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REVIEW OF NESREA ACT 2007 AND REGULATIONS 2009-2011: A NEW DAWN IN ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN NIGERIA

Muhammed Tawfiq Ladan

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1 INTRODUCTION

Nigeria's formal environmental regime has developed significantly from humble beginnings,[1] to the promulgation of twenty-four environmental regulations.[2] Nigeria, the most populous nation in Africa, rich in oil but underdeveloped,[3] has its own share of environmental problems which justify local and international attention. In terms of Nigeria's environmental problems,[4] the four broad issues being accorded highest priority at present are: ensuring sustainable industrial production; preventing and reversing desertification; managing forest, wildlife and natural resources; combating floods and erosion.[5]

2 BRIEF OVERVIEW OF THE DEVELOPMENT OF ENVIRONMENTAL LAW IN NIGERIA[6]

Environmental law in Nigeria is that branch of public law, which contains rules and regulations, which have as their object or effect the protection of the environment.[7]

During the colonial era, protection of the environment was not a priority in Nigeria and there was accordingly no policy aimed at preserving and protecting it. Matters relating to the environment were dealt with as a tort of nuisance because disputes in environmental law were not viewed as public matters warranting state intervention. The few environment related laws criminalised activities that could degrade the environment. These laws included the Criminal Code Act[8] of 1916, which prohibited water pollution and air pollution and created the offence of nuisance.

In 1917 the Public Health Act[9] was enacted. Although somewhat broad in scope, this Act contained provisions of relevance to the regulation of land, air and water pollution. Thus it is evident that at this time matters relating to the environment were dealt with in a rudimentary manner, from the viewpoint of environmental sanitation.

Following Nigeria's independence in 1960 and the discovery of oil, it became apparent that existing laws dealing with the environment were grossly inadequate. This was owing to the fact that most of the provisions on environmental protection were scattered throughout different laws, resulting in an *ad hoc* response to different needs in different situations.[10] During the decade following independence, the Government criminalised polluting activities, particularly those relating to the discharge of oil in navigable waters and environmental degradation as a result of petroleum activities. The 1970s saw the further development of Nigeria's environmental regime in response to industrial growth associated with the oil boom.[11] River basin authorities[12] were created and environmental units were established in some government ministries.[13] The laws were, however, typically 'knee-jerk' responses to emergency situations.

1 *See* M.T. Ladan, *Materials and Cases on Environmental Law and Policy* 117-244 (Zaria, Nigeria: ECONET Publishers, 2004).
2 *See* Federal Republic of Nigeria, Abuja, Official Gazette, Vol. 96, Nos. 58-68 dated 2-20 October 2009.
3 Underdevelopment is universally measured in terms of standard of living, gross domestic product, foreign exchange denominator, foreign reserves, political stability and the level of fundamental human rights of the citizens.
4 *See generally*, the *National Policy on the Environment* of 1999 (Revised edition), at pp. 30-37.
5 *See* Appendix 1 for a brief discussion on the four broad environmental problems/challenges being accorded highest priority at present in Nigeria.
6 *See generally*, P.B. Ajibola, 'Protection of the environment through the Law', *in* F. Shyllon ed., *The Law and the Environment in Nigeria* (Ibadan: University of Ibadan Press, 1999).
7 *See generally*, Y. Osinbajo, *Some Public Law Considerations in Environmental Law* (Lagos: Faculty of Law, University of Lagos, 1990).
8 Cap.C.38 LFN 2004.
9 Cap.P.40 LFN 2004.
10 *See* F. Shyllon, 'Present and future institutional framework for environmental management in Nigeria', *in* Shyllon note 6 above.
11 *See* Appendix 2 of this paper.
12 *Id.*
13 E.g., Ministries of Agriculture, Water Resources and Environment.

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The 1980s and 1990s witnessed the most drastic and systematic development of environmental laws in Nigeria, partly owing to Nigeria's ratification of or accession to a number of international instruments during this period.[14] The main national laws and decrees developed during this period, and which are still in operation today, are listed in Appendix 2 of this paper.

These laws and decrees are supported by an array of national regulations[15] and policies[16] of environmental significance. The most recent and important addition to Nigeria's environmental regime is the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA Act),[17] which came into force in 2007. The Act establishes the National Environmental Standards and Regulations Enforcement Agency (NESREA or Agency), Nigeria's lead environmental protection agency.

As should be evident from the above, Nigeria's formal environmental regime has developed significantly from humble beginnings. Having been initiated in the colonial period during which environmental issues where generally couched within public health regulation;,[18] and having developed in a rather *ad hoc* manner in the early days of independence during which heavy reliance was placed the law of nuisance, Nigeria now has a relatively comprehensive environmental regime. This regime is administered by an array of institutions. The Federal Ministry of Environment, Housing and Urban Development and the National Environmental Standards and Regulations Enforcement Agency are then main institutions responsible for the formulation of environmental policy, monitoring compliance and enforcement respectively. Their functions are supported by the following government institutions: Federal Ministry of Solid Minerals Development; Federal Ministry of Agriculture and Natural Resources; Federal Ministry of Water Resources; Federal Ministry of Science and Technology; and Ministry of Energy, Oil and Gas Resources.

3 MAJOR DRAWBACKS OF THE DEFUNCT FEDERAL ENVIRONMENTAL PROTECTION AGENCY (FEPA) ACT AND REGULATIONS 1991-2006

The Federal Environmental Protection Agency (FEPA) was defunct and its Act and Regulations were repealed in 2007 by the NESREA Act. The major drawbacks of FEPA were:[19]

14 These include: Convention on Biological Diversity (1992) 31 *ILM* 818; United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification (1994) 33 *ILM* 1328; Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973) 46 *ILM* 1178; Convention on the Conservation of Migratory Species of Wild Animals (1980) 19 *ILM* 11; Vienna Convention on the Protection of the Ozone Layer (1987) 26 *ILM* 1516; Montreal Protocol on Substances that Deplete the Ozone Layer; Stockholm Convention on Persistent Organic Pollutants (2001) 40 *ILM* 532; and Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989) 28 *ILM* 567. For a comprehensive discussion of the international and regional environmental instruments which Nigeria is party to, *see* S. Simpson and O. Fagbohun eds, *Environmental Law and Policy* 10-49 (Lagos: Law Centre, Faculty of Law, Lagos State University, 1998); I.A. Ayua and O. Ajai, *Implementing the Biodiversity Convention: Nigerian and African Perspectives* (Lagos: Nigerian Institute of Advanced Legal Studies, University of Lagos, 1997); and I.L. Worika, *Environmental Law and Policy of Petroleum Development: Strategies and Mechanisms for Sustainable Management in Africa* 62-80 and 311-328 (Portharcourt, Nigeria: Anpez Centre for Environment and Development, 2002).

15 Relevant regulations include: National Environmental Protection (Effluent Limitations) Regulation, 1991; National Environmental in Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations, 1991; and Management of Solid and Hazardous Waste Regulations, 1991.

16 Relevant policies include: National Policy on the Environment of November 1989 (revised in 1999); and the draft National Policy on Environmental Sanitation and its Guidelines (2004).

17 Act 57 of 2007.

18 O. Okediran, 'An appraisal of Environmental Sanitation Edicts in Nigeria', *in* Shyllon, note 6 above, at 25.

19 *See* M.A. Ajomo and O. Adewale eds, *Environmental Law and Sustainable development in Nigeria* 1-11 (Lagos: Nigerian Institute of Advanced Legal Studies, 1994).

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I. Lack of or weak enforcement of existing environmental laws and regulations. FEPA gave industries five years moratorium in 1990 for industrial compliance with the installation of pollution abatement facilities, which expired in 1994. Nonetheless compliance rate by industries was generally low (between 20-40 per cent). Even then the efficiency of many of the pollution abatement facilities was suspect. Many had broken down, or were grossly inadequate or were just operationally cosmetic to give semblance of compliance.[20]

II. The enforcement mechanism was through visits to facilities for compliance monitoring, facilities work through, find out challenges for non-compliance, examine monitoring records where they exist, undertake in situ environmental monitoring of some parameters and discuss findings with the facility manager; and proffer appropriate advice that could promote compliance or issue warning where non-compliance is persistent.[21]

III. The resultant consequence of the above mentioned poor environmental compliance or weak enforcement regime were the following industrial pollution problems and their impact on the environment and human health in Nigeria: - [22]

- Surface waters (60-70 per cent) in urban areas coloured, foul smelling, fishless, and were non-potable and non-swimmable;[23]
- Shallow groundwater acquifers contaminated by infiltration of domestic and industrial wastes; petroleum waste products, toxic and non-toxic;[24]
- Visual impairment and reduced fish catch in costal and marine waters;[25]
- Nuisance and health problems from industrial effluents disposed on land or wetlands;[26]
- Worsening public health through exposure to pollutants, thereby putting the lives of millions of Nigerians at risk from water related health diseases such as typhoid fever epidemic.[27]

4 LESSONS LEARNT

Hence the major lessons learnt from the above include the following:

- It is counter-productive and unsustainable for a lead environmental protection agency to pursue a weak or outdated compliance monitoring and enforcement strategy.[28]
- It is retrogressive to lack focus on pollution prevention strategies, life cycle analysis approach and non-integration of environmental treaties obligations into national environmental compliance and enforcement framework on industrial, wastes and chemicals pollution control for the benefit of present and future generations.[29]

20 *See* A. Ahmad, *Policing Industrial Pollution in Nigeria* 131-5, Essay submitted to the Harvard Law, School, Cambridge MA, USA (in partial fulfillment of the award of LLM degree, 2001).
21 *Ibid*, at 141-3.
22 Ajomo and Adewale, note 19 above, at 67-80.
23 *Ibid*, at 115-8.
24 Ahmad, note 20 above, at 144-6.
25 *See* Osibanjo O., *Promoting Environmental Standards, Regulations and Compliance in Nigeria*, Paper presented at the National Stakeholders Forum on the new mechanism for environmental protection and sustainable development in Nigeria, NESREA, Abuja, 22-23 October 2007, pp. 11-15.
26 *Ibid*, at 14-16.
27 *See* M.T. Ladan, *Biodiversity, Environmental Litigation, Human Rights and Access to Environmental Justice in Nigeria* 80-89 (Zaria: Faith Publishers, 2007).
28 *Ibid*, at 81.
29 *Ibid,* at 92.

