

# **An Analysis of the National Environmental (Sanitation and Wastes Control) Regulations, 2009 and the Challenges of its Implementation in Nigeria**

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## **Abstract**

*One of the important aspects of pollution control is waste management. Waste Management has assumed great importance in the context of growing affluence and rapid industrial development in urban areas in Nigeria. Waste if left unmanaged, would lead to degradation of the environment and would affect not only the ecological processes but also injure public health. Among the many measures of waste management are prevention, reduction, control, disposal, treatment and monitoring. These measures are found in various statutes and regulations dealing with waste management. Using doctrinal method, this research analysed the National Environmental (Sanitation and Wastes Control) Regulations, 2009 and the challenges of its implementation. The findings were the lukewarm attitude towards ensuring full compliance with the letters of the Regulations by the members of the public, inadequate human and institutional capacity, poor information exchange and feedback mechanism, inadequate budgetary allocations, etc. The research therefore made far reaching recommendations including adoption of (a) waste management strategies that should include public support and participation; (b) a holistic approach to minimise the generation of waste by encouraging efficient technology and reducing packaging; (c) providing incentives for recycling and reuse of materials; and (d) by setting strict environmental controls for disposing of wastes.*

**Key Words:** Sanitation, Wastes, Wastes Management, Regulations, Challenges

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## 1. Introduction

The in famous toxic waste dumping at Koko port, a small town in Delta State in 1988 revealed the inadequacy in Legal Framework and Regulations for Environmental Protection and Management in Nigeria. One good thing about the incidence is the spontaneous manner with which the Federal Government of Nigeria reacted to the issue by enacting legal instruments to preserve and protect the Nigerian environment. First was the Promulgation of the Harmful Wastes (Special Criminal Provisions, etc) Decree No. 42 of 1988,<sup>1</sup> followed by the establishment of the Federal Environmental Protection Agency (FEPA) by Decree No. 58 of 1988.<sup>2</sup> This later Act was repealed by the National Environmental Sanitation Standards and Regulation Enforcement Agency (Establishment) Act, 2007.<sup>3</sup>

By virtue of the powers conferred on the Minister of Environment by Section 34 of the Act, the Minister of Environment in September 2009, made the National Environmental (Sanitation and Wastes Control) Regulations, 2009. The Regulations was made to apply to issues in environmental sanitation and all categories of wastes in all parts of Nigeria.<sup>4</sup> The purpose of the Regulations as stated in Regulations 2 is the adoption of sustainable and environment friendly practices in environmental sanitation and waste management to minimize pollution.

The basis for national legal and regulatory arrangement for environmental protection turns up to be that it is imperative to develop and implement integrated and effective laws and regulations that are based upon sound socio-economic, ecological, scientific and international principles.

## 2. Background to the Study

The concept of waste has been variously used and applied to different things under different circumstances by different persons in different climes. However, in whatever area it is used, it carries with it a negative connotation of something that is not good. Waste is a phenomenon of human existence which is synonymous with human activities and the environment. Thus, waste is generated as a result of man's incessant activities in the environment.

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1. Now Cap. H1 LFN 2004

2. Now Cap. F10 LFN 2004

3. See NESREA, 2007, section 36

4. See Regulation 1

Waste management entails the collection, transport, processing, recycling or disposal of waste or unwanted materials usually ones produced by human activities in an effort to reduce their effect on human health and the environment. Waste management and control admits of different methods for different nations. This depends on the types of legal framework, level of scientific and technological knowhow, etc. Thus, management practices of waste differs for developed and developing nations, for rural and urban centres, for industrial, residential or commercial areas.

The governments of Nigeria at all levels are trying within the scope of their duties to tackle the menace of waste generation in the country. This is because generally environmental problems present high risk avenues for human health and environmental development. Therefore, even though waste management and control entails huge financial commitments, government is employing various method to tackle the problems including the use of legal frameworks and policies.

