

**CHAPTER N164 - NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (ESTABLISHMENT) ACT**

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## **CHAPTER N164**

NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS  
ENFORCEMENT AGENCY (ESTABLISHMENT) ACT

**An act to provide for the establishment of the National Environmental Standards and Regulations Enforcement Agency charged with responsibility for the protection and development of the environment in Nigeria; and for related matters.**

[30th July, 2007]

[commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria.

PART I

*Establishment of the National Environmental Standards and Regulations Enforcement Agency*

**1. Establishment of National Environmental Standards and Regulations Enforcement Agency**

(1) There is established a body known as, National Environmental Standards and Regulations Enforcement Agency (in this Act referred to as “the Agency”).

(2) The Agency-

(a) shall be the enforcement agency for environmental standards, regulations, rules, laws, policies and guidelines;

(b) shall be a body corporate with perpetual succession and a common seal;  
and

(c) may sue and be sued in its corporate name.

**2. Objectives of the Agency**

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 and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

**3. Establishment and composition of Council**

(1) There is established for the Agency, a Governing Council (in this Act referred to as “the Council”) which shall consist of –

- (a) a Chairman who shall be appointed by the President on the recommendation of the Minister;
- (b) the Permanent Secretary of the Federal Ministry of Environment or his representative;
- (c) a representative each, not below the rank of Director from the –
  - (i) Federal Ministry of Solid Minerals Development,
  - (ii) Federal Ministry of Agriculture and Natural Resources,
  - (iii) Federal Ministry of Water Resources,
  - (iv) Federal Ministry of Science and Technology,
  - (v) a representative of the Standard Organisation of Nigeria,
  - (vi) a representative of the Manufacturers' Association of Nigeria,
  - (vii) a representative of the Oil Exploratory and Production Companies in Nigeria;
- (d) the Director-General of the Agency; and
- (e) three other persons to represent public interest, to be appointed by the Minister of Environment.

(2) A member of the Council, other than the Chairman, shall be appointed by the Minister on the recommendation of the body, if any, he represents.

(3) with the exception of the Director-General, membership of the Council shall be on a part-time basis.

(4) The members of the Council shall be paid such allowances as provided under existing regulations on such payments.

(5) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of the Council and other matters mentioned therein.

[schedule.]

#### **4. Tenure of office**

A member of the Council appointed, otherwise than by office and the Director-General, shall hold office for a term of four years and shall be eligible for re-appointment for only one further term of four years.

#### **5. Cessation of membership**

(1) The office of a member of the Council shall become vacant if -

- (a) he resigns as a member of the Council by notice in writing under his hand addressed to the Minister; or

(b) the Minister subject to the approval of the President, is satisfied that it is not in the interest of the Agency for the person appointed to continue in office and notifies the members in writing to that effect.

(2) If it appears to the Council that a member of the Council, other than an ex-officio member or the Director-General, shall be removed from office on the ground of misconduct or inability to perform the functions of his office, the Council shall make a recommendation to the Minister.

(3) If the Minister, after making such enquiries as he considers necessary, approves the recommendation, the Minister shall, in writing, declare the office of such a member vacant.

## **6. Emolument, etc. of members**

The Chairman and members of The Council shall be paid such emoluments, allowances and benefits in accordance with the existing regulations on such payment.

## **PART II**

### *Functions and Powers of the Agency and Council*

## **7. Functions of the Agency**

The Agency shall-

(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 on international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, 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 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;
- (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, licensing 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.