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- It is inexcusable not to borrow a leaf from best practices by exploring the use of economic incentives such as tax holidays and tax exemptions as a means to promote high compliance by industries.[30]

- It is ineffective for environmental pollution control and prevention not to pursue adequately inter-agency cooperation and collaboration including information sharing and exchange among government agencies and other federating units that have similar mandate or over lapping functions.[31]

5 ESTABLISHMENT OF NESREA: A NEW DAWN

The National Environmental Standards and Regulation Enforcement Agency is currently the major federal body charged with the protection of Nigeria's environment. NESREA was created by the NESREA Act.[32] The federal government, in line with section 20 of the 1999 constitution, established the Agency as an institution under the supervision of the Federal Ministry of Environment, Housing and Urban Development. NESREA was created to replace the defunct Federal Environmental Protection Agency (FEPA). In examining the enforcement of the preventive principle in Nigeria, it is necessary to take a look at the establishment, mandate and powers of NESREA.

NESREA was established on 30 July 2007 as a body corporate with perpetual succession and a common seal, which may sue and be sued in its corporate name.[33] It is responsible for the enforcement of environmental standards, regulations, rules, laws, policies and guidelines. Its authority extends to the enforcement of environmental guidelines and policies, such as the National Policy on the Environment, 1999. This is indicative of the importance and relevance of standards, rules, policies and guidelines on the environment. Although they may not have the force of law, they are a vital and necessary element in the protection and preservation of the environment.

The Agency is charged with responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources as well as environmental technology.

The NESREA Act and Regulations constitute a new dawn because in both purpose and contents, they aim at addressing the preponderance of obsolete environmental regulations, standards and enforcement mechanisms, which resulted, over the years, in the high rates of non-compliance with environmental laws, regulations and standards.

In order to deliver on her mandate, the immediate implementation strategies of NESREA are: i) collaboration and partnership; ii) conducting public education and awareness on topical environmental issues; and iii) strengthening institutions and building capacity to monitor compliance and enforce existing environmental regulations, including guidelines for best practices.

In terms of collaboration and partnership, NESREA's enabling law and regulations provided a platform for:

- Creating fora for dialogue, exchange of information and best practices as well as build consensus and partnerships among all stakeholders. This informed NESREA's decision to organise the 1st National Stakeholders' Forum on "The new Mechanism for Environmental Protection and Sustainable Development in Nigeria" with the theme "ensuring a safer and cleaner environment in Nigeria through partnerships".

30 Ahmad, note 20 above, at 151.
31 Osibanjo, note 25 above, at 16-18.
32 No. 25 July 30, 2007
33 NESREA Act No. 25 of 2007, section 1(2).

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- As part of the partnership strategy, NESREA proposes to have Zonal Headquarters in the six geo-political Zones and Offices in all States of the Federation.

- To date NESREA has established five (5) functional Zonal Offices in Port-Harcourt – Rivers State; Owerri-Imo State; Jos – Plateau; Gombe – Gombe State; and Kano – Kano State. NESREA also has thirteen (13) State Offices.

- NESREA goes beyond local partnership to collaborate with international bodies, Agencies and Non-governmental organisations including international regulatory bodies e.g. UN Agencies; World Bank; Partners for Water and Sanitation (PAWS-UK); United Kingdom Environment Agency;

- Sector-specific consultative meetings for sharing of ideas and experience, and better dissemination of information, e.g. Nigerian Tanners Council, Association of Food Beverages and Tobacco employers.

Between 2007-2011, there has been continuous advocacy at all levels in the print and electronic media to properly communicate the concept of voluntary compliance and enlist the support and participation of all key stakeholders including trade unions, professional and business associations, civil society organisations, traditional, natural and faith-based organisations.

In other to ensure effective compliance, monitoring and enforcement, NESREA has adopted environmental permitting and licensing system; promoting the development of local technologies to aid compliance monitoring and enforcement; pursuing technical assistance to strengthen capacity through exchange of knowledge and experience, and learning of best practices in environmental management from other countries whose policy systems have some similarities with Nigeria. Partnerships and networks have been established with institutions and organisations in Japan and Singapore. Establishing modern reference laboratories for prompt and reliable analysis of environmental samples for effective compliance monitoring and enforcement.

5.1 Mandate and Powers of NESREA

Part II of the NESREA Act contains the functions of the Agency. The Agency is authorised to enforce compliance with laws, guidelines, policies and standards of environmental matters.[34] Such standards would include the federal water quality standards and air quality standards. In carrying out its functions, it is to coordinate and liaise with stakeholders within and outside Nigeria on matters of environmental standards, regulations and enforcement.[35] Relevant stakeholders would include the organised private sector, environmental groups at both national and international levels, and other ministries and parastatals.

A notable provision of the NESREA Act is section 7(c), which mandates the Agency to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment and such other agreement as may from time to time come into force.

Nigeria has ratified several international agreements on the environment in matters such as climate change, biodiversity, desertification, forestry, oil and gas, hazardous waste, marine and wildlife and pollution. However, most of these environmental treaties to which Nigeria is a state party are yet to be domesticated. This provision could therefore be interpreted in two ways.

First, it could be interpreted in terms of giving NESREA the authority to enforce such environmental treaties in Nigeria whether or not they have been domesticated in the country. This would be based on the fact that by ratifying the relevant treaty, Nigeria has signified its intention to be bound by the provisions of the treaty. The state can therefore, not shy away from the performance

34 *Ibid*, section 7(a).
35 *Ibid*, section 7(b).

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of its treaty obligations under international law. This principle is expressed in Article 26 of the Vienna Convention on the Law of Treaties, which provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith". This principle is also known as the Principle of Good Faith (pacta sunt servanda). This thinking was reflected in the judgment of the Court of Appeal in the case of *Mojekwu v. Ejikeme*.[36] Although the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)[37] had not been domesticated in Nigeria, the court referred to it in its judgment and had no difficulty in holding that the 'ili ekpe' custom was a form of discrimination against women.

Second, the provision could be interpreted in such a way as to limit the enforcement powers of NESREA to those international agreements and treaties on the environment that have specifically been domesticated in Nigeria by an Act of the National Assembly.

Section 12(1) of the 1999 constitution[38] provides that: 'No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly where the treaty deals with maters not included in the Exclusive legislative list, it must in addition be ratified by a majority of all the state Houses of Assembly in the federation.[39]

For NESREA to enforce compliance with the provisions of such treaties to which Nigeria is a state party, the relevant treaty would first of all have to be domesticated before it could be said to properly 'come into force'. Treaties on the environment that have been domesticated in Nigeria include the Convention on International Trade in Endangered Species of Fauna and Flora and Convention on the Prevention of Pollution by the Sea by Oil. There is also the African Charter on Human and Peoples Rights, containing provisions relevant to environmental protection. NESREA could play a vital role in the domestication process.

Whatsoever view is taken by the court, in the event of the relevant section being referred for judicial interpretation, section 7c of the NESREA Act has the laudable effect of highlighting the importance and relevance of international environmental law as a veritable source of Nigerian environmental law.

Once ratified, a treaty becomes binding on the state party. Nigeria is therefore under an obligation to domesticate her environmental treaties by incorporating them as part of her national law to ensure effective implementation. This requires political will on the part of both the executive and legislative arms of government to comply with the provisions of Section 12 of the 1999 constitution. However, Nigerian courts are free to take the provisions of ratified treaties into consideration in arriving at decisions involving questions of rights of access to justice in environmental matters, non-discrimination and equality.[40]

The inclusion of 'oil and gas' in the list of international treaties on the environment to be enforced by NESREA under section 7(c) is contradictory in light of the provisions of the Act which expressly remove oil and gas from the purview of NESREA. Section 7(h), for example, empowers NESREA to 'enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies ***other than in the oil and gas sector***" (emphasis added).[41] The position of 7(h) is buttressed by 7(g) which mandates NESREA to enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste ***other than in the oil and gas sector***.

