



## National Environmental Regulations 2009 – A New Dawn for Environmental Protection in Nigeria

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### Introduction

Nigeria's formal environmental regime has developed significantly from humble beginnings.<sup>1</sup> Having been initiated in the colonial period, during which environmental issues were generally couched within public health regulation; 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 most recent and important addition to Nigeria's environmental regime is the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, which came into force in 2007. The Act establishes the National Environmental Standards and Regulations Enforcement Agency, Nigeria's lead environmental protection agency.

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<sup>1</sup> See M. Ladan, *Materials and Cases on Environmental Law and Policy* (2004) ECONET Publishers, Zaria, Nigeria, at pp. 117-244.

Nigeria, the most populous nation in Africa, rich in oil but underdeveloped,<sup>2</sup> has its own share of environmental problems which justify local and international attention. In terms of Nigeria's environmental problems,<sup>3</sup> 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.

This country report seeks to provide an overview of the unprecedented development in Nigeria's Environmental Law by the coming into force of eleven Environmental Regulations<sup>4</sup> made by the Federal Minister of Environment on 30<sup>th</sup> September 2009.

The importance of this unprecedented development in Nigeria's Environmental law lies in its consistency with the new environmental policy thrust that is based on fundamental re-thinking and a clearer appreciation of the interdependent linkages among development processes, environmental factors as well as human and natural resources. Since development remains a top national priority, it is recognized that the actions designed to increase the productivity of the society and meet the essential needs of the populace must be reconciled with environmental standards and regulations that had hitherto been neglected and/or ignored.

In order to provide for effective enforcement of environmental standards, regulations, rules, laws, policies and guidelines by the newly established National Environmental Standards, Regulations and Enforcement Agency (NESREA),<sup>5</sup> the Minister of Environment is empowered to make regulations

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<sup>2</sup> 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.

<sup>3</sup> See generally, Federal Ministry of Environment, *National Policy on the Environment* of 1999 (Revised edition), The Presidency, Abuja, Nigeria, at pp. 30-37.

<sup>4</sup> See Federal Republic of Nigeria, Abuja, Official Gazette, Vol.96, Nos. 58-68 dated 2-20 October 2009.

<sup>5</sup> For the analysis of the NESREA Act 2007, see M. Ladan, *Law, Cases and Policies on Energy, Mineral Resources, Climate Change, Environment, Water, Maritime and Human Rights in Nigeria* (2009) Ahmadu Bello University Press, Zaria, Nigeria at pp 357-378.

for the general purposes of carrying out or giving full effect to the functions of the Agency under the NESREA Act.<sup>6</sup>

Hence, the making of the following eleven Regulations, three of which are highlighted below due to limited space. The list of the eleven regulations are: National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009; National Environmental (Watershed, Mountainous, Hilly and Catchment 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.

The decision to focus on the following three Regulations is based on: (1) the numerical order by which the eleven regulations were promulgated by the Minister of Environment; and (2) the fact that the three chosen Regulations seek to address two of the four broad environmental problems being accorded highest priority in Nigeria namely, ensuring the sustainable use of natural resources and the adoption of national sustainable and environmentally friendly practices in both industrial and general sanitation.

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<sup>6</sup> Section 34 of the NESREA Act No. 25 of 2007.

*National Environmental (Wetlands, River Banks and Lake Shores) Regulations,<sup>7</sup> 2009*

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. The various regulations<sup>8</sup> under this part address: matters relating to the application, objectives<sup>9</sup> and principles<sup>10</sup> of this part of the Regulations; an inventory of wetlands,<sup>11</sup> 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,<sup>12</sup> 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<sup>13</sup>: - the application, objectives<sup>14</sup> and principles<sup>15</sup> of this Regulation; identification of river banks and lake shores,<sup>16</sup> registration of degraded river banks and lake shores,<sup>17</sup> 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).

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<sup>7</sup> Regulations No. 26 of 2009, Vol. 96, No. 58, Official Gazette.

<sup>8</sup> Regulations 1-14.

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> See First Schedule to regulation 4.

<sup>12</sup> 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'.

<sup>13</sup> Regulations 15-27.

<sup>14</sup> Regulation 16.

<sup>15</sup> Regulation 17.

<sup>16</sup> Regulation 18.

