

THE CHALLENGES OF ENVIRONMENTAL ENFORCEMENT IN AFRICA: THE NIGERIAN EXPERIENCE

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SUMMARY

In Africa like in most developing countries, the major preoccupation of government for many years has been the provision of basic social amenities. Environmental protection was synonymous with conservation of natural resources, while concerns for industrial pollution control and hazardous waste management were treated as both esoteric and an attempt to slow down the pace of industrialization. Under such a state of lethargy in environmental protection, a strong catalyst is needed to wake up both government and the populace to their responsibilities. For Nigeria this much needed catalyst for environmental enforcement came in 1988 in the form of an illegal dumping of toxic wastes of Italian origin.

The response of government was swift and decisive. The Federal Environmental Protection Agency was created and a National Policy on Environment was launched. These two instruments though coming 16 years after the Stockholm Conference put Nigeria in the forefront in Africa and somehow equal with a number of developed countries. However, unlike the developed countries, Nigeria was starting de novo without any industrial pollution law or an enforcement tradition and in a period of rapidly dwindling economic fortunes.

The absence of pollution waste management laws, the lack of tradition of enforcement, the expectations of a restive press and a populace sensitive to toxic waste scares have all compounded the challenges of environmental enforcement in Nigeria. This paper presents the highlights of five years of laying the foundation for environmental protection in Nigeria. It describes the varied challenges encountered in establishing an effective enforcement programme and how the challenges are being tackled.

1 HISTORICAL BACKGROUND

Past efforts of the Nigerian Government in environmental protection (pre-and-post independence) were geared primarily either towards safety or the protection and conservation of the economically important natural resources. This is clearly demonstrated by the list of environmental laws which include:

- Oil Pipeline Act. 1956.
- Forestry Act. 1958.
- Destruction of Mosquitoes Act. 1958.
- Public Health Act. 1958.
- Minerals Act. 1958 cap. LFN 1990.
- Mineral Oil (Safety) Regulations 1963 cap. 350 LFN 1990.
- Oil in Navigable waters Act. 1968 cap. 339 LFN 1990.
- Endangered Species Act. cap. 108 LFN 1990.
- Quarries Act. cap. 385 LFN 1990.
- Sea Fisheries Act. cap. 404 LFN 1990.

There were no laws on industrial pollution and hazardous wastes. Industrialization was considered a key indicator of development. States and Municipal governments gave tax and other

concessions to lure industrialists to establish industries in their domain, and the citizens being uninformed, lived happily with the resultant pollution and hazardous wastes. Over time, hot and heavy, metal laden, coloured effluent discharged into streams by textile factories in certain localities assumed mythical references (including disease curative properties). Industrial effluents and sludges were erroneously used as manure to produce "fresh" but deadly crops for the kitchens and dining tables of our urban population. Fishes and crabs caught from polluted rivers and lagoons were sold and eaten freely. Containers of chemicals (and pesticides) littered the surroundings in open dump-sites waiting to be picked by innocent and illiterate folks who would use them to store their own food and water. Particulates from quarries, asphalt, cement and similar industries settled on many a house wife pots of soup forming layers of crust that inevitably get consumed as part of the regular meal. Fumes from stacks occlude sunlight and cause burning and other irritations of the eye, nose, lungs and skin. The list was endless.

The 1972 Stockholm Conference on Human Environment which was attended by Nigeria ignited the consciousness of our government on the need to evolve a holistic rather than sectoral approach to environmental protection. Other efforts and regional initiatives such as the Lagos Plan of Action of 1980 also reinforced this emerging consciousness for environmental protection. In 1981, a bill for the establishment of a Federal Environmental Protection Agency was placed before parliament. Meanwhile a small unit called Environmental Planning and Protection Division in the Federal Ministry of Works and Housing was handling environmental protection. But nothing happened to the bill and the comic but horrifying situation of industrial pollution described earlier continued throughout most of the 80s.

2 THE TURNING POINT

In June 1988, at the height of Nigeria's diplomatic leadership in protecting the West African Region from toxic waste and of Nigeria condemning neighbouring African states for accepting foreign toxic waste cargoes for disposal, a Nigerian Newspaper carried a headline story which revealed that toxic waste had been dumped on a site in Koko, a small port town in the southern part of Nigeria. Subsequent investigations confirmed the story. The waste came from Italy in five (5) shipment loads totalling 3,884 metric tonnes. For government, this was a national embarrassment. But the incident awoke the consciousness of government and the people to environmental protection. A Ministerial Task Force was immediately set up to evacuate the waste within six weeks. The government also pledged commitments which raised hopes for sound environmental management in Nigeria.

3 ACHIEVEMENTS: 5 YEARS LAYING THE FOUNDATION FOR ENVIRONMENTAL ENFORCEMENT IN NIGERIA

3.1 The enabling instruments

The Federal Environmental Protection Agency was created by the Decree 58 of 1988 as the overall (unitary) body charged with the responsibility of protecting the environment in Nigeria. Specifically, the Decree establishing the Agency authorizes it to, among other things, establish and prescribe national guidelines, criteria and standards for water quality, air quality and atmospheric protection, noise levels, gaseous emissions and effluent limits etc; to monitor and control hazardous substances, supervise and enforce compliance.

The Decree also gave the Agency broad enforcement powers, even without warrants, to gain entry, inspect, seize and arrest with stiff penalties of a fine and/or jail term on whosoever obstructs the enforcement officers in the discharge of their duties or makes false declaration of compliance etc.

The FEPA executes its functions in accordance with the goals of the National Policy of the Environment which was launched on 27th November, 1989.

3.2 Institutional framework

Nigeria operates a Federal system of government with 30 states and a Federal Capital Territory. The Federal Environmental Protection Agency operates a central system with headquarters at the Federal Capital Territory, Abuja and five zonal (regional) offices located in Lagos, Port Harcourt, Benin-City, Kaduna and Kano.

The zonal offices were established to address environmental problems of the various ecological and industrial zones and to place within easy reach of states the required technical advisory support needed by state EPAs.

A consultative and policy making forum called the National Council on Environment was created to promote cooperation, coordination and harmonization of policies and implementation of enforcement strategies between the Federal and States EPAs as well as among the State EPA's themselves. About 60% of the States now have autonomous EPAs while the remaining operate environment units either under the Ministry of Works and Housing or Ministry of Health.

From inception till December 1991, the Agency operated as a parastatal under the Minister of Works and Housing. But effective from January 1992, FEPA was transferred to the Presidency (FEPA amendment Decree 59 of 1992), with an expanded mandate which includes the conservation of natural resources as well as the control of land erosion and desertification. For its day to day activities, FEPA is organized into five technical departments viz; Planning and Evaluation, Environmental Resources Conservation, Environmental Technology, Environmental Quality and the Inspectorate and Enforcement. (Figure 2)

3.3 Instruments of intervention

In order to stop the bad practices of industries and toxic waste merchants and reverse the horrifying state of environmental pollution described earlier, government had to enact a number of legal instruments which spell out in clear terms specific offenses, requirements and penalties for contravention. the following are the instruments of intervention in pollution control enacted in Nigeria from 1988 to date:

- The Hazardous Waste Criminal Provisions Decree 42 of 1988.
- The National Guidelines and Standards for Environmental Pollution control in Nigeria.
- The National Effluents Limitations Regulations S.I.8. of 1991 which make it mandatory for industrial facilities generating wastes to retrofit or install at commencement of operations, anti-pollution equipment for detoxification of effluents and chemical discharges. The regulations also spell out by industrial categories, crucial parameters and their limits in effluents or emissions and prescribe penalties for their contravention.
- The Pollution Abatement in Industries and Facilities Generating Regulations S.I.9. of 1991. which spell out: restrictions on release of toxic substances into Nigeria's ecosystem; the pollution monitoring requirement for industries, the strategies for waste reductions, requirements for environmental audits and penalties for contravention.
- The Management of Solid and Hazardous Wastes Regulations S.I.15 of 1991. which give a comprehensive list of dangerous and hazardous wastes, the contingency plans and emergency procedures; The regulations also prescribe the guidelines for ground water protection, toxic waste tracking programme, and the environmentally-sound technologies for waste disposal.
- The Environmental Impact Assessment (EIA) Decree 86 of 1992. which is to infuse environmental considerations into development project planning and execution. It prescribes the guidelines for EIA studies; spells out the project areas and sizes of projects requiring EIA in all areas of national development and the restrictions on public or private projects without prior consideration of the environmental impact.

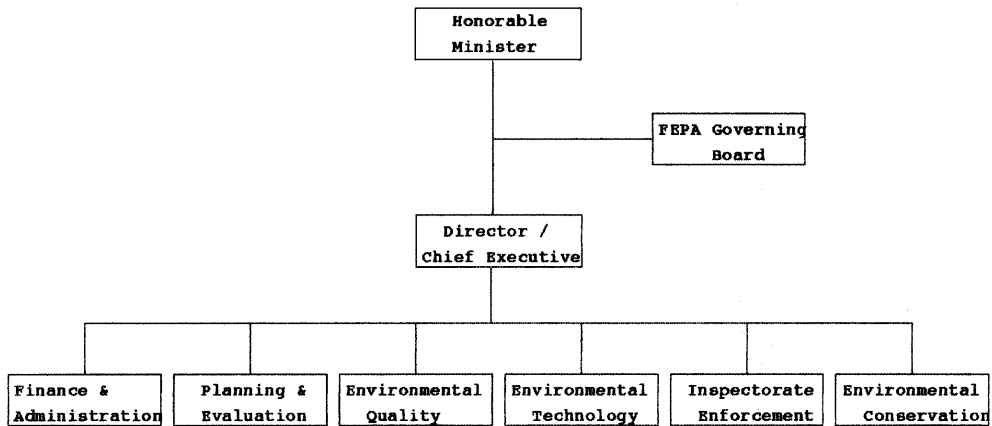


Figure 1. FEPA organizational chart 1991-1992.

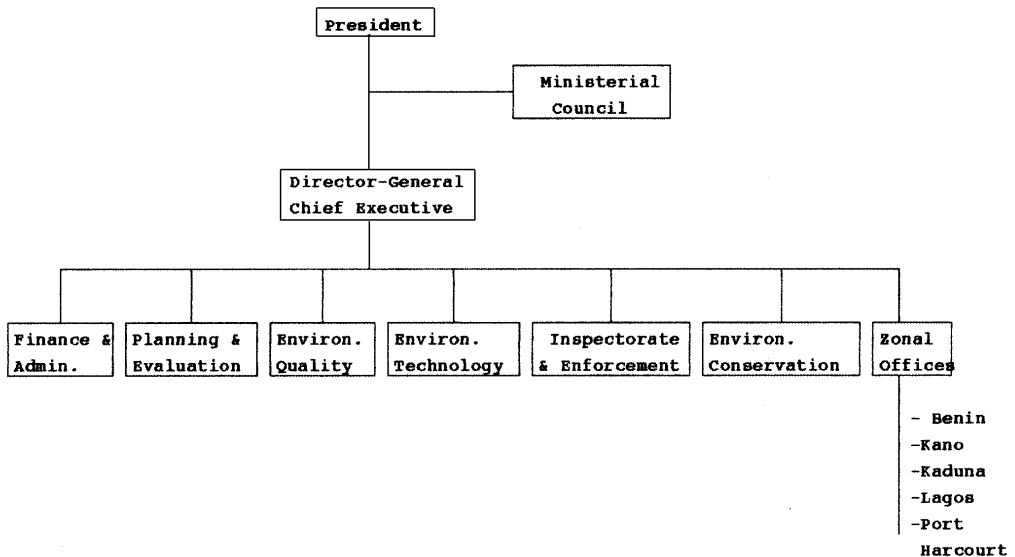


Figure 2. FEPA organizational chart 1993.

3.4 Institutional strengthening and capacity building

For Nigeria to meet the challenges of the rapidly evolving complex issues of environmental protection in the world, the Agency had to embark on strong recruitment drives in 1989 and 1991. The exercises were very successful, bringing in senior academics from the Universities to occupy management positions in the agency. The Agency now has 38 Ph.D and 169 M.Sc graduates of various disciplines.

A National Reference Laboratory has been built in Lagos and efforts are being made to equip it to international standards. An Environmental Data Bank is being established with an IDA facility of

the World Bank, as the National Network for environmental monitoring, data gathering and information. A number of studies are currently being carried out on Industrial pollution. Hazardous Wastes and Hazardous chemical tracking; Ozone Depleting Substances (ODS) phase out; Lagos Lagoon Pollution Control etc. with grants from the British ODA, World Bank etc. The British ODA assisted in putting together a 5 year plan for the Agency in 1989.

A memorandum of understanding (MOU) was developed with the US EPA for technical assistance in staff training and environmental management. Similar MOUs have been developed between the Agency and four Nigerian Universities which are designated Linkage Centres for environmental research and capacity building in order to maintain a training programme geared towards environmental management (rather than the traditional basic disciplines) for the States and the public at large.

3.5 Public enlightenment

Recognizing the need to gain the confidence of the general public through information about the agency's ability to control pollution, FEPA embarked on a wide array of activities all geared towards public enlightenment. These publicity seeking activities include:

- Publicised walk-through inspection of industrial facilities led by the Director/Chief Executive of FEPA.
- Agency-organized or sponsored Workshops/Seminars on Industrial Pollution/Hazardous wastes management.
- Attendance at Workshops, Seminars and Conferences on Pollution management related themes organized or sponsored by professional associations, NGOs and academics with the Agency making official policy statements/address.
- Information dissemination through Newsletters; Monographs, Bulletins and Radio Jingle commercials.

4 THE CHALLENGES

4.1 Establishment of the Enforcement Department and considerations for the evolution of effective enforcement strategies

The Inspectorate and Enforcement Department of FEPA was created on 1st April, 1991. Prior to this I was the Head of the Agency's Department of Conservation for 1 year and a University Lecturer for 15 years. With a bachelor degree in Agriculture and a doctorate in Environmental Stress Plant Physiology and no formal or informal training in enforcement or factory inspection, I needed to rise up to the challenge of my new assignment in the shortest time possible. I sought and received from the US Training Manuals on inspections and enforcement, environmental laws of several states in the US, as well as other relevant literatures including those on waste management, environmental crimes etc. I adapted some of the materials to organise In-House Training for my staff.

In order to evolve effective and sustainable enforcement strategies, the following issues were considered:

- The status quo ante (before FEPA).
- Peculiarity of industrial estates in Nigeria.
- The downturn in the economy (recession).
- The technical and financial constraints of the Agency.
- Expectations of the Nigerian populace.

As mentioned earlier, there were no laws on industrial pollution before the creation of FEPA, and hence there was no culture of pollution control. Over the last 20 years, it had become fashionable

for State and municipal governments to designate certain areas in their major towns as industrial estates. But the peculiar characteristic of these industrial estates is the absence of central waste treatment plants and properly lined hazardous waste landfills. Many do not even have basic infrastructures such as tarred roads, pipe-borne water supply or electricity. (The most advanced industrial estate in Nigeria - The Agbara Industrial Estate, Lagos which has a central waste treatment facility was connected to National Electric Power Grid in 1992 after 15 years!).

Building an industrial facility in Nigeria, most often, carries with it the added burden of constructing your own road and providing your own water supply and electricity.

With the national economic recession, the majority of industries were operating well below capacity and they paid no attention to environmental problems. FEPA as a young agency was also striving very hard to develop capacity for pollution monitoring, abatement and enforcement both in terms of technical facilities and manpower development. There were no functional analytical laboratories. All these notwithstanding, the increasingly environmentally conscious Nigerian populace (smartening from the agonies of toxic waste dump incident) expected the Agency to exercise its full authority particularly with respect to sanctions and penalties to control industrial pollution and hazardous waste in Nigeria.

Recognising the establishment of other departments especially those of Environmental Quality and Environmental Technology whose functions should normally compliment and support the enforcement Department, and in order to avoid overlap in function, the Inspectorate and Enforcement Department identified, and limited itself to the following in the order of priority listed: (Figure 3)

- Review and Development of the Guidelines and Standards for Pollution Control.
- Development of appropriate regulations for pollution control and waste management.
- Inspection and Compliance Monitoring of Industrial facilities.
- Hazardous Chemicals Inspection, Registration and Tracking; and Toxic Waste Dump Watch.
- Establishment of a Permit System for:
 - Construction and Operation of Landfills.
 - Importation of hazardous chemicals.
 - Transportation, storage, treatment and disposal of hazardous wastes.
 - Waste Discharge by Industrial Facilities.

4.2 Funding

At the launching of the National Policy on the Environment in 1989, the President of the Federal Republic pledge that government would provide the Agency "an extra budgetary take off grant of #500 Million Naira (USD 80 Million) for each of the first two years". Meanwhile, government had established an Ecological Fund into which it makes a mandatory statutory allocation of 1% of the Gross National Revenue to take care of ecological problems including natural disasters.

Unfortunately, the period of the establishment of the Agency and its early years coincided with the peak of global economic recession, and the declining fortunes of government due to falling commodity prices in international market. For a country which depends on a single commodity (petroleum) for over 80% of its foreign exchange earnings and a country which commits over 30% of its GNP on debts servicing, the financial pledge of government borne out of enthusiasm and genuine desires for environmental protection became a mirage.

The approach of the Agency in meeting the challenge of financial constraint was several fold. First it sought assistance from the US EPA, the British ODA, Japan JICA, Canada and the Netherlands. Second, it sought and obtained in an amendment Decree 59 of 1992 an approval earmarking 0.5% of the Gross National Revenue as a statutory grant to the Agency.

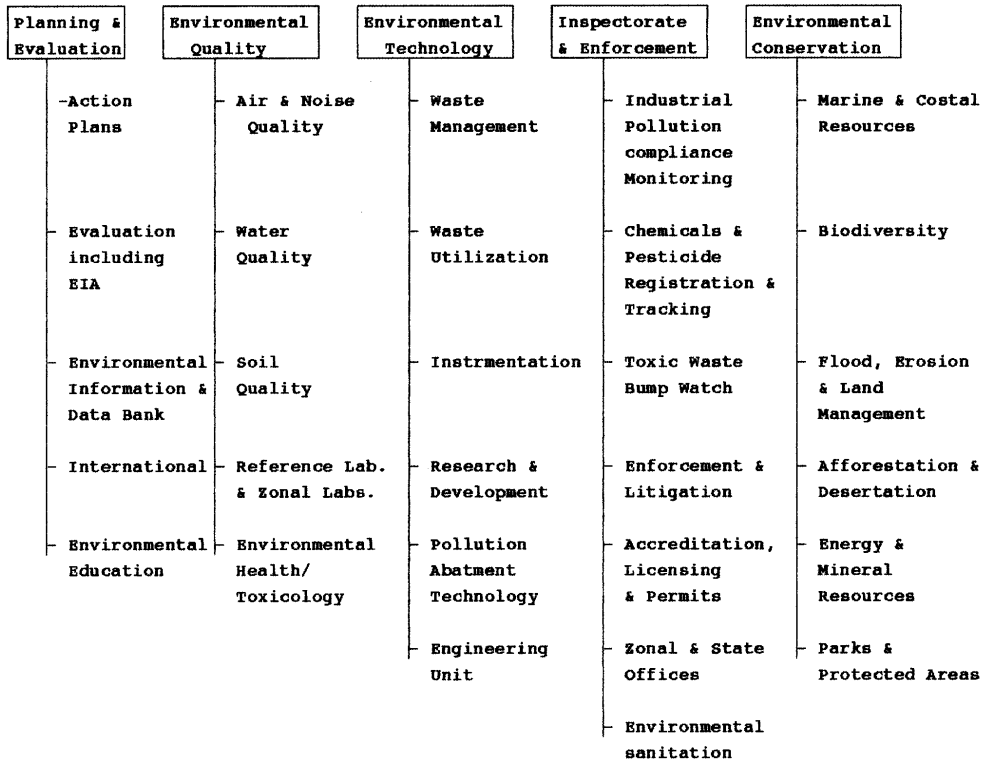


Figure 3. Functional organization charts of technical departments 1991-93.

4.3 Technical assistance

The Agency received some assistance in the form of mobile pollution monitoring equipment from Japan. The Memorandum of Understanding (MOU) signed with the US EPA did not yield results because it was at the outset, a loose one, directed at no specific programme or project. By the time FEPA was able to order its priorities, the US EPA was unable to secure the financial assistance to meet FEPA's request. One lesson from this is that requests for assistance must not be ambiguous but clear and specific in both technical and financial terms.

4.4 Powerful individuals and groups

One of the greatest challenges of an enforcement department in a developing country comes in form of threats from powerful individuals and groups. When such individuals and/or groups own industries which in turn form themselves into associations, they become extremely formidable. Perhaps two cases might serve as good illustrations:

In 1991 during one of the early widely publicised inspections of highly polluting industrial facilities in Nigeria, the Chief Executive of FEPA personally led a team to a Detergent factory which was discharging its effluents into an open drain. The drain in turn empties into a river used as drinking water some 600 meters down stream. The facility was given a maximum of 90 days to correct the situation and the news about the inspection which was to serve as a warning to other polluting facilities, was meant to be carried out that night on the National Television Networks and in the

Newspaper the following morning. But the unusual happened. First twenty minutes later as we proceeded to the next town, my boss' car in the middle of our convoy of cars suddenly veered off the road, hit a rock embankment and summersaulted! (Unseen forces at play you might say?) Second, the owner of the facilities ensured that news of the inspection was blacked out. He followed with a telephone call two days later to confirm that he was responsible for the news black-out and to warn that he was going to report the Agency to the President of the Federal Republic for (a) daring to embarrass him by saying that his facility was polluting and (b) trying to frustrate his efforts at providing jobs for his people!. I seized the opportunity of his telephone call to calm him down and to re-assure and enlighten him.

The second example relates to a power play between FEPA and the Manufacturers Association of Nigeria (MAN) who were resisting the imported Hazardous Chemicals Compulsory Inspection Procedure which the Agency introduced as a part of the strategy to prevent the importation of toxic wastes. The MAN had written a letter to the Secretary to the Government imploring him to force FEPA to stop the inspection procedure. Somehow FEPA was made to suspend the procedure until it presents some facts to the Government for reconsideration of the case. While this tussle was still on, the President of MAN was appointed a Cabinet Minister. However it must be pointed out that MAN was merely catching in on an opportunity. The real problem had been the dispute between the Federal Ministry of Health and FEPA as to who had the authority to inspect chemicals. (see section 4.6 NAFDAC vs FEPA for details).

4.5 FEPA - Industry Relations

The initial media promotion activities of FEPA including the exposition of the enforcement powers of the Agency and the series of inspections of highly polluting facilities achieved the desired objectives of sensitising the public and industry about the hazards of pollution and hazardous waste and the enforcement powers of the Agency to deal with the problems. However, this approach also created certain problems for the Agency. Some of these problems include:

- A general fear of FEPA among owners and operators of facilities and a determination to fight back using blackmail and/or intimidation.
- A tendency by certain individuals to pose as officers of the Agency to harass and threaten owners/operators of facilities with the aim of extorting money from them in exchange for lenient sanctions or waiver of penalties.
- An increase in the number of industries who were wrongly advised in the choice, design and installation of pollution abatement technologies by sub-standard "consultants".

The Federal Environmental Protection Agency dealt with these issues in a number of ways. First, FEPA ensured that representatives of Manufacturers Association of Nigeria (MAN) were members of major advisory committees of the Agency, including the Committee that reviewed the National Guidelines and Standards for Pollution Control; The National Advisory Committee on the Control of Hazardous Chemicals etc. The FEPA soon discovered though, that decisions taken at these National Committees of which MAN is a member were not passed down to the Sectoral Groups of the MAN. The FEPA therefore had to institute additional lines of communication by inviting the representatives of the Sectoral groups of MAN e.g. Textiles; Cement; Paints; etc. to dialogue with FEPA and also by attending meetings of their Environment Committees. This method has been very effective in enlightening operators of facilities about what is expected of them.

The MAN and FEPA now have a standing agreement to co-sponsor a series of National Seminars on Industrial Pollution Control for members of MAN on a yearly basis. The programme started in 1993. In addition, FEPA has worked out, on facility by facility basis, compliance schedules, audit requirements and moratorium based on an evaluation of each facility's pollution control efforts.

While industries that belong to organized groups and associations such as the MAN are easier to communicate with, small scale industries that operate as one-man or family business have posed

the greatest headache for enforcement. Many of such industries operate illegally and are often located in residential areas in the backyard or as an extension to the main apartment building housing other tenants. They display no sign posts and their products sometimes carry identification labels of more reputable industries. The Agency relies heavily on complaints from co-residents to track down this category of operators.

With regard to the harassment of operators of facilities by fraudsters, FEPA has put in a widely publicised FEEDBACK REPORTING ALERT procedure which stipulates that entry should be granted for inspection and enforcement only upon presentation of an AUTHORIZATION TO INSPECT paper duly signed by the chief Executive or Head of Department of the Agency. Except in cases of surprise inspection, facilities would have been prior informed of the proposed inspection by the Agency. The procedure also stipulates that owners/operators of facilities must, at the conclusion of an inspection exercise, write their own report, stating their evaluation of the exercise, including what may have been prescribed for their facilities as requirements towards meeting compliance. The facility operators' reports are to be forwarded to the Chief Executive or Head of Enforcement of the Agency who in turn will reply to confirm whether the inspection was indeed authorized.

The Agency now has enforcement uniforms, patches and badges which will confer instant recognition and respectability on its officers.

The problems of sub-standard consultants and the dangers they pose were solved by instituting an Environmental Consultant/Contractor Accreditation Procedure which evaluates qualifications, experience and technical facilities at the disposal of the consultants for performing their task. Qualified consultants now have yearly renewable ACCREDITATION CERTIFICATES OF FEPA to enable them perform a variety of functions, including audit, EIA, site remediation etc. FEPA also employs the services of these consultants from time to time.

4.6 Role conflicts and their resolution

In the emerging trends in environmental protection in Nigeria, two types of role conflicts can be identified:

- Conflicts in Federal/States/Local Government relations.
- Conflicts in Environmental-Line Ministries/Agencies relations: e.g. PIDPR vs FEPA; NAFDAC vs FEPA; NARESLON vs FEPA.

The first deals with line of authority and delineation of designated responsibilities. The second relates largely to the apparent overlap in functions of Federal Ministries/Agencies dealing with environment resources and/or issues.

By the Nigerian constitution, municipal waste disposal and sanitation are the responsibility of local governments (LGs) who also have powers to pass By-laws. On this there is no dispute. (The failure of the LGs is their continued insistence on treating municipal waste disposal as more or less a free social service.) What is not so clear is the responsibility of the States on industrial pollution control especially in the many situations where industrial waste are mixed with municipal waste. This is because industry is a federal concern even though states have the responsibility to designate areas as industrial estates. Similarly, although State Governments can enact environmental pollution edicts, they derive their powers to prescribe and enforce standards from the Federal Environmental Laws vested in the FEPA. A statutory arrangement therefore had to be put in place to enable FEPA share its enormous powers with the State EPAs or to designate State EPAs to perform certain functions for which states have developed capacity on its behalf. This has worked fairly well especially under the auspices of the National Council on Environment (NCE), the consultative forum where policies implementation processes are harmonised and conflicts resolved.

For the financial year (FY) 1994, FEPA is going to try to infuse the FEPA officers operating in States into a State EPA administrative structure in advisory and operational capacity. That will remove the direct inspection and enforcement schedules of FEPA which tend to undermine the authority of

the State EPAs to enforce. FEPA envisages that by such an arrangement State EPAs will develop capacity to monitor and enforce in the shortest time possible.

In regard to other Federal Ministries/Agencies that perform environment related functions, FEPA has set up several inter-ministerial committees which regularly deliberate upon specific issues to harmonise functions and remove overlaps. However, there are three of these Agencies whose disputes have shaken the Agency.

The first is the Petroleum Inspectorate Department of the Ministry of Petroleum Resources (PIDPR). Prior to the creation of FEPA the Department had been responsible for monitoring pollution in the petroleum sector. Apart from the usual inter-ministerial committees on environment in which FEPA ensures that PIDPR is represented, the Department co-sponsors with FEPA a Biennial International Seminar on Petroleum Industry and the Nigerian Environment which has over the years produced far-reaching recommendations influencing government policies. In the last three years, two controversial issues have emerged:

- Who should set the Guidelines and standards for Pollution Control in the Oil industry?
- Who is to enforce those standards?

After two years of strained relationship, FEPA finally resolved the issue as follows:

- PIDPR can set Guidelines and Standards on Operational Safety and Environmental Pollution Control in the Petroleum Sector. However such standards cannot be weaker than and must be subordinate to, the National Standards that would be set by FEPA for the Petroleum Sector.
- PIDPR would continue to monitor pollution and enforce compliance in the Petroleum Sector but on behalf of FEPA who reserves the right to carry out check inspections to determine how effective PIDPR is carrying out those functions.

The second case is the dispute between the National Agency for Food and Drug Administration and Control (NAFDAC) of the Federal Ministry of Health and FEPA on which Agency has responsibility for the control of hazardous chemicals. Prior to the establishment of FEPA, NAFDAC used to grant permits to industries for the importation of chemicals along with narcotics, foods and drugs. NAFDAC granted the permits by a special arrangement with the Pharmacist's Registration Board of Nigeria (PBN) which issues the permits on behalf of NAFDAC under the provisions of the Poisons and Pharmacy Act cap 152 Section 40 (5)1.

It was one of such permits, IMPORT PERMIT NO 676 granted to Iruerken Construction Company of 126A Nnebisi Road, Asaba for the importation of "industrial and Laboratory chemicals" that was used to import toxic waste into Nigeria in 1988. The report of the Ministerial task Force set up to evacuate the toxic wastes recommended that authority to issue permit for importation of chemicals should be withdrawn from the Pharmacist Board. The President-in Council approved the recommendation among others. Shortly after FEPA was created, Government also created the National Drug Law Enforcement Agency (NDLEA) to handle narcotics.

In setting up the National Chemical Tracking Programme for the control of hazardous chemicals especially in order to implement the London Guidelines under the Prior Informed Consent (PIC) procedure, the Enforcement Department considered the following:

- The lapses inherent in the permit granting procedure of the Pharmacist Registration Board.
- The weakness of the Poison and Pharmacy Act which provides the Pharmacy Board the legal cover to issue permit by equating "chemicals" with "poisons" without any mention of the chemicals by name.
- The added loophole in the Act which states that the Permits are to be granted for the importation of the chemicals for "Laboratory and research use" only.

- The propriety of a Pharmacy Board (a non-governmental organisation) granting permit for chemicals while there exists the Chemical Society of Nigeria.
- The need to restrict the PBN to Foods and Drugs control in view of the fact that while drugs are chemicals, most chemicals are not drugs.
- The provisions of Schedules 11 and 13 of the Management of Solid and Hazardous wastes Regulations S.I.15 of 1991 of FEPA which provides a full list of hazardous chemicals by toxicity category.
- The international norm which vests the control of hazardous chemicals and wastes in environmental agencies.

Convinced of having the historical, procedural and legal bases, FEPA set up a National Committee for Chemical Tracking with both NAFDAC and PBN as members. Thereafter the Inspectorate and Enforcement Department established a procedure of compulsory inspection and confirmation of imported hazardous chemical for which no Prior Informed Consent was obtained.

There were hues and cries from both the NAFDAC and PBN. PBN being a sectoral member of MAN got the backing of MAN to protest to the highest quarters in government. Within six months, NAFDAC decree was amended and among other things, the word "poison" was changed to "chemicals". In other words NAFDAC had powers to control "food, drugs, cosmetics and chemicals". With the backing of MAN, FEPA which had received an earlier support from government on the programme received a letter from the same quarters asking it to suspend the programme. However three weeks later at a meeting on Ports Security with the Vice President, FEPA was requested to re-present the case to Government for reconsideration.

The third and final case is the overlap in functions between the Natural Resources Conservation Council (NARESCON) and FEPA. To remove the overlap, Government repealed the Decree establishing NARESCON and merged its functions with FEPA's. This merger led to a period of leadership struggle and instability in the Agency (see next section).

4.7 Political instability

Political instability has often been confirmed as the greatest bane of development in developing countries; and Nigeria was a perfect case for such illustration in 1993. In the wake of the change in the country's leadership which took the nation through three Presidents between August and November 1993, a new Director General was appointed for the Agency. The new Director-General, hitherto the Head of the rival agency responsible for wildlife conservation, NARESCON, scrapped the structure presented in Figure 2 and replaced it with another which has the following Departments;

- Ecological Services.
- Biological Resources Development.
- Land Erosion Control.
- Environmental Education and Extension.
- Planning Research and Statistics.
- Environmental Quality.
- Environmental Impact Assessment (EIA).

The greatest surprise of the proposed structure was the dissolution of the Inspectorate and Enforcement Department and the creation of a whole Department for EIA! After much criticism, he decided to transfer the functions of the Inspectorate and Enforcement Department to the Department of EIA!

Luckily the situation did not last. On January 25, 1994 Government redeployed the Director-General and re-appointed the pioneer Director-General removed 5 months earlier. But the enforcement programme had suffered some set back with staff on the programme passed to other schedules.

5 CONCLUSION

Establishing an effective enforcement programme in Africa requires a firm commitment on the part of government and a stable leadership in the Enforcement Agency in its formative years. The mandate for enforcement must be clear and the roles of line agencies distinct to avoid inter-agency conflicts that could be capitalized upon by powerful target groups to frustrate enforcement programmes. Requests for technical assistance from developed countries for capacity building should be unambiguous to avoid delay, but a lot can be achieved by mobilizing internal resources. An EPA organizational structure statutorily entrenched in the country's EPA Act may be one way to protect the enforcement under an unstable political set-up.