The inclusion of 'oil and gas' in Section 7(c) introduces some confusion as the other provisions of the Act have the effect of precluding NESREA

36 (2002) 5 NWLR (PT.657), at 402.
37 Nigeria signed and ratified the CEDAW on 23rd April 1984 and 13th June 1985 respectively.
38 Constitution of the Federal Republic of Nigeria, 1999 (hereafter CFRN).
39 CFRN, section 12(3).
40 *See* M. T. Ladan 'Towards an Effective African System for Access to Justice in Environmental Matters' 23-24(2) *A.B.U Law Journal* 10-11 (2005).
41 *See also* NESREA Act, section 7(g, j, k, l).

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from exercising its enforcement powers in the oil and gas sector. The phrase 'oil and gas' should therefore be struck out to bring section 7(c) in conformity with the rest of the Act particularly section 7(g, h, j, k and l) and to give effect to the intention of the legislation which was to clearly remove the oil and gas sector from the authority of NESREA.

The Agency is mandated to enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation including pollution abatement.[42] The establishment of such policies and laws are primarily directed at the prevention of pollution and environmental degradation. It can therefore be implied that the functions of NESREA are directed primarily at the prevention of pollution and environmental harm rather than remedying harm that has already occurred to the environment. Where pollution is already occurring, the Agency is to enforce its abatement.

NESREA is also concerned with the enforcement of the guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources.[43] This provision confers broad powers on NESREA over a wide range of issues. Guidelines and legislation on the sustainable management of the ecosystem and biodiversity conservation include the Sea Fisheries Act[44] and the Regulations made pursuant to it, the Endangered Species (Control of International Trade and Traffic) Act,[45] and the National Park Act.[46]

NESREA likewise possesses oversight functions over hazardous chemicals and waste other than in the oil and gas sector. It is required to enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use handling and disposal of hazardous chemicals and waste. It is also to enforce compliance with legislation on sound chemical management, safer use of pesticide and disposal of spent packages.[47] This provision establishes beyond any doubt the authority of NESREA in relation to this important issue. It also has the effect of putting to rest the dispute in the 1990s between the defunct FEPA and the National for Foods and Drugs Administration and Control (NAFDAC) about which agency had oversight/ responsibility for the control of hazardous chemicals and wastes.

This provision is also commendable as it takes cognisance of the fact that hazardous chemicals and wastes need to be strictly monitored at every stage. Having been victims of reckless discharge of polluting substances from industries and of the dumping of toxic wastes, Nigerians are becoming increasingly aware of the dangers posed by the careless use and disposal of harmful and toxic products of industrialisation.[48] There is the need for strict regulation and monitoring of such substances from the point of source to the point of final disposal as handing at every stage poses great risks to the environment and humans. There is an urgent need for environmental protection agencies to take preventive action to forestall environmental harm due to the improper production, sale use, handling and disposal of such substances. There must be strict enforcement of the law in this regard.

The laws to be enforced by NESREA in relation to hazardous chemicals and waste include; the Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes and their Disposal,[49] the Bamako Convention,[50] the NESREA Act, the Harmful Waste (Special Criminal Provisions etc) Act,[51] and the National Environmental Protection (Management of Solid and Hazardous Wastes) Regulations 1991[52].

42 *Ibid*, section 7(d).
43 *Ibid*, section 7 (e)
44 LFN 2004, Chapter S4.
45 *Ibid*, Chapter E12.
46 Cap 197 LFN 1990.

47 NESREA Act, section 7(f)(g).
48 Examples are the recurrent oil spills and ecological devastations in the oil producing areas and the Koko incident in June 1988 when 3,888 tons of highly toxic wastes from Italy were dumped on the land of a farmer.
49 (1989) 28 ILM 567.
50 Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa 1991.
51 Cap. H1 LFN 2004.
52 S. 1:15 of 1991.

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NESREA in performance of its functions faces many challenges. It is not possible to properly assess performance of its functions in view of its short lifespan. However the challenges faced by the FEPA (its predecessor) and the Directorate of Petroleum Resources (DPR)[53] in the enforcement of laws on hazardous waste management were succinctly highlighted as follows:

> Their staff, particularly the inspectorate staff: are handicapped. They perform their jobs under hazardous and unhealthy conditions... their field inspection terms depend on oil companies and industries respectively... a worker on inspection of pollution abatement equipment recently imported and installed was embarrassed when he could not operate the machine due to lack of the necessary equipment that would have enhanced his performance.[54]

It is hoped that NESREA will overcome the obstacles and pitfalls that beset its predecessor Agency in the enforcement of the preventive principle. This cannot be achieved by wishful thinking. There is a need for adequate funding of the new agency to adequately perform its oversight and enforcement duties. There is also the need for trained technical manpower. Hazardous and waste chemical and waste management is a comparatively new field in Nigeria and requires multifaceted technical and expert services.

NESREA is mandated to enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other bodies.[55] NESREA is thus expected to enforce the environmental standards covering water quality, air quality, noise control and atmospheric protection, this would prevent an alteration of the chemical, physical or biological quality of the environment consistent with the definition of 'pollution' under section 37 of the Act. In fulfilling this mandate, it behoves the Agency to establish effective monitoring mechanisms. In line with this, the Agency may establish monitoring stations or networks to locate sources of atmospheric pollution and determine their actual or potential danger.[56]

The Agency possesses supervisory functions over environmental projects funded by donor organisations and support agencies. It is to ensure that such projects adhere to regulations in environmental safety and protections.[57] With the exception of the oil and gas sector, it is the body responsible for the enforcement of environmental control measures through registration, licensing and permitting systems. The use of licenses and permits is a useful tool for the prevention of environmental harm. This system enables NESREA to set and enforce limits on the concentration of particular pollutants, which are permitted to enter the environment. It regulates for instances the amount of substances released into the water and thus prevents water pollution. The use of licenses and permits means that no one may discharge polluting substances to any of the environmental media without holding a permit or license to do so. In this way, the quality of the environment is preserved and safeguarded. All industrial facilities generating waste would be required to register with the agency and to obtain permits and licenses. For example, the National Environmental Protection Pollution Abatement in industries and Facilities Generating Wastes Regulations[58] require industries and other facilities to possess a permit issued by the Agency for the discharge of effluents with constituents beyond permissible limits into public drains and other waters.

In addition to the foregoing, NESREA is required to create public awareness and provide environmental education on sustainable

53 The DPR is responsible for the enforcement of environmental legislations and standards in the oil and gas sector.

54 Nkereuwem Akpan, "Workers' Health, Safety, Vital to Environmental Protection", The Daily Sunray, 21 October 1993, p. 5.

55 NESREA Act, section 7(h).

56 *Ibid*, section 20(2).

57 *Ibid*, section 7(i).

58 S. 1. 9 of 1991.

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environmental management, promote private sector compliance with environmental regulations and publish general scientific or other data resulting from the performance of its functions.[59]

This is an important provision in light of the fact that the use of law as an instrument to obtain compliance has its limits. The mere existence of law (and a regulatory body) does not in itself create or bring about a change in behavior. Clean and healthy Nigeria cannot be obtained solely by statutes. There is the added need for information, environmental education and enlightenment of the public. This is the best form of prevention of environmental harm. There must be instilled in the minds of a sizeable number of the population an unambiguous message clearly urging the need for a healthy environment. This environmental consciousness will enable the law to function better. The persistent use not only of the media but also education and social institutions to force a change of thinking and behavior in conformity with the demands of a healthy environment, will ease the duty of enforcement bodies. It will make it possible for the environmental agencies to succeed and not to collapse under the severe pressure of trying to contain large-scale disobedience of the laws.

Section 7(m) provides a general rounding up clause that enables NESREA to carry out 'such activities as are necessary or expedient for the performance of its functions'.

In furtherance of the mandate of NESREA, it has been conferred with broad powers. These include the power to prohibit processes and use of equipment or technology that undermine environmental quality,[60] conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator,[61] and establishment of mobile courts to expeditiously dispense cases of violation of environmental regulations.[62] The purpose of the mobile courts is to ease pressure on the higher courts and to ensure that cases are treated with dispatch. At present, Rivers, Akwa Ibom and Lagos states operate mobile environmental sanitation tribunals/courts. The establishment of such courts must be in accordance with the provisions of the constitution or else their legality could be called into question. NESREA is also empowered to conduct public investigations on pollution and the degradation of natural resources and to submit proposals for the evolution and review of existing guidelines, regulations and standards on the environment to the Minister of the Environment for approval.[63]

It is empowered further to collaborate with other relevant agencies and with the approval of the minister, establish programmes for setting standards and regulations for the prevention and control of pollution and environmental degradation and for restoration and enhancement of the environment and natural resources of Nigeria.[64] In the exercise of its power, NESREA would be expected to collaborate with the State Environmental Protection Agencies and other bodies whose functions relate to the environment. This would be especially necessary in a situation where there is an overlapping of functions or roles in a federation like Nigeria where the states and Local Government may have

5.2 Enforcement Powers of NESREA

NESREA possesses broad enforcement powers for the purpose of enforcing the Act. Thus an officer of the Agency may at all times enter and search with a warrant issued by a court any premises including land, vehicle, tent, vessel and floating craft, inland water and other structure which he reasonably believes carries out activities or stores goods which contravene environmental standards or legislation for the purpose of conducting inspection, searching and taking samples for analysis. This power to enter and search premises excludes oil and gas facilities such as maritime tankers, barges and floating production, storage offload (FPSO).[65]

To constitute a lawful search, the search has to be carried out with a search warrant issued by the

59 NESREA Act, section 7(l).
60 *Ibid*, section 8(d).
61 *Ibid*, section 8(e).
62 *Ibid*, section 8(f).
63 *Ibid*, section 8(g)(k).
64 *Ibid*, section 8(o).
65 *Ibid*, section 30.

