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AN APPRAISAL OF THE LEGAL FRAMEWORK ON ENVIRONMENTAL PROTECTION: KWARA STATE AS A CASE STUDY.

I. INTRODUCTION

The problem of damage caused by man to the environment as a result of the destructive effect of his activities have for long necessitated the need to establish a legal and administrative framework for the protection of the environment. However, issues on environmental concerns became an important policy issue in Nigeria only after the discovery in May 1988, that as far as August 1987 some Nigeria businessmen in collusion with their Italian counterparts dumped large containers of toxic wastes at the port town of Koko, Delta State.¹ The Government reaction to the event was *inter alia* the promulgation of the Federal Environmental Protection Agency Decree² which was a very good step towards improving other legislations governing all forms of environmental degradation.

This law was replicated in most States of the Federation including Kwara State by the enactment of the Kwara State Environmental Protection Agency Law.³ The main thrust of this paper is therefore to highlight the provisions of that law and to critically appraise its adequacy, efficacy and utility or otherwise with a view to suggesting possible amendments thereto in order to ensure an effective pollution control in the State and to meet the challenges of globalization.

The Kwara State Environmental Protection Agency Law⁴ is the starting point of the State plan of actions on environmental protection. Although preceded by some earlier environmental statutes⁵ prohibiting specific activities, these were far cry from what a substantive environmental protection law should be. The KWEPA Law, with a far more pervasive and sweeping effect presents the legal sign post for essential considerations of the State policy on the environment.

As the starting point of statutory environmental regulation in the State, an understanding of the substantive and procedural aspects of the Law and the Agency which it establishes is a necessary predicate to the study and practice of environmental law. And it is against this background that this paper is dedicated to highlighting and examining the provisions of the Law and to critically appraise its efficacy and utility.

In appraising the Law, emphasis is placed on the issues of Environmental Impact Assessment/Statement under the statutory powers of the Agency, enforcement methodologies and penalties with a view to determining their effects at preventing environmental abuse. In the final part of the paper, far reaching recommendations are made for improved statutory regulation. However, while the paper is not strictly

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1. The Koko toxic wastes dump actually motivated serious consideration by government in formulating policies on environmental law in Nigeria with sudden realization that the erstwhile scope and concept of the environment needed a redefinition as well as the drafting of new anti-pollution measures to address emerging problems: see M T Okorodudu-Fubara, *Law of Environmental Protection: Materials and Text* (Caltop Publication Ltd; Ibadan 1998) 52; L Atsegbua and V Akpotair and F Dimowo, *Environmental Law in Nigeria: Theory and Practice* (Ababa Press Ltd; Lagos 2004) 6-7.

2. Decree No 58 1988, now cap F10 Laws of the Federation of Nigeria 2004 (the 'FEPA ACT'). Now replaced by the National Environmental Standard and Regulation Enforcement Agency Act 2008.

3. No 5 1992, now cap K16 Laws of Kwara State 2008 (the 'KWEPA Law' or 'the Law').

4. Ibid.

5. eg Kwara State Environmental Sanitation Law 1986 ss 7&8.

speaking concerned with the appraisal of the performance, achievements or failures of the Agency which the Law created, occasional references are made thereto.

II. HISTORICAL BACKGROUND AND PURPOSES OF KWEPA LAW

The need to enact the KWEPA Law arose from section 24 of the FEPA Decree⁶ which required the Director-General of the Federal Environmental Protection Agency to encourage States and Local Government Councils to set up their own environmental protection bodies for the purpose of maintaining good environmental quality in the area of related pollutants under their control.

The purpose of the KWEPA Law is basically to establish the Kwara State Environmental Protection Agency (KWEPA) and to lay down a solid legal foundation for the State plan of action on the Environment. Thus, an appraisal of the Law reveals that the intention of the Lawmaker is to provide a comprehensive and yet simplified compendium of Environmental Laws in the State.