## **8. Powers of the Agency**

The Agency shall have power to –

- (a) purchase or take on lease any interest in land, building or property;
- (b) build, equip and maintain the offices and premises for the performance of its functions under this Act;
- (c) lease out any office or premises held by it, which is no longer required;
- (d) prohibit processes and use of equipment or technology that undermine environmental quality;
- (e) conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator;
- (f) subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations;

(g) conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage;

(h) open and operate ordinary and domiciliary account for the Agency in recognized banking institutions in Nigeria;

(i) borrow by overdraft or otherwise, with the approvals of the minister, such sums as it may require for the performance of its functions under this Act;

(j) accept gifts of land, money or other property, upon such terms and conditions, if any as may be specified by the person or organization making the gift, as long as such conditions are consistent with the functions of the Agency;

(k) submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector including –

(i) atmospheric protection;

(ii) air quality;

(iii) ozone depleting substances;

(iv) noise control;

(v) effluent limitations;

(vi) water quality;

(vii) waste management and environmental sanitation;

(viii) erosion and flood control;

(ix) coastal zone management;

(x) dams and reservoirs;

(xi) watershed management;

(xii) deforestation and bush burning;

(xiii) other forms of pollution and sanitation; and

(xiv) control of hazardous substances and removal control methods;

(l) develop environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels;

(m) undertake, co-ordinate, utilize and promote the expansion of research, experiments, surveys and studies by public or private agencies, institutions and organizations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector as the Agency may, from time to time, determine;

(n) enter into agreement and contracts with public or private organizations and individuals to develop, utilize, co-ordinate and share environmental monitoring programmes, research effects, and basic data on chemical, physical and biological effects

of various activities on the environment and other environmental related activities other than in the oil and gas sector;

(o) in collaboration with other relevant agencies and with the approval of the Minister, 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;

(p) collect and make available, through publications and other appropriate means and in co-operation with public or private organizations, basic scientific data and other information pertaining to environmental standards;

(q) charge fees for test, investigations and other services performed by the Agency;

(r) develop and promote such processes, methods, devices and materials as may be useful or incidental in carrying out the purposes and provisions of this Act; and

(s) do such other things other than in the oil and gas sector as are necessary for the efficient performance of the functions of the Agency.

## **9. Functions of the Council**

The Council shall –

(a) be responsible for the appointment, promotion and discipline of the staff of the Agency;

(b) advise the Agency with regard to financial, operational and administrative matters;

(c) establish committees as may be expedient which shall be charged with specific functions;

(d) encourage and promote activities related to the functions of the Agency; and

(e) carry out such other activities as may be directed by the Minister.

## **PART III**

### *Structure of the Agency*

## **10. Directorates of the Agency**

(1) The Agency shall have-

(a) Directorate of Administration and Finance;

- (b) Directorate of Planning and Policy Analysis;
  - (c) Directorate of Inspection and Enforcement;
  - (d) Directorate of Environmental Quality Control; and
  - (e) Directorate and Legal Services.
- (2) Each Directorate shall be headed by a Director.
- (3) The Director of the Directorate of Legal Services shall also function as the Legal Adviser to the Agency.
- (4) The Agency and its Directorate shall have adequate numbers of units and divisions as may be required in the discharge of functions of the Agency.
- (5) The Agency shall have zonal offices in the six (6) geopolitical zones of the country.
- (6) The Agency may create such other departments, units or offices in any part of the Federation as may be required for the proper performance of the functions of the Agency.

## **PART IV**

### *Staff of the Agency*

#### **11. Appointment of Director-General and other staff of the Agency**

- (1) The Director-General of the Agency shall be appointed by the President, on the recommendation of the Minister.
- (2) The Director-General Shall-
- (a) be the Chief Executive and Accounting Officer of the Agency;
  - (b) be responsible for the day-to-day administration of the Agency;
  - (c) be a person with good working knowledge of the environment and with a minimum of 15 years postgraduate experience in environmental management or related discipline;
  - (d) hold office for a period of 4 years on such terms and conditions as may be specified in his letter of appointment and be eligible for re-appointment for another period of 4 years and no more.

(3) The Agency shall, from time to time, appoint such other persons as members of staff of the Agency as it may deem necessary, to assist the Agency in the performance of its functions under this Act.

(4) The appointment of the staff in junior cadre, shall be made by the Director-General while the appointment in the senior cadre, shall be made with the ratification and approval of the Council.

(5) The member of staff of the Agency appointed under subsection (3) of this section shall be appointed on such terms and conditions of service (including remuneration, allowances, benefits and pensions) as determined by the Government.

(6) The promotion of staff in the junior cadre shall be as recommended by the Junior Staff Committee to the Director-General for ratification and approval.

(7) The promotion of staff in the senior cadre shall be as recommended by the Senior Staff Committee to the Council for ratification and approval.

## **12. Pensions Act No. 2 of 2004**

(1) The service in the Agency shall be approved service for the purposes of the Pension Reform Act and, accordingly, officers and other persons employed in the Agency shall be entitled to pensions, and other retirement benefits as are prescribed thereunder.

(2) Notwithstanding the provisions of subsection (1) of this section, the Agency may appoint a person to any office on terms, which preclude the grant of a pension or other retirement benefits in respect of that office.

(3) For the purpose of the Pension Reform Act, any power exercisable thereunder by a Minister or other authority of the Government of the Federation, other than the power to make regulations under section 34 of this Act is vested in and shall be exercised by the Agency and not by any other person or authority.

## **PART V**

### *Financial Provisions*

## **13. Fund of the Agency**

(1) The Agency shall establish a Fund from which shall be defrayed all expenditure incurred by the Agency for the purposes of this Act.

(2) There shall be paid and credited to the Fund of the Agency-

(a) adequate take off grant from the Federal Government;

(b) annual subventions and budgetary allocations from the Federal Government;

- (c) loans and grants in aid from national, bilateral and multilateral agencies;
- (d) counter part funding as may be provided from time to time;
- (e) all sums accruing to the Agency by way of rents, fees and other internally generated revenues from services rendered by the Agency; and
- (f) all sums accruing to the Agency by way of gifts, endowments, bequeaths or other voluntary contributions by persons and organizations.

#### **14. Expenditure of the Agency**

The Agency shall, from time to time, apply the funds at its disposal to—

- (a) the cost of establishing and maintaining the Head Office of the Agency at the Federal Capital Territory, Abuja and its offices located in other places in Nigeria;
- (b) the cost of compliance monitoring and enforcement activities;
- (c) pay allowances and other benefits of members of the Council and of its Committees;
- (d) pay the salaries and entitlements of the Director-General and other members of staff of the Agency;
- (e) pay the personnel, overhead, allowances, pensions, gratuities, benefits and other administrative costs of the Agency;
- (f) pay for attendance at local and international conferences related to its functions;
- (g) build capacity of members of staff of the Agency;
- (h) publicize and promote the activities of the Agency;
- (i) attend national and International scientific and professional seminars on environmental matters;
- (j) develop and maintain any property vested in or owned by the Agency;
- (k) pay for services and contracts entered into by the Agency; and
- (l) undertake any other activity in connection with all or any of the functions of the Agency.

#### **15. Exemption from income tax**

All income derived by the Agency from the sources specified in section 13 (2) of this Act shall be exempted from income tax and all contributions to the Fund of the Agency shall be tax deductible.

## **16. Annual estimate**

The Agency shall submit to the President through the Minister, not later than 30th September each year, its programme of work and estimates of its income and expenditure for the following year.

## **17. Accounts and audit**

(1) The Council shall keep proper accounts of the Agency and proper records in relation to those accounts.

(2) The accounts of the Agency shall be audited, not later than six months, after the end of the year to which it relates, by auditors appointed by the Agency from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation.

## **18. Annual report**

The Agency shall prepare and submit to the Federal Executive Council, through the Minister, not later than 30th June in each year, a report on the activities of the Agency during the immediate preceding year, and shall include in such report, a copy of the audited accounts of the Agency for that year and auditors report.

## **19. Investment**

The Agency may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all of its funds in any security prescribed by the Trustee Investment Act or in such other securities as may, from time to time, be approved by the Minister.

## **20. Air quality and atmospheric protection**

(1) The Agency may make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources, so as to promote the public health or welfare and the natural development and productive capacity of the nations' human, animal, marine or plant life including, in particular-

(a) minimum essential air quality standards for human, animal, marine or plant health;

(b) the control of concentration of substances in the air which separately or in combination are likely to result in damage or deterioration of property or of human, animal, marine or plant health;

(c) the most appropriate means to prevent and combat various atmospheric pollution;

(d) control of atmospheric pollution originating from energy sources, including that produced by aircraft and other self-propelled vehicles, industries, factories and power generating situation or facilities;

(e) standards applicable to emission from any new mobile or stationary source which in the Agency's judgment causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare; and

(f) the use of appropriate means to reduce emission to permissible levels.

(2) The Agency may establish monitoring stations or networks to locate sources of atmospheric pollution and determine their actual or potential danger.

(3) A person who violates the regulations made pursuant to subsection (1) of this section commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional N 20,000 for everyday the offence subsists.

(4) Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction be liable to a fine not exceeding N 2,000,000 and an additional fine of N 50,000 for every day the offence subsists.

## **21. Ozone protection**

(1) The Agency shall in collaboration with other relevant agencies undertake to study data and recognize developments in force in other countries, regarding the cumulative effects of all substances, practices, processes and activities which may affect the stratosphere.

(2) The Agency shall, in collaboration with other relevant agencies, embark on programmes for the control of any substance, practice, process or activity which may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, when such effects may be reasonably be anticipated to endanger public health or welfare.

(3) Where an offence under subsection (2) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N2,000,000 and an additional fine of N 50,000 for everyday the offence subsists.

## **22. Noise**

(1) The Agency shall, on the commencement of this Act, in consultation with appropriate authorities:

(a) identify major noise sources, noise criteria and noise control technology; and

(b) make regulations on noise, emission, control, abatement, as may be necessary to preserve and maintain public health and welfare.

(2) the Agency shall enforce compliance with existing regulations and recommend programmes to control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities.

(3) A person who violates the Regulations made pursuant to sub-section (1) of this section commits an offence and shall on conviction be liable to a fine not exceeding N50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N 5,000 for every day the offence subsists.

(4) Where an offence under subsection (3) of this section is committed by a body corporate, it shall on conviction be liable to a fine not exceeding N 500,000 and an additional fine of N 10,000 for every day the offence subsists.

### **23. Federal water quality standards**

(1) The Agency shall in collaboration with other relevant agencies make regulations for the purpose of protecting public health or welfare and enhancing the quality of water to serve the purpose of this Act.

(2) In drawing up proposals for such regulations and standards, the Agency shall take into consideration the use and value of the public water supplies, propagation of marine and wildlife, recreational purposes, agricultural, industrial and other legitimate use.

(3) A person who violates the provisions of the regulations made pursuant to subsection (1) of this section, commits an offence and shall on conviction, be liable to a fine not exceeding N50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N 5,000 for every day the offence subsists.

(4) Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N 500, 000 and an additional fine of N 10, 000 for every day the offence subsists.

### **24. Effluent limitations**

(1) The Agency shall, on the commencement of this Act, establish effluent limitations for new point sources which shall require application of the best control technology currently available and implementation of the best management practices.

(2) The Agency shall, on the commencement of the Act, review effluent limitation for existing point sources which shall require the application of the best management practices, under circumstances as determined by the Agency, and shall include, schedule

of compliance for installation and operation for the best practicable control technology as determine by the Agency.

(3) Notwithstanding the existing regulations in force, other than in the oil and gas sector, the Agency may make regulations on effluent limitations, on existing and new point sources, for the protection of human, animal, marine and plant life.

(4) A person who violates the provisions of the regulations made pursuant to subsection (3) of this section, commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment and an additional fine of N 5,000 for every day the offence subsists.

(5) Where an offence under subsection (3) of this section is committed by a body corporate, it shall on conviction, be liable to a fine, not exceeding N 1,000,000 and an additional fine of N 50,000 for every day the offence subsists.

## **25. Environmental sanitation**

(1) The Agency may make regulations for the purpose of protecting public health and promotion of sound environmental sanitation.

(2) A person who violates the provisions of the regulations made pursuant to subsection (1) of this section shall be guilty of an offence and punished under the penalties imposed in the regulations made pursuant thereto.

