

Legal Alert ? February 2014 ? Environmental Compliance Requirements for Non-Oil and Gas Companies

Introduction - Environmental Compliance Requirements

Managing and protecting the environment continues to be an enormous task that Governments around the world cannot be expected to bear alone.

Also, public perception that environmental protection and legislations only apply to materials which are toxic and hazardous to the environment has not endeared compliance, even at the least minimum compliance levels required for sustaining a good environment.

In Nigeria, there are Federal and State Legislations which seek to protect the environment; and some of these legislations directly and indirectly apply to many establishments that are not engaged in oil and gas activities. Some of such legislations include:-

1. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.
2. The Environmental Impact Assessment Act.
3. The Lagos State Environmental Protection Agency Law.
4. The Edo State Sanitation and Pollution Management Law
5. The Delta State Environmental Protection Agency Law.
6. The Abuja Environmental Protection Board Act.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 repealed the Federal Environmental Protection Agency Act.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 ("the NESREA Act") created the National Environmental Standards and Regulations Enforcement Agency ("NESREA") with the principal responsibility of protecting and developing the environment, its biodiversity, and conservation.

NESREA is further statutorily charged to ensure the sustainable development of Nigeria's natural

resources, i.e. its standards, regulations, rules, laws, policies and guidelines on water quality, environmental health and sanitation, which includes pollution abatement, etc.

NESREA is also charged to enforce compliance with environmental regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste generated in the non-oil and gas industries.

NESREA is not however empowered to regulate most environmental activities in the oil and gas sector.

NESREA REGULATIONS

In furtherance of the objectives of the NESREA Act, various environmental regulations were recently published in the government's official journal known as the Gazette. Some of these regulations provide governance direction in some of these areas of human endeavour:-

1. Wetlands, River Banks, Lake Shores, Mountain, Hills, etc.
2. Sanitation and Waste Control.
3. Mineral Resources.
4. Ozone Layer Protection.
5. Food, Beverages and Tobacco.
6. Textile, Wearing Apparel, Leather and Footwear.
7. Noise Standards and Control.
8. Chemicals, Pharmaceuticals, Soap and Detergent.
9. Telecommunication and Broadcasting.
10. Soil Erosion and Food Control.
11. Protection of the Endangered Species.
12. Coastal and Marine Area Protection.
13. Construction, Decommissioning and Demolition Activities.
14. Control of Vehicular Emissions from Petrol and Diesel Engines.
15. Electrical/Electronic Activities.

As food and other nourishments remain very vital to the subsistence of mankind, the highlights of the NESREA National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009 ("the Food, Beverages and Tobacco Environmental Regulations") will be reviewed to provide a sampling of what is contained in the other 23 NESREA Environmental Regulations.

FOOD BEVERAGE AND TOBACCO REGULATIONS.

The Food, Beverages and Tobacco Environmental Regulations is intended to prevent and minimise pollution from every operation and ancillary activity in the Food, Beverages and Tobacco Industry.

Every company in the Food, Beverages and Tobacco sectors of the economy must therefore ensure compliance with the following:-

- I. Every new industry and major developmental project must obtain an Environmental Impact Statement ("EIS") before it commences operations.
- II. All existing companies must undertake and obtain every three years, an Environmental Audit Report ("EAR").
- III. All companies must have and maintain an Environmental Management Plan ("EMP").
- IV. All companies must have and maintain an Emergency Response Plan and Equipment to combat pollution hazards.
- V. All companies must install anti-pollution equipment for the detoxification of effluent and emissions emanating from any of their pollution related activity.

These Regulations further require companies in the Food, Beverages and Tobacco sector to apply up-to-date, cost-effective and efficient cleaner technologies, which will minimise pollution to the highest degree practicable.

THE THREE "RS" ? REUSE, RECOVER AND RECYCLE

These Regulations further empower NESREA to strictly enforce the three "Rs" ? Reuse, Recover and Recycle. Thus, all recyclable damaged and disused packaging materials like glass, plastics, metals, paper, wood, nylon, etc. must be recycled.

POLLUTER-PAYS PRINCIPLE

The Food, Beverages and Tobacco Environmental Regulations reiterates the Polluter-Pays Principle to every company whose activities pollutes the environment by ensuring that such a company must collect, treat, transport and dispose of the waste that it generates within specified standards and guidelines.

Polluter-Pays Principle further requires that a polluter of the environment will also be responsible for the costs of any damage, the assessment, control, clean-up, remediation, restoration or reclamation, compensation to any affected person or persons, etc. arising from such a polluter's infringing activities.

ENVIRONMENTAL INCENTIVES

NESREA is statutorily required to recognise every company that demonstrates and adopts the best environmental practices. One of the ways that such recognition will be conferred is by NESREA awarding to such a company the NESREA compliance mark flag award, which the compliant company can use to brand itself and its products.

There are five kinds of NESREA compliance flag award; from the highest which is Green, to Blue, Yellow, Red and the lowest for non-compliance, which is red.

The Environmental Impact Assessment Act

The Environmental Impact Assessment Act ("EIA Act") was enacted to set out the general principles, procedures and methods that would enable the prior evaluation of any possible environmental impact, that any project or development, whether private or public sector led, would have on the environment.

Where a development or project is likely to have any impact on the environment, whether such a project or development is among the type of development for which a Mandatory Environmental Impact Assessment ("MEIA") must be undertaken, and an approved environmental impact assessment certification obtained, such assessment or analysis must be commenced at the very early stage of the project or development; and the Environmental Impact Assessment ("EIA") must be approved by NESREA as provided for in Section 35 of the NESREA Act.

The final decisions of NESREA are published after comments and opinions are received from members of the public and other stakeholders to the project or development.

Failure to comply with the provisions of the NESREA Act attracts fines and terms of imprisonment for both corporate bodies and individuals.

Lagos State Environmental Protection Agency Law

In Lagos State, the applicable Law is the Lagos State Environmental Protection Agency Law. This Law has among other things established the Lagos State Environmental Protection Agency

("LASEPA") as the Agency in Lagos State that manages all environmental matters inside Lagos State.

LASEPA is more commonly known for enforcing environmental sanitation regulations, which includes the disposal and control of all kinds of waste and other hazardous materials in Lagos State.

The LASEPA Law also expressly prohibits the discharge of untreated or un-purified waste of any kind into the environment.

To assist LASEPA in the discharge of its statutory functions, private sector enterprises are required to pay an annual Environmental Development Levy; and the amount of the Levy that a private sector enterprise will pay is subject to the nature of its business, with various amounts stated in Schedule 2 to the LASEPA Law.

Officials of LASEPA, who have reasonable grounds to believe that an environmental infringement has occurred are authorised by the LASEPA Law to without a warrant, enter, search, seize and or arrest any person or item that is constituting any environmental hazard or infraction.

Other penalties for infringing the LASEPA Law includes fines for both individuals and corporations, and both fine(s) and or terms of imprisonment for individuals.

Abuja Environmental Protection Board

In the Federal Capital Territory ("FCT") the principal legislation is the Abuja Environmental Protection Board Act, 1997. The subsidiary legislations include the Waste Management Rates/Charges Regulations, 2005, and the Solid Waste Control Environmental Monitoring Regulations 2005.

The FCT Environmental Protection Law and Regulations have in addition to making regulations for the protection of the environment, also provided for private businesses to pay an annual environmental levy or charge. Default with this legislation attracts fines, terms of imprisonment and the sealing of the business premises of the defaulting party.

Edo State Sanitation and Pollution Law

Like Lagos State, Edo State also has a similar Environmental Protection Law that goes by the name the Edo State Sanitation and Pollution Law, 2010. This Law empowers the Edo State

Ministry of Environment and Public Utilities to charge and collect an annual Environmental Remediation and Pollution Management Levy. The average amount for this Levy is N100,000 (One Hundred Thousand Naira) per annum.

One of the penalties for non-compliance with the provisions of the Edo State Sanitation and Pollution Law is the sealing-up of the business premises from which the environmental infraction arises.

Delta State Environmental Protection Laws

Some of the applicable Environmental Laws in Delta State include the Delta State Waste Management Board Law and the Delta State Ecology Law. These legislations, like the ones of other States above mentioned, seek to protect the environment in Delta State while also providing for an annual environmental development levy or charge.

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