the Principal Act, for instance section 31 of the Principal Act which also provides for offences and penalties made reference to section 3 of the Act, which is on the composition of the governing council of the Agency not offences as provided thereunder.

One of the major amendment done was the amendment to the provisions of section 30 of the Principal Act[185], section 30 provides thus:

"30—(1) An officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required:

(a) enter and search with a warrant issued by a court, any premises including land, vehicle, tent, vessel, floating craft except Maritime Tankers, Barges or Floating Production, Storages, Offload (FPSO) and oil and gas facilities or any inland water and other structures, at all times, for the purpose of conducting, inspection, searching and taking samples for analysis which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation..."

[184] Ibid s. 9
[185] Cap N164 LFN 2010

The effect of the this provision is that, the personnel of the Agency has the power to enter and search any facility for the purpose of carrying out inspection or search, and can even take samples for analysis, where he reasonably believe that the facilities is carrying on any activities that violates environmental regulations or standards, provided such an officer is armed with a warrant or order from a court. However, the courts have ruled that the used of the operative word "may" under section 30 (1) is not discretionary but a condition precedent to the exercise of the powers of the personnel under the section[186].

Based on the operative word "May" in the Section, a lot of erring facilities tend to hide under the operative word and file frivolous cases against the Agency thereby hampering her from carrying out her fundamental objective of protecting the environment.

It is to be noted that the nature and impact of environmental violations could be so devastating on human life and the environment that the requirement of a warrant will jeopardize the overriding need for a swift and effective enforcement action to arrest the life-threatening situation.

Based on this major impediment in the enforcement drive of the Agency the Principal Act was amended by inserting a new 30(4A). The amendment now enables the Agency's authorized officer(s) to suspend, seal and close down premises or facilities, whose pollution to the environment is of imminent danger to life and property, while an application to the court for a warrant or order is being sought[187].

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[186]. Axxari Hotels and Suite v NESREA, FHC/CA/CS/1/16, Judgment delivered 28th February, 2018. Sourced 2019

[187] NESREA (Establishment) Amendment) Act, 2018. s. 13

The new section 30 (4A) provide that:

" Where, in a case of verifiable urgency where the environmental pollution is an immediate or imminent threat to life and property , or to prevent the commission of an offence provided under this Act, and an application to the court for an order or to a judge in chambers to obtain a search warrant would cause delay that may be prejudicial to the maintenance of public safety or order, an authorized officer of the Agency or a relevant agency may, without prejudice to the provisions of subsection or any other law, with the assistance of other officers as may be necessary and while search warrant or court order is being sought for-

a) Enter and search any premises ,place or conveyance if he has reason to suspect that, within those premises, place or conveyance-
   i. An offence under the Act is being committed or likely to be committed;
   ii. There is evidence of the commission of an offence under the Act;
b) Search any person or conveyance found on any previous or place which such officer is empowered to enter and search under (a) above;
c) Stop, board and search any conveyance where the authorized officer of the Agency or relevant Agency has reasons to suspect that there is evidence of the commission or likelihood of the commission of an offence under this Act;

d) Seize , remove and detain anything which is or contains or appears to him to be or to contain or likely to contain evidence of the commission of an offence under the Act;

e) Suspend activities , seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water and other structure ;or

f) Arrest, search and detain any person whom the officer reasonably suspect to have committed or likely to commit an offence under the Act.

The import of the amended Section 30, is that when there is the risk of an imminent danger to the environment or life and property an authorized officers of the Agency have been empowered to seal, suspend and close down the premises of such a facility, while order of court is being sought. The requirement here is that the officer must ensure that the pollution is of imminent danger to life and property, this is to avoid arbitrary use of power by the Agent of government against facility operator and to preserve the right of privacy guaranteed by our laws.

The amendment also amended section 31 of the Principal Act by inserting a new section 31A[188]which provides for limitation of actions against the Agency which is a replica of the Public Officers Protection Act[189]. Section 15 of the Amended Act amend Section 32 of the Principal Act by inserting a new section 32A which provides in effect the restriction on execution of a judgment against the Agency without a prior consent of the Attorney-General of Federation. Furthermore Section 16 of the Amended Act amends Section 33 of the Principal Act which provides for indemnity for officers of the Agency in case of any judgment whether civil or

[188]. ibid s.14
[189] s. 2(a)

criminal against them. Section 37 of the Principal is amended by inserting a new definition of 'environmental enforcement infrastructure'.[190]

4.3 Extant National Environmental Laws

The role of legislation in inducing responsible attitude toward compliance, with environmental laws and regulations cannot be overemphasized. Legislation serves as an effective instrument for environmental protection, planning, prevention and control.