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federal or state high court. This is in contrast to section 26 of the repealed FEPA Act and section 10 of the Harmful Wastes (special criminal provisions) Act where environmental protection agencies were empowered to search without warrant. The new requirement of a search warrant by the court is in recognition of the right to privacy guaranteed under the constitution.[66] This involves the recognition of the citizen's right to be secure in their persons, house, premises and efforts against unreasonable and unlawful searches and seizures. Thus, the right of NESREA and other environmental protection bodies to search and seize environmental substances considered harmful is not absolute. It must be based on a reasonable belief that the premises are used for activities or storage of goods, which contravene environmental standards or legislation. The court, in the interest of the 'privacy of the citizens', has construed narrowly the police power of entry, search and seizure. As Lord Denning stated in *Ghani v. Jones*,[67] the requirement of reasonable grounds for searches and seizures was based on the principles that the individual's privacy and his possession are not to be invaded except for the most compelling reason.[68]

The right to privacy can be constrained by legislation that is reasonably justifiable in a democratic society in the interest of the public.[69]

The requirement of a search warrant also brings the NESREA Act in conformity with the criminal procedure code and the Criminal Procedure Act where a search warrant is required for a search to be lawful.[70]

The NESREA Act in addition gave the Agency powers to examine any article found pursuant to the search to which the Act or regulations apply or which he reasonably believes is capable of being used to the detriment of the environment. The officer of the Agency may in furtherance of his investigation also take a sample or specimen of any such article, open and examine any container or package and examine and make copies of any book, document or other record found in the course of the research, which he reasonable believes may contain any information relevant to the enforcement of the Act or the regulations. He may also seize and detain any articles by means or in relation to which he reasonable believes the provision of the Act or regulations has been contravened and issue a written receipt for the articles seized.[71]

Finally, the officer of the Agency may obtain a court order to suspend activities, seal and close down premises.[72] Thus, the enforcement powers conferred upon the NESREA Act are far reaching, extending even to the closure of the premises used in contravention of the law. The requirement of a court order would guard against arbitrary exercise of its powers by the Agency. It could however have the effect of causing delay in favour of the polluting facility.

5.3 Rationale for the 2009 - 2011 Environmental Regulations

In order to provide for effective enforcement of environmental standards, regulations, rules, laws, policies and guidelines by the newly established NESREA,[73] the Minister of Environment is empowered to make regulations for the general purposes of carrying out or giving full effect to the functions of the Agency under the NESREA Act.[74]

This has led to twenty-four Regulations, which are highlighted below: National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009; National Environmental (Watershed, Mountainous, Hilly and Catchment

66 CFRN, section 37.
67 (1970) 1 QB 693, 708.
68 *See also* O. G. Amokaye, 'Procedural Aspects of Environmental Litigation in Nigeria' Vol. 3 *Nigeria Journal of Private and Comparative Law* 182 (2001).
69 *See* CFRN, section 37.
70 *See* Criminal Procedure Code, section 74 and Criminal Procedure Act, section 107.
71 NESREA Act, section 30(l)(b c, d, e, f).
72 *Ibid*, section 30(l)(g).
73 For an analysis of the NESREA Act 2007, *see* M.T. Ladan, *Law, Cases and Policies on Energy, Mineral Resources, Climate Change, Environment, Water, Maritime and Human Rights in Nigeria* 357-378. (Zaria: Ahmadu Bello University Press, 2009).
74 NESREA Act, section 34.

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Areas) Regulations, 2009; National Environmental (Sanitation and Wastes Control) Regulations, 2009; National Environmental (Permitting and Licensing System) Regulations, 2009; National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, 2009; National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009; National Environmental (Ozone Layer Protection) Regulations, 2009; National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009; National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009; National Environmental (Noise Standards and Control) Regulations, 2009; National Environmental (Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, 2009; National Environmental (Standards for Telecommunications and Broadcasting Facilities) Regulations, 2011; National Environmental (Soil Erosion and Flood Control) Regulations, 2011; National Environmental (Desertification Control and Drought Mitigation) Regulations, 2011; National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations, 2011; National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations, 2011; National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011; National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulations, 2011; National Environmental (Coastal and Marine Areas Protection) Regulations, 2011; National Environmental (Construction Sector) Regulations, 2011; National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, 2011; National Environmental (Non-Metallic Minerals Manufacturing Industries Sector) Regulations, 2011; National Environmental (Surface and Groundwater Quality Control) Regulations, 2011; and National Environmental (Electrical/ Electronic Sector) Regulations, 2011.[75]

The fact is that the twenty-four Regulations sought to address all the four broad environmental problems being accorded highest priority in Nigeria namely ensuring sustainable use of natural resources and adoption of sustainable and environmental friendly practices in both industrial and general sanitation nationwide. Eleven of these regulations are discussed hereinbelow.

(i) National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009[76]

In terms of structure and content, these Regulations have been divided into three parts and five schedules. Part one deals with regulations of wetlands and wetland resources in Nigeria.[77] The various regulations under this part address: matters relating to the application, objectives[78] and principles[79] of this part of the Regulations; an inventory of wetlands,[80] the furnishing of particulars by state Governments, the role of local governments, the declaration of a specifically protected area, control of use of wetlands, the wetland resource use permit system,[81] and implied covenant and duty of land owners and users.

Part two deals with regulation of river banks and lake shores in Nigeria and provides for the following matters[82]: the application, objectives[83] and

75 *See below* for a brief discussion of the eleven regulations.

76 Federal Republic of Nigeria, Abuja, Regulations No. 26 of 2009, Official Gazette, Vol. 96, No. 58 dated 2nd October, 2009.

77 Regulations 1-14.

78 Under Regulation 2, the objectives of Part 1 include, among others, providing for the conservation and wise use of wetlands and their resources in Nigeria; ensuring the sustainable use of wetlands for ecological and tourism purposes for the common good of all citizens.

79 Under Regulation 3, the following principles, among others, shall be observed in regulating all wetlands in Nigeria: a) wetland resources shall be utilised in a sustainable manner compatible with the continued presence of wetlands and their hydrological functions and services; b) the EIA, shall be conducted in accordance with the relevant laws on all activities in wetlands likely to have adverse effects on the wetlands.

80 *See* First Schedule to Regulation 4.

81 This term is defined under Regulation 33 as: "a permit granted to a person, community or organisation to make extractive utilisation of wetlands and other non-extractive uses such as tourism and cultural activities in accordance with the grant under these Regulations."

82 Regulations 15-27.

83 Regulation 16.

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principles[84] of this Regulation; identification of river banks and lake shores,[85] registration of degraded river banks and lake shores,[86] the permit system for river bank or lake shore use, duties of the Agency and private landowners as well as the users, and protection zones for river banks and lake shores (whether or not used for purposes of tourism in Nigeria).

Part three covers miscellaneous provisions relating to EIA, environmental restoration orders, offences and penalties, appeals and interpretation as well as citation.[87] The schedules provide the parameters for conservation status of wetlands, application forms for permits to carry out a regulated activity in a wetland, river bank and lake shore, and a register of river banks and lake shores in Nigeria.[88]

(ii) National Environmental (Watershed, Mountainous, Hilly and Catchment Areas) Regulations, 2009[89]

These Regulations set out to achieve the following objectives:[90]

- Every land owner or occupier, while utilizing land in a watershed, mountainous, hilly or catchment area shall: observe and respect the carrying capacity of the land; carry out measures for soil conservation and for the protection of water catchment areas; use the best available environmentally friendly technologies to minimise significant risks and damage to ecological and landscape aspects;

- The Agency shall, with respect to watersheds, mountainous, hilly and catchment areas in a particular environment, control activities, which are inconsistent with good land management practices especially in areas prone to landslides, floods, drought, desertification, siltation, heavy sediment loads, falling rocks, fires and damage by wind.

These Regulations are structured into three parts and three schedules. The first part provides for the regulations on watersheds,[91] mountainous,[92] hilly[93] and catchment areas[94] in Nigeria. Regulations 1-9 under this part cover matters relating to the objectives, identification of major watersheds, registration and restriction on the use of watersheds, mountainous and hilly areas; delineation of roles, prevention of fires in watersheds, mountainous and hilly areas; land use mapping,[95] afforestation and reforestation as well as grazing of livestock.

