PUBLIC HEALTH LAW (PHS 402)

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UNIT NINETEEN:

PROCESS OF ENFORCING PUBLIC HEALTH LAW

LEARNING OBJECTIVES

- At the end of studying this unit the learner should be able to:
- 1. Define law enforcement
- 2. List some processes involved in public health laws enforcement
- 3. Briefly discuss the processes involved in public health laws enforcement

Definition of Enforcement

- Enforcement is the process of bringing any person who has committed an offence to attend or answer the charge against him/her before a competent authority or tribunal or court for the purpose of determining his/her innocence or guilt and to give appropriate sanction. According to Webster‟s Online Dictionary enforcement are federal or state or local legal actions to obtain compliance with environmental laws, rules, regulations, or agreements and/or obtain penalties or criminal sanctions for violations.
- Enforcement procedures may vary, depending on the requirements of different environmental laws and related implementing regulations.

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- The point you need to note from the above definitions is that once we mention enforcement of public health laws, we talking about the various ways public health rules or regulation are complied with and the sanctions that could be imposed on an offender if found to have breached a public health offence.
- In public health law the procedure does not begin with arrest or summons, on the contrary it begins with an inspection, notice, then a summons and followed by arrest where necessary. We shall now consider some of these processes in the next session.

Public Health Laws Enforcement Process

- **Inspection:** The first process in the enforcement of public health laws is inspection. It is the statutory duty of the Local Governmen Authority and other Environmental Protection Agencies to carry out regular inspection of premises, streets and industries as well as measure the level of either air or water pollution from time to time so as to determine what action they should take in the performance of their functions under the relevant law establishing them (Ormandy and Burridge, 1988).
- The main purpose of inspection is to detect the presence of statutory nuisances and to take steps to remove them, ascertain repairs, areas of improvement, slum that require clearing, drainages and gutters that require cleaning, over grown weeds, refuse dump sites, and general housing conditions to ensure they are safe and fit for human habitation. However, before an inspection is undertake adequate notice has to be given to the occupiers of the resident or the industry or locality within which the inspection is to be carried. This is to both serve the requirement of the law and to avoid action for trespass.

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- **Abatement Notice**
- The next step in the enforcement of public health laws is the service of an —Abatement Notice‖. An Abatement notice can be defined as a notice issued under the authority of the Local Government Council by a person so authorised to do so informing an occupant of a inspected premises or area of the existence of some nuisance which needs to be removed, stating details of the nuisance and the steps required to remove them, and the time within which to remove the saidnuisance. It is important that the abatement notice contain the necessary details otherwise it would be invalid.
- A statutory abatement notice can only serve while the nuisances is still in existence, however, where it has already occurred and it is likely to occur or has occurred repeatedly in the past then a prohibition notice would be the best notice to be served. Also, there is no right of appeal against an abatement or prohibition notice(s).

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- **Court Proceedings**
- The next process in the enforcement of public health laws is court proceeding which are always commenced at the Magistrates Court. The court could be a permanent or mobile court. A mobile court is often used during special sanitation days or occasion that requires the immediate trial and conviction of several offenders. The court session is always not held in the regular to court sitting place time. Conversely, the permanent court holds or sits at its regular place and time to hear the allegation of breach of public health laws brought against any person.

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- A summons is usually a written order by a magistrate or any judicial officer so authorised by law notifying an individual that he has been charged with an offence and requiring him to appear in court or a police station at a particular date and time (being not less than 48 hours after the service of such summons) to answer to the charge orallegation against him . However, you need to know that in the case of mobile court a summons is not need because it is summary trial because the offender was caught committing the offence and so the proceedings take place immediately.
- Although, there are order public health laws enforcement procedures such as injunction obtained from the High Court to prevent a polluter from continuing the action of pollution or takeover a premise or prevent people from entry a particular building or premises or area because of the existence of nuisance which is of high public health threat.

UNIT TWENTY :

PUBLIC HEALTH LAWS ENFORCEMENT BODIES

LEARNING OBJECTIVES

At the end of studying this unit the learner should be able to:

1. Mention the various public health laws enforcement agencies in the Nigeria.
2. List some environmental health laws enforcement bodies at the federal level
3. List some environmental health laws enforcement bodies at the state level
4. List some of the environmental health enforcement bodies at the local government level
5. Briefly describe the roles of some public health laws enforcement bodies
6. List and discuss some of the remedies available to a victim of environmental harm

Public Health Laws Enforcement Bodies at Federal Level

- The first set of public health laws enforcement bodies we shall be considering are those at the federal level. There are several government bodies which are involved either directly or indirectly in the enforcement of environmental laws. These include: the Federal Environmental Protection Agency, the National Environmental Standards and Regulations Enforcement Agency, the National Agency for Food and Drugs Administration and Control, the Standard Organization of Nigeria, the National Agency for Oil Spill Detection and Control, the Federal Ministry of Environment, the various Federal Courts (Federal High Court, Court of Appeal and the Supreme Court).