However, the bulk of the Law consist of substantive regulations, leaving it to the Agency it created to lay down procedural aspects of environmental control through delegated-type regulations.⁷ As the starting point of statutory environmental regulation in the State an understanding of the Law and the Agency which it established is required for an appraisal of the legal and administrative framework for the protection of the environment in the State.

Part 1 of the Law established the Kwara State Environment Protection Agency,⁸ its stated functions and powers.⁹ It also established for the Agency a Technical Committee, and specifies its functions and membership.¹⁰ Part II provides for financial provisions for the Agency.¹¹ Part III established Local Government Committee on Environmental Protection.¹² While part IV provides for a framework for the setting up of the standards in specific media such as water, air, noise, industrial discharge and gaseous waste, toxic and hazardous substances, storage of radioactive materials, herbicides or insecticides in rivers, lakes etc.¹³ The part also regulates enforcement power of the Agency and general penalties for violation of any provisions of the Law or any regulation made there under.¹⁴

III. CONSTITUTION AND MEMBERSHIP OF THE AGENCY

Section (3)(1) expressly established for the State a body to be called the Kwara State Environmental Protection Agency, which shall be a body corporate with perpetual succession having a common seal and power to sue and be sued in its corporate name. The Law further give the Agency powers to enforce environmental protection measures, and requires it to co-operate with the first, second and third tiers of government as well as statutory and research bodies on matter relating to the protection of the State environment.¹⁵

6. (n2).

7. Ibid. s. 15.

8. (n 3) s. 12-13.

9. Ibid. s. 3A (1)-(2).

10. Ibid s. 2(2) (i-ix).

11. Ibid.

12. Ibid.

13. Ibid.

14. Ibid. ss. 54-7.

15. Environment includes land, air, water, all plants, animals, human beings and the inter-relationships which among these or any of them. See (n 2) s 38. See also C S Ola, 'The Law on Environmental Protection' (2005) 2 JBPL 6.

The Governor is required under section 24 of the law to establish at the each Local Government, a committee for the purpose of maintaining good environment quality in the areas of related pollutants under their control¹⁶

The Governing Council of the Agency is statutorily a thirteen-member institutional body. This include the Chairman,¹⁷ the Honourable Commissioners charged with responsibility of the State Ministries of (i) Finance and Economics Development, (ii) Works and Transport; (iii) Health (iv) Environment and Tourism¹⁸, (v) Education and (vi) Industrial as members.¹⁹

Other members include four persons from the private sector who are required to have distinguished themselves as skillful and experienced in environmental matters,²⁰ a representative of the State Ministry of Environment and Tourism not below the rank of a director²¹ and the General Manager of Kwara State Environment Protection Agency who shall be an *ex-officio* member and secretary to the Council.²²

The Governing Council may co-opt additional member(s) on any occasion it desires to obtain the advice of such person(s) on any particular matter.²³ And the person(s) co-opted when attending meetings of the Council has all the rights and privileges of a member but is not entitled to vote on any issue.²⁴ The chairman of the Technical Committee established pursuant to S.3A is an *ex-officio* member of the Governing Council of the Agency.²⁵

IV. FUNCTIONS AND POWERS OF THE AGENCY

As the ombudsman of the State's environment, the Agency is required under section 12 of the Law to take charge of the protection and development of the environment as well as formulation of policies aimed at improving the protection of the environment, and implementing applicable laws and standards on activities relating to the environment.²⁶ It is required to establish water quality standards for the intra-State waters, enhance its quality²⁷ as well as enforcing the World Health Organization's water standard.²⁸

The Agency is required to establish State's standard codes and guidelines for the air quality,²⁹ noise control and hazardous substances.³⁰ It is also required of the Agency to designate refuse disposal sites for refuse,³¹ obnoxious toxics and poisonous wastes,³² and to assist in the disposal of refuse wastes within the States.³³

16. (n3) s. 24.

17. Ibid. s. 2.

18 Now renamed Ministry of Environment and Forestry.

19. (n 3), s. 2 (a) (I) - (v).