The second part deals with miscellaneous provisions relating to offences, penalties and appeals.[96] The third part of this Regulation covers general matters of interpretation, citation and schedules.[97] The schedules deal with request and application formats

84 Regulation 17.
85 Regulation 18.
86 *See* the Fourth and Fifth Schedules to Regulations 19, 25 – 26 for the 47 rivers and 4 lakes listed.
87 Regulations 28-34.
88 *See* First to Fifth Schedules to Regulations 4, 8, 9, 19-20 and 25-26.
89 Regulations No. 27 of 2009, Vol. 96, No. 59.
90 Regulation 1.
91 Under Regulation 12, the term 'watershed' means the total land area that drains directly or indirectly into a particular stream or river.
92 Under Regulation 12, the term 'watershed' means the total land area that drains directly or indirectly into a particular stream or river. 'Mountain area' means an area with steep elevation with a restricted summit area projecting 600 metres or more above the surrounding land.
93 Under Regulation 12, the term 'watershed' means the total land area that drains directly or indirectly into a particular stream or river. 'Hilly area' means an area with a natural elevation of land of the local area and a well defined outline higher than a rise and lower than a mountain usually not less than 300 metres but not up to 600 metres above the surrounding land.
94 Under Regulation 12, the term 'watershed' means the total land area that drains directly or indirectly into a particular stream or river. 'Catchment area' means an area from which rainfall flows into a river, stream, lake, reservoir or other water bodies including the tributaries and the entire basin draining into the water body.
95 Under Regulation 12, the term 'watershed' means the total land area that drains directly or indirectly into a particular stream or river. 'Land use mapping' means a map showing the human use to which land is put at a given time; categories could be pasture, natural forest, agricultural land, waste land and so on.
96 Regulations 10-11.
97 Regulations 12-14.

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for registration and permits to carry out activities in watersheds, mountainous, hilly and catchment areas.

(iii) National Environmental (Sanitation and Wastes Control) Regulations, 2009[98]

In terms of structure and contents, these Regulations are divided into seven parts with eighteen schedules.

Under part one on preliminary provisions relating to application and object, the purpose of these Regulations is the adoption of sustainable and environmentally friendly practices in sanitation and waste management in order to minimise pollution.[99] The Regulations apply to issues in environmental sanitation, particularly food, market and industrial sanitation; and all categories of wastes generated therein, especially, community, end-of-life, hazardous, health care, industrial, radioactive, leaf and yard, solid and packaging wastes[100].[101]

Part two deals with environmental sanitation matters relating to general cleanliness, duties of owners and occupants of properties and premises, citizens' obligations, extended producer's responsibility, the polluter pays principle and banned pesticides or chemicals for domestic fumigation.[102]

Part three provides for detailed provisions on the control of solid waste, effluent discharge, and hazardous and health care wastes.[103]

The Agency shall ensure the implementation of the provisions of the National Environmental Sanitation Policy and Guidelines of 2005 at all levels of government;[104] enforce compliance with the provisions of these Regulations; ensure compliance with conditions of the permits issued as contained in the relevant schedules, part four provides for institutional roles and responsibilities of the Federal, state and local governments by emphasising the need for strategic cooperation and collaboration.[105]

Part five seeks to ensure effective implementation of these Regulations and to promote stakeholder involvement in environmental sanitation through the public and private sector strategic alliance on approved intervention programmes; enforcement action and notices, offences and penalties.[106]

Part six provides that, as part of the Agency's Strategic Alliance Programme on Environmental Sanitation and Waste Control, all states and local governments shall ensure that their programmes conform to the Agency's intervention programmes in this area promoting proper harmonisation and implementation as contained in schedule 8 to these Regulations.[107]

While part seven defines all the relevant key terms in the Regulations, the schedules provide for: (a) guidelines for food handlers, recommended approved number of toilets, septic tank construction, integrated pest and vector control, waste collection and transportation vehicle, extended producers responsibility programme, permissible limits for waste water discharge, waste water treatment facility, labeling and packaging of hazardous wastes containers; and (b) quality standards for sources of domestic water; lists of banned pesticides; materials amendable to extended producers responsibility programme; standards for the disposal of industrial effluents; types of hazardous waste; list of hazardous characteristics under the UN Code; categories and treatment methods of, and national colour code for, health care waste.[108]

(iv) National Environmental (Permitting and Licensing System) Regulations, 2009[109]

In terms of structure and content, these Regulations have been divided into four parts and one schedule.

98 Regulations No. 28 of 2009, Vol. 96, No. 60.
99 Regulation 2.
100 For the definitions of all categories of wastes listed, *see* Regulation 107, part 7.
101 Regulation 1.
102 Regulations 3-22.
103 Regulations 23-62.
104 *See Regulation 63 and also see* Ladan, note 1 above, at 481.
105 Regulations 63-65.
106 Regulations 66-104.
107 Regulation 105.
108 Part 7 Regulations 106; also *see* Schedules 1-18 to Regulations 6, 9, 10, 22, 25-26, 32, 35, 41-42, 45, 54, 57-58, 77-79, 88 and 90.
109 Federal Republic of Nigeria, Abuja, Regulations No. 29 of 2009, Official Gazette, Vol. 96, No. 61 dated 7th October 2009.

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The purpose of the thirty-eight Regulations[110] is, among others, to enable consistent application of environmental laws, regulations and standards in all sectors of the economy and geographical regions.[111] Part one deals with matters relating to: - mode of applicant, information accompanying application, chargeable permit fees, acknowledgement of application, assessment of application, approval or refusal of permit, duration of application, notice of approval of permit, reasons for refusal, appeal by applicant and duration of appeal. Applicants[112] operating any facility[113] for effluent discharge permit must comply with the application[114] procedure laid down in part one.

Part two includes regulations relating to the procedure for amendment and renewal of permit, submission of application for amendment and attachment of receipt of payment to application for amendment.[115]

Under part three, regulations 19-32 deal with matters relating to suspension and cancellation of permit: procedure and grounds for suspension of permit, notification of and representation by, the permit holder; decision of the agency,[116] orders regarding suspension of permit, review of suspension of permit order; procedure and grounds for cancellation of permit; notice and prescribed manner of proceedings; other terms and conditions; notice of cancellation of permits; and orders.

Part four covers miscellaneous provisions relating to re-hearing and appeals, review or reconsideration of decision, duration to reconsider, withdrawal of application for re-hearing or appeal, re-application, interpretation and citation.[117]

(v) National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, 2009[118]

These Regulations are structured into five parts and five schedules. The first part provides for conservation monitoring. This part covers matters relating to environmental impact assessment, conservation of threatened species,[119] inventory[120] of biological diversity,[121] and monitoring of status.[122]

The second part deals with access[123] to genetic resources.[124] Regulations 5-16 cover matters relating to application for access permit,[125] prior informed consent,[126] material transfer

110 Regulations 39-40 deal with interpretation and citation.

111 *See* Regulation 1.

112 The term 'applicant' is defined under Regulation 39 to "include an individual, a company, partnership or any association of individuals who submits application to the agency".

113 The term 'facility' means "industry, factory or any physical set up or equipment for manufacturing, production and processing, including treatment plants".

114 The term 'application' means "a request for the issuance of a permit, or an amendment of a permit under these Regulations".

115 Regulations 13-18.

116 Agency refers to the National Environmental Standards and Regulations Enforcement Agency established under section 1 of the NESREA Act 2007.

117 Regulations 33-40.

118 Federal Republic of Nigeria, Abuja, Regulations No. 30 of 2009, Official Gazette, Vol. 96, No. 62 dated 9th October, 2009.

119 Under Regulation 25, the term "threatened species" means any species of plant or animal which is likely to become an endangered species within the foreseeable future throughout all or significant portion of its range".

120 The term 'inventory' means "a detailed list, report or record of resources, or the process of making such a list, report or record". *See* Regulation 25.

121 The term 'biological diversity' means "the variability among living organisms from all sources of ecosystems and the ecological complexes of which they are part; this includes diversity within species between species and of ecosystems". *See* Regulation 25.

122 Regulations 1-4.

123 The term 'access' means "obtaining, processing and using genetic resources conserved, whether derived products and where applicable, intangible components, for purposes of research, bio-prospecting, conservation, industrial application or commercial use". *See* Regulation 25.

124 The term 'genetic resources' means "genetic materials of actual or potential value", while genetic materials "means any genetic material of plant, animal, microbial or other origin containing functional units of heredity". *See* Regulation 25.

125 The term 'access permit' means "a permit that allows a person to access genetic resources issued under Part II to these Regulations.

126 The term 'prior informed consent' means "the consent given to the applicant for access permit by the academic or research institute or relevant agency or the concerned local community based on an access application containing a complete and accurate access information to a person seeking access to a specified genetic resource or traditional knowledge". *See* Regulation 25.

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agreement,[127] notification of application, examination of documents, materials, notification of application, determination of application, access permit form, communication of decision, validity and renewal of access permit, terms and conditions of access permit, suspension and cancellation of access permit and register of access permits.

Under part three dealing with benefit sharing,[128] regulations 17-19 cover matters relating to application of this part, entitlements to benefits sharing and traditional[129] and community[130] rights.

