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AN APPRAISAL OF THE LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION IN NIGERIA*

Abstract

As the most recent and comprehensive statute on environmental matters in the country, an understanding of the substantive and some procedural aspects of the NESREA Act (No.25 of 2007) as well as the Agency established thereunder is a necessary predicate to the study and practice of environmental law. This paper is therefore dedicated to highlighting and examining the provisions of that Act and to critically appraise its adequacy, efficiency and utility or otherwise with a view to suggesting possible amendments thereto in order to ensure an effective pollution control and to meet the challenges posed by globalization. In appraising the Act, emphasis is placed on the issues of Environmental Impact Assessment and Statement under the statutory powers of the Agency, enforcement methodologies and penalties with a view to determining their effects at preventing environmental abuses. In the final part of the paper, far reaching recommendations are made for improved statutory regulations. The paper is not, however, strictly speaking concerned with an assessment of the achievements or performance of the Agency which the Act established.

Introduction

Issues of environmental interest became a theme of common apprehension in Nigeria only after the discovery in May 1988 that as far as August of the previous year, some large containers of toxic wastes had been dumped at the port town of Koko, Delta State.¹ The Government reaction was the promulgation of the *Harmful Waste (Special Criminal Provisions, etc)*

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¹ The Koko toxic waste-dump actually motivated serious consideration by government in formulating policies on environmental law in Nigeria, with sudden realization that the erstwhile scope and concept of the environment needed a redefinition and drafting of new anti-pollution measures to address emerging problems: see M.T. Okorodudu-Fubara, *Law of Environmental Protection: Materials and Text* (Ibadan: Caltop Publication Ltd, 1998), 52; L. Atsegbua and V. Akpotair and F. Dimowo, *Environmental Law in Nigeria: Theory and Practice* (Lagos: Ababa Press Ltd, 2004), 6-7.

*Decree*² which in turn facilitated the establishment of the then Federal Environmental Protection Agency (FEPA) through yet another Decree.³ The Agency was charged with the responsibility for environmental protection and management.

However, in the wisdom of the federal government, the functions of the FEPA and other relevant departments in some other federal ministries were subsumed into those of the Federal Ministry of Environment in 1999, initially without an enabling law on enforcement issues. This situation caused serious omissions in the enforcement of environmental laws, standards and regulations.

In addressing these needs, the Federal Government in line with S. 20 of the 1999 Constitution⁴ established the present National Environmental Standards Regulations and Enforcement Agency (NESREA) as a parastatal of the Federal Ministry of Environment, Housing and Urban Development for enforcing the environmental laws, regulations and standards. And by virtue of the NESREA (Establishment) Act⁵ the erstwhile FEPA Act⁶ was repealed.

² No. 42 of 1988 (now Act), Cap. H1 Laws of the Federation of Nigeria 2004. The Act in summary prohibits dumping of harmful waste on any land, territorial waters, contiguous zone, exclusive economic zone of Nigeria or its inland-water ways and prescribes severe penalties for any person (s) found guilty of these crimes.

³ Nos. 58 of 1988, and 59 (as amended of 1989), later Act, Cap. F 10 Laws of the Federation of Nigeria 2004.

⁴ No. 25 of 2007. The Act has been published in the Federal Republic of Nigeria Gazette no. 92 of 31st July, 2007.

⁵ See (n. 4).

⁶ The Act is divided into six (6) parts. Part I of the Act established the Agency, states its objectives and establishes a Governing Council for it. Part II provides for the powers of the Agency and functions of the Council. Part III establishes the Directorates of the Agency while part IV provides for issues relating to the appointment of the Director-General and other staff of the Agency. Part V of the Act deals with the finances of the agency and provides a framework for setting up of standards in specific media such as water, air, noise, industrial discharge and gaseous wastes, toxic and hazardous substances, storage of radioactive materials, herbicides or insecticides in rivers, lakes etc. Lastly, Part VI relates to miscellaneous matters and the repeal of the FEPA Act. That part also regulates enforcement powers of the Agency and general penalties for violation of provisions of the Act or any regulations made there under.