<sup>17</sup> See the Fourth and Fifth Schedules to regulations 19, 25 – 26 for the 47 rivers and 4 lakes listed.

Part three covers miscellaneous provisions<sup>18</sup> relating to EIA, environmental restoration orders, offences and penalties, appeals and interpretation as well as citation. The first to fifth schedules provide for 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.<sup>19</sup>

*National Environmental (Watershed, Mountainous, Hilly and Catchment Areas) Regulations,<sup>20</sup> 2009*

These Regulations are structured into three parts and three schedules. The first part provides for the regulations on Watersheds,<sup>21</sup> Mountainous,<sup>22</sup> Hilly<sup>23</sup> and Catchment areas<sup>24</sup> 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,<sup>25</sup> afforestation and reforestation as well as grazing of livestock.

The second part deals with miscellaneous provisions relating to offences, penalties and appeals.<sup>26</sup> The third part of this Regulation covers general matters of interpretation, citation and schedules.<sup>27</sup> Schedules 1-3 deal with the request and application formats for registration and permits to carry out

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<sup>18</sup> Regulations 28-34.

<sup>19</sup> See First to Fifth Schedules to regulations 4, 8, 9, 19-20 and 25-26.

<sup>20</sup> Regulations No. 27 of 2009, Vol.96, No. 59.

<sup>21</sup> Under regulation 12, the term 'watershed' means the total land area that drains directly or indirectly into a particular stream or river.

<sup>22</sup> Ibid. 'Mountain area' means an area with steep elevation with a restricted summit area projecting 600 meters or more above the surrounding land.

<sup>23</sup> Ibid. '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 meters but not up to 600 meters above the surrounding land.

<sup>24</sup> Ibid. '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.

<sup>25</sup> Ibid. '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.

<sup>26</sup> Regulations 10-11.

<sup>27</sup> Regulations 12-14.

activities in watersheds, mountainous, hilly and catchment areas. These Regulations set out to achieve the following objectives:<sup>28</sup>

- 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 minimize significant risks and damage to ecological and landscape aspects;
- The Agency to control activities which are inconsistent with good land management practices.

*National Environmental (Sanitation and Wastes Control) Regulations,<sup>29</sup> 2009*

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 minimize pollution.<sup>30</sup> The Regulations apply<sup>31</sup> 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.<sup>32</sup>

Part two deals with environmental sanitation matters relating to general cleanliness, duties of owners and occupants of properties and premises,

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<sup>28</sup> Regulation 1.

<sup>29</sup> Regulations No. 28 of 2009, Vol. 96, No. 60.

<sup>30</sup> Regulation 2.

<sup>31</sup> Regulation 1.

<sup>32</sup> For the definitions of all categories of wastes listed, see Regulation 107, part 7.

citizens' obligations, extended producer's responsibility, the polluter pays principle and banned pesticides or chemicals for domestic fumigation.<sup>33</sup>

Part three provides for detailed provisions on the control of solid waste, effluent discharge, and hazardous and health care wastes.<sup>34</sup>

In order to ensure the implementation at all levels of government of the NESREA Act, the National Environmental Sanitation Policy and Guidelines;<sup>35</sup> 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 emphasizing the need for strategic cooperation and collaboration.<sup>36</sup>

Part five seeks to ensure effective implementation of these Regulations and 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.<sup>37</sup>

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 harmonization and implementation as contained in schedule 8 to these Regulations.<sup>38</sup>

While part seven defines all the relevant key terms in the Regulations, Schedules 1 to 18 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, on permissible limits for waste water

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<sup>33</sup> Regulations 3-22.

<sup>34</sup> Regulations 23-62.

<sup>35</sup> Of 2005. See Ladan (n.1) at p.481.

<sup>36</sup> Regulations 63-65.

<sup>37</sup> Regulations 66-104.

<sup>38</sup> Regulation 105.

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.<sup>39</sup>

## **Conclusion**

It is evident from the above review that protection of the environment and management of biodiversity are key priorities for sustainable development in Nigeria. Effective implementation of both the Act and its Regulations will however require capacity building in its human, technical, material and financial sense. It will further require the effective cooperation and collaboration of various stakeholders in the protection of the environment and management of natural resources in Nigeria.

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<sup>39</sup> 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.