The fourth part provides for miscellaneous matters: confidentiality, transition, offences and penalties. Part five deals with the following general matters: - application or exemption, interpretation and citation.[131]

The schedules deal with the form and contents of an application for an access permit; guidelines on form and contents of prior informed consent; guidelines on form and contents of materials transfer agreement; access permit form and application form for renewal of an access permit.

(vi) National Environmental (Mining and Processing Of Coal, Ores and Industrial Minerals) Regulations 2009[132]

The purpose of these Regulations is to minimise pollution from the Mining and Processing of Coal, Ores and Industrial Minerals.[133] These Regulations are structured into thirteen parts and thirteen schedules. The first part provides for preliminary issues such as purpose, planning and best practices.[134] Regulation 2 requires new development in the Mining and processing techniques to apply up-to-date, efficient cleaner production technologies to minimise pollution to the highest degree practicable.

The second part covers matters relating to general permits, monitoring pollution, equity, community relations, control, mitigation and enforcement as well as incentives.[135] Part three deals with treatment of effluent, management of oil station and fuel dumpsites, permits, polluter pays principle and emergency response plan.[136] Part four deals with matters relating to sample collection, preservation and analysis and dispersion train.[137] Part five covers matter relating to industrial wastewater monitoring and reporting requirements.[138] Matters relating to duty of the Agency to ensure compliance with conditions, enforcement notices and reminder, mode of delivery and suspension notice are covered by part six.[139]

Parts seven and eight deal with offences and penalty under effluent limitations.[140] Emission limitations, noise pollution and control, guidelines and codes of practice, audiometric testing and compliance verification as well as interpretations and citations are dealt with in parts 9 to 13.[141]

The schedules deal with effluent limitation standards, format for annual effluent monitoring report, best practices, polluter pays principle, emergency response plan, monthly effluent discharge monitoring report format, incident report form, guidelines for preparing environmental management plan, fugitive emission sources, emission quality standards for conventional

127 The term 'material transfer agreement' means "an agreement negotiated between the holder of an access permit and a relevant agency or community on access to genetic resources and benefit sharing". *See* Regulation 25.
128 The term 'benefit sharing' means "the sharing of benefits that accrue from the utilisation of genetic resources" *See* Regulation 25.
129 The term 'traditional' means "a body of pattern of behavior, practices and beliefs that are valued by a traditional or indigenous community from generation to generation". *See* Regulation 25.
130 The term 'community' means "a group of people having a long standing social organisation that binds them together whether in a defined area or howsoever otherwise and shall include indigenous peoples, local populations and shall where appropriate also include any organisation duly registered under the law of Nigeria to represent the interest of such group". *See* Regulation 25.
131 Regulations 24-26.
132 Federal Republic of Nigeria, Abuja, Regulations No. 31 of 2009, Official Gazette, Vol. 96, No. 63 dated 12th October, 2009.
133 Regulation 1.
134 *See* Regulations 1-3.
135 Regulations 4-9.
136 Regulations 10-14.
137 Regulations 15-17.
138 Regulations 18-22.
139 Regulations 23-27.
140 Regulations 28-29.
141 Regulations 30-48.

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pollutants, emission limit for specific pollutants, operating procedures/measures for fugitive emission control plan and noise standards or permissible noise exposure levels.

(vii) National Environmental (Ozone Layer Protection) Regulations, 2009[142]

These Regulations are divided into parts and six schedules. The first part deals with the prohibition of ozone[143] depleting substance[144] and release, working with an ozone depleting substance, fire protection equipment and pressurised containers, sale and labeling of ozone depleting substances, flexible and rigid insulation foams, packaging and wrapping.[145]

Regulation 11 under part two deals with the powers and responsibilities of the Agency. Part three deals with matters relating to permit conditions, application fees for permit, bi-annual report by permit holder, permit numbers to be shown on records, offence for handling ozone depleting substance refrigerant, possession or trading in refrigerant, offence for possessing halon,[146] refrigerant destruction facilities, application for halon special permit, application for RAC[147] industry permit general, offences and penalty, interpretation and citation.[148]

The schedules deal with list of permits and entitlements, categories of pre-charged equipment, list of ozone depleting substances, requirements for bi-annual report by permit holders, application for permit in respect of RAC and phase out deadline for controlled substances.

(viii) National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009[149]

In terms of structure and contents, these Regulations have been divided into nine parts and thirteen schedules. Part one deals with matters relating to environmental governance,[150] planning, emergency response plan, installation of anti-pollution equipment, polluter pays principle, best practices, pollution control organisational system, buy back or extended products stewardship programme, chemical usage, banned or restricted chemicals, permit, management of oil station and fuel dumps site, equity, community relations, effluent limitation standard, restriction on the release of toxic effluent, treatment of effluent, sludge[151] disposal standards, emission and emission control, treatment technologies, noise standards and abatement, hearing conservation program and noise monitoring.[152]

Part two deals with sampling procedures in relation to collection and analysis of samples; spot and composite sampling[153] for physical or chemical parameters; sampling for licence classification, microbiological analysis, air analysis and for other parameters as well as noise measurements.[154] Parts

142 Federal Republic of Nigeria, Abuja, Regulations No. 32 of 2009, Official Gazette, Vol. 96, No. 64 dated 13th October, 2009.

143 The term 'ozone' is defined under Regulation 23 as "the layer of gas containing three atoms of oxygen formed at the stratosphere within 10 to 50km above the surface of the earth which has the ability to filter out a very high proportion of the incoming ultra violet radiation and is essential for the very survival of life on earth".

144 The term 'depleting substance' is defined as "a substance or mixture of substances listed in Schedule 3 to these Regulations, including their isomers". *See* Regulation 23.

145 Regulations 1-10.

146 The term 'halon' is defined under Regulation 23 as "a bromofluorocarbon listed in Schedule 3 to these Regulations.

147 The term 'RAC' is defined as "refrigeration and air conditioning equipment, used for the cooling or heating of anything, that uses a refrigerant".

148 Regulations 12-24.

149 Federal Republic of Nigeria, Abuja, Regulations No. 33 of 2009, Official Gazette, Vol. 96, No. 65 dated 14th October, 2009.

150 The purpose of these Regulations is to prevent and minimise pollution from all operations and ancillary activities of Food, Beverages and Tobacco Companies to the Nigerian Environment. *See* Regulation 1.

151 This term is defined under Regulation 54 as "liquid or solid-sediments and other residue from a municipal sewage collection and treatment system and liquid or solid and other septic from septic or holding tank pumping from commercial, industrial or residual establishments".

152 Regulations 1-25.

153 The term "spot sampling" has been defined under Regulation 54 as "sample of liquid or sediments obtained at a specific depth inside a tank using a bottle. Spot samples are analyzed to determine the gravity of the oil, base sediment and water of the fluid in the tank".

154 Regulations 26-33.

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three to nine cover the procedures for licensing and permit; industrial effluent or air emission monitoring and reporting requirements; duty of the Agency to ensure compliance with conditions or enforce[155] the regulations; nature and scope of offences[156] and penalty;[157] incentives;[158] interpretation[159] and citation.

Finally, the schedules provide for: effluent limitation standards for food, beverages or tobacco sector; sludge disposal permissible limit; air emission guidelines for food, beverages and tobacco sector; soil quality standards for food, beverages and tobacco sector; permissible noise exposure levels/standards; best practices; list of banned and restricted chemicals; guide template for emergency procedures in industry; guideline for preparing environmental management plan; guidelines for consumer products stewardship programmes; organisational system and the functions of pollution control manager(s); NESREA compliance flag award and monthly discharge monitoring report.

(ix) National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009[160]

These Regulations are structured into nine parts and fifteen schedules. Part one deals with the following matters: environmental governance,[161] planning,[162] emergency response plan, installation of anti-pollution equipment, polluter pays principles, best practices, minimisation of wastes, pollution control organisational system, chemical usage, banned and restricted chemicals, permits, management of chemicals, oil station and fuel dump site, equity, community relations, effluent limitation standard, restriction on the release of toxic effluent, treatment of effluent, sludge disposal, emission standards, priority air pollutants treatment technologies (pollution abatement) for air emissions, activities resulting in atmospheric emissions, noise standards, noise abatement, hearing conservation program and noise monitoring.[163]

Part two provides for the following sampling procedures: collection and analysis of samples,[164] spot and composite sampling for physical or chemical parameters, sampling for licence classification, microbiological and air analysis, other parameters an noise measurements.[165]

Under parts three to nine, the following matters are dealt with: procedure for licensing and permitting; industrial effluent, air emission monitoring and reporting requirements; enforcement duty of the Agency; offences and penalty; incentives and interpretations.

The schedules cover the following matters: effluent limitation standards for textiles, wearing apparel, tanning and leather finishing sectors; sludge disposal permissible limit; waste generation in textile manufacturing facilities; activities requiring atmospheric emission licence; air emission guidelines and soil quality standards for textile, wearing apparel, leather an footwear industry; noise standards and best practices; list of banned and restricted chemicals; draft guide template for emergency procedures in industry; organisational system and the functions of pollution control manager(s); NESREA compliance flag award and monthly discharge monitoring report; guideline for preparing environmental management plan and certification statement.