- The National Environmental Standards and Regulations Enforcement Agency (NESREA) was established because in the wisdom of Government, FEPA and other relevant Departments in other Ministries were merged to form the Federal Ministry of Environment in 1999, but without an appropriate enabling law on enforcement issues. This situation, however, created a vacuum in the effective enforcement of environmental laws, standards and regulations in the country. To address this situation, the National Environmental Standards and Regulations Enforcement Agency (NESREA) were established as a parastatal of the Federal Ministry of Environment, Housing and Urban Development. NESREA has responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

- The other federal body involved in environmental laws enforcement is the Standards Organization of Nigeria (SON). The Standard Organization of Nigeria (SON) is the sole statutory body that is vested with the responsibility of standardizing and regulating the quality of all products in Nigeria. It was established by the General Yakubu Gowon military regime through Act 56 in 1971, it was called the Nigerian Standards Organization (NSO). the Act conferred partial autonomy on the SON from the Ministry of Industry. It now has full autonomy. Just like NAFDAC SON is not a direct environmental law enforcement agency, but it regulates the standard of products.

Public Health Laws Enforcement Bodies At State Level

- Most of the functions of the state are similar to those of the federal bodies and again because the enforcement bodies vary from state to state. However, some of the environmental health laws enforcement bodies at the state level include: The State Environmental Protection Agency, the State Environmental Sanitation Authority, the Housing and Property Development Authority, the State Capital Development Authority and the Courts (Magistrates and State High Courts).

Public Health Law Enforcement Bodies At The Local Government Level

- The Local Governments do not have independent bodies like the federal and state level which are involved in environmental health enforcement. However, the Environmental Health Unit of the Local Government Primary Health Care Department has the responsibility of enforcing environmental health laws at the local government level. Also, some of the federal and state level bodies have local government branch offices which complement the role of the Environmental Health Unit.

Environmental Health Remedies

- There are several remedies available to a victim of environmental harm or threat that is any person who has or is likely to suffer environmental harm or threat. These include; injunction, compensation, damages, action for loss of profit, abatement and sensibility claim. We shall now examine each of these remedies briefly.
- **Injunction**
- One of the remedies available to a person who has suffered or is likely to suffer or is continuously suffering from environmental harm or threat is to apply for an injunction against the polluter to prevent from continuing the acts that is leading to the environmental harm or pollution or threat.

Compensation

- Another remedy available to a victim of environmental pollution or harm is an action for compensation for damages suffered as result of the defendant's action which led to the pollution. Usually compensation actions are more appropriate if negligence is established it has not been successfully applied in case of nuisance and trespass. Compensation is usually for damages to property and chattels and not personal injury suffered (Wolf et al, 2002).
- **Damages**
- Equally a victim of environmental pollution or harm or threat can action for damages suffered. Damages may be exemplary or specific or general. Exemplary damages has very limited success in environmental health actions, however, where the plaintiff can prove that the defendant undertook the act because he calculated he could make profit that would outweigh the cost of damages he is to pay then exemplary damages would be awarded.

- **Loss of Profit**
- Also, a victim of environmental pollution or harm can action for loss of profit and it is availed the plaintiff once damage has been proved in a nuisance action. It is not for any other damages but purely for economic loss (Wolf et al, 2002). See the case of Blackburn v. ABC Ltd (1998) Env. L.R 469 where the plaintiff claims for profit suffered as a result damage to a renovated house was rejected as it does not constitute economic loss.
- **3.4.5 Sensibility Claim**
- This is a remedy available to person who has suffered very severe and persistent nuisance as result of environmental pollution which has resulted in some permanent loss. If the plaintiff cannot prove serious, severe and permanent loss of amenity then the damage to be awarded might not be too high.

- **Abatement** a victim of environmental pollution could action for abatement of the nuisance caused by the action of the defendant. This is an action in which the plaintiff is seeking an order of court to compel the defendant to remove the nuisance he caused. This is very common in cases of public nuisance where the relevant environmental laws enforcement agencies have refused or neglected to take steps to abate the nuisance.

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