

**NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT  
AGENCY  
(NESREA) ACT - A REVIEW\***

**I. Introduction**

On 17 May, 2007 and 30 May, 2007, the Nigerian Senate and the House of Representatives, respectively, passed the National Environmental Standards and Regulations Enforcement Agency (Establishment) Bill, 2007. On 30 July, 2007, the Nigerian President, Umaru Musa Yaradua, assented to the Bill, thus heralding the new law on environmental protection, hereinafter called the NESREA Act, 2007<sup>1</sup>.

It is worthy of note that the NESREA Act repealed the Nigerian flagship law on the environment ie the Federal Environmental Protection Agency Act (FEPA Act)<sup>2</sup>. Consequently, the NESREA Act has become the primary law on environmental protection while the new Agency has replaced the old Agency.

In light of this development, our effort here will focus on a review of this new law with a view to highlighting its vital provisions and their vitality in the crusade for a healthier and safer Nigerian environment.

Part II will focus on the establishment of the Agency charged with “the protection and development of the Nigerian environment and related matters,”<sup>3</sup>

Part III will focus on the composition of the Council and its role within the Agency. Part IV will focus on the structure of the Agency and their respective areas of specialization. Part V will focus on the enforcement powers of the Agency while Part VI will conclude.

**II Establishment of the Agency.**

The NESREA Act<sup>4</sup>, we stated earlier, established a corporate entity known as the National Environmental Standards and regulations Enforcement Agency<sup>5</sup>. The Act also charged the Agency with the enforcement of environmental standards, regulations, rules, laws, policies and guidelines.<sup>6</sup>

As a corporate entity<sup>7</sup>, the Agency is endowed with perpetual succession and a common seal<sup>8</sup>. Pursuant to its responsibilities, it may sue and be sued in its corporate name.<sup>9</sup>

Section 2 of the Act which covers the objectives of the Agency provides as follows

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*The Agency, shall, subject to the provisions of this Act, have responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigerian’s natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and*

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1 The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, No. 25. the Act officially commenced on 30 July, 2007

2 Section 36, NESRE Act expressly repealed the FEPA Act cap F 10 LFN, 2004.

3 Ibid, note 1

4 Supra

5 Ibid, section 1 (1)

6 Ibid, section 2 (a)

7 Ibid, section 2 (b)

8 Supra

9 Ibid, section 2 (c)

*outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.*

The Agency is armed with a wide range of powers with a view to making its operations more effective. In the sphere of environmental protection, the Agency can “prohibit processes and use of equipment or technology that undermine environmental quality”,<sup>10</sup> it can also “conduct field follow-up compliance with set standards and take procedures prescribed by law against any violator”,<sup>11</sup> The Agency is empowered to establish mobile courts to expeditiously dispense cases of environmental infringements.<sup>12</sup> However, this has to be done with the ‘relevant judicial authorities’ as well as in consonance with the Nigerian Constitution<sup>13</sup>. The Agency can conduct public investigations<sup>14</sup> and make proposals to the Minister for the review of existing guidelines, regulations and standards on environment<sup>15</sup>.

It can develop environmental monitoring networks, and compile environmental data from other sectors, except the oil and gas sector<sup>16</sup>. In partnership with the public or private agencies, institutions and organizations, it can promote the expansion of research experiments, surveys and studies.<sup>17</sup> With the approval of the Minister, the Agency can “establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation’s air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation’s environment and natural resources.”<sup>18</sup> Through publications and other appropriate means, the Agency can collect and make available basic scientific data on environmental standards<sup>19</sup>. For their services, the Agency is empowered to charge fees.<sup>20</sup>

It is pertinent to note that the powers of the Agency do not extend to environmental issues arising from the oil and gas sector.<sup>21</sup> In other words, the Agency lacks jurisdiction over environmental matters emanating from the oil and gas sector. Also noteworthy is the fact that although the Agency has a Director General as the Chief Executive Officer,<sup>22</sup> it still remains, like its predecessor (FEPA), a parastatal within the Federal Ministry of Environment, Housing and Urban Development.<sup>23</sup> The Minister in charge of the Ministry enjoys an overriding authority over the Agency and its functions.<sup>24</sup>

### **III Establishment Of The Council**

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10 Ibid, section 8 (d)

11 Ibid, section 8 (e)

12 Ibid, section 8 (f)

13 Supra

14 Ibid, section 8 (g)

15 Ibid, section 8 (k)

16 Ibid, section 8 (l)

17 Ibid, section 8 (m)

18 Ibid, section 8 (o)

19 Ibid, section 8 (p)

20 Ibid, section 8 (q)

21 Ibid, section 8 (g) (k), (n), (s)

22 Ibid, section 11 (1), (2)

23 See sections 3 (1) (e), 5 (1) (b), 5 (3), 8 (i), 8 (k), etc

Federal Environmental protection Agency (FEPA) was merged into the federal Ministry of Environmental by virtue of the Presidential Directive Ref. No SGF 5/5/221 of October 12, 1999; referenced in Fagbohun, O. Reappraising the Nigerian Constitution for Environmental Management, (2002) 1 (1) A.A.U Law Journal, Vol, I No 1, 44

24 See sections 3(1) (e), 3 (2), 5(1) (5(3), 11(1), 33 and 34b)

The supreme organ of the Agency is the Governing Council or “Council”<sup>25</sup>. The functions of the Council include responsibility for the appointment, promotion and discipline of the staff of the agency.<sup>26</sup> The Council acts in an advisory capacity with regard to the agency’s financial, operational and administrative matters.<sup>29</sup> When necessary, the Council can establish committees to carry out specific functions on behalf of the Agency.<sup>28</sup> As a body, the Council can encourage and promote activities that could facilitate the functions of the Agency <sup>29</sup>, as well as the activities directed by the Minister,<sup>30</sup>

### **Composition**

The Council is composed of fourteen (14) members drawn from the major stakeholders in the environmental sectors covering both the public and private sectors.<sup>31</sup>

The head of the Council is entitled a “Chairman”, appointed by the President on the recommendation of the Minister<sup>32</sup>. Other members include the Permanent Secretary of the Federal Ministry of Environment or his representative,<sup>33</sup> a Director representative from the Federal Ministries of Solid Minerals Development<sup>34</sup>; Agriculture and Natural Resources <sup>35</sup>; Water Resources <sup>36</sup>; and Science and Technology.<sup>37</sup>

Others are representatives of the Standards Organization of Nigeria, <sup>38</sup> Manufactures’ Association of Nigeria<sup>39</sup>, Oil Exploratory and Production Companies in Nigeria <sup>40</sup>, as well as the Director General of the Agency <sup>41</sup>. The Minister appoints four additional members; three appointees representing public interest<sup>42</sup> and one appointee representing any stakeholder body<sup>43</sup>.

All Council members shall serve for four years and shall be eligible to be reappointed for one more term, except the Director – General<sup>44</sup>.

However, the Council membership shall be on part –time basis with the exception of the Director – General<sup>45</sup>. They shall be compensated for their services by the payment of allowances, emoluments and benefits<sup>46</sup>.

There are three principal ways that a member may cease to serve on the Council<sup>47</sup>. First is if the member voluntarily resigns by giving the Minister a written notice<sup>48</sup>. What is not clear is whether the notice should be for a minimum number of

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25 Ibid, section 3(1)  
26 Ibid, section 9 (a)  
29 Ibid, section 9(b)  
28 See sections 9 (c)  
29 Ibid, section 9 (d)  
30 Ibid, section 9 (e)  
31 See sections 3 (1) (a) (b) (c) (d) (e) and 3 (2)  
32 Ibid, section 3 (1) (a)  
33 Ibid, section 3 (1) (b)  
34 Ibid, section 3 (1) (c) (i)  
35 Ibid, section 3 (1) (c) (ii)  
36 Ibid, section 3 (1) (c) (iii)  
37 Ibid, section 3 (1) (c) (iv)  
38 Ibid, section 3 (1) (c) (v)  
39 Ibid, section 3 (1) (c) (vi)  
40 Ibid, section 3 (1) (c) (vii)  
41 Ibid, section 3 (1) (d)  
42 Ibid, section 3 (1) (e)  
43 Ibid, section 3 (2)  
44 Ibid, section 3 (4)  
45 Ibid, section 3 (3)  
46 Ibid, section 3 (6)  
47 Ibid, section 5  
48 Ibid, section 5 (1) (b)

time, whether the Minister must accept the notice before it becomes effective, or whether the date of the notice serves as the official date of resignation<sup>49</sup>. Second method of cessation of Council membership is by the termination of the Minister subject to the approval of the President<sup>50</sup>. The Minister in exercise of this power must have made a *prima facie* case that the continuation of such membership is contrary to the best interest of the Agency, and must notify the affected member in writing<sup>51</sup>.

Third method arises when the Council makes a recommendation to the Minister to remove a member “on the grounds of misconduct or inability to perform the functions of his office”<sup>52</sup>. However, before the Minister can so act, the Minister must first make “such enquiries as he considers necessary”<sup>53</sup>. After which, and if he is satisfied, the Minister shall declare the membership office vacant in writing.<sup>54</sup>

## **V Structure Of The Agency**

The Agency consists of five Directorates,<sup>55</sup> headed by a Director.<sup>56</sup> Of the five, two are service Departments ie Directorate of Administration and Finance<sup>57</sup> and the Directorate of Legal Services<sup>58</sup>

The remaining three are technical Departments ie the Directorate of Planning and Policy Analysis,<sup>59</sup> the Directorate of Inspection and Enforcement,<sup>60</sup> and the Directorate of Environmental Quality Control.<sup>61</sup> The Director in charge of the legal services Directorate shall also serve as the Legal Adviser to the Agency.<sup>62</sup>

The Agency is empowered to establish zonal offices in the six (6) geopolitical zones of the country.<sup>63</sup> Further, the Agency may create more departments, units or offices in any part of the Federation, as it deems necessary.<sup>64</sup>

## **Staff**

The Director-General of the Agency shall be appointed by the President on the recommendation of the Minister of Environment, Housing and Urban Development.<sup>65</sup> As we stated earlier, the Director –General shall be the Chief Executive and Accounting Officer of the Agency.<sup>66</sup> Accordingly, the DG shall be responsible for the day – to- day Administration of the Agency.<sup>67</sup>

In order to qualify to be appointed as DG, the candidate for the office must have a minimum of 15 years of postgraduate experience in environmental management or related discipline and also possess a good working knowledge of the environment.<sup>68</sup> The

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49 Supra  
50 Ibid, section 5 (1) (b)  
51 Supra  
52 Ibid, section 5(2)  
53 Ibid, section 5 (3)  
54 Supra  
55 See sections 10 (1) (a) (b) (c) (d) and (e)  
56 Ibid, section 10 (2)  
58 See, sections 10 (1) (e)  
59 Ibid, section 10 (1) (b)  
60 Ibid, section 10 (1) (c)  
61 Ibid, section 10 (1) (d)  
62 Ibid, section 10 (3)  
63 Ibid, section 10 (5)  
64 Ibid, section 10 (6)  
65 Ibid, section 11 (1)  
66 Ibid, section 11 (2) (a)  
67 Ibid, section 11 (2) (b)  
68 Ibid, section 11 (2) (c)

tenure of office of the DG shall be four (4) years and can be re-appointed for a maximum of another four years.<sup>69</sup>

Other members of staff shall also be appointed by the Agency.<sup>70</sup> While the DG shall solely appoint the junior staff,<sup>71</sup> the senior staff shall be appointed with the approval of the Council.<sup>72</sup> Similarly, the promotion of the junior staff as recommended by the Junior Staff Committee shall be approved solely by the DG,<sup>73</sup> while that of the senior staff as recommended by the Senior Staff Committee shall be approved by the Council.<sup>74</sup>

Employment in the Agency is subject to the Pension Reform Act<sup>75</sup> and the officers and staff are eligible to pensions and other retirement benefits.<sup>76</sup> The Agency may, however, appoint a staff without the pension entitlement.<sup>77</sup>

## **V Enforcement Powers Of The Agency**

Part II of the NESREA Act contains the enforcement powers of the Agency which can be deduced from its statutory functions<sup>78</sup> and its statutory powers.<sup>79</sup> The statutory functions of the Agency will be meaningless if not complemented with the effective tools for enforcement ie the statutory powers. Indeed, the powers of enforcement inject life and meaning into the lofty ideals framed as functions.