In Nigeria, waste disposal and management system is poorly developed and the little available methods are outmoded and poorly managed. On the whole, domestic, industrial and commercial waste poses a lot of problem for the environment and human health in Nigeria in the form of health disorders, domestic hazards arising from rodents, snake bites, wild reptiles and scorpions emanating from the dumped sites which are poorly managed and are insecured. In this paper therefore, the legal framework for waste management and control in Nigeria with particular emphasis on the National Environmental (Sanitation and Wastes Control) Regulations, 2009 was critically examined with the view to assess its adequacy, effectiveness and how the legislation is being implemented and the aftermath on the environment. The scope of the paper is limited to solid waste management and control. Therefore, other aspects of the Regulations regarding control of effluent discharge, hazardous waste control and health care waste (HCW) control are not within the scope of this paper. In a nutshell, the focus of this research is on the appraisal of the nature of offences and liabilities together with the challenges associated with the enforcement and implementation of the National Environmental (Sanitation and Wastes Control) Regulations, 2009.

### 3. Conceptualising Wastes and Wastes Management

Waste has no generally acceptable definition. This stems from the fact that the dominant attributes in the concept of waste, namely, “unwanted and value” are relative context wise. Thus, one person’s waste might be another person’s raw material or one person’s valuable material might be another person’s unwanted material. By and large however, environmental law imbibes the natural ordinary meaning of waste which implies that waste is any material or substance that is unwanted and is therefore discarded or disposed of by the owner as useless or valueless.<sup>5</sup>

Waste is defined in various statutes. By section 32 of the Lagos State Environmental Sanitation Law, 1985 waste means (a) waste of all description; (b) any substance which constitutes scrap material or an effluent or other unwanted surplus substance arising from the application of any process.<sup>6</sup> Under the Environmental Public Health Act, 1993 (Singapore) waste is defined in section 2 as including:

- (a) Any substance which constitutes a scrap material or an affluent or other unwanted surplus substance arising from the application of any process; and
- (b) Any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled, and for the purposes of this act anything which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.

Note that there is a distinction between ordinary waste and toxic industrial waste which owing to its nature, composition or quantity, constitutes a danger to human health or the environment or which contains or may produce pathogens or transmissible diseases.

There are two main types of waste namely: (i) Solid and (ii) Liquid Substances, generally known as “Wastewater” (which includes a combination thereof such as affluent wastes). These wastes are classified into domestic, trade, commercial and industrial. Such classification is useful for the purpose of Management; for example, different levies apply in respect of their disposal. This

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<sup>5</sup>. See Esa Onoja “An Appraisal of the Definition of Waste in Environmental Law”. African Journal of Environmental law and Development Studies (AJEDS) Vol.1 part 1, June, 2005

<sup>6</sup>. See also Section 75(2) of the United Kingdom Environmental Protection Act, 1990

encourages waste minimization. The classification is also important for handling, storage, transport and disposal.

Solid wastes are material that contain less than 70% water. These include such items as household garbage, industrial waste, construction and demolition debris, waste from mining sites, sanitation residue and waste arising from littering behaviours. With upsurge in rural-urban drift resulting in urbanization, a change in lifestyle and food/habits, the amount of municipal solid waste has been increasingly rapid and its composition changing. Steady growth in intrinsic and the consumer habit has led to products being packaged in cans, aluminum foils, plastics and other such biodegradable materials which cause unpleasant sight and harm to the environment.

Prominent examples of solid waste in Nigeria are the so called agricultural waste which in most cases are seasonal. These include maize comb, groundnut and rice husk, orange peels, left over mangoes, tomatoes and vegetable that litter the markets and streets of major towns and cities in the country. Included in this category of solid wastes are domestic wastes and e-wastes that have now characterised the environmental scene of Nigeria.

Waste Management means the collection, keeping, treatment and disposal of wastes in such a way as to render it harmless to human and animal life, and environment. It involves the after care of sites and equipment used in the management of wastes as well as employment in industries or technologies that are designed to ensure maximum environmental safety in the operation of industries.

The consequences of improperly managed wastes transcends degradation of the environment. It includes serious health hazards to human life. It could also lead to the destruction of organisms and animal species.

#### **4. Legal Framework for Wastes Management in Nigeria**

The first major legislation for the protection of environment in Nigeria that was applicable to the entire federation was the Federal Environmental Protection Agency (FEPA) Act, 2004. This Act was repealed by section 36 of the National Environmental Standards Regulations and Enforcement Agency (Establishment) Act, 2007.<sup>7</sup> This new Act, established a new agency known as National Environmental Standards and Regulation Enforcement Agency

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<sup>7</sup>. NESREA, Act No. 25 of 2007.