The purpose of the Act is therefore basically to establish the Agency and to lay down solid legal bases for the nation's plans of action on the Environment.⁷ An appraisal of the Act reveals further that the intention of the lawmaker is to provide a simplified compendium of environmental laws for the country while the Minister of Environment is empowered to make further regulations for general purposes, especially of carrying out or giving full effects to the functions of the Agency under the Act.⁸

Constitution and Membership of the Agency

The Act expressly established the NESREA as a body corporate with perpetual succession, having a common seal and power to sue and be sued in its corporate name.⁹ It also gives the Agency the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources and environmental technology including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of environmental standards, regulations, rules, laws, policies and guidelines.¹⁰

The Council of the Agency is statutorily a twelve-member institutional body. This includes the chairman who shall be appointed by the President on the

⁷ See S. 34. Hence, the coming into force of the following (eleven) regulations made by the Federal Minister of the Environment on 30th September, 2009, namely, (i).National Environmental (Wetlands, River Banks & Lake Shores Protection) Regulations 2009 (ii).National Environmental (Watershed, Hilly, Mountainous, & Catchment Areas) Regulations 2009 (iii).National Environmental (Sanitation and Wastes Control) Regulations 2009; (iv).National Environmental (Permitting and Licensing System) Regulations 2009 (v).National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations 2009 (vi).National Environmental (Pollution Abatement in Mining and Processing of Coal, Ores and Industrial Minerals) Regulations 2009 (vii).National Environmental (Ozone Layer Protection) Regulations 2009 (viii). National Environmental (Pollution Abatement in Food, Beverages & Tobacco Sector) Regulations 2009 (ix).National Environmental (Pollution Abatement in Textile, Wearing Apparel, Leather & Footwear Industry) Regulations 2009 (x). National Environmental Noise Standards & Control) Regulations 2009 (xi).National Environmental (Pollution Abatement in Chemicals, Pharmaceuticals, Soaps & Detergent Manufacturing Industries) Regulations 2009: See the Official Gazette of the Federal Republic of Nigeria, Vol. 96, Nos. 58-68 dated 2nd-20th October 2009.

⁸S. (1) Sub-sec (1).

⁹ Environment includes water, air, land and all plants, and human beings or animals living therein and the inter-relationships which exist among these or any of them: see s. 37 NESREA Act (n. 2); see also C. S. Ola, 'The Law on Environmental Protection' (2005) 2 JBPL 6.

¹⁰ S. 3 (1) (a).

recommendation of the Minister,¹¹ the permanent secretary of the federal ministry of environment or his representative,¹² a representative each, not below the rank of director from the federal ministries of - (i) solid minerals development (ii) agriculture and natural resources, (iii) water resources and (iv) science and technology as members.¹³

Other members of the Council include a representative each from the Standards Organization of Nigeria (SON), Manufacturers' Association of Nigeria (MAN), Oil Exploration and Production Companies of Nigeria.¹⁴ Others are the Director-General of the Agency and three other persons to represent public interest, to be appointed by the Minister of Environment.¹⁵

Functions and Powers of the Agency

The Agency is required under section 7 of the Act to enforce compliance with laws, guidelines, policies and standards on environmental matters; to coordinate and liaise with stakeholders, within and outside Nigeria on matters of environmental standards, regulations and enforcement.

In addition, the Agency is required to enforce compliance with the provisions of international agreements; protocols, conventions and treaties on the environment including climate change, biodiversity conservation, desertification, forestry, chemicals, hazardous waste, ozone depletion,

¹¹ *Ibid.*

¹² S. 3 (1) (c) (i)-(iv).

¹³ *Ibid.* s. 3 (1) (v)-(vii).

¹⁴ *Ibid.* s. 3(1) (d)-(e).

¹⁵ When the rising profile of the negative impact of climate change was noticed, United Nations Framework Convention on Climate Change (UNFCCC), in which the Principle of Common but Differentiated responsibilities was acknowledged, was put in place as a first measure. Some of the other international agreements and conventions put in place included Kyoto Protocol; Marrakashi Accord and the Copenhagen Protocol of 2009. However, for NESREA to be able to enforce compliance with the provisions of these treaties (to which though Nigeria is a party) such treaties will have to be domesticated by being passed as an Act of the National Assembly, otherwise they have no force of law and by implication no legal mechanism by which compliance with such agreement can be enforced: see s. 12 of the Constitution of the Federal Republic of Nigeria, 1999. Thus, such Bills, as the one for the establishment of the National Climate Change Commission which seek to make provisions for implementation of the rules, institutional regimes on climate change as outlined in the aforementioned treaties, are before the National Assembly.

marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force.¹⁶

The Act also requires the Agency to enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement¹⁷ as well as enforcing compliance with guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources.¹⁸ It is also the function of the Agency to enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof,¹⁹ as well as with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste.²⁰

It is also required of the Agency to enforce, through compliance monitoring, the environmental regulations and standards on noise, air, land, oceans and other water bodies.²¹ And to ensure that projects funded by donor organizations or external support agencies adhered to regulations on environmental safety and protection.²²

Furthermore, the agency is required to create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations and publish general scientific or other data resulting from the performance of its functions.²³

The Agency also has the statutory power to prohibit processes and use of equipment or technology that undermine environmental quality; conduct

¹⁶S.7 (d).

¹⁷*Ibid.* s.7(e).

¹⁸*Ibid.* s. 7(f).

¹⁹*Ibid.* s. 7(g).

²⁰*Ibid.* s. 7(h).

²¹*Ibid.* s.7 (i).

²²*Ibid.* s.7 (j)-(l).

²³S.8 (d) - (e).

field follow-up compliance with set standards, conduct public investigations on pollution or degradation of natural resources and taking procedures prescribed by law against any violator.²⁴

And Subject to the provisions of the 1999 Constitution, and in collaboration with a relevant judicial authority, the Agency is empowered to establish mobile courts to expeditiously dispense cases of violation of environmental regulations.²⁵

Environmental Impact Assessment under the Statutory Powers of the Agency

The provisions of section 7 (i) of the Act are of special significance in as much as they can be construed as giving powers to the Agency to initiate suitable policy actions and regulations mandating the preparation and use of Environmental Impact Statement for proposed projects by not only the private and public sectors but also donor organizations and other external support agencies.²⁶

Water Quality and Resources Protection

Under section 23 of the Act, the Agency is mandated to make regulations for the purpose of protecting and enhancing the quality of water to serve the

²⁴ S.8 (f).

²⁵ An Environmental Impact Assessment ('EIA') refers to the process by which changes in the environment as a result of developments are assessed with a view to measuring how beneficial or deleterious those changes might be: L. Atsegbua et al. (n.3) 93; see also Y. Omoregbe: *Regulation of Oil Industry in Nigeria* in *New Frontiers in Law*, Azinge (ed.) (Benin: Oliz Publishers, 1993), 147, 158.

²⁶ The primary aim of Environmental Impact Assessment is therefore to ensure that, as far as possible adverse impacts of development projects are predicted and finding the means of preventing or mitigating and compensating for likely unacceptable impact before the project is commenced, while older projects that have polluted the environment are to be audited and re-organized for safer productions and services: see M.F. Ivbijaro, 'Environmental Impact Assessment/ Environmental Audit Report in Nigeria: An Overview' in *Environmental Law and Sustainable Development in Nigeria*, Ajomo & Adewale (eds.) n.53, 149; see also L. Atsegbua and V. Akpotair and F. Dimowo (ibid.) 170. See generally ss. 8 (a)-(s) of NESREA Act which expand and further shed light on some aspects of the general functions of the Agency stipulated in s.7.

purpose of the Act.²⁷ In performing the above functions, however, the Agency must take into consideration the use and value of public water supplies, propagation of marine and wildlife, recreational purposes, agricultural, industrial and other legitimate uses.²⁸ It is thus required to establish different water quality standards for different uses.

It should be noted however that, strictly speaking, the Agency has no powers to directly make regulations or guidelines establishing the nation's water quality standards. The Act simply provides that the Agency shall draw up and submit proposals for the evolution and review of such regulations and standards to the Minister who may or may not alter the submitted 'proposals'.²⁹

The Act also prioritized on the establishment of regulations on effluent limitations on the existing and new point sources for the protection of human, animal, marine and plant life as well as review of effluent limitations for existing point sources which shall require the application of the best management practices, and this shall include schedules of compliance for installation and operation of the best management practices and practicable control technology.³⁰

Air Quality and Atmospheric Protection

The Act came up with targeted statutory provisions for the control of air pollution which is on the rise with the increased tempo of industrialization. It presents the legislative expression of the nation's policy of ensuring that air pollution does not endanger public health and welfare. For instance, the Act

²⁷ The earliest and perhaps the most significant water pollution control effort can be found in the Penal Code Laws of Northern States of Nigeria (Federal Provisions) Act Cap P3 Laws of the Federation of Nigeria 2004 applicable in the Northern States which contains specific provisions aimed at preserving the utility and quality of water. Under section 191 of the Code, whoever voluntarily corrupts or fouls the water supply so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

²⁸ S. 23 NESREA Act.