155 This includes enforcement notices and reminder as well a suspension of permit under Regulations 41-43.

156 The offences under Regulations 44-48 include: contravention of permit condition, false statement, discharge of effluent beyond permissible level.

157 *See* Regulation 49 for details.

158 Part 8, Regulations 50-53 provide for four types of incentives.

159 *See* Regulation 54.

160 Federal Republic of Nigeria, Abuja, Regulations No. 34 of 2009, Official Gazette, Vol. 96, No. 66 dated 16th October, 2009.

161 Under Regulation 1, the purpose of these Regulations is to prevent and minimise pollution from all operations and ancillary activities from the above named industry to the Nigerian Environment.

162 Regulation 2 is to the effect that every facility shall submit to the Agency: a) an Environmental Impact Statement for new industries and major developmental projects before commencement of operations; b) an Environmental Audit Report for existing industries every 3 years; and c) an Environmental Management Plan as contained in Schedule XIV.

163 Regulations 1-26.

164 Regulation 56 defines a 'Grab Sample' as "a single sample or measurement taken at a specific time or over a short period of time as feasible".

165 Regulations 27 to 34.

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(x) National Environmental (Noise Standards and Control) Regulations, 2009[166]

The purpose of these Regulations is to ensure maintenance of a healthy environment for all people in Nigeria, the tranquility of their surroundings and their psychological well being by regulating noise levels and generally, to elevate the standard of living of the people by a) prescribing the maximum permissible noise levels a facility or activity to which a person may be exposed; b) providing for the control of noise and for mitigating measures for the reduction o noise; c) and for giving effect to the provisions of section 22 of the NESREA Act.[167]

These Regulations are structured into five parts and two schedules[168]. Parts 1 and 2 deal with permissible noise levels; noise[169] in excess of permissible levels; duty to control and mitigate noise level.[170] Parts 3 to 5 provide for matters relating to permit and its revocation for noise in excess of permissible levels; enforcement matters covering general action for noise, noise control orders, power to confiscate machinery, restitution of property, guidelines for noise from plant or machinery and codes of practice; general matters relating to exclusion from liability, offences, interpretation[171] and citation.[172]

166 Federal Republic of Nigeria, Abuja, Regulations No. 35 of 2009, Official Gazette, Vol. 96, No. 67 dated 19th October 2009.

167 *See* Regulation 1.

168 Schedule 1 deals with maximum permissible noise levels: - for general environment, from a factory or workshop, from impulsive noise, from construction site, for public announcement system or device, for places of entertainment and areas of workshop, for accelerating vehicles and from mines and quarries. Schedule 2 provides for noise improvement notice format.

169 Regulation 18 defines the term 'Noise' as any unwanted and annoying sound that is intrinsically objectionable to human beings or which can have or is likely to have an adverse effect on human health or the environment.

170 Regulations 2-6.

171 Regulation 18 defines several relevant terms such as: 'Noise pollution' means the same as "excessive noise in these regulations; 'Disturbance' means any act or instance of interrupting rest, calm, attention or quiet of another.

172 *See* Regulations 7-19.

(xi) National Environmental (Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, 2009[173]

These Regulations are divided into nine parts and fourteen schedules. Part one[174] deals with matters relating to the following: purpose[175] of regulations, planning, emergency response plan, installation of anti-pollution equipment, polluter pays principle, best practices, minimisation of wastes, pollution control organisational system, buy back or extended products stewardship programme, chemical usage, banned or restricted chemicals, permit, management of chemicals, oil and fuel dump site, equity, community relations, effluent limitations standard, restriction on the release of toxic effluent, treatment of effluent, sludge disposal, emission standards, priority air pollutants; treatment technologies for air emissions, listing of activities resulting in atmospheric emissions, noise standards an abatement, hearing conservation program and monitoring.

Part two deals with sampling procedures in respect of collection and analysis of samples; spot and composite[176] sampling for physical or chemical parameters; sampling for licence classification microbiological analysis and for other parameters; air sampling analysis and noise measurements.[177] Parts 3 to 9 provide for matters relating to procedures for licensing and permit; industrial effluent or air emission monitoring and reporting; enforcement, offences and penalty as well as incentives and interpretations.[178]

The schedules cover: effluent limitation standards, sludge disposal permissible limit; gaseous emissions guidelines for pharmaceutical, petroleum an chemical industries; soil quality and noise standards;

173 Federal Republic of Nigeria, Abuja, Regulations No. 36 of 2009, Official Gazette, Vol. 96, No. 68 dated 20th October 2009.

174 *See* Regulations 1-27.

175 By virtue of Regulation 1, the purpose of these regulations is to prevent and minimise pollution from all operations and ancillary activities from the chemicals, pharmaceuticals, soap and detergent manufacturing sector in the Nigerian environment.

176 It is defined under Regulation 54 as "a representative mixture of several different samples (usually bulk sample)".

177 *See* Regulations 28-35.

178 *See* Regulations 36-55.

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best practices; banned and restricted chemicals; guide template for emergency procedures in industry; guidelines for preparing environmental management plan an consumer products stewardship programme; activities requiring atmospheric emission licence; organisational system for pollution control; NESREA compliance flag awards and monthly discharge monitoring report.

The title and purpose of the remaining regulations are listed below:

(xii) National Environmental (Standards for Telecommunications and Broadcasting Facilities) Regulations, 2011, S.I. No. 11 Gazette No. 38, Vol. 98 of 29th April, 2011.

Purpose: to protect the environmental and human health; ensure safety and general welfare; eliminate or minimise public and private losses due to activities of the telecommunications and broadcast industry.

(xiii) National Environmental (Soil Erosion and Flood Control) Regulations, 2011, S.I. No 12, Gazette No 39, Vol. 98 of 2nd May 2011.

Purpose: to protect human life and the environment; minimise losses due to flood and erosion and their effects on vulnerable areas by controlling earth-disturbing activities.

(xiv) National Environmental (Desertification Control and Drought Mitigation) Regulations, 2011, S.I. No. 13 Gazette No. 40. Vol. 98 of 3rd May, 2011.

Purpose: 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.

(xv) National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations, 2011, S.I. No.14, Gazette No. 41. Vol. 98 of 4th May, 2011.

Purpose: to prevent and minimise pollution from all operations and ancillary activities of the sector in the Nigerian environment, especially the release of priority air pollutants.

(xvi) National Environmental (Control of Bush/ Forest Fire and Open Burning) Regulations, 2011, S.I. No. 15 Gazette No 42. Vol. 98 of 6th May, 2011.

Purpose: to prevent and minimise the destruction of ecosystem through fire outbreak and burning of any materials that may affect the health of the ecosystem through the emission of hazardous air pollutants.

(xvii) National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011, S.I. No. 15 Gazette No. 42. Vol. 98 of 6th May, 2011.

Purpose: to protect endangered species of fauna and flora; and prevent their extinction by controlling international trade in their living specimens, parts and derivatives.

(xviii) National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulations, 2011, S.I. No. 17, Gazette No 44, Vol. 98 of 10th May, 2011.

Purpose: to prevent and minimise pollution from all operations and ancillary activities of the domestic and industrial plastic, rubber and foam sector to the Nigerian environment including the control of volatile organic compounds.

(xix) National Environmental (Coastal and Marine Areas Protection) Regulations, 2011, S.I. No. 18 Gazette No 45, Vol. 98 of 13th May 2011.

Purpose: to provide the regulatory framework for preserving the natural ecological conditions of the estuarine system, barrier islands system and the beaches so as to safeguard and perpetuate their natural productivity and their biological, economic and aesthetic values.

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(xx) National Environmental (Construction Sector) Regulations, 2011, S.I. No. 19, Gazette No. 46. Vol. 98 of 17th May, 2011.

Purpose: to prevent and minimise pollution from construction, decommissioning and demolition activities to the Nigerian Environment.

(xxi) National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, 2011, S.I No. 20, Gazette No 47. Vol. 98 of 17th May, 2011.

Purpose: to control vehicular emission; and restore, preserve and improve air quality by among others, ensuring regular emission testing and maintenance of automobiles operating the road ways.

(xxii) National Environmental (Non-Metallic Minerals Manufacturing Industries Sector) Regulations, 2011, S.I. No 21 Gazette No. 48, Vol. 98 of 23rd May, 2011.

Purpose: to prevent and minimise pollution from all operations and ancillary activities of the non-metallic minerals manufacturing sector to the Nigerian environment.

(xxiii) National Environmental (Surface and Groundwater Quality Control) Regulations, 2011, S.I. No. 22, Gazette No. 49, Vol. 98 of 24th May, 2011.

Purpose: to restore, enhance and preserve the physical, chemical and biological integrity of the nation's surface and ground waters; and to maintain existing water uses.

(xxiv) National Environmental (Electrical/ Electronic Sector) Regulations, 2011, S.I. No 23 Gazette No. 50, Vol. 98 of 25th May, 2011.

Purpose: to prevent and minimise pollution from all operations and ancillary activities of the electrical/electronic sector. This Regulation covers both new and used electrical/electronic equipment (EEE/UEEE).