(NESREA). The Agency took over the duties of FEPA as a national environmental regulator in Nigeria. Thus, part I of the NESREA Act, 2007 provides for the establishment and membership of the Agency. The Agency is vested with the responsibility of catering for the Nigerian environment. Section 2 of the Act States that:

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 Nigeria's natural resources in general and environmental technology, including co-ordination with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

The Act in section 7(g) further provides that the Agency shall "enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and wastes other than in the oil and gas sector.

By this provision, the Agency is to ensure that any individual of corporation involved in any activity where any hazardous chemicals and waste is to be imported, exported, produced, distributed, stored, sold, used, handled or disposed, must comply with the laws and regulations guiding such act. In other words, the level and extent of damage that would be done to the environment when such hazardous chemical and waste is handled or disposed of in the country must be made known to the Agency. The essence is to enable the Agency develop the best method to handle or dispose such waste in order to minimise the effect of such disposal on the environment.

Section 34 of the NESREA Act, 2008 empowered the Minister in charge of environment to make regulations generally for the purpose of carrying out or giving full effects to the functions of the Agency. This power was exercised leading to the enactment of the National Environmental (Sanitation and Waste Control) Regulations, 2009. Part I, especially Regulation 2 provides that 'the purpose of these Regulations is the adoption of sustainable and environment friendly practices in environmental sanitation and waste management to minimise pollution.'

To facilitate the implementation of the Regulations, the Agency was given same roles and responsibilities to carry out. Thus, by Regulation 63, the Agency shall:

- (a) ensure the implementation of the provisions of the National Environmental Sanitation Policy and Guidelines at all levels of Government;
- (b) enforce compliance with the provisions of these Regulations;
- (c) issue permits as prescribed in the relevant regulations of these Regulations;
- (d) ensure compliance with conditions of the permits as contained in the relevant schedules;
- (e) establish strategic alliance with other Federal Ministries, Departments and Agencies (MDAs), States, Local Government Areas (LGAs) and other relevant stakeholders;
- (f) ensure that the waste management facilities comply with the Environmental Impact Statement (EIS);
- (g) embark on intensive environmental education and awareness campaign on sound environmental sanitation and waste management;
- (h) develop and publicise set standards for environmental sanitation, waste management and equipment procurement and maintenance;
- (i) develop and periodically review the Regulations, Standards and Guidelines on Environmental Sanitation and Waste Management;
- (j) initiate and institutionalize extended product programme with emphasis on 'buy back' initiative;
- (k) establish data bank on environmental sanitation and waste management;
- (l) be responsible for the monitoring of five-star hotels;
- (m) ensure that the States and Local Governments make provisions for land for waste management facility;
- (n) provide technical assistance to States and Local Governments; and
- (o) ensure safe and sustainable control of waste generated by specialized agencies.

Under Regulation 64, States, shall establish sanitation and integrated waste management programmes and ensure the provision and maintenance of (a) abattoirs; (b) adequate toilets and urinals in public places; (c) waste receptacles in the streets and premises of all

kinds; (d) sites for development of waste management facilities in Local Government Areas. The responsibilities of the States is expanded in Regulation 64 (2) which is to the effect that the States shall:

- (i) ensure clearance of litter and refuse from designated dumps sites;
- (ii) be responsible for the registration and monitoring of three and four star hotels;
- (iii) ensure that large and medium scale food premises comply with relevant guidelines;
- (iv) register Municipal and Health Care Waste Collectors;
- (v) register Integrated Pest and Vector Management Outfits; and
- (vi) ensure compliance with the provisions of these Regulations.

The Responsibilities of Local Government Councils are stated in Regulation 65. Accordingly, all Local Government Councils shall ensure the provision and maintenance of:

- (a) sanitary slaughter houses;
- (b) toilets and urinals in public places; and
- (c) waste receptacles in the streets, premises of all kind and public places.

To this end, the Local Government Councils shall:

- (i) be responsible for the clearing of litter and waste on the highway;
- (ii) be responsible for the registration and monitoring of one and two stars hotels including small scale food premises;
- (iii) ensure that small scale food premises comply with guidelines;
- (iv) register Municipal and Health Care Waste Collectors;
- (v) register Integrated Pest and Vector Management Outfits; and
- (vi) ensure compliance with the provisions of these Regulations.<sup>8</sup>

To effectively implement the provisions of the Regulations, the Regulation made provision for strategic alliance programmes. Thus, by Regulation 66, in order to ensure effective implementation of these Regulations and promote stakeholder involvement in environmental sanitation, the following programme shall be implemented by governments in collaboration with the public and the private sector under the strategic alliance programme: (a) waste minimisation programme; (b) Extended producers Responsibility

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<sup>8</sup>. See Regulations 65(2)



Programme; (c) Plastic Film Phase-out Programme; (d) Hazardous Waste Management Programme; (e) Waste Management Enlightenment Programmes (Information, Education and Communication); (f) Research and Development Programme on Environmental Sanitation (g) National waste or sanitation Databank.