²⁹ *Ibid.* s. 8 (k).

³⁰ *Ibid.* s. 24(1)-(3).

prohibits discharge into the air of any hazardous substance in harmful quantities.³¹

The Agency is also empowered to make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources with emphasis on air quality, standards and control of concentration of substances in the air which may reasonably be anticipated to cause damage or deteriorate the environment.³²

Noise

Under section 22 (2) (1) (a)-(b), the Agency is required to identify major noise sources, noise criteria and noise control technology; and to make regulations on noise emission, control and abatement as may be required to preserve and maintain public health. It is also empowered to enforce compliance with existing regulations and recommend programmes to control noise.

Control of Hazardous Substances

Toxic chemical and hazardous waste belong to that category of substance of which no conclusive list yet exists³³ but include any chemical, drugs, pesticides, physical or biological radioactive materials that pose threats to human health and the environment or any such substance regulated under international conventions to which Nigeria is a party or signatory.³⁴ They also include any substance designated as such by the President of the Federal Republic of Nigeria by order published in the Federal Gazette.³⁵

With the proliferation of hazardous substances, most of which are though beneficial to the consumer needs of man but highly risky and dangerous to

³¹ *Ibid.* s.27 (1).

³² *Ibid.* s.20 (1)(a)-(f).

³³ See s. 37; See also M.T. Okorodudu-Fubara (n.1) 729.

³⁴ E.g. .Montreal Protocol, Rotterdam Convention, Stockholm Convention.

³⁵ S. 37.

the environment if left uncontrolled or inadequately regulated, misused or improperly disposed, the Act has controls of the menace of the substance by prohibiting the discharge in such harmful quantities of any such substance in the air or upon the land and the waters of Nigeria or at the adjoining shorelines, except where such discharge is permitted or authorized under any law in force in Nigeria.³⁶

Land Resources Protection

Section 26 of the Act, deals with protection of land resources and watershed quality. Under the Act, the Agency has statutory function of taking measures towards the protection of the quality of land resources,³⁷ natural watershed, coastal zones, dams and reservoirs as well as prevention of flood and erosion with a view to serving the purpose of the Act. Section 26 (2) of the Act expressly empowered the Agency to make regulations, guidelines or standards in consonance with the Zoning Acts, Municipal Development Guidelines and Building Codes to prevent sitting of essential facilities on floodplain.

Regulating Powers

The Act empowers the Agency to enforce compliance with all regulations and provisions of International agreements protocols, conventions and treaties on importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste and

³⁶ S. 27(1). It should be noted however that the provisions of the Harmful Waste (Special Criminal Provisions, etc) Act still applies in respect of any hazardous substance constituting harmful wastes as defined in section 37 of the NESREA Act: see s.27(5).

³⁷ In a general sense, Land comprises of the ground or soil of the earthly planet including fields, meadows, pastures, woods, moors, marshes and rock: see M.T. Okorodudu-Fubara (n. 1) 235. In a narrower sense and as a term of law 'Land' denotes the quality and character of the interest or estate which a person may own in Land: see H. C. Black, *Black's Law Dictionary* 5th ed (London: Paul Minn West Publishing Co., 1979), 789. S. 17 (1) of the Interpretation Act 1964, now Cap 142 LFN 2004 defines Land as including any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals.

compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof.³⁸

Enforcement Powers and Methodology

Sections 30 of the Act deals with the enforcement of the powers of the Agency in relation to the environment. The Agency may perform any of its functions through or by any of its officers, servants or agents duly authorized by it in that behalf.³⁹ And there are provisions under the Act empowering such authority to adopt any or multiple of the below discussed methods for strict compliance with the Act and or regulations made thereunder. The most often used of the methods however include the following:

Criminal Prosecution

Section 23 (3) of the Act makes it clear that any person who contravenes any of the provisions or regulations made pursuant to section 23(1) commits an offence and shall on conviction, be liable to a fine not exceeding N50, 000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N5000 for every day the offence subsists. But when the person is a corporation, a body corporate or incorporates, the penalty on conviction shall be a fine not exceeding N50, 000 and an additional fine of N10, 000 for every day the offence subsists.