By the combine effect to section 7 and 8, the Agency established under the Act[191], has powers to enforce the compliance with any national environmental laws, policies, regulations and standards and international conventions to which Nigeria is signatory. In this chapter therefore we are going to highlight some of these National Environmental Laws.

a. Harmful Waste (Special Criminal Provisions etc.) Act[192]. The objective of this Act is to prohibit without lawful authority, the crying, dumping or deposition of harmful waste in the air, land or water of Nigeria. This is to control the importance of end-of-life waste electrical appliance/electronic or Zone depleting substances into the country.
b. National Oil Spill, Detection and Response Agency (NOSDRA) Act 2006, the objective of this law is to put in place a machinery for the co-ordination and implementation of the national oil spill contingency plan for Nigeria to ensure safe, timely, effective and appropriate response to major or disastrous oil pollution.

[190] NESREA Amended Act. s. 17
[191] Cap N164 LFN 2010
[192] Cap H1 LFN 2004

c. National Park Services Act[193], this act makes provision for the conservation and protection of natural resources and plants in national parks.

d. Endanger Species (Control of International Trade and Traffic) Act[194]. This Act provides for the conservation and management of Nigeria's wild life and the protection of some of her endangered species in danger of extinction as a result of over-exploitations, as required under certain international treaties to which Nigeria is a signatory.

e. Nigeria Minerals and Mining Act, 2007, this Act repealed the mineral and mining act No. 34 and re-enact the Nigeria Mineral and Mining Act 2007 for the purpose of regulating all aspects of the exploration of solid minerals in Nigeria.

f. Environmental Impact Assessment Act[195], an environmental impact assessment (EIA) is an assessment of the potential impacts whether positive or negative of a proposed project on the natural environment. The EIA Act as it is informally called, deals with the consideration of environmental impact.Section 2(1) of the EIA Act requires an assessment of public or private projects likely to have a significant (negative) impact on the environment prior to the commencement of the project.

g. Water Resources Act retained as[196], it aims at promoting the optimum, development and use of the Nigeria's water resources in a way that will among other things, be protective of the water resources.

h. National Agency for the Great Green Wall (Establishment) Act[197], the Act establishes the national Agency for the Great Green Wall for the implementation of the provision

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[193] Cap N65 LFN 2004
[194] Cap E9 LFN 2004
[195] Cap E12 LFN 2004
[196] Cap W2 LFN 2004
[197] No. 23 of 2015

of the convention on the great green wall programme in Nigeria. Management of drought, desertification and afforestation control measures.

4.4 Factors Influencing Effective Environmental Enforcement in Nigeria

Despite the plethora of legislation that the Country has on environmental law, enforcement continue to be a challenge to effective environmental governance and some of the key challenges are:

i. There is poor capacity building of the personnel. One of the major challenge to effective enforcement of environmental laws in Nigeria is lack of the technical knowhow on the job by the officers of the Agency. Capacity building of staff of regulatory Agencies continue to be a bane to effective enforcement of environmental laws in Nigeria. The environment sector is a technical area that the personnel need to be train and retrain in international best ways of compliance monitoring and enforcement, for example on issues like mode of identifying endangered species of fauna and flora, conducting of test on effluent discharged into water bodies, use of modern technology like drone for compliance monitoring, use of Geo referencing information system in monitoring, use of mobile air quality monitoring machine to gather data on the quality of ambient and wildlife prosecution.

ii. Inadequate synergy or working relationship with other relevant regulatory and enforcement agencies.There is a poor working relationship among the relevant stakeholders to the Agency. Though the Agency is an enforcement Agency but it has to partner with other bodies like the, Police, Nigeria Custom Service, Vehicle Inspection Officer, Federal Road Safety Corp, National Park Services, Interpol in carrying out her mandate, however because of poor synergy with the other relevant

regulatory Agencies, enforcement of environmental laws and regulations has continue to be an issue most especially on importation of electronic waste and trafficking in endangered species.

iii. Difficulty in compelling recalcitrant environmental offenders to appear in court. Due to the poor synergy it has with other relevant bodies.There is always difficulty in securing the appearance of offenders in court. This is majorly based on the fact that the Agency has no custodian facilities to detain suspects most especially in dealing with wildlife crimes, therefore it has to make arrangement for suspects to be detain by other institutions like the Police and customs and in practice this stall the prosecution.

iv. Delay in giving accelerated hearing to environmental cases. The judicial arm till date finds it difficulty in appreciating the significance of environmental sustainability and the need to treat environmental cases with dispatch. This has continue to be a challenge with the enforcement of environmental laws in Nigeria, because environmental matters are treated just like normal conventional matters before the court. Whereas some matters ought to be treated with dispatch, for instance where it has to do with failure to conduct Environmental Impact Assessment over big projects whose activity will negatively impact on the environment or discharge of untreated effluent into the eco-system.