## **26. Land resources and watershed quality**

(1) The Agency may make regulations, guidelines and standards for the protection and enhancement of the quality of land resources, natural watershed , coastal zone, dams and reservoirs including prevention of flood and erosion, to serve the purpose of this Act.

(2) In drawing proposals for such regulations, guidelines or standards, the Agency shall take into consideration the Zoning Act, Municipal Development Guidelines and Building Codes to prevent sitting of essential facilities on flood plain.

(3) A person who violates the provisions of the regulations made pursuant to subsection (1) of this section, commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for term not exceeding one year or to both such fine and imprisonment and an additional fine of N 10,000 for every day the offence subsists.

(4) Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N 1,000,000 and an additional fine of N 50,000 for every day the offence subsists.

## **27. Discharge of hazardous substances and related offences**

(1) The discharge in such harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the adjoining shoreline is prohibited, except where such discharge is permitted or authorized under any law in force in Nigeria.

(2) A person who violates the provisions of subsection (1) of this Section, commits an offence and is liable on conviction, to a fine, not exceeding N1,000,000 or to imprisonment for a term not exceeding 5 years.

(3) Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine, not exceeding N 1,000,000 and an additional fine of N 50,000 for every day the offence subsists.

(4) Where an offence under subsection (1) of this section is committed by a body corporate, every person who at the time the offence was committed was in charge of the body corporate shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly provided nothing contained in this subsection shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(5) Notwithstanding the provisions of this section or any other section of this Act, the provisions of the Harmful Waste ( Special Criminal Provisions, etc) Act shall apply in respect of any hazardous substance constituting harmful waste as defined in section 37 of this Act.

## **28. Removal methods, etc.**

The Minister for the purpose of implementing the provisions of this Act, shall by regulations prescribe any specific removal method, financial responsibility level for owners or operators of vessels, or onshore or offshore facilities notice and reporting requirements.

## **29. Co-operation with appropriate authorities**

The Agency shall co-operate with other Government agencies for the removal of any pollutant excluding oil and gas related ones discharged into the Nigerian environment and shall enforce the application of best clean-up technology currently available and implementation of best management practices as appropriate.

## **PART VII**

### *Miscellaneous Provisions*

## **30. Power to enter premises**

(1) An officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required-

(a) enter and search with a warrant issued by a court, any premises including land, vehicle, tent, vessel, floating craft except Maritime Tankers, Barges or Floating Production, Storage, Offload (FPSO) and oil and gas facilities or any inland water and other structure, at all times, for the purpose of conducting, inspection, searching and taking samples for analysis which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation;

(b) examine any article found pursuant to paragraph (a) of this subsection, which appears to him to be an article to which this Act or the regulations made under apply or anything which he reasonably believes is capable of being used to the detriment of the environment;

(c) take a sample or specimen of any article to which this Act or the regulations apply or which he has power to examine under paragraph (b) of this subsection;

(d) open and examine, pursuant to paragraph (a) of this subsection, any container or package which he reasonably believes may contain anything to which this Act or its regulations apply or which may help in his investigations;

(e) examine any book, document or other record found pursuant to paragraph (a) of this subsection, which he reasonably believes may contain information relevant to the enforcement of this Act or the regulations and make copies thereof or extracts there from;

(f) seize and detain for such time as may be necessary for the purpose of this Act, any articles by means of or in relation to which he reasonably believes any provision of this Act or regulations has been contravened; and

(g) obtain an order of a court to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water and other structure whatsoever.

(2) A written receipt shall be given for any article or thing seized under subsection (1) of this section and the reasons for such seizure shall be stated on such receipt.

(3) An article seized under this Act shall be kept or stored in such a place as the officer of the Agency may direct and shall be returned to the owner or the person from whom it was seized if the article upon analysis or examination is found to conform with the requirements of this Act or regulations made under it.

