



REGULATORY IMPACT STATEMENT
THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION (WASTE MANAGEMENT) REGULATIONS,
2023

INTRODUCTION

The Environmental Management and Coordination (Waste Management) Regulations, 2006 (hereinafter 'Regulation') which have been in existence for almost two decades are anchored in Section 86 (4) of the Environmental Management and Coordination Act, 1999 (hereinafter 'EMCA'). The Regulation came into effect through Legal Notice 121 of 2006. The Regulations' purpose is to provide a framework for the management of waste and abatement of pollution in line with the constitutional and statutory guarantees of ensuring a clean, safe, healthy and sustainable environment for all persons.

The purpose of the Regulation is to provide for guidance, procedures and standards for environmental governance to ensure compliance in the waste management sector. The Regulation also provides for licensing, monitoring and enforcement.

Kenya generates an estimated 22,000 tons of waste per day calculated by assuming an average per capita waste generation of 0.5 kilograms for a current population of over 50 million translating to over 8 million tonnes annually. It is estimated that 40% of the waste is generated in urban areas. Given that urbanization is increasing by 10%, by 2030, the Kenya urban population will be generating an estimate of about 5.5 million tonnes of waste every year.

Past scientific inventories estimate that 60% of waste generated is organic, 30% recyclable, and 10% others. Inefficient production processes, low durability of goods, unsustainable consumption, and production patterns lead to excessive generation of waste. This implies that there exists a huge space for circularity and sustainable consumption and production to extract maximum value from waste for green jobs and wealth creation. The Constitution sets out in its preamble, respect for the environment and the desire to achieve environmental sustainability. This has necessitated the need to have the Regulation reviewed to address existing gaps that have become apparent in addition to the need to align the Regulation to the provisions of the Constitution.

The Authority in accordance with its mandate and as provided for under Section 86 (4) of EMCA has proposed to undertake a review of this Regulation through a technical committee. The committee comprise of experts with divergent background touching on waste management and pollution control. The technical committee is tasked with identifying the gaps in the Regulation, coming up with remedies for such gaps, collecting views from members of the public and preparing a draft Regulation with the proposed changes.

A. OBJECTIVES OF THE PROPOSED REGULATIONS

- i. To align the Regulation with the provisions of the Constitution of Kenya.
- ii. establish an environmentally sound infrastructure and systems for sustainable waste management;
- iii. promote and ensure the effective delivery of waste services;
- iv. reduce air, land, fresh water, water aquifers and marine pollution;
- v. create an enabling environment for employment in the green economy in waste management, recycling and recovery;
- vi. promote circular economy practices for green growth;
- vii. promote sustainable waste management; and

- viii. improve the health of all Kenyans by ensuring a clean and healthy environment.
- ix. Mainstream environmental governance into waste management

B. EFFECTS OF THE PROPOSED REGULATIONS

The effects of the proposed regulations can be categorized as follows:

i. Economic Effects

- ❖ There will be minimal financial implication to the Kenyan public arising from waste licensing and permits fees as shall be prescribed.
- ❖ Encourage uptake of innovation and technologies to address waste management
- ❖ Enhance ease of doing business and provides opportunity for economic development and green job creation.
- ❖ Provides good investment climate and favourable living environment.
- ❖ To ease the burden of disease arising from the impact of waste pollution.
- ❖ Productivity index is enhanced.
- ❖ Supports the government policy objectives for sustainable development.

ii. Social Effects

- ❖ This Regulation will enhance behavior change by embracing the 7Rs (Reduce, Rethink, Refuse, Recycle, Reuse, Repair, Refill) principles of circular economy
- ❖ By enhancing positive social behavior and consideration within the community for promotion of a clean, safe, healthy and sustainable environment for all in the Country.
- ❖ By promoting stakeholder engagements, public participation, transparency and social acceptability (social licenses) it will mitigate against conflicts and social unrests.

- ❖ It ensures the tranquility of their surroundings and their psychological wellbeing by improving the environment aesthetic value.
- ❖ It will enhance synergy and interagency co-ordination among MCDAs, especially County Governments in environmental management and thus avoid institutional conflict and duplication of responsibilities.

iii. Environmental Effects

- ❖ It ensures the right to a clean, safe, healthy and sustainable environment for all citizens.
- ❖ Puts in place measures for proper segregation, separation, collection, recycling, treatment and disposal of waste in the country.
- ❖ Fosters domestication of relevant International treaties and conventions such as the Basel Convention On The Control Of Trans Boundary Movements Of Hazardous Wastes 1992, the Bamako Convention On The Ban Of The Importation Into Africa And The Control Of Trans Boundary Movement And Management Of Hazardous Waste Within Africa, 1991, Stockholm Convention On Persistent Organic Pollutants, 2004 and Rotterdam Convention on Prior Informed Consent, 2004, the Minamata Convention on Mercury 2013.

C. STATEMENT OF OTHER PRACTICABLE MEANS OF ACHIEVING THE OBJECTIVES OF THE PROPOSED INSTRUMENT (WASTE MANAGEMENT) REGULATIONS, 2023

i. Regulatory Options

- ❖ Constitution of Kenya in the fourth Schedule, Part II (2) (g) devolves the management of refuse removal, dumps and solid waste management to county governments.

- ❖ Kenya Nuclear Regulatory Act, 2013 in relation to the classification, registrations, labelling, packaging, transportation, importation, exportations, waste disposal, health and safety requirements with regard to radioactive substances;
- ❖ Pesticide Control Products Act, Cap 346 relating to the classification, registration, labeling, packaging, advertising, import, export, distribution, storage, transportation, handling and disposal of pesticides;
- ❖ County legislation;
- ❖ The Mining Act, 2016 for waste arising from quarrying and blasting activities;
- ❖ The Public Health Act, Cap 242 relating to taking lawful, necessary and reasonably practicable measures for maintaining the environment at all times in clean and sanitