

Legal Alert – February 2014 – Minimum Environmental Legal Compliance for Businesses

Introduction – Minimum Environmental Legal Compliance Requirements

Managing and protecting the environment continues to be an enormous task that Governments alone cannot be made to bear and sustain.

Also, public perception that environmental management, protection and legislations only apply to materials which are very toxic and hazardous to the environment has not assisted compliance to at least some minimum levels for sustaining a healthy 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 businesses which are not involved in toxic or hazardous trades in Nigeria. Samples of such legislations include:-

1. The Federal Environmental Protection Agency Act.
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 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 public or private 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 types 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 the Environmental Impact Assessment Agency ("EIAA").

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

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

The Federal Environmental Protection Agency Act

The Federal Environmental Protection Agency Act ("FEPA Act"), which is a Federal Law, created the Federal Environmental Protection Agency ("FEPA").

FEPA is charged with various statutory responsibilities, which are encapsulated in the EIA Act; i.e. protecting and developing the environment, its biodiversity, conservation, and the sustainable development of Nigeria's natural resources.

Any breach of the provisions of the FEPA Act attracts fines to the offending individuals and corporate entities; and terms of imprisonment to offending individuals and corporate supervisors who were aware of the breach.

Another penalty for any breach is the authority of FEPA to demand that compensation be paid for any damage resulting from the environmental infraction; and or that the environmental area be repaired or restored.

Lagos State Environmental Protection Agency Law

In Lagos State, the applicable Law is the Lagos State Environmental Protection Agency Law, which Law has among other provisions, the establishment of 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 dependent on the nature of its business, with various amounts for various

categories of businesses stated in Schedule 2 to the LASEPA Law. The Figures in Schedule 2 of this Law are however subject to review by LASEPA.

The LASEPA Law authorises officials of LASEPA to, without a warrant, enter, search, seize and or arrest any person, item or premises where an environmental hazard or infringement is reasonably believed to be occurring.

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.

FCT, Abuja Environmental Protection Board

In the Federal Capital Territory ("FCT") Abuja, 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 in the FCT Abuja, also provided for private businesses to pay **an annual Environmental Levy or Charge**. Any infringement of any of the provisions of 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 other States in the Federal Republic of Nigeria, Edo State has a 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 ₦100,000 (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 occurred or is occurring.

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.

Conclusion

Public enlightenment on the importance of the environment to mankind's wellbeing is virtually non-existent in Nigeria, as issues regarding the environment are perceived to be elitist and not communal.

Celebrating the environment once in a year, or imposing once-in-a-month-no-movement-for-a-few-hours compulsory sanitation exercise is not enough to protect the environment.

Governments and private sector stakeholders must collaborate in protecting and improving the environment, for this and the coming generations.

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