20. Ibid. s 2 (b).

21. Ibid s 2(c).

22. Ibid. s. 2(d).

23. Ibid s. 2(4).

24. Ibid.

25. The Kwara State Environmental Protection Agency Technical Committee is established for the purposes of assisting and advising the Council and the Agency in the performance of their functions under the Law and also to give technical opinion on issues referred to it or delegated by the Council. The Committee is composed of the General Manager of the Agency as its chairman, two distinguished persons from the private sector having wide knowledge, skills and expertise in environmental matters; the Director, Town Planning Ministry of Lands, Survey and Physical Development, Governor's office; the Director, Civil Engineering, Ministry of Works, the Director, Public Health Services Ministry of Environment and Forestry, The Director, Schools and College, Ministry of Industries and the Secretary of the Agency as Secretary.

26. (n 3) see generally s 12(a)-(r).

27. Ibid. s. 32(1).

28. Ibid. s. 32 (2).

29. S. 13 (2) (k).

30. S. 13 (2) (j).

31. S. 37.

The Agency has power to enter into any transaction with other bodies in pursuance of its functions and can enter and inspect any premises carrying on manufacturing operation with the intention of collecting samples to ascertain environmental pollution level at any time as well as applying enforcement measures to combat environmental degradation in the premises.³⁴

V. ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE STATUTORY POWERS OF THE AGENCY

Environmental Impact Assessment ('EIA') refers to the process by which changes in the environment as a result of developments are assessed with a view to measuring how beneficial or deleterious those changes might be.³⁵ An examination of the Environmental Impact Assessment Act³⁶ reveals that an Assessment is predicated on the likely environmental impacts of a proposed development and finding the means of preventing or mitigating or compensating for likely unacceptable impact.³⁷

The primary aim of Environmental Impact Assessment is therefore to ensure that, as far as possible, negative or adverse impacts of development projects are predicated and addressed before the project is commenced, while the goal is to ensure responsible exploitation of natural resources and sustainable productivity of the ecosystem.³⁸

The provisions of section 12(i) of the Law is of special significant in as much as it can be construed as giving powers to the Agency to issue or initiate suitable policy action and regulations mandating the preparation and use of Environmental Impact Statement for proposed projects by private and public sectors.

VI. WATER QUALITY AND RESOURCES PROTECTION

The earliest and perhaps the most significant water pollution control effort can be found in the Penal Code³⁹ which contains specific provisions aimed at preserving the utility and quality of water. Under section 191 of the Code, whoever voluntarily corrupts or fouls the water supply so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.⁴⁰ Under section 25(e) of the law the Agency is mandated to establish such environmental criteria, guidelines, specifications or standards for the protection of the intra-State waters and that the standard shall be such as may be necessary to protect the health and welfare of the population from environmental degradation and enhance the quality of water for the specified purposes.

In performing the above function, the Agency must take into consideration the utility of water for different purposes such as public water use, propagation of fish and wild life, recreation purposes, agricultural, industrial and other legitimate uses.⁴¹ The Agency is thus required to establish different water quality standards for different uses.

It should be noted however, that strictly speaking, the Agency has no powers to directly make regulations establishing the State's water quality standards. The law

32. Ibid.

33. Ibid. s. 40(i).

34. Ibid. See s. 13(a)-(p).

35. Omoregbe, 'Regulation of Oil Industry Pollution in Nigeria' in Azinge (ed), *New Frontiers in Law* (Olitz Publishers, Benin 1993) 147-158.

36. Cap E 12 Laws of the Federation of Nigeria 2004 (the 'EIA Act').

37. M F Ivbijaro, 'Environmental Impact Assessment/Environmental Audit Report in Nigeria: An Over view' in Ajomo and Adewale (eds), *Environmental Law and Sustainable Development in Nigeria*.