- Section 7 enumerates the functions of the Agency as follows <sup>80</sup> \_\_\_\_\_
- (a) enforce compliance with laws, guidelines, policies and standards on environmental matters;
  - (b) coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;
  - (c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous waste, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
  - (d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;
  - (e) enforce compliance with guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of the Nigeria's natural resources;
  - (f) enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof ;
  - (g) 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;

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69 Ibid, section 11 (2) (d)

70 Ibid, section 11 (3)

71 Ibid, section 11 (4)

72 Supra

73 Ibid, section 11 (6)

74 Ibid, section 11 (7)

75 Ibid, section 12 (1)

76 Supra

77 Ibid, section 12 (2)

78 See section 7 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) and (m)

79 See sections 8 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) and (s)

80 Ibid, Note 78

- (h) 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;
- (i) ensure that environmental projects funded by donor organizations and external support agencies adhered to regulations in environmental safety and protection;
- (j) enforce environmental control measures through registration, licencing and permitting systems other than in the oil and gas sector;
- (k) conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
- (l) create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions;
- (m) carry out such activities as are necessary or expedient for the performance of its functions.

Section 8 enumerates the powers of the Agency<sup>81</sup>. Some of the pertinent ones we have highlighted earlier under part II dealing with the Establishment of the Agency. In the same vein, it is worthy of note that the chief enforcer under the Act is an “officer” of the Agency.<sup>82</sup> A reasonable interpretation, in the light of the usage of “authorized authorities or officer” in other sections of the Act is that in addition to the Agency official, any Police officer not below the rank of Inspector of Police or any Custom officer can enforce the Act.<sup>83</sup>

Such officer, with a Court warrant, can enter and search any premises he reasonably believes is used to contravene environmental standards or legislation.<sup>84</sup> In conducting the search, the officer is authorized to examine any article,<sup>85</sup> take a sample or specimen of any article,<sup>86</sup> open and examine any container or package,<sup>87</sup> examine any book, document or other record.<sup>88</sup> The officer may also seize and detain any article,<sup>89</sup> and can obtain a court order to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water.<sup>90</sup>

Obstruction of an officer under if the Act carries a stiff penalty.<sup>91</sup> If the obstruction is caused by an individual, upon conviction he is sentenced to a minimum fine of ₦ 200,000 or to a maximum imprisonment of one year or to both fine and imprisonment, and an additional fine of ₦ 20,000 for each day the offence continues<sup>92</sup>. If the obstructor is a corporate body, it shall, upon conviction, be liable for a fine of ₦2, 000,000, an additional fine of N200,000 for each day the offence continues<sup>93</sup>.

#### **IV Conclusion**

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81 Ibid, Note 79

82 See section 30 (1)

83 See section 37 on the interpretation of the Act

84 See Part VII of the Act on the Powers to enter premises, section 30 (1) (a)

85 Ibid, section 30 (1) (b)

86 Ibid, section 30 (1) (c)

87 Ibid, section 30 (1) (d)

88 Ibid, section 30 (1) (e)

89 Ibid, section 30 (1) (f)

90 Ibid, section 30 (1) (g)

91 See section 31 on offences and penalties

92 Supra

93 Supra

The NESREA Act enjoys the preeminent role of the flagship legislation on environmental law in Nigeria, having repealed and replaced both the FEPA Act and Agency<sup>94</sup>. The new legislation has, no doubt, improved upon the shortcomings inherent in its predecessor Act.

Some of the features of the new legislation which were absent in the predecessor legislation include the appointment of a Director – General as the Chief Executive and Accounting Officer<sup>95</sup>, the establishment of the five Directorates headed by a Director<sup>96</sup>, the increase of the penalties for obstruction of an officer under the Act<sup>97</sup>. The mandate for the Agency to establish offices in the six geo – political zones in the country<sup>98</sup> is indicative of the realization by the legislature that the real impact of enforcement under the Act must be extended to the rural areas.

**NESREA** has set a short-term strategy as follows<sup>99</sup> \_\_\_\_\_

1. Review and Evaluation of Environmental Regulations and Standards;
2. Institutional Strengthening and Capacity Building;
3. Data Base Development and Cadastral Mapping; and
4. Environmental Education and Awareness Creation.

**NESREA's** medium term strategy is as follows<sup>100</sup>

1. Encouragement of voluntary compliance through public enlightenment and outreach programme;
2. Development of appropriate environmental standards and regulations enforcement Master Plan for the Country; and
3. Mainstreaming of the Master Plan in all national development agenda

**NESREA's** long-term strategy is the implementation of the Master Plan<sup>101</sup>.

Time shall tell how well the Agency meets these self – imposed targets in the larger context of ensuring that the Nigerian environment is cleaner and healthier.

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94 Note 2

96 Note 55 and 56

97 Note 91, 92 and 93

98 Note 63

99 See the pamphlet published by the Agency and visit their website at [www.nesrea.org](http://www.nesrea.org)

100 Supra