Similarly, any person who violates the provisions of the regulations with respect to effluent limitations for existing or new point sources made or reviewed pursuant to section 24 (2) shall be guilty of an offence under the Act, and is liable to a maximum fine of N200, 000 or imprisonment for two years or both fine and imprisonment and additional fine of N5000 for each

³⁸ However, in the light of the goals and objectives of the National Environmental Protection Policy which aimed at preserving the wholesomeness and sustainability of the physical, economic, cultural, ecological and aesthetic factors, which make up of land, then notwithstanding the provisions of the s. 17(1) of the Interpretation Act land include mineral as well as the resources, natural or man-made attached to the earth or permanently fastened to anything so attached : see M. T. Okorodudu-Fubara (n. 1) 235.

³⁹ S. 7 (c)-(g).

day the offence subsists.⁴⁰ But when the person is a corporation, a body corporate or incorporates, the penalty on conviction shall be fine not exceeding N1, 000,000 and an additional fine of N5000 for every day the offence subsists.

In addition, any person who fails or neglects to comply with any of the provisions of section 26 of the Act relating to the Agency's regulations or guidelines for the protection and enhancement of the quality of land resources, natural watershed, coastal zone, dams and reservoirs to serve the purpose of the Act shall be liable on conviction to a fine not exceeding two hundred thousand naira or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N10,000 for every day the offence subsists.⁴¹

Furthermore, any person who fails to comply with provisions of section 27 relating to discharge of hazardous substance in harmful quantities shall be liable on conviction to a fine not exceeding one million naira or to imprisonment for a term not exceeding five years.⁴² But where the offender is a statutory corporation, a body corporate or incorporates, he shall be liable on conviction to a fine not exceeding one million naira and an additional fine of N50, 000 for every day the offence subsists.⁴³

It has been observed that at the inception of prosecution over enforcement of environmental protection laws, criminal prosecution for violation was seldom effective because of the requirement of *mens rea*.⁴⁴ It was argued for instance that to impose a substantial prison term, wilfulness, or at least recklessness would have to be proved beyond reasonable doubt, and that

⁴⁰ S. 30 (1).

⁴¹ *Ibid.* s. 24(4).

⁴² *Ibid.* s. 26(3)

⁴³ *Ibid.* s.27. Presumably, this include dumping or burying of toxic substance as well as storage of radioactive materials except where such discharge, dumping, burying or storage is permitted or authorized by any law in force in Nigeria: see s. 37 of the Harmful Waste (Special Criminal Provisions, etc) Act Cap H1 LFN 2004.

⁴⁴ S.27 (3).

since the most important polluters are likely to be large business concerns, it would often be impossible to prove the personal culpability of individual officers or employees.⁴⁵

The NESREA Act has avoided this technically by providing under section 27(4) that, where an offence has been committed by a body corporate, all that needed to be proved is that the offence was committed with the knowledge, consent or connivance of or attributable to any neglect or omission on the part of any person who at the time the offence was committed was in charge of the body corporate. And such person shall be liable to be proceeded against and punished accordingly as if he had personally committed the offence.⁴⁶

In addition, a person who obstructs an officer of the Agency in the performance of his duties under s.7 of the Act commits an offence and is liable on conviction to a fine not less than N200, 000 for an individual or to imprisonment for a term not exceeding one year or to both such fine and imprisonment, and an additional fine of N2, 000,000 on conviction as well as an additional fine of N200, 000 for every day the offence subsists.⁴⁷

Inspect and Search

Section 30 of the Act empowers an officer of the Agency to enter and search with warrant issued by court any premises including land, vehicle, tent,

⁴⁵ Literally guilty mind. In Criminal Law, to constitute a crime there must not only be a guilty or forbidden act (*actus reus*) but also a guilty mind (*mens rea*), for there has for centuries been a presumption that parliament did not intend to make criminals of persons who were in no way to blame in what they did: see *Sweet v Parsley* (1969) All ER 347. In other words, a man should not be guilty of an offence which he did not intend to commit: see E. H. Ofori-Amankwa, *Criminal Law in the Northern States of Nigeria* (Gaskiya Corporation Ltd., Zaria, 1986) 70-83; C. O. Okonkwo, *Criminal Law in Nigeria* (Ibadan: Spectrum Law Publishing, 1980), 43-9.

⁴⁶ M. T. Okorodudu-Fubara (n.1) 209; see also R J Adebimpe, *An Appraisal of the Légal Framework on Environmental Protection: Kwara State As Case Study* (2010) 3(1) CJJIL 43-53.

⁴⁷ Obviously this may include any director, manager, secretary, or any other similar officer(s) of the corporation or even any other officer of the corporation or any person purporting to act in that capacity. The statutory intent is to introduce a disjunctive as opposed to a conjunctive element into the practical effect of the provisions. Thus, any of knowledge, consent, connivance, neglect or omission is a sufficient proof of personal culpability of the corporate officers.

vessel, floating craft etc for the purpose of conducting inspection, searching and taking samples of any materials found in the premises which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation.

He may also open and examine any book, document or other record, containers or packages, articles, sample or specimen of any article found which appears to him to be an article which he reasonably believes is capable of being used to the detriment of the environment or which may contain any information or help in his investigations or relevant to the enforcement of the Act or regulations.⁴⁸ And in the case of a book or document or other record found, he may make copies of same or extract therefrom.⁴⁹

Sealing

Under section 30(g) of the Act, an officer of the Agency may obtain an order of the court to suspend activities, seal or close down premises or any tenement including land, vehicle, tent, vessel, floating craft or in land, water and other structures in which activities which are capable of being detrimental to the environment or which contravene environmental standards or legislation are carried out.

Seizure and Detention

Under section 30 (f) of the Act an officer of the Agency may, in the course of his duty confiscate and detain for such time as may be necessary for the purpose of the Act, any article⁵⁰ by means of or in relation to which he reasonably believes any provision of the Act or the regulations has been contravened. And any such article 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

⁴⁸ S.31 NESREA Act.

⁴⁹ S.30 (1) (b)-(e).

⁵⁰ *Ibid.*

the person from whom it was seized if the article upon analysis or examinations is found to conform to the requirements of the Act or regulations made under it.⁵¹

Revocation of Certificate, Permit, License, etc

Issuance of certificates, authorization, consent, permits, licenses by the Agency is a vital technique for guarding against environmental degradation as same can be used as monitoring devices to regulate activities which are potential sources of environmental pollution, in the sense that their issuance carried with them an understanding that the holder will forfeit same upon a breach of the regulations, law or any of the laid down conditions specified on such certificate, authorization, consent, permits, licenses or certificates.⁵²

Suits against the Agency

A suit against the Agency shall not be commenced before the expiration of a period of one month after written notice of intention to commence the suit must have been served on the Agency by the intending plaintiff or his agent. Such notice must clearly state the cause of action; particulars of claim; name and place of abode of the intending plaintiff and relief which he claims.⁵³

The said notice and any summons, notice or other document required or authorized to be served on the Agency under the provisions of the NESREA Act or any other enactment or law may be served by (a) delivery of the same to the office of the Director-General of the Agency; or (b) sending it by

⁵¹ The expression 'article' to which the Act or regulations made under it apply are: (a) liquid, soil, vegetation; (b) biological and chemical sample; (c) particulate filters, air quality gauges; and such other articles or samples as may be determined by the Agency.

⁵² *Ibid.* s. 30 (3).

⁵³ *Ibid.* s.35; see also 7 (j) which provides that, the Agency shall enforce environmental control measures through registration, licensing, authorization and permitting systems for most operations. There is no gainsaying in adding that any permit, authorization, Certificate, or License, etc issued may be cancelled, suspended or refused to be re-issued.

registered post addressed to the Director-General at the Head Office of the Agency.⁵⁴

Funding, Accountability and Appointment of Auditors

The Agency's sources of finance include take-off grants, annual subventions and budgetary allocations from the federal government, loans and grants-in-aid from national, bilateral and multilateral agencies; counterpart funding as may be provided from time to time and monies earned or arising from property and/or investments acquired by or vested in the Agency by way of rents, fees and charges for services rendered by the Agency or payable or vested in the Agency in respect of or incidental to its functions. It also includes sums accruing to the Agency by way of gifts, endowments, bequests or other voluntary contributions by persons and organizations.

Section 17 requires the Agency to keep all proper and usual accounts in respect of its functions under the Act. And such accounts must be audited, not later than six months after the end of the year to which it relates by auditors appointed by the Agency from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation.⁵⁵

Institutional Networking between NESREA and other Relevant Agencies

Obviously, the content and scope of the Act is too important for the Agency alone, thus the responsibility for the enforcement of the Act lies not only with the Agency and the overseeing ministries⁵⁶ but in collaboration with other relevant agencies⁵⁷ and regular law enforcement agents such as the

⁵⁴ S. 32 (1).

⁵⁵ *Ibid.* s. 32(2). Note however, subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 which relate to the power of the Attorney-General of the Federation to institute, continue criminal proceedings against any person in any court of law, an officer of the Agency may, with the consent of the Attorney-General of the Federation, conduct criminal proceedings in respect of offences under the Act or regulations made under it: see s. 32(3).

⁵⁶ S. 17(1) NESREA Act.

⁵⁷ That is, the Ministries of the Environment at both the States and Federal levels.

police, especially where criminal offences are involved. As the *ombudsman* of the Nation's environment however, NESREA nonetheless, should continue to be on the frontline in the institutional network for the enforcement of its enabling statute.

Recommendations

Awareness of environmental problem is still very low in this country. Problem arising with environmental protection is not that there are not enough laws but enforcement. Again without an enlightened public, enforcement of environmental laws would have little likelihood of being successful, as there is no doubt that the lack of concern for the condition of our environment is partly due to ignorance as to its effect on the quality of life. The starting point therefore is that the Agency should enlighten the populace on the dangers of environmental pollution, improper management of wastes, and encourage the formation of People Environmental-Interest Groups. This would help guide the attitudes of the people to environmental pollution.⁵⁸

The issues of generating and treating industrial waste in particular cannot be effectively taken care of by the provisions of the Act as it presently stands, thus an urgent reform should be made. For example, additional penalties such as permanent closure of a corporation or confiscation should be made possible,⁵⁹ so that the disadvantages accruing to a defaulter will by far outweigh the advantages which he may seek to achieve by his default.

The penalties prescribed for nuisance and other offences⁶⁰ as provided in section 22 of the Act are rather too liberal because a corporation or even an

⁵⁸ E.g. the Standards Organization of Nigeria (SON), NAFDAC etc; see ss. 21-22 and 29 of NESREA Act.

⁵⁹ As J.S. Mill once observed 'There will be no great improvement in the general ecological condition until great changes take place in our modes of thought', cited by O.A. Bowen, 'The Role of Private Citizens in the Enforcement of Environmental Laws', in J.A. Omotola (ed.), *Environmental Law in Nigeria including Compensation*, (Lagos: Mayodele Ajayi Enterprises, 1990), p. 169.

⁶⁰ E.g. violating the Agency's regulations to control noise, emission, control, abatement as prescribed to preserve and maintain public health and welfare.

individual may find it cheaper to violate same and pay the prescribed fine rather than complying with it and incur a heavy cost.

An amended Act should also provide for the immediate arrest of drivers of vehicles generating an unusual amount of smoke while administrative machinery for ensuring road worthiness of vehicles required to be overhauled should be devised. One other fatal lapse in the Act is the lack of compensation provisions for the victims of industrial pollution. It is suggested that this ought to be remedied at the earliest opportunity.

An amended Act should revisit the issue of technical committee to serve as a think-tank for the Governing Council and the Agency and for the purpose of assisting and advising them in the performance of their functions under the Act as well as giving technical opinion on issues referred to it.

Conclusion

The provisions of the Act have been examined in some material particulars. On paper they appear sound enough and have indeed made impacts. The appraisal of the law reveals that the intention of the lawmaker is to provide a comprehensive and yet simplified compendium of environmental law in the country. It has undoubtedly been a major legislative breakthrough in that regard. However, the paper posits that it is only when we are able to warn ourselves of environmental dangers and exercise restraint that the law will become more effective in the crusade for environmental protection.

It is strongly believed that if suggestions made herein are taken seriously and reflected in subsequently amendment of the Act, they will go a long way in regulating environmental abuse. Meanwhile, while a hundred percent success cannot be claimed, the law arguably represents a bold step in the direction of achieving sustainable development in Nigeria.