**a. Nature of Solid Wastes control under the Regulations**

Part Three of the Regulations provides for waste control. The part is divided into four sections, namely solid waste control; control of Effluent discharge; Hazardous Waste Control and Health Care Waste (HCW) control. The scope of this paper is limited to solid waste control as contained in Regulations 23 – 34. In order to control solid waste in Nigeria, Regulation 23 states that all owners or occupiers of premises shall provide waste receptacles for storage of waste generated by them before collection by licensed waste managers. It is therefore the responsibility of any person who owns or controls a facility or premises which generates waste to reduce, re-use and recycle waste to minimize pollution. This can be done by adopting any or all of the following measures:

- (a) imbibe cleaner production principles to conserve raw materials and energy;
- (b) segregate wastes at source;
- (c) undertake resource recovery, re-use and recycling; and
- (d) ensure safe disposal.<sup>9</sup>

Under Regulation 25, it is the responsibility of a licensed waste manager to undertake waste collection at the designated points and at scheduled time or period in line with the waste collection and transportation guidelines provided in schedule 7 to these Regulations. In transporting waste, the licensed manager shall ensure:

- (a) waste is collected from designated area of operations and delivered to the designated transfer station, disposal site or plant;
- (b) the collection and transportation of waste is conducted in such a manner that will not cause scattering, escaping or flowing out of the waste; and
- (c) the vehicles and equipment for the transportation of waste are in such a state that shall not cause the scattering, escaping, flowing

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<sup>9</sup>. See Regulation 24

out of the waste or the emission of noxious smells, fumes or smoke from the waste.

This part also provide for product stewardship programme and general obligation to prevent pollution of the environment by industrial establishment. Accordingly, all manufacturers and importers of various brands of products specified in Schedule 8 shall, by the provisions of Regulation 32:

- (a) register with the Agency;
- (b) undertake buy back of containers for recycling;
- (c) embark on individual or collective products stewardship programme as contained in schedule 9 to these Regulations; and
- (d) support the Environmental Education and Awareness Programme of the Agency.

The materials amenable to extended producers responsibility programme as provided for in Regulation 32 include: plastic materials, used tyres, E-waste, newsprint and papers, batteries, metals, cans or tins, glass, refrigerators and asbestos' waste.

Every waste management facility shall install at its premises anti-pollution technology for the treatment of waste emanating from such business or industrial undertaking.<sup>10</sup> Anti-pollution technology installed pursuant to sub-regulation (1) of this regulation shall be based on the best available technology that is economically achievable as may be prescribed by the Agency.<sup>11</sup> No owner or operator of a waste management facility shall discharge or dispose of any waste in any State into the environment, unless such waste has been treated in a manner or a standard prescribed by the Agency.<sup>12</sup>

Schedule 9 provides for guidelines for extended producers responsibility programme. Thus, by paragraph 1 of the schedule, the manufacturers and importers of products as contained in schedule 9 shall be responsible for the management of the end-of-life waste of their products. These responsibilities shall include information, physical and financial commitment. To this end, thee manufacturers and importers of products as mentioned in schedule 8 shall individually or collectively submit a Product Stewardship

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<sup>10</sup>. See Regulation 33(1)

<sup>11</sup>. Ibid, Regulation 33 (2)

<sup>12</sup>. Ibid, Regulation 34

Programme (PSP) to the Agency for approval.<sup>13</sup> The Product Stewardship Programme (PSP) shall:

- (a)(i) establish a process for the collection, handling, transportation and final treatment of post-consumer products, regardless of who the original brand owner of the products or the consumer is;
- (ii) employ various types of processes to reduce, reuse, recycle or recover post-consumer products, including but not limited to details of efforts to incorporate the priorities of a pollution prevention hierarchy by moving progressively from disposal to reduction, reuse, recycling and recovery of post-consumer products;
- (iii) establish the location of any long-term containment or final treatment and processing facilities for post-consumer products;
- (iv) monitor the types of educational information and programmes provided.