(4) An article other than in the oil and gas sector, seized by an officer of the Agency in pursuance of this Act or the regulations made under it, may be submitted to an analyst for analysis or examination and the analyst upon making such analysis or examination shall,

issue a certificate or report in the prescribed form, setting forth the result of such analysis or examination and the officer of the Agency shall, on demand, deliver a copy of such certificate or report to the owner of the article if the article is to be the subject of a proceeding under this Act or regulations thereunder.

(5) In this section, the expression “article” to which this Act or regulations made under it apply are-

- (a) liquid, soil, vegetation;
- (b) biological and chemical samples;
- (c) particulate filters, air quality gauges; and
- (d) such other articles or samples as may be determined by the Agency.

### **31. Offences and penalties**

A person who obstructs an officer of the Agency in the performance of his duties under section 3 of this Act commits an offence and is liable on conviction to a fine of not less than N200,000 for an individual or to imprisonment for a term not exceeding one year or to both such fine and imprisonment, and an additional fine of N 20,000 for each day the offence subsists and in the case of body corporate, it shall be liable for a fine of N 2,000,000, on conviction and an additional fine of N 200,000 for every day the offence subsists.

### **32. Legal Proceedings**

(1) A suit shall not be commenced against the Agency before the expiration of a period of one month, after written notice of intention to commence the suite shall have been served on the Agency by the intending plaintiff or his agent and the notice shall clearly state the-

- (a) cause of action;
- (b) particulars of the claim;
- (c) name and place of abode of the intending plaintiff; and
- (d) relief which he claims.

(2) The notice referred to in subsection (1) of this section and any summons, notice or other document required or authorized to be served on the Agency under the provisions of this Act or any other enactment or law may be served by-

- (a) delivering the same to the office of the Director-General; or

(b) sending it by registered post addressed to the Director-General at the Head Office of the Agency.

(3) Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999, (which relates to the power of the Attorney-General of the Federation institute, continue or discontinue criminal proceedings against any person in a court of law), any officer of the Agency may, with the consent of the Attorney –General of the Federation, conduct criminal proceedings in respect of offences under this Act or regulations made under this Act.

(4) In a judicial proceeding for an offence under this Act or any regulation made under it, the provisions of the Criminal Procedure Act or depending on the venue, the Criminal Procedure Code shall, with such modification as the circumstance may require, apply in respect of such matter to the same extent as they apply to the trial offences generally.

### **33. Power of Minister to give Directives**

The Minister may give directives of a general or special nature to the Agency relating to its functions under this Act, and the Agency shall comply and give effect to the directives.

### **34. Power to make regulations**

The Minister shall make regulations-

(a) to prescribe the methodologies for private sector payments into the fund of the Agency;

(b) to prescribe the fees to be paid for services rendered by the Agency;

(c) generally for the purposes of carrying out or giving full effect to the functions of the Agency under this Act.

### **35. Application**

Every other requirement, certificate, notice, direction, decision, authorization, consent, application, request, agreement or thing made, issued, given or done under any enactment repealed by this Act shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

### **36. Repeal of Cap. F10 L.F.N, 2004**

The Federal Environmental protection Agency Act is repealed.

[Cap.F10]

### **37. Interpretation**

In this Act -

“Agency” means the National Environmental Standards and Regulations Enforcement Agency established under section 1 of this Act;

**“appropriate authorities”** means any government agency which has jurisdiction over the land or water affected by the pollution or any government agency which ordinarily has jurisdiction or any government over the operation which held to the pollution;

**“authorised authorities or officer”** means any employee of the Agency, any Police officer not below the rank of Inspector of Police or any custom officer;

**“chairman”** means the Chairman of the Agency appointed under section 3 (1) (a) of this Act;

**“Constitution”** means the Constitution of the Federal Republic of Nigeria, 1999;

**“Council”** means the Council of the Agency established under section 3 of this Act;

**“Court”** means the Federal or State High Court;

**“Director-General”** means the Director-General of the National Environmental Standards and Regulation Enforcement Agency;

**“disposal”** includes both land based disposal and dumping in waters and air space of Nigeria;

**“effluent limitation”** means any restriction established by the Agency of quantities, rates and concentration of chemical, physical, biological or other constituents which are discharged from point sources into waters in Nigeria;

