RE-FORTIFYING POLLUTER-PAYS PRINCIPLE IN ADDRESSING ENVIRONMENTAL DAMAGE IN NIGERIA

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Abstract

The biosphere is a closed ecological system with finite resources and is maintained in equilibrium by grand-scale recycling. With the beginning of the 21st Century man appears hamstrung on the enormity of environmental abuse and degradation created by him. The sources of pollution are varied such as natural such as volcanoes, which spew forth sulphur oxides and particles. Man's quest for development has introduced into the ecosystem massive quantities of waste matter that is disrupting the natural recycling mechanisms that had affected the environment's carrying capacity and self-regeneration ability. However, what man has created he is making strenuous efforts to rectify. These efforts had led to the enactment of pieces of legislation on the environment, in order to reduce activities causing environmental damage, remediate such outcomes, and at times prescribe means of punishing deviant behaviours. One major instrument that is targeted at achieving all these is the application of the polluter-pays principle. The authors examined the nature of environmental damage and its derivatives such as environmental pollution, environmental adverse effects and harm to the environment. The paper examined the historical development of the principle, its practical implications, and applications at international, regional and national levels. Finally, the authors reviewed the bottle-necks in the application of the principle and proffered suggestions on how to reinvigorate the basis under which the adoption of the principle as means of achieving environmental protection compliance by punishing activities that cause environmental damage.

Keywords: Environmental damage; Environmental pollution; Environmental adverse effects; Environmental harm; Polluter-pays principle.

1.0. Introduction

The environment is humanity's life support system. It supplies us with air, water and food for our bodily survival and with materials and energy for housing, transport and manufactured products. For thousands of years humans have altered environments through hunting, use of fire and agriculture, but most of the changes had been gradual, reversible and local.

While the 20th Century had seen pollution approach crisis proportions throughout the world, in the 21st Century man appears hamstrung on the enormity of environmental issues he helped to create. One of the major environmental issues is the capacity of the biosphere to disperse, degrade, and assimilate human wastes. The biosphere is a closed ecological system with

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finite resources and is maintained in equilibrium by grand-scale recycling. Under natural conditions organic and certain inorganic materials in the biosphere are continually recycled by processes including photosynthesis and respiration, nitrogen fixation and denitrification, evaporation and precipitation, and diffusion by wind and water action. But the introduction of massive quantities of waste matter at any point in the biosystem may "overload" it, disrupting the natural recycling mechanisms and affecting the environment's carrying capacity. The sources of pollution are varied. Natural sources include those that are not directly under human control, such as volcanoes, which spew forth sulphur oxides and particles. But it is the human activities that pollute the environment through contamination of air, water, and soil that are of great concern and needing protection through legislation.

While history, in terms of precise date, is lost to us as to when the environment became a subject for legal protection, it is clear that the origin could be traced with some authority and confidence to the development of world science and technology. These, in turn, brought about competing world economics in terms of deliberate sovereign, economic, political and social ambitions of nations. The element of competition in the exploration and exploitation of natural resources to achieve economic development and the pursuit of political powers have debilitating effect on the environment, and on human lives. It therefore became imperative that to protect the environment, and therefore human lives, there is need to legislate against activities that may result in environmental abuse and punish any form of environmental damage that results therefrom.

To this end, legislating against environmental damage therefore arose on the realization that the environment is the most formidable source of national and international development and should be protected from damage, destruction and annihilation. In this respect, various environmental pollution abatement laws have been put in place to protect not only the environment *per se*but also to manage it for human survival.[4]

Over the years Nigerian government had passed pieces of environmental laws in order not only to protect the environment from damage and annihilation, but also punish defiant behaviours that are responsible for such damage. In spite of the presence of these laws environmental stresses have continued. To curb this, some of the laws introduced polluter-pays principle as an instrument of punishing activities of those that cause environmental damage.[5]

In order to determine the course of application of the principle, we first examined the nature of environmental damage under which a liability may arise, to which the principle sets to apply and punish the perpetrators. We also discussed some of the derivatives of the word 'environmental damage' such as 'environmental pollution,''environmental adverse effects' and 'harm to the environment.' The paper examined the historical development of the

[4] These environmental pollution abatement laws generally deal with environmental damages caused by water pollution, oil and gas pollution, air quality and atmospheric protection, toxic and hazardous waste problems, noise control, municipal waste disposal, among others.