38. Ibid.

39. Laws of Northern States of Nigeria (Federal Provisions) Act Cap P 3 LFN 2004 applicable in Kwara State.

40. Compare sections 234 (e) and 245 Criminal Code Act Cap C 38 LFN 2004 applicable in Southern Nigeria.

41. (n 3) s. 15 (e).

simply provides that the Agency shall make recommendations to the Governor who may or may not alter the submitted 'recommended regulations'.⁴²

The Law also prioritized on the establishment of effluent limitations for both the new as well as existing point sources as the primary approach to water pollution control. It is provided that the agency may, subject to the approval of the Governor, make regulations for standard or effluent limitation.⁴³

Furthermore, the law prohibits indiscriminate digging of wells and boreholes for industrial purposes except with the written approval of the Agency.⁴⁴ Also, the Agency is empowered to monitor and survey waters including underground water to determine pollution levels in them and/or to collect baseline data there from.⁴⁵

VII. AIR QUALITY AND ATMOSPHERIC PROTECTION

For the first time in the legislative history of the State the KWEPA Law came up with targeted and purposeful statutory provisions for the control of air pollution which is on the rise with the increase tempo of industrialization and economic development. For instance, it prohibits discharge into the air in the course of industrial process any inadequately filtered and purified gaseous waste or gases containing substances injurious to life and property, such as sulfur dioxide oxide of nitrogen, hydrogen sulphide, carbon monoxide, amonial, chlorine, smoke, metallic dust and particulates.⁴⁶

The Law further presents the legislative expression of the State policy to attain a clean air environment through specified strategies which include monitoring sources of toxic pollution in the air and offering the necessary advice to industrial establishments,⁴⁷ initiating measures to ensure pollution-free air throughout the State including any other step to inculcate environmental discipline to individuals or groups.⁴⁸ Other strategies include establishment of air quality standards for appropriate stack/filters reactors for industries that emit gaseous wastes⁴⁹ and making regulations for acceptable standards or criteria to control the pollution level of air.⁵⁰

The fundamental objective of the provisions is to ensure that air pollution does not endanger public health and welfare. And in order to attain this statutory objective, the Law mandates the Agency to establish criteria, guidelines, specifications and standards to protect and enhance the air quality.

VIII. NOISE

Under Section 13(2)(i), the Agency is empowered to control noise pollution, and make regulations for acceptable standards or criteria to control the pollution level of noise but in consonance with the Federal Government guidelines and policies and criteria on the environment.⁵¹

42. Ibid. s. 32 (i).

43. Ibid. s. 15 (g). Effluent limitation, is not define in the KWEPA Law but s 16 of FEPA Act (n 2) defines Effluent Limitation as any restriction established by the Agency on quantities, rates and concentration of chemical, physical, biological or other constituents which are discharged from point sources into the waters of Nigeria.

44. (n 3) s. 61.

45. Ibid s. 13 (2) (c).

46. Ibid. s. 60 .

47. Ibid.

48. Ibid. s. 12 (j).

49. Ibid. s. 13 (k).

50. Ibid. s. 15 (e).

51. Ibid. s. 14 (e).

IX. CONTROL OF TOXIC CHEMICAL AND HAZARDOUS SUBSTANCES

Toxic chemical and hazardous waste belong to that category referred to as hazardous substances of which no conclusive list yet exists but include drugs, pesticides, chemicals etc.⁵² With the proliferation of hazardous substances, most of which are though beneficial to the consumer needs of man but highly risky and imminently dangerous to man and his environment if uncontrolled or inadequately regulated, misused or improperly disposed, the law has controls the menace of the substance.

Hitherto, the bringing in, processing, distribution, use or disposal of a vast majority of chemicals in the State was largely unregulated. The law has, though not expressly use the word 'chemical' prohibit the carrying, dumping, buying, depositing of any toxic or hazardous substance or harmful waste on any land or water witl in the State⁵³

Similarly, the Law prohibits burying or dumping of expired drugs or chemicals of any type from pharmaceutical or chemical companies in any part of the State without prior written permission of the Agency.⁵⁴ It also expressly prohibits the use of *Gammalin 20*, or any other herbicide or insecticide or other chemical to kill or for any other purpose in rivers, lakes or streams within the State without first obtaining a written permission of the Agency.⁵⁵

X. REGULATING POWERS

The Law empowers the Agency to make regulations for the control of hazardous substances.⁵⁶ An industry or facility is required under the law to submit to the Agency: (a) list of the chemicals used in the manufacture of its products; (b) details of stored chemicals and storage conditions; (c) where chemicals are brought, sold or obtained, the name of any secondary buyer.⁵⁷

The information is expected to aid the Agency in its chemical tracking program which involves monitoring and controlling the management (i.e. manufacturing, processing, use and disposal) of chemical substance.

XI. LAND RESOURCES PROTECTION⁵⁸

Sections 12 (f) and 14(f) deals with protection of Land resources. Under law, the Agency has a statutory function of taking measures to guarantee effectiveness of environmental structures throughout the State for flood control. Section 14 (f) of the Law expressly empowered the Agency to make regulations for acceptable erosion measures in consonance with Federal Government guidelines and policies, as well as basic requirement for nature conservation.

52. M T Okorodudu-Fubara (n1) 729.

53. (n3) s. 63.

54. Ibid. s. 62

55. Ibid. s. 65.

56. Ibid. s. 15.

57. Ibid.

58. In a general sense, Land comprises of the ground or soil of the earthly planet, including fields meadows, Pastures, woods, moors, marshes and rock: see MT Okorodudu-Fubara (n 1) 235. In a narrower sense and as a term of law 'Land' denotes the quality and character of the interest or estate which a person may own in Land: see H C Black, *Black's Law Dictionary* (5th edn Paul Minn West Publishing Co. London 1979) 789. Interpretation Act 1964(now) Cap 142 LFN 2004 s 17(1) defines Land as including any building and any other thing attached to the earth or permanently fastened to any thing so attached, but does not include minerals. However, in the light of the goals and objectives of the National Environmental Protection Policy which aimed at preserving the wholesomeness and sustainability of the physical, economic, cultural, ecological and aesthetic factors, which make up of land, then notwithstanding the provisions of the s 17(1) of the Interpretation Act land include mineral as well as the resources, natural or man-made attached to the earth or permanently fastened to anything so attached, see M T Okorodudu-Fubara (n 1) 235.

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59. (n 3)
60. Ibid.
61. Ibid.
62. Ibid.
63. Ibid.
64. Ibid.
65. Ibid.
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XII. ENFORCEMENT POWERS AND METHODOLOGY

Sections 13(2) (m)-(n), 27, 37, 51(1)-(2) of the Law deals with the enforcement of the power of the Agency in relation to the environment. The Agency may perform any of its functions through or by any of its officers, servants or agents duly authorized by it in that behalf.⁵⁹ And there are provisions under the Law empowering such authority to adopt any or multiple of the methods for strict compliance with the Law and regulations made there under. The most often used of the methods include the following:

(a). Criminal Prosecution

Section 53 (1) of the Law makes it clear that any person who contravenes any of the provisions of sections 34-36, 38-40 or 43-50, shall be guilty of an offence under the Law, and in accordance with section 57 be liable to a maximum fine of five thousand naira or imprisonment for six months. But when the person is a corporation, a body corporate or incorporate, the penalty shall be fifty thousand naira for each offence.⁶⁰

Furthermore, where it is proved that the offence committed under the provisions by a corporation, a corporate or unincorporated has been with the consent or connivance of or attributed to any neglect or omission on the part of any of its officer he shall be liable on conviction to a fine of ten thousand naira or to imprisonment for one year as if he had personally committed the offence⁶¹

In addition, any person who fails or neglects to comply with any of the provisions of sections 58-62 or 64-65 relating to failure to adequately treat or purify industrial waste and sinking of industrial wells or boreholes and use of herbicides or insecticides in rivers, lake etc shall be liable on conviction to a fine not exceeding one hundred thousand naira.⁶² And where the offender is a statutory corporation, body corporate or incorporate he shall be liable on conviction to a fine not exceeding five hundred thousand naira.⁶³

Any person who fails to comply with provisions of sections 63 or 66 relating to dumping or burying of toxic or hazardous wastes and storage of radioactive materials shall be liable on conviction to a fine not exceeding five hundred thousand naira.⁶⁴ While any person who permits such substances to be dumped on his land commits an offence and shall on conviction be liable to a maximum term of ten years imprisonment without an option of fine⁶⁵.

It has been observed that at the inception of prosecution over enforcement of environmental protection laws criminal prosecution for violation was seldomly effective because of the requirement of *mens rea*.⁶⁶ It was argued for instance that to impose a substantial prison term, willfulness, or at least recklessness would have to be proved beyond reasonable doubt, and that since the most important polluters are likely to be

59. (n 3) s. 27.

60. Ibid. s. 53 (2).

61. Ibid. s. 53 (3).

62. Ibid. s. 67 (1).

63. Ibid. s. 67 (2), see also s 67 (3).

64. Ibid. s. 67 (4).

65. Ibid. s 67 (6).

66. Literally *guilty mind*. In Criminal Law, to constitute a crime there must not only be a guilty or forbidden act (*actus reus*) but also a guilty mind (*mens rea*). In *Sweet v Parsley* (1969) All ER 347 Lord Reid observed that '...there has for centuries been a presumption that parliament did intend to make criminals of persons who were in no way to blame in what they did' In other words a man should be guilty of an offence which he did not intend to commit. see E H Ofori-Amankwa, *Criminal Law in the Northern States of Nigeria* (Gaskiya Corporation Ltd., Zaria 1986) 70-83; C O Okonkwo, *Criminal Law in Nigeria* (2nd edn Spectrum Books Ltd, Ibadan) 43-9.

large business concerns, it would often be impossible to prove the personal culpability of individual officers or employees.⁶⁷

The KWEPA Law has avoided this technically by providing under section 57(3) that, where an offence has been committed by a body corporate, all that need to be proved is that the offence was committed with the consent or connivance of or attributable to any neglect or omission on the part of any director, manager, secretary or any other similar officer of the corporation or any person purporting to act in that capacity.⁶⁸

Furthermore, an Environmental Health Officer may commence proceedings against a person who fail to abate a nuisance or commit an offence under certain provisions of the law⁶⁹ after service on him by means of a criminal summons.⁷⁰ While any person who obstructs an officer of the Agency or any person authorized by him or person engaged in carrying out the provisions of the law commits an offence and on conviction shall be liable to a fine of five thousand naira or imprisonment for six months.⁷¹

(b). Civil Penalties

Under section 67(7) of the law, where an owner of land or facility which is a statutory corporation or body corporate or unincorporated is responsible for the discharge, dumping or burying of hazardous substance or storage of radioactive materials contrary to sections 63 and 66, he will in addition to criminal penalty prescribed in that section be liable for the cost of the removal of the substance as well as bearing the cost incurred in removing the substance and restoring the environment to a harmless state.⁷²

(c). Inspect and Search

Section 13(2)(m)-(n) of the Law empowers any authorized officer of the Agency to require to be produced, examined and take a copy of any license, permit, certificate or any document, and any appliance, device or other items to be used in relation to environmental protection in accordance with the provisions of the law or any regulation made there under.

Similarly, under section 13(2) (i) any authorized officer of the Agency may enter and inspect any premises engaged in or carrying on manufacturing operations or business with the intent of collecting samples to ascertain environmental pollution level at any time.⁷³ While section 15 (2) empowers such an officer to inspect a drain, open space, public place, recreation ground or drainage system for the continuous flow of such drain or drainage system or any part thereof.⁷⁴

67. M T Okorodudu-Fubara (n 1) 209.

68. The Statutory intent is to introduce a disjunctive as opposed to a conjunctive element into the practical effect of the provisions. Thus, any of *consent, connivance, neglect or omission* is a sufficient proof of personal culpability of the corporate officers.

69. Eg under sections 34-36, 38-40, or 43-50.

70. Ibid. s. 540.

71. Ibid. s. 30.

72. Ibid. s. 67(7).

73. Note that there is no power of seizure or forfeiture of an offending substance under the KWEPA Law. The question is, was the absence of such power in the law an oversight by the legal draftsmen, or such power was not deemed necessary for the Agency in the first place?

74. (n 3) s. 51 (2).

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(d). **Sealing**

Under section 51(1) (3) - (4), a duly authorized officer of the Agency may seal up any tenement in respect of which a nuisance has been committed. And such tenement shall remain sealed up until the nuisance committee is abated.

Similarly, any person or group of persons or school who contravenes the provisions of section 12 (r) by failing to ensure a conducive learning environment, may in addition to being liable on conviction to a fine also have the institution totally or partially closed.⁷⁵ While any defaulter who fails to comply with the water standard as laid down by the Agency pursuant to section 13(2) (e) by registering and providing good quality water shall in addition to fine have the premises closed pending satisfactory compliance with the Agency order.⁷⁶

(e). **Revocation of Permit, License, Certificate Etc**

Issuance of permits, licenses or certificates by the Agency is a vital technique for guarding against environmental degradation as same can be used as monitoring devices to regulate activities which are potential sources of environmental pollution in the sense that their issuance carried with them an understanding that the holder will forfeit them upon a breach of the regulations, law or any of the laid down conditions specified on such permits, licenses or certificates.⁷⁷

(f). **Arrest**

Power is given to an authorized enforcement agent such as agent of the Agency, a police officer or an Environmental Health Officer to arrest without warrant any person who he has reason to believe has committed an offence under the law.⁷⁸

XIII. SUITS AGAINST THE AGENCY

No one can sue any member, officer or employee of the Agency for any act done or ordered to be done by him in good faith in the discharge of his functions under the law.⁷⁹ And in any suit against the Agency, no execution or attachment or process in the nature thereof can be issued against the Agency but any sum of money which by judgment of the court is awarded against the Agency shall, subject to any directions given by the Agency be paid from the funds of the Agency.⁸⁰

XIV. FUNDING, ACCOUNTABILITY AND APPOINTMENT OF AUDITORS

The Agency's sources of finance will be grants from the State Government, gifts, monies earned or arising from property and investments acquired by or vested in the Agency; fees and charges for services by the Agency or payable or vested in the Agency in respect of or incidental to its functions.

Section 19 requires the Agency to keep all proper and usual accounts in respect of its functions under the Law, such accounts must be audited as soon as possible after

75. Ibid. s. 57 (4) (a).

76. Ibid. s. 57 (4) (b).

77. S. 39 makes discharge of an industrial waste by a person subject to a permit system. Similarly, a license is required for most operation, e.g. license to use incinerator: s 45; License to operate private refuse disposal: s 40(2); License to manufacture any matter of any description of chemicals, lubricants, petroleum products, cement or carrying on the containerizing of any oil, lubricant or petroleum: s 61; any permit issued under any of these provisions may be cancelled, suspended or refuse to be re-issued.

78. S. 56.

79. Ibid. s 10 (A) (1). This is a bad section which needs repeal for insulating the agency and its servants against legal action for any wrong committed bonafide in the discharge of its duties.

80. Ibid. s 10 (A) (2).

the end of each year by auditors appointed by the Governing Council of the Agency with the approval of the State Auditor-General.⁸¹

XV. INSTITUTIONAL NETWORKING BETWEEN KWEPA AND OTHER RELEVANT AGENCIES

Obviously, the content and scope of the Law is too wide for the Agency alone, thus the responsibility for the enforcement of the law lies not only with the Agency and the overseeing ministries⁸² but in collaboration with the regular law enforcement agents such as the police especially where a criminal offence is involved. As the *ombudsman* of the State's environment however, KWEPA nonetheless, maintain the frontline of the institutional network for the enforcement of its enabling law.

XVI. RECOMMENDATIONS

Awareness of environmental problem is still very low in the State. Problem arising with the environmental protection is not that there are not enough laws but the enforcement. And without an enlightened public, enforcement would have little prospect of success, as there is no doubt that the lack of concern for the state of our environment is partly due to ignorance as to its effect on the quality of life. The starting point therefore is that the Agency should enlighten the populace on the dangers of environmental pollution, improper management of wastes, and encourage the formation of People Environmental-Interest groups. This would help guide the attitudes of people to environmental pollution.⁸³

The issues of generating and treating industrial waste in particular cannot be effectively taken care of by the provisions of the law as it presently stands, thus an urgent reform should be made. For example, additional penalties such as permanent closure of a corporation or confiscation should be made possible, so that the disadvantages accruing to a defaulter will outweigh the advantages which he may seek to achieve by his default.

The penalties attaching to nuisance and other offences⁸⁴ as stipulated in section 57 of the law are rather too liberal because a corporation or an individual may find it cheaper to violate same and pay the prescribed fine rather than complying with it and incur a heavy cost, for instance in treating wastes as specified therein.

Regulation or prohibition of unhygienic food processing is not covered by the Law. To this end, it is recommended that it should be included in any future amendment to the law with powers given to the Agency to destroy any contaminated food in addition to any other penalty prescribed for processing and sale of same. Also, the use of preservatives, flavoring and colouring used in food processing as well as the disposal of their containers should be regulated.

An amended law should also provide for the immediate arrest of drivers of vehicles generating an unusual amount of smoke while administrative machinery for ensuring road worthiness of vehicle required to be over hauled should be devised. One other fatal lapse in the law is the lack of compensation provisions for the victims of

81. Ibid. s20. It submitted that this provisions gives room for the Agency to audit itself since loyalists of members will get the job and lobbying followed by corruption will follow. This dark side of the appointment of the auditor may be removed if the accounts are audited by the staff of the State director of Audit.

82. i.e. the State Ministry of Environment and Tourism or Forestry, and Health.

83. As J S Mill once observed 'There will be no great improvement in the general ecological condition until great changes take place in our modes of thought' cited by in J A Omotola (ed), O A Bowen, *The role of Private Citizens in the Enforcement of Environmental Laws* (Mayodele Ajayi Enterprises, Lagos 1990) 169.

84. e.g. Failure to keep, maintain or replace waste respectable: s 34-6; erection or use of an incinerator without the prior approval in writing of the Agency: s 45; storage or burning of industrial or commercial wastes on a tenements: s 46-7; deposit on road of sand, litterite, gravel, iron rod, plant or any building materials: s 50 etc.

industrial pollution. It is suggested that this ought to be remedied at the earliest opportunity.

XVIII. CONCLUSION

The provisions of the Law have been examined in some material particulars. On paper they appear sound enough and have indeed made an impact. Perhaps, the devolution of responsibility to Local Government under section 24 (subject to the provisions of the law) may go along way towards making the impact of the law felt up to the grass root level.

The appraisal of the law reveals that the intention of the law maker is to provide a comprehensive and yet simplified compendium of environmental law in the State. And it has undoubtedly been a major legislative breakthrough in that regard. However, the paper posits that it is only when we are able to warn ourselves of environmental dangers and exercise restraint that the law will become more effective in the crusade for environmental protection.

It is strongly believed that if suggestions made herein are taken seriously and reflected in subsequent amendment in the law, they will go along way in regulating environmental abuse. Meanwhile, while a hundred percent success can not be claimed the law arguably represents a bold step in the direction of achieving sustainable development in the State.