CONCLUSION

Having examined the justification for the establishment, mandate and powers of NESREA as well as the rationale behind the making of the twenty four regulations, it can be concluded that the new initiatives brought about by the NESREA Act are substantive, particularly with regard to its enforcement roles and provision of more realistic monetary sanctions that can help prevent destructive environmental practices in Nigeria.

Having learnt lessons from the major drawbacks of the defunct agency (FEPA), there is an identified major shift towards the enforcement of environmental standards and regulations as opposed to just creation of standards and regulations. Further, specific offences were created for breach of each aspect of the environmental standards, namely, air, water and land; prescribed penalties for violation of environmental standards were reviewed upwards as more realistic monetary fines can now be imposed; and the power of NESREA to enforce multilateral environmental treaties to which Nigeria is a party and to prohibit processes and use of equipment or technology that undermine environmental quality was introduced.

It is evident from the above review that protection of the environment and management of natural resources is a key priority for sustainable development in Nigeria. Effective implementation of both the NESREA Act and its regulations requires necessary capacity building of the agency in terms of human, technical, material and financial capacity. It further requires effective cooperation and collaboration of various stakeholders in the protection of the environment and management of natural resources in Nigeria.

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APPENDIX 1

BRIEF DESCRIPTION OF THE FOUR BROAD ENVIRONMENTAL PROBLEMS/ CHALLENGES BEING ACCORDED HIGHEST PRIORITY AT PRESENT IN NIGERIA

Ensuring Sustainable Industrial Production

Most industries, with the exception of the petroleum industry, do not have waste treatment facilities to deal with the solid waste, effluent and air emissions they generate. The few treatment plants that do exist are outdated; not functioning effectively as a result of overuse and a lack of proper servicing; and unable to cope with the vast amounts and types of industrial waste, effluents and emissions passing through them. The environmental problems associated with Nigeria's industrial sector therefore include: air pollution (gas or particle emissions), especially from cement, steel and asbestos industries; land and water pollution (effluent discharged onto land and into water has become a great concern particularly in view of the epidemic tendencies of such pollution) especially from the pharmaceutical, chemical, textile, food processing and oil industries; and noise pollution.

Preventing and Reversing Desertification

Nigeria has lost about 351,000 km^2 of its land to the desert, which is estimated to be advancing at a rate of 0.6 km^2 per year. Desertification is most prevalent in northern Nigeria, where entire settlements, and in some cases major access roads, have recently been buried by encroaching sand dunes.

Managing Forest, Wildlife and Natural Resources

Deforestation and loss of wildlife resources are problems throughout Nigeria. Deforestation affects timber production and the production of associated products such as medicines, food and paper. A ban was imposed on the export of wood obtained from natural forest in 1976. However, much of the current deforestation is the result of wood consumed for domestic purposes. The depletion of Nigeria's wildlife is an additional concern. Hunting is a major contributor to its demise and there is a dire need to protect wildlife and biodiversity by specifically providing for the protection of certain species and areas that are of scientific, recreational or aesthetic value.

Combating Floods and Erosion

Nigeria's coastal and inland soil reserves have been greatly depleted by flooding and resultant erosion, which has had severe financial consequences for many local communities. Research into methods of controlling floods and erosion is accordingly being promoted by the Government.[179]

In light of the above pressing environmental concerns, the need to use law as a vehicle in the regulation, management and protection of Nigeria's environment has become paramount.[180]

APPENDIX 2

MAIN NATIONAL ENVIRONMENTAL LAWS IN NIGERIA

- Animal Diseases (Control) Act[181]
- Bee (Import, Control and Management) Act[182]
- The Endangered Species Act[183]
- Hides and Skins Act[184]

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179 See generally, the *National Policy on the Environment* of 1999 (revised edition), at pp. 30-37.

180 On the role of law in international environmental protection, *see* P.W. Birnie and A.E. Boyle, *International Law and the Environment*, 2nd ed (Oxford: Oxford University Press, 2002), pp. 7-9.

181 Cap. A.17 *Laws of the Federation of Nigeria* (*LFN*) 2004. The main objective of the Act is to prevent the spread and introduction of infections and contagious diseases among animals, hatcheries and poultry enterprises.

182 Cap. B.6 *LFN* 2004. The Act provides that bees and agricultural materials shall be imported by licensed persons only.

183 Cap. E.9 *LFN* 2004. The Act provides for the conservation and management of wildlife and the protection of species in danger of extinction as a result of overexploitation.

184 Cap. H.3 *LFN* 2004. The Act provides for the regulation and control of the trade and export of hides and skins.

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- Live Fish (Control of importation) Act[185]
- National Crop Varieties and Livestock Breeds Act[186]
- Agricultural (Control of Implementation) Act[187]
- Agricultural and Rural Management Training Institute Act[188]
- Pests (Control of Produce) Act[189]
- Quarantine Act[190]
- Associated Gas Re-injection Act[191]
- Civil Aviation Act[192]
- Oil and Navigable Waters Act[193]
- River Basin Development Authority Act[194]
- Sea Fisheries Act[195]
- Territorial Waters Act[196]
- Exclusive Economic Zone Act[197]
- National Water Resources Institute Act[198]
- Kainji Lake National Park Act[199]
- Harmful Waste Act[200]
- Land Use Act[201]
- Minerals Act[202]
- Petroleum Act[203]
- Criminal Code Act[204]
- Energy Commission of Nigeria Act[205]

185 Cap. L.14 *LFN* 2004. The Act prohibits the importation of live fish without a permit.
186 Cap. N.27 *LFN* 2004. The Act provides for the certification, registration and release of national crop varieties and livestock breeds.
187 Cap. A.13 *LFN* 2004. The Act seeks to control the spread of plant diseases and pests; and regulates the importation of specific articles.
188 Cap. A.10 LFN 2004. The Act establishes a training institute to identify management training needs in agricultural and rural development organisations throughout the country; and provides for the development and implementation of training programs to meet the needs of managers in agriculture and rural development.
189 Cap. P.9 *LFN* 2004. The Act provides for the inspection of produce for pests before export from all air and sea ports.
190 Cap. Q.2 *LFN* 2004. The Act regulates quarantine procedures so as to prevent the introduction of infectious diseases.
191 Cap. A.25 *LFN* 2004. The Act prohibits gas flaring that will result in air and thermal pollution.
192 Cap. C.13 *LFN* 2004. The Act regulates atmospheric pollution resulting from aviation activities.
193 Cap. O.6 *LFN* 2004. The Act prohibits the discharge of oil into navigable waters.
194 Cap. R.9 LFN 2004. The Act establishes eleven river basin development authorities to undertake development of surface and underground water resources for multiple uses; especially for the control of floods and erosion and for watershed management.
195 Cap. S.4 *LFN* 2004. The Act provides for the regulation and protection of sea fisheries in territorial waters.
196 Cap. R.5 *LFN* 2004. The Act determines the limit of Nigeria's territorial waters.
197 Cap. E.17 *LFN* 2004. The Act defines the Exclusive Economic Zone of Nigeria as extending 200 nautical miles seawards from the coast and enables Nigeria to exercise its sovereign rights, especially in relation to the conservation or exploitation of the resources of the seabed, subsoil and superjacent waters.
198 Cap. N.83 *LFN* 2004. The Act establishes the National Water Resources Institute to promote and develop training programs in water resource management and to advise government on training needs and priorities.
199 Cap. 197 *LFN* 1990. The Act establishes Kainji Lake National Park for the conservation and preservation of wildlife and natural life.
200 Cap. H.1 *LFN* 2004. The Act prohibits the carrying, depositing and dumping of harmful waste on land or water.
201 Cap. L.5 *LFN* 2004. The Act vests all land in a state in the governor of that state and defines interests that can be held in land.
202 Cap. M.12 *LFN* 2004. The Act provides for environmental protection during mining activities.
203 Cap. P.10 *LFN* 2004. The Act provides for the protection of the environment during petroleum activities.
204 Cap. C.38 *LFN* 2004. The Act creates the offence of public nuisance which includes fouling of water and air.
205 Cap. E.10 *LFN* 2004. The Act establishes the Energy Commission of Nigeria to coordinate the development of Nigeria's energy resources.

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- Federal Environmental Protection Agency Act[206]
- Natural Resources Conservation Council Act[207]
- Environmental Impact Assessment Decree[208]
- The Federal Environmental Protection Agency Decree[209]
- The Nuclear Safety and Radiation Protection Decree[210]

206 Cap. F.10 *LFN* 2004. The Act establishes the Federal Environmental Protection Agency, which is charged with the responsibility for protecting and preserving the environment. It was repealed by the NESREA Act, 2007.

207 Cap. 268 *LFN* 1990. The Act establishes the Natural Resources Conservation Council, responsible for the conservation of natural resources and the formulation of a national policy for resource conservation.

208 No. E.12 LFN 2004. The Decree aims at infusing environmental considerations into development project planning and execution.

209 NESREA Act, 2007. The Act prescribes the powers and functions of the NESREA.

210 No. N.142 of 2004. The Decree regulates nuclear safety and radiation protection.

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