By Schedule 9(3)(b) Manufactures and importers shall submit to the Agency on annual report on their consumer PSP which report is to include the following:

- (i) the total amount of consumer products sold and post-consumer waste collected;
- (ii) the total amount of post-consumer waste processed or in storage;
- (iii) the percentage of post-consumer waste that was treated, contained, reduced, reused, recycled or recovered; efforts taken through consumer product marketing strategies to reduce post-consumer waste;

In addition, such manufacturers and importer are to supply any other information requested by the Agency and failure to participate shall attract penalties.<sup>14</sup>

#### **b. Nature of Offences and Penalties under the Regulations**

*Offences under the Regulations:* Offences under the Regulations are categorised in line with owner or occupant in care of premises or whether the offence is committed by commercial or industrial facility or persons involved in the organisation of party, event or meeting, etc. Offences under the Regulations shall therefore be treated under the following heads:

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<sup>13</sup>. See Paragraph (2) of schedule 8

<sup>14</sup>. See Schedule 9 Paragraph 3(c) and (d)

**a. Offence in relation to an owner or occupant in care of premises, etc.**

Under Regulation 71, it shall be an offence for an owner or occupant in care of premises or in control or management of a business to:

- (a) Releases or cause, litter to be released into the environment;
- (b) Fails to contain and dispose litter at construction or demolition site regularly;
- (c) Fails to segregate waste for proper management;
- (d) Fails to provide standard container for storage of sorted wastes before collection;
- (e) Fails to provide, service, maintain or empty receptacles for litter and recyclable materials;
- (f) Fails to keep litter away from 15 metres within the premises or vacant plots;
- (g) Fails to locate water source away from pollution source;
- (h) Fails to immediately clean up or remove debris around a dug well after installing or repairing pumping equipment;
- (i) Constructs dug well within 15 metres of soak away pit or similar disposal unit or septic tank, refuse dump, landfill or other source of contamination;
- (j) Fails to supply information as required for approval to operate waste management facility;
- (k) Fails to maintain waste management facility in clean and orderly condition;
- (l) Fails to comply with the decommissioning conditions of waste management facility as may be prescribed by the Agency;
- (m) Fails to submit to the Agency within a specified period, information or data about materials received at dumpsite, landfill or incinerator operations;
- (n) Carries out or allows open burning of any waste material including confiscated items or materials;
- (o) Owns, operates or manages a waste management facility that fails to meet the national standards;
- (p) Fails to comply with requirements of the abatement or enforcement notices.
- (q) Suspends, dismiss or imposes penalty on any employee who reports any contravention of these Regulations to the Agency; and

- (r) Fails to provide and ensure the use of appropriate personal protective equipment while handling, treating or disposing of wastes.

**b. Offence in relation to any commercial, industrial and recreational facility:**

This offence is provided for by Regulation 72. Thus, it shall be an offence for any commercial, industrial or recreational, facility not to:

- (a) provide adequate toilet facilities or conveniences for the use of both sexes;
- (b) provide hand washing facilities;
- (c) ensure that such toilets and hand washing facilities are kept clean at all times;
- (d) segregate waste for recycling; and
- (e) provide standard receptacles for storage of sorted wastes before collection.

**c. Offence in relation to person who organises event, party, meeting, etc:**

By Regulation 73, it shall be an offence for a person who organizes or is responsible for public, religious, or private event, party, meeting, or the custodian of such venue not to:

- (a) provide adequate toilets for the use of guests;
- (b) ensure sanitary disposal of the contents of the toilets into designated sewage handling facility or treatment plant by a licensed operator;
- (c) provide an adequate number of receptacles for litter and recyclable materials in appropriate and easily accessible locations;
- (d) service, maintain and empty the receptacles as required; and
- (e) ensure that the venue where the event takes place and all public or private lands, streets, lanes, passageways, beaches or docks within 15 metres of the boundary of the venue or property are free from litter within 24 hours after the conclusion of the event.

**d. Offence in relation to Individual Persons**

It shall be an offence if a person fails to: (a) comply with the conditions of any guideline, standard or permit; (b) comply with the requirements of an enforcement notice, under these

Regulations; and (c) comply without reasonable excuse with any requirement imposed by a notice served by the Agency.<sup>15</sup>

**e. Offence in relation to food vendors and premises**

Under Regulation 75, it shall be an offence if a food premises fails to (a) comply with the conditions of any guideline or standard contained in these Regulations; (b) comply with the requirements of an enforcement notice under these Regulations.

**f. Offence in relation to false statement, etc.**

By Regulation 76, it shall be an offence to make a statement which is known to be false or misleading particularly, where the statement is made: (a) in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; (b) for the purpose of obtaining a permit; (c) to intentionally make a false entry in any record required to be kept under the condition for issuing a permit; or (d) with intent to deceive, forge or use a document issued or authorised to be issued under any of the conditions of a permit.

**g. Other Offences**

Other offences provided for under the Regulations which are outside the scope of this paper include but not limited to: (a) release or discharge of untreated effluent into the environment<sup>16</sup>; (b) engage in any activity likely to generate hazardous waste without a permit issued by the Agency<sup>17</sup>; (c) any generator of hazardous waste not to ensure that every container or package for sorting such waste is secured, marked and labeled as required under the Regulation<sup>18</sup>; (d) failure to treat or cause to be treated any hazardous waste using acceptable methods to the conditions approved by the Agency; (e) exporting or transiting hazardous wastes without a valid permit issued by the Agency in consonance with international conventions; (f) transfer any permit for the export of toxic or hazardous wastes; (g) transit toxic or hazardous waste destined for another country through the territory of Nigeria without a valid prior informed consent for such movement issued by the Agency; (h) failure of generator of toxic or hazardous waste not to subscribe to an insurance policy, upon written instructions from the Agency, to cover the risks caused by the wastes, etc.

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<sup>15</sup>. See Regulation 74

<sup>16</sup>. See Regulation 77

<sup>17</sup>. See Regulation 78

<sup>18</sup>. See Regulation 79

**c. Penalties for Violation of the Regulations:** Section III of Part 5 of the Regulations provides for penalties for the violation of offences created in section II of the Regulations. Accordingly, any person who violates the provisions of regulation 71 paragraphs (a) – (j) of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N20,000.000 or imprisonment for six (6) months or to both such fine and imprisonment.<sup>19</sup>

By regulation 95, any person who violates the provisions of regulation 71 paragraphs (12) to (r) of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N200,000.00 or imprisonment for one (1) year or to both such fine and imprisonment.

Furthermore, any person who violates regulation 72 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N50, 000.00 or imprisonment for eight (8) months or to both such fine and imprisonment.<sup>20</sup>

By regulation 97, any person who violates regulation 73 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N100,000.000 or imprisonment for one (1) year or to both such fine and imprisonment.

Any person who violates regulation 74 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N250,000.00 or imprisonment for eighteen (18) months to both such fine and imprisonment.<sup>21</sup> Regulation 99 provides for penalty for violation of regulation 75 of these Regulations. Thus, any person who violates regulation 75 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of not exceeding N500,000.00 or imprisonment for two (2) years or to both such fine and imprisonment.

*An Analysis of the National Environmental (Sanitation and ...)*  
imprisonment.

Under regulation 100, any person who violates regulation 76 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N250,000.000 or imprisonment for eighteen (18) months or to both such fine and imprisonment. By regulation 101, any person who violates regulation 77 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of not exceeding N500,000.00 or imprisonment for two (2) years or to both such fine and imprisonment.

<sup>19</sup>. See Regulation 94

<sup>20</sup>. See Regulation 96

<sup>21</sup>. See Regulation 98

Note that notwithstanding the provisions of these Regulations regarding penalties for violation of the provisions of the Regulations, the provisions of the Harmful Wastes (Special Criminal Provisions, etc) Act, 2004<sup>22</sup> shall apply as appropriate in respect of offences under these Regulations.<sup>23</sup>

Furthermore, any person who violates regulations 78 – 85 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N5,000 or to imprisonment for five (5) years or to both such fine and imprisonment.<sup>24</sup> By regulation 104, any person who violates regulations 86 to 93 of these Regulations shall be guilty of an offence and shall on conviction be liable to a fine of N250,000.00 or imprisonment for eighteen (18) months or to both such fine and imprisonment.

#### **d. Enforcement Mechanism under the Regulation**

The National Environmental (Sanitation and Wastes Control) Regulations, 2009 made elaborate provisions in Regulations 67 – 70 for the purpose of enforcing the provisions of the Regulations. By Regulations 67, the enforcement power of all the provisions relating to meeting the requirements and standards on environmental sanitation and waste control provided in these Regulations is vested on the Agency and on the basis of an information available to it, the Agency may take any enforcement action at anytime as may be appropriate. Thus, if an owner or occupant in care of premises or in control or management of a business is in contravention or is likely to contravene the provision of any regulation, guideline or condition of the permit, the Agency shall serve an enforcement notice. An enforcement notice shall (a) specify the matters constituting the contravention or the matters making it likely that the Contravention will arise, as the case may be; (b) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and (c) specify the period within which those steps must be taken.<sup>25</sup>

Mode of service of notice is provided for in Regulation 69. To this end, enforcement notice shall be by hand delivery or delivered by registered post or courier, newspaper publication or pasting at the address of the owner or occupant of the premises. Where a person

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<sup>22</sup>. Cap. H1 LFN, 2004

<sup>23</sup>. See Regulation 102

<sup>24</sup>. See Regulation 103

<sup>25</sup>. See Regulation 68(1) & (2)



fails to comply with enforcement notice within specified period as contained in the notice, a second notice will be served to him.<sup>26</sup>

## 5. Challenges to Solid Wastes Management in Nigeria

Urban centres in Nigeria have exhibited a clear inability to manage human as well as organic or non-organic wastes. Today, defiling the era of civility most towns in Nigeria are still using pit latrine/toilets as means of disposing human faeces. The growth in size of urban population compound this issue as management of pit latrine system becomes impossible to law enforcement officers. Apart from the unhygienic nature of this system, it is common knowledge that pit latrine system is obsolete and archaic. Moreover, underground water easily drains its contents into hand-dug wells as well as streams. Even where most people use the flush system toilets, the septic tank and soak-away pits are often not properly built and thus continue to seep into the surrounding water sources. Thus, it was estimated that 60% Nigerians did not have access to improve water sources in the year 2002, while 62% did not have access to sustainable improved sanitation.<sup>27</sup> Thus, apart from Abuja and some parts of Lagos there are no central sewage system in any city in Nigeria. The most common domestic waste treatment methods is the use of individual septic tanks and soak-away systems.

Generally, the legal framework as it stands today in Nigeria has exposed the laxity and unseriousness of government and its agencies. In most cases, government through its agencies usually display lukewarm attitude towards ensuring full compliance with the letters of the law. Other challenges are:

1. Lack of baseline information and data;
2. Inadequate human and institutional capacity;
3. Inadequate regulatory framework and enforcement;
4. *See An Analysis of the National Environmental (Sanitation and ...*
5. Inadequate budgetary allocations;
6. Challenges from the Courts, etc.

There is need to emphasized that the judiciary, which is the third arm of government, is vested with enormous powers and functions

<sup>26</sup>. See Regulation 70

<sup>27</sup>. See Aper, J. A. "Towards a model of Household waste Generating Factors in the South-Bank Area of Makurdi Town". Benue valley journal of Interdisciplinary Studies, Vol.2, 2003 p.60

including the interpretation and application of law.<sup>28</sup> The judiciary is therefore seen today as not just the hope of the oppressed but the institution for the protection of environment. The role of the Courts as defenders/protectors of environment was visible in the case of *Counsellor F. B. Farrah v. Shell Petroleum Dev. Co. Ltd*,<sup>29</sup> where damages were awarded in favour of the plaintiff against the defendant and the Court further made consequential order compelling the defendant to rehabilitate the polluted land. Also in *SPDC V. Otoko*<sup>30</sup> the Court was alive to its responsibilities where large sums of money were awarded as compensation for damages to pollution victims.<sup>31</sup> The following challenges are confronting the Courts and therefore hinders the Courts from performing its task of protecting the environment.

