NEMA reigns on companies polluting Kenyan rivers

Kenyan urban rivers have for a long time suffered from pollution especially from littered solid waste. The main reason for this was due to inadequate legislation for waste management at post consumer level. But this space has changed after inclusion of Section 13 in the Sustainable Waste Management Act 2022 that introduced mandatory Extended Producer Responsibility (EPR) for all products in Kenya.

The National Environment Management Authority (NEMA) carried out inspections at various points within the Nairobi River catchment on 18th January 2024. The inspection team established the following:

1. That there were assorted synthetic wastes, along the river part of which bore the identity of different producers.
2. That the waste had accumulated in the rivers interfering with their flow, posed a potential threat of flooding, water pollution and are likely to have adverse environmental effects on the general environment.

The Constitution of Kenya 2010 (Article 42) provides that “Every person has a right to a clean and a healthy environment”. Further, the Environmental Management and Coordination Act (EMCA), 1999 Part II – General Principles, Section 3 (1) states that “Every Person in Kenya is entitled to a clean and healthy environment and has a duty to safeguard and enhance the environment”.

Additionally, the Sustainable Waste Management Act, 2022 requires as follows:

1. Section 13 (1) states that “Every producer shall bear extended producer responsibility obligations to reduce pollution and environmental impacts of the products they introduce into the Kenyan market and waste arising therefrom”.
2. Section 30 (1) states that “A person who fails to manage waste in accordance with this Act shall be required to clean up and restore the site where the waste was being managed to its natural state’’.
3. Section 30 (2) states that “The Authority shall issue the person with a site restoration order if the person fails to clean up and restore the site in accordance with subsection (1)’’.
4. Section 32 states that “a person who contravenes a provision of this Act for which a penalty has not been prescribed shall, on conviction, be liable to a fine of not less than two million shillings and not more than four million shillings or to imprisonment for a term not exceeding four years or to both

Based on the legal provisions above, the Authority issued environmental restoration orders to 29 companies to individually undertake curative and preventive measures to reduce pollution in Nairobi river. Each company is expected to do the following within 30 days of receipt of this environment restoration Order.

1. Clean up the wastes within the specific sites where the crime was committed to their natural state.
2. Submit to NEMA the EPR plan for management of waste emanating from their products and packaging for Nairobi River catchment region.

The orders were signed by the Director General NEMA on 25th January and this marks the first day of enforcement of the provisions of Extended Producer Responsibility in Kenya. It is expected that the producers will operationalize their EPR plans to prevent environmental pollution by their products.

The environmental restoration order also communicated to the producers the right of appeal against this order to the National Environment Tribunal, if aggrieved.

NEMA intends to inspect all rivers in the country and task the producers to restore all sites polluted by products subject to EPR. This would help to ensure that all rivers are flowing all the time and devoid of solid waste pollution.