**“environment”** includes water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them;

**“hazardous substance”** means any chemical, physical or biological and radioactive material that poses a threat to human health and the environment or any such substance regulated under international conventions to which Nigeria is a party or signatory e.g Montreal Protocol, Rotterdam Convention, Stockholm Convention etc. and includes any substance designated as such by the President of the Federal Republic of Nigeria by order published in the Federal Gazette;

**“he”** means male or female gender

**“member”** means a member of the Council and includes the Chairman;

**“Minister”** means the Minister charged with the responsibility of the environment;

**“new source”** means any source, the construction of which is commenced after the publication of any regulations prescribing a standard to such source;

**“officer”** means qualified persons employed to act in that capacity by the Agency;

**“offshore facility”** means any facility (including but not limited to motor vehicles and rolling stock) of any kind located over, in, or under any land within Nigeria other than submerged land;

**“owner” or “operator”** means, in the case of –

- (a) vessel, any person owning, operating or chartering by demise such vessel;
- (b) an onshore facility or an offshore facility, any person owning or operating such onshore facility or offshore facility; and
- (c) any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

**“point source”** means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduct, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessels or other floating craft from which pollutants are or may be discharged;

**“pollution”** means man-made or man-aided alteration of chemical, physical, or biological quality of the environment beyond acceptable limits and “pollutants” shall be construed accordingly.

**“President”** means the President of the Federal Republic of Nigeria;

**“removal”** means removal of hazardous substances from the environment of Nigeria or taking of such action as may be necessary to minimise or mitigate damage to the public health or welfare, ecology and natural resources of Nigeria;

**“stratosphere”** means the part of the atmosphere above the troposphere;

**“water of Nigeria”** means all water resources in any form including atmospheric, surface and sub-surface, and underground water resources where the water resources are interstate, or in the Federal Capital Territory, Territorial Waters, Exclusive Economic Zone or in any other area under the jurisdiction of the Federal Government of Nigeria.

### **38. Citation**

This Act may be cited as the National Environment Standards and Regulations Enforcement Agency (Establishment) Act, 2007

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## **SCHEDULE**

[Section 3(5)]

*Proceedings of the Council*

**1.** (1) Subject to the provisions of this Act and section 27 of the Interpretation Act, the Council may make standing orders regulating its proceedings or those of any of its committees.

(2) The quorum of the Council shall be the Chairman or the person presiding at the meeting and 5 other members of the Council including the Director-General, and the quorum of any committee of the Council shall be as determined by the Council.

**2.** (1) The Council shall meet whenever it is summoned by the Chairman and if the Chairman is required to do so by notice given to him by not less than 8 other members, he shall summon a meeting of the Council to be held within 14 days from the date on which the notice is given.

(2) At any meeting of the council, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of them to preside at the meeting.

(3) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him to the Council for such period as it deems fit, but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Council and shall not count towards a quorum.

**3.** (1) The Council may establish one or more committees to carry out, on behalf of the Council, such functions as the Council may determine.

(2) A committee established under this paragraph shall consist of such number of persons as may be determine by the Council and a person shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Council shall be of no effect until it is ratified by the Council.

**4.** (1) The fixing of the seal of the Agency shall be authenticated by the signature of the Chairman, the Director-General or any person generally or specifically authorized by the Council to act for that purpose.

(2) A contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Agency by the Director-General or any person generally or specifically authorized by the Council to act for that purpose.

(3) A document purporting to be a document duly executed under the seal of the Agency shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

**5.** The validity of any proceedings of the Council or of a committee shall not be adversely affected by –

- (a) a vacancy in the membership of the council or committee;
- (b) a defect in the appointment of a member of the Council or committee
- (c) reason that a person not entitled to do so took part in proceedings of the Council or Committees.

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**CHAPTER N164**

**NATIONAL ENVIROMENTAL STANDARDS AND REGULATIONS  
ENFORCEMENT AGENCY (ESTABLISMENT) ACT**

**SUBSIDIARY LEGISLATION**

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No Subsidiary legislation

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