- i. Jurisdictional problems: A plaintiff may have a good cause of action supported by existing law and if he takes his case to a Court which has no jurisdiction over the subject matter or the cause of action, he cannot ventilate his claims before the Court. In other words, once a jurisdiction of a Court to determine a matter has been ousted, any further hearing in the matter is indeed null and void because any decision it makes amounts to nothing.<sup>32</sup> Section 251(1) CFRN 1999 gives exclusive jurisdiction to the Federal High Court in respect of matters arising from or connected with Mines and Minerals (including oil fields, oil mining and geological surveys and natural gas). Therefore, where a litigant institutes an action on any of the issues stated above in a High Court of a State, the decision of the Court is a nullity and can be upturned on appeal.<sup>33</sup> Since Federal High Court is not located in states of the Federation, where the violation of right occurs in one state the victim will have to travel to another state to institute the action, thereby limiting access to justice especially where the victim is not in the financial position to do so.

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<sup>28</sup>. See section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>29</sup>. (1995) 3 NWLR (Pt. 382) 148

<sup>30</sup>. (1990) 6 NWLR (Pt. 159) 693

<sup>31</sup>. See also *SPDC V. HRH Tiebo VII* (1996)1 NWLR (Pt. 445) 71.

<sup>32</sup>. See *SPDC V. Halleluya Bukuma Fishermen Multipurpose Co-operation Society Ltd* (Unreported suit No. CA/PH/8496/2001 – decided on 12<sup>th</sup> July 2001).

<sup>33</sup>. See *Abel Isaiah F. & Ors V. SPDC Nig. Ltd* (2001)6 NSCQR 542

- ii. Undue delay in the administration of justice: Undue delay in the administration of justice is a veritable source of frustration in pursuing legal redress on rights of victims of pollution cases. A good example of this frustration can be seen in the case of *Ebioge V. NNPC*,<sup>34</sup> where damage caused in 1979 and followed by correspondence leading to a writ of summons in 1984 was first heard in 1987. It was appealed in 1989 and was heard by the Supreme Court in 1994. This was also the case in *Elf Nig. Ltd. V. Opersilo & Dan Estemi*<sup>35</sup> where the damage was suffered in 1967 but the case was heard in 1987 in the High Court, in 1990 at the Court of Appeal and in the Supreme Court in 1994.
- iii. Undue attachment to Technicalities: Undue attachment to technicalities by courts is another problem faced by victims of environmental pollution and one of the leading problems in this regard is the issue of locus standi.<sup>36</sup>

## 6. Concluding Remarks

In this research, effort was made to analyse the National Environmental (Sanitation and Wastes Control) Regulations, 2009 and the challenges of its implementation in Nigeria. It was found that whatever Laws are enacted and whatever institutional or Management apparatus are put in place, unless the general public is sufficiently informed, all efforts may be ineffective. To make the regulations achieve the desired goal therefore, this research makes the following recommendations:

- (1) The government, through its agencies and ministries, should institute measures aimed at compelling companies and industries, whose activities generate unusual wastes, to put in place measures to control such wastes. This is discussed in *An Analysis of the National Environmental (Sanitation and ... Problems of Environmental Degradation*.
- (2) The provision of section 20 of the Constitution of the Federal Republic of Nigeria 1999, which is the environmental objectives of the State should be made enforceable. In other words, it should be transferred to chapter IV of the Constitution which deals with Fundamental Human Rights. This will enable individuals to have the right to enforce environmental violations that affects them.

<sup>34</sup>. (1994) NWLR (Pt. 347) 90

<sup>35</sup>. (1994)6 NWLR(Pt. 234) 64

<sup>36</sup>. See *State V. Gwonto* (1983)1 SCNJR 47

- (3) The jurisdictional capacity of the High Courts should be expanded to cover issues relating to environmental protection. In other words, the Federal High Court and State High Courts should be made to have concurrent jurisdiction on environmental matters.
- (4) Furthermore, the Courts should whittle down undue delay in administering justice and undue attachment to technicalities in all cases involving environmental matters. The Courts should rather encourage litigants to pursue legal redress by quick disposal of cases rather than attachment to legal technicalities.

In conclusion, it is important to note that Nigeria, like other modern societies, generate enormous amounts of industrial and commercial waste; some of which is very dangerous to human health and poses a serious threat to the environment. The modern legal response to the problem of waste has been to adopt a holistic approach first to minimise the generation of waste by, for example, encouraging efficient technology and reducing packaging; by providing incentives for recycling and reuse of materials; and by setting strict environmental controls for disposing of waste. At present, the options that exist for disposing of waste are litters, incineration, and landfills. Each of these options carry adverse environmental consequences and require a balancing between environmental and economic costs taking account of what is technically feasible. The challenge in most cases is to ensure that the balance achieved is sustainable.