v. Another major issue has to do with poor funding of the Agency. The policy makers in Nigeria has not given the environment sector the neededattention it deserve in terms of budgetary allocation and this is hampering the enforcement drive of the Agency in terms of buying operational vehicles for compliance monitoring, prosecution of cases, having a standard laboratory for testing and the poor working condition.

vi. Poor operationalization of the gazetted regulations. The findings of the research work shows that despite gazetting 33 Regulations, the Agency has not effectively operationalized most of the regulations, thereby allowing the pollution of the environment to continue unabated.

vii. Despite the powers conferred by the Act to enforce international conventions, treaties and protocol, Section 12 of the Constitution of Nigeria has a clog to that powers. The Constitution provides to the effect that, the Country shall not enforce the provision of any treaty signed by Nigeria, unless and until it is domesticated by the National Assembly. Therefore, based on the provisions of the constitution, the powers given to the Agency to enforce compliance with convention will continue to be on paper alone.

viii. Another major challenge is that some of the penalties in the laws are obsolete which doesn't make the punishment deterring to violators, for instance the punishment for not conducting Environmental Impact Assessment under the EIA Act is just the payment of one million naira by the company. Base on the meager nature of the fine, facilities prefer to violate and pay one million naira to conducting the assessment.

CHAPTER FIVE

SUMARRY, CONCLUSION AND RECOMMENDATIONS

5.1. Summary

In trying to have an overview of the NESREA Act, the research commenced by having a contextual background of the work by looking at what the federal government of Nigeria did over the years in promoting environmental protection and sustainable development. The work looked at three key periods of environmental development in Nigeria. This started with the pre Koko saga which mostly referred to the pre-colonial era, the post era which brought about serious environmental awareness by enacting the FEPA Act, Harmful Waste (Special Criminal Provision etc.) Act and the EIA Act and lastly considered the establishment of the NESREA Act in 2007, thereby repealing the FEPA Act.

In the course of this work the research also looked at what other writers did in this field with the sole aim of improving on their works.

Under chapter three the research made a general overview of the Act with a view of giving the reader a better understanding of its provisions in practical sense, and to help even the regulated community appreciate the law governing the environment sector in Nigeria. This work dwelled extensively on the functions, mandate and the enforcement powers of the Agency under the Act which is primarily to enforce compliance with environmental laws, policies, standards, and regulations and prohibits the processes and use of technology that undermines environmental quality. It also discussed the recent amendment done to the principal Act

The work also brought to fore some of the weakness of the FEPA Act which inter-alia was found to have weak or obsolete enforcement strategies and the penalties were also found not to be deterring enough to ensure compliance.

Chapter four of the work considered the attitudes of the judiciary in dealing with matters under the Act. The research finally discussed some other extant environmental laws which the Act also gives power to enforce by virtue of section 7 of the Act and concluded with the factors affecting enforcement of environmental laws in Nigeria and concluded with some recommendations.

5.2. Conclusion

While enacting legislations on environment continues to be a veritable tool towards achieving economic growth and sustainability. Enforcement of this laws and regulations must be given the needed attention.First of all adequate funding for enforcement activities needs to be provided, capacity of the personnel must be built, ensure strong synergy among agencies, continues awareness creation to the regulated community and above all the government must have the political will for the enforcement drive and be ready to set good example by complying with extant environmental laws in carrying out her own projects too.

5.3. Recommendations.

Based on the above findings of the research work and conclusion arrived at, the researcher therefore makes the following recommendations:-

There should be continuous training and re-training of the personnel of the Agency on international best practices of compliance monitoring and enforcement strategies.

There should be aggressive public enlightenment to create environmental consciousness and the need for voluntary compliance. The yearly stakeholders' forum done by the Agency should be sustained.The states and local government should be partnered with in terms of compliance monitoring and enforcement.Awareness creation in the print and electronic Medias should be carried out frequently.

There should be proper funding of the regulatory body as this will help her to carry out her mandate effectively.

There should be frequent appreciation workshop for the judiciary and other law enforcement agencies on environmental laws and policy to enable them understand the sensitive nature of the environment and the need to protect it. This will help them in determining how to pass deterring penalties in accordance with the law.

There should be operationalization of sector specific regulations rather than passing or evolving regulations without enforcing them.

The provisionsof section 12 of the Constitution need to be amended in such a way that there would be no restriction on the powers of the Agency to enforce compliance with international conventions on environment to which Nigeria is a signatory.

The law need to be strengthened by having a review periodically,as this will help in addressing emerging environmental issues.

5.4 Limitations of the Study.

One of the major limitationsto the work has to do with lack of enough literature on the subject matter, the Act being enacted in 2007, there is no much awareness on it and also a novel area of law.

Secondly the Agency has no comprehensive data on it activities hence the information used were gathered from different areas and this posed a limitation to the work also.

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