[5] Such as the National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009, National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009, National Environmental (Sanitation and Wastes Control) Regulations, 2009, National Environmental (Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, 2009. All these Regulations were made pursuant to the provisions of section 34 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007. These Regulations are discussed in the course of this paper.

principle, its practical implications, its applications at international, regional and national levels and how to re-fortify it in order to achieve the desired result.

2.0. Defining Environmental Damage

For the polluter-pays principle to apply it is imperative for us to first examine the nature of environmental damage under which a liability may arise. Defining environmental damage remains a complex issue. Two related issues needed to be distinguished and discussed together. They are:

1) What constitutes environmental damage? and
2) At what level should environmental damage give rise to liability?

In defining environmental damage, Treaties and State practices reflect various approaches. A narrow definition of environmental damage is limited to damage to natural resources alone.[6] A more extensive approach includes damage to natural resources and property which forms part of the cultural heritage; the most extensive definition includes landscape and environmental amenity.[7] On each approach, environmental damage does not include damage to persons or damage to property, although such damage can be consequential to environmental damage.

Environmental damage has been defined in instruments establishing civil liability, particularly in relation to oil pollution.[8] In respect of state liability the only treaty definition is provided by the Convention on the Regulation of Antarctic Mineral Resource Activity, (CRAMRA), 1988, which defines damage to the Antarctic environment or ecosystem very broadly, to include:

> any impact on the living or non-living components of that environment or those ecosystems, including harm to atmospheric, marine or terrestrial life, beyond that which is negligible or which has been assessed and judged to be acceptable pursuant to [the] Convention. [9]

Some treaties equate environmental damage as akin to environmental pollution. The concept of 'pollution' defined in the Long Range Trans-boundary Air Pollution Convention (LRTAP), 1979 and in the United Nations Law of the Sea (UNCLOS), 1982, are some cases in point. For instance, under article 1(a) of LRTAP 'air pollution' is defined by reference to deleterious effects on living resources and ecosystems, human health and material property, as well as interference with amenities and other legitimate uses of the environment. UNCLOS on the other hand defines pollution generally as:

> the introduction by man directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including

[6] Air, water, soil, fauna and flora, and their interactions.
[7] Phillipe Sands: *Principles of International Environmental Law,* 2nd edn. (Cambridge: Cambridge University Press, 2003), 876
[8] Article 2, Civil Liability Convention, 1992.
[9] Article 1 (15) Convention on the Regulation of Antarctic Mineral Resource Activity, (CRAMRA), 1988

> fishing and other legitimate use of the sea; impairment of quality for uses of seawater and reduction of amenities.[10]

The distinction between environmental damage (and compensable environmental damage) and pollution is illustrated by the Lugano Convention, 1993 which provides that an operator of a dangerous activity will not be liable for damage (impairment of the environment) caused by pollution at 'tolerable' levels under local relevant circumstances.[11]

Some treaties require 'adverse effects,' rather than pollution, to define the consequences of activities which are to be avoided. The Vienna Convention on Ozone Depleting Substances (ODS), 1985, defines 'adverse effects' in relation to ozone depletion as 'changes in the physical environment or biota, including changes in climate, which have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind.'[12] The Climate Change Convention, 1992, introduces a similar definition, although it reverses the order by placing deleterious effects on the environment before effects on human health, and extends the definition to include effects on socio-economic systems and human welfare.[13]To this end, 'pollution' and 'adverse effects' help in determining the threshold beyond which environmental damage might trigger liability, though they did not actually define it.

Furthermore, environmental damage at times is equated to 'harm' to the environment. This is also difficult to define. For instance, if mere contact between the environment and a pollutant amounts to a "threat" of harm, where is the threshold at which actual harm begins? How do we measure or describe it? Should all harm be treated equally, or should Statutes provide different sanctions for unlawful emissions that result in different degrees of environmental harm? Again, some environmental harm focus on the environment directly while others focus on man. The difference between the two however, is merely academic. This is because emissions or releases that threaten or harm human health, safety, or other interests must of necessity also harm the environment.

However, a traditional way of measuring environmental harm is to look through the lens of harm to human beings instead of examining the effect on the environment itself. The reason for this according to Clifford is that "our ethical heritage largely attaches values and rights to persons, and if non-personal realms enter, they enter only as tributary to the personal."[14] Thus, many discharges and effluent limitations are set with human health and welfare in mind. For example, in Nigeria, Regulations made pursuant to the National Environmental Standards Regulations and Enforcement Act (NESREA Act), 2007, set their provisions with a view to protecting the human environment. In this respect some of the regulations set permissible limits for noise,[15] permissible levels for effluent discharges into the water bodies,[16] and emission standards for facilities.[17] Again, the purpose of the environmental

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10 Article 1(4), UNCLOS

11 Article 2(7) (a) (b) (d) Lugano Convention.

12 Article 1(2) Vienna Convention on Ozone Depleting Substances (ODS), 1985

13 Article 1(1) Climate Change Convention.

14 Mary Clifford: "Criminal Law, and Environmental Crime," in Mary Clifford (ed), *Environmental Crime: Enforcement, Policy, and Social Responsibility,* (Boston: McGraw Hills,1998), 139

15 Regulation 3, National Environmental (Noise Standards and Control) Regulations, 2009 and under regulation 10 of these Regulations any person may complain to the Agency in writing if such a person considers that the noise levels being emitted, or likely to be emitted may be higher than the permissible noise levels under these Regulations.

16 Regulation 16 (1) National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009

impact assessment requirements under the Nigerian Environmental Impact Assessment Act, 1992,[18] is to predict the likely impact of a proposed project on the environment with a view of protecting human health and safety proactively.

A final way to look through the lens of harm to human beings is to measure financial costs other than damage to property itself. For example, some sets of the NESREA Regulations on environmental standards have provisions for the application of the polluter-pays principle. Under these provisions in the event of pollution resulting in an impact on the environment whether socio-economically or health wise, the facility that caused the polluting act shall be responsible for: "the cost of clean-up; remediation; reclamation; compensation to all affected parties; and cost of damage assessment and control."[19]

Although non-mention of harm to the environment *per se* by Statutes may lead to a conclusion that Statutes are only interested in the protection of humans. This may not be correct as these Statutes are part of environmental protection scheme. To this end, one may say that harm to humans is used as a surrogate measure for harm to the environment. The premise is that if the pollution is extreme enough to threaten human interests, the environment must of necessity also be threatened. As can be seen under the NESREA Regulations on polluter-pays principle mentioned above, for any polluting activity that results in an impact on the environment, the polluter shall bear the cost of "clean-up, remediation and reclamation of the environment." These remediating acts are targeted towards rehabilitation of the environment. In other words, under the existing scheme of polluter-pays principle, protection of both the human environment and the environment *per se* are envisaged.

3.0. Polluter-pays Principle and Pursuit of Environmental Damage

The polluter-pays principle establishes the requirement that the costs of pollutions should be borne by the person responsible for causing the pollution. The meaning of the principle, and its application to particular cases and situations, remains open to interpretation, particularly in relation to the nature and extent of environmental damage or harm, the resulting costs and the circumstances, in which the principle will, and perhaps exceptionally, not apply. According to Thornton and Beckwith,[20] the practical implications of the polluter-pays principle are in its allocation of economic obligations in relation to environmentally damaging activities, particularly in relation to liability, the use of economic instruments, and the application of rules relating to competition and subsidy.

The principle has nevertheless attracted broad support, as basis for determining liability for environmental damage or harm. These supports can be found in:

(i) the rules governing civil and State liability for environmental damage;
(ii) the permissibility of certain forms of State subsidies; and

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17 Regulation 20 (1) National Environmental (Textiles, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009

18 Cap E.10, Laws of the Federation of Nigeria (LFN) 2004

19 Regulation 13 (2), National Environmental (Mining and Process of Coal, Ores and Industrial Minerals) Regulations, 2009. Similar provisions can be found in regulation 5 National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009 as well as in regulation 5 National Environmental (Food Beverages and Tobacco Sector) Regulations, 2009

20 Justine Thornton and Silas Beckwith: *Environmental Law* (2nd edn), (London: Sweet and Maxwell, 2004), 14 and 15.

(iii) the recent acknowledgement in various instruments by developed countries of the 'responsibility that they bear in the pursuit of sustainable development in view of the pressures their societies place on the global environment', as well as the financial and other consequences that flow from this acknowledgement.[21]

The polluter-pays principle in treaty law can be traced back to some of the first instruments establishing minimum rules on civil liability for damage resulting from hazardous activities. Examples are the Conventions on Civil Liability for Nuclear Damage, the Paris Convention 1960 and the International Atomic Energy Agency (IAEA) Liability Convention 1963.[22] Under Article V (2) of the Convention on Civil Liability for Oil Pollution 1969 however, the ship owner is precluded from relying on the limitation of liability if the incident occurred as a result of his actual fault or privity. Similarly, the Preamble to the Oil Fund Convention 1971 reflects the consideration that the economic consequences of oil pollution damage should be borne by the shipping industry and oil cargo interests.

The first international instrument to refer expressly to the polluter-pays principle was the 1972 Organisation for Economic Co-operation and Development (OECD) Council Recommendation on "Guiding Principles Concerning the International Economic Aspects of Environmental Policies," which endorsed the polluter-pays principle to allocate costs of pollution prevention and control measures to encourage rational use of environmental resources and avoid distortions in international trade and investments and that the polluter should bear the expenses of carrying out the measures deemed necessary by public authorities to protect the environment. The 1972 Recommendation does not, on the face of it, apply to the costs of environmental damage. However, in 1974, the OECD Council adopted a further Recommendation on the "Implementation of the Polluter-Pays Principle," which reaffirmed that the principle constituted a 'fundamental principle' for member countries, that aid given for new pollution control technologies and the development of new pollution abatement equipment was not necessarily incompatible with the principle, and that member countries should strive for uniform observance of the principle.

The 1989 OECD Council "Recommendation on the Application of the Polluter-Pays Principle to Accidental Pollution," extends the principle to imply that the operator of a hazardous installation should bear the cost of reasonable measures to prevent and control accidental pollution from that installation which are introduced by public authorities in conformity with domestic law prior to the occurrence of an accident.[23] According to the Recommendation, however, this does not necessarily require that 'the costs of reasonable measures to control accidental pollution after an accident should be collected as expeditiously as possible from the legal or natural person who is at the origin of the accident.' Examples of specific applications of the polluter-pays principle cited by the 1989 Recommendation include adjusting fees or taxes payable by hazardous installations to cover more fully the cost of certain exceptional measures taken by public authorities to prevent and control accidental

[21] Principle 7, Rio Declaration on Environment and Development, 1992.

[22] These instruments were influenced by the desire to channel compensation from those responsible for the activity causing damage to the victims.

[23] These measures include measures taken to prevent accidents in specific installations and to limit their consequences for human health and the environment, including safety measures, emergency plans, carrying out clean-up operations and minimizing ecological effects, but not including humanitarian measures or measures to compensate victims for economic consequences.

pollution, and charging to the polluter the cost of reasonable pollution control measures decided on by public authorities following an accident to avoid the spread of environmental damage and limit the release of hazardous substances (by ceasing emissions at the plant), the pollution as such (by cleaning or decontamination), or its ecological effects (by rehabilitating the polluted environment).

The Recommendation also provides guidance on 'reasonable' measures: they depend on 'the circumstances under which they are implemented, the nature and extent of the measures, the threats and hazard existing when the decision is taken, the laws and regulations in force, and the interests which must be protected.' The Recommendation cites certain exceptions to the principle, including the need for rapid implementation of stringent measures for accident prevention,[24] or if strict and prompt implementation of the principle would lead to severe socio-economic consequences. The application of the principle does not affect the possibility under domestic law of requiring the operator to pay other costs connected with the public authorities' response to an accident, or compensation for future costs of the accident.

The principle has now found application under regional[25] and national laws. In Nigeria under Regulation 13(1),[26] "the collection, treatment, transportation and final disposal of wastes within the specified standards and guidelines, shall be the responsibility of the facility generating wastes." Thus, in the event of a pollution resulting in an impact on the environment whether socio-economically or health wise, "the facility shall… be responsible for; the cost of clean-up; remediation; reclamation; compensation to affected parties; and cost of damage assessment and control."[27] Again, under Regulation 14,[28] "all generators of wastes, owners or occupiers of premises where wastes are generated shall be legally and financially responsible for the safe and environmentally sound disposal of their wastes." To this end all generators and managers of wastes shall apply sustainable practices to minimize pollution.[29] The National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009 also apply the polluter- pay principle under Regulation 5. The provisions of these Regulations are similar to that of Regulation 13 (1) National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009. The only difference being that the former applies specifically to every company that pollutes the environment.[30]

The increased attention being paid to the polluter-pays principle results, in part, from the greater consideration being given to the relationship between environmental protection and economic development, as well as recent efforts to develop the use of economic instruments in enforcing environmental damage. This is predicated on the fact that the polluter-pays

[24] Provided this does not lead to significant distortions in international trade and investment.

[25] The European Community (EC) adopted the principle in its first programme of action on the environment in 1973 and in 1975 adopted a recommendation in which the EC at Community level and the member states in their national environmental legislation must apply the polluter—pay principle, according to which "natural or legal persons governed by public or private law who are responsible for pollution must pay the costs of such measures as are necessary to eliminate that pollution or to reduce it so as to comply with the standards or equivalent measures laid down by the public authorities."

[26] National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009. These Regulations were made pursuant to the provisions of section 34 of National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

[27] Regulation 13 (2), National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009.

[28] National Environmental (Sanitation and Wastes Control) Regulations, 2009.

[29] Regulation 15,*ibid*.

[30] Similar provision is also found under Regulation 5, National Environmental (Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, 2009.

principle requirements that the costs of pollution should be borne by the person responsible for causing the pollution and consequential costs.[31] It means that the polluter should bear the expenses of carrying out the measures decided by appropriate environmental protection agencies. In other words, the cost of the measures taken by the agencies in this respect should be reflected in the cost of goods and services which caused pollution and this is to be borne by the polluter. The beauty of the polluter-pays principle lies in its allocation of economic obligations in relation to environmentally damaging activities, especially in relation to environmental liability and environmental damage.

The principle therefore implies that the operators of hazardous installations should bear the cost of reasonable measures to prevent and control accidental pollution from such installation. This is supported by the Rio Declaration[32] which provides that:

> national authorities should endeavour to promote the internalization of environmental cost and the use of economic instruments, taking into account the approach that polluter should, in principle, bear the costs of pollution, with due regard to the public interest….

Despite all these, the polluter-pays principle has not received the same degree of support or attention accorded over the years to some notable International Environmental Law principles such as the principle of preventive action, or the attention more recently accorded to the precautionary principle. Inspite of its acceptability it is doubtful whether the principle has achieved the status of a generally applicable rule of customary international law.[33]

4.0. Changing the Tide in Application of Polluter-pays Principle

Certain fundamental issues may arise in respect of adoption and application of the polluter-pays principle to enforce environmental damage. The first concerns the extent of the pollution control costs which should be paid by the polluter. Although it seems clear that the principle includes costs of measures required by public authorities to prevent and control pollution**,** it is less clear whether the costs of decontamination, clean up and reinstatement would be included. Again, there is the problem of defining the extent of environmental damage as there is no clearly acceptable definition of that subject matter.

As a result of the existence of these problems, it is advocated that a legislature that wants to address a full spectrum of environmental damage or environmental harm or environmental pollution or environmental adverse effects, must articulate a standard that reflects purely environmental values. The Statute must require proof of something more than mere contact between a pollutant and the environment. The legislature should therefore go beyond an anthropocentric focus. To this end, it is suggested that an alternative approach to focusing on the regulatory standards might be to define "environmental damage or environmental harm or environmental pollution or environmental adverse effects" in the criminal provision itself. A legislature might, for example, vary the seriousness of the criminal sanction based on the toxicity of the substance at issue; the risk versus fact of contact with air or water; the risk versus fact of an effect on flora, fauna, or human populations; and the magnitude of the

[31] Phillipe Sands *op cit.* 213.
[32] Principle 16, Rio Declaration on Environment and Development, 1992.
[33] Except perhaps in relation to states in the EC, the UNECE and the OECD. In 1986, the EEC Treaty was amended to provide that EC action relating to the environment shall be based on the principle that 'the polluter should pay'. In 1992, the EC member states and EFTA member countries agreed that action by the parties was to be based on the principle that 'the polluter should pay.'

violation. Thus, sanctions in terms of environmental "harm" or "damage" or authorized differences in sanctions may be based on degrees of "harm," proof of "pollution," negative changes to the existing environment, among other considerations. The reason for this approach in determining sanctions is that such graduation of punishment is based on concrete harm and the sanctions are focused on environmental values.

The above prepositions are achievable as some of Nigerian Environmental laws have already made inroads into such approach. For instance, while regulation 8(2) of the National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009 permits traditional use of wetland resources, regulation 14(1) enjoins every land owner, occupier or user of property contiguous to a wetland to prevent the degradation or destruction of the wetland and such a person shall maintain the values of the wetland. To this end, regulation 14(2) of the same Regulations makes it an offence for any person who fails, neglects or refuses to protect a wetland and further offence is committed under regulation 30(d) where any person deposits in, on, or under any wetland a substance in a manner that has or is likely to have an adverse effect on the wetland. Punishment is provided under regulation 31 of these Regulations.

What is left therefore is the will to act by our Legislature to amend all necessary Environmental Laws[34] to fall in line with the trend in making environmental damage a strict and absolute liability affair and that a polluter must of necessity pay for his action or activity that damaged the environment. We suggest that such amendments should contain the followings:

1) That any person, whether natural or juristic, who undertakes an activity that causes or is likely to cause damage to the environment shall take all reasonable and practicable measures to prevent or minimize any resulting adverse effects to the environment. Therefore, where such person discharges or causes or permits the entry intothe environment, of any contaminant in any amount, concentration or level in excess of that prescribed by any Regulations made under any Environmental Laws in force or stipulated by any environmental authorization made pursuant to any Law, shall be strictly and absolutely liable for his conduct.
2) Any person responsible for the contaminant or for the process involving the contaminant or who causes or permits a discharge that caused the environmental damage, shall:
    (a) immediately notify any appropriate authority responsible for environmental protection or management of:
        (i) the discharge;
        (ii) the concentration, nature and amount of contaminant;
        (iii) the circumstances of the discharge;
        (iv) what action the person had taken or intends to take to restore the natural environment.
    (b) be responsible for :
        (i) cleaning or clean-up cost, cost of assessment and damage control;
        (ii) restoring the air, land and water to the condition they were before the discharge or the full cost of remediation, restoration,

[34] Environmental Law harnesses various statutes, regulations, guidelines and standards within a legal system to develop new approaches, new concern and new awareness aimed at controlling, reducing, preventing, remediation, and at times, punishing environmentally damaging behaviours. Environmental Laws on the other hand, consist of Statutes, Regulations, Standards, Guidelines, Institutions and Administrative procedures adapted to control or prevent and punish activities damaging to the environment within an entity.

reclamation and rehabilitation of the damaged environment to the condition it were before the damage.

(c) be liable to:
  (i) pay compensation to those who suffered loss or damage as a consequence of his action;
  (ii) pay for the cost of independent investigation into the discharge;
(d) do everything practicable to preserve, for investigation, evidence of the effects of the discharge

3) Where the pollution in issue resulted in the course of the polluter carrying out any act permitted by any Environmental Laws for the time being in force, or any Regulations made pursuant to any extant Environmental Laws, or that the harm to the environment cannot reasonably be avoided, such person shall take all reasonable measures to ensure that the pollution or degradation is minimized and rectified. Liability shall arise where the polluter fails to commence, continue or complete the measures to minimize and rectify the pollution or degradation of the environment or fails to comply with a directive from the Agency or Authority charged with environmental protection or management, the Agency or Authority shall take all reasonable measures to remedy the situation and recover all costs of assessment, assessment and damage control from such person.

4) In an event of any contravention of any of the provisions of any extant Environmental Laws it is further suggested that the Agency or Authority charged with environmental protection or management, shall make an order directed to one or more of the following:

a) any person responsible for the contaminant; any person responsible for the process involving the contaminant;
b) any person whose assistance is necessary and can aid in the prevention, elimination, or ameliorating the adverse effects or restore the natural environment.

Such order shall require the person so ordered to take such action as may be specified in the order in respect of the prevention, diminution or amelioration of the adverse effects and restoration of the natural environment within such period as may be specified in the order.

5) Again, where damage to the environment was caused by a permit holder under any Law the Court may enquire on whether the person was negligent or gained monetary advantage in the process. Legal proceedings may be commenced by the Agency or Authority charged with environmental protection or management or any person who suffered any loss or damage as a result of the act of the permit holder. And where the Court finds that the permit holder was negligent or gained monetary advantage, the Court shall order that the holder shall pay to Agency or Authority charged with environmental protection or management a fine equal to the amount gained, and if the action was commenced by a person who suffered a loss or damage, the Court shall order that such amount as would be necessary to restore him to the position he was before the act complained of occurred, be paid to him.

5.0. Conclusion

We are of the opinion that the polluter-pays principle, as entrenched in our law,[35] should be amended and rigidly enforced. In this way, environmental spoliation and economic activities, though a twin but strange bedfellows can be made to accommodate each other. Since it is impossible to eliminate all traces of environmental damage without at the same time shutting down all economic activities, it should be noted that in the world where money talks, the environment needs value to give it a voice. No longer should environmental damage, and its social and economic costs be externalized and presumed to disappear. The environmental well-being is an important ingredient of our society.[36] It is under this premise that we advocate implementation of a re-fortified version of polluter-pays principle,as we have advocated, in order to curb environmental problems and achieve sustainable development. We owe the next generation a clean environment and an undiminished stock of the earth's resources. And whoso ever that damages the environment must of necessity be made to pay for his actions, or inactions.

[35] Regulation 13(1) National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009. Regulation 13 (2), National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009, National Environmental (Sanitation and Wastes Control) Regulations, 2009. Similar provision is also found under Regulation 5, National Environmental (Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, 2009.

[36] US Supreme Court in *Sierra Club v. Morton,* US 727 3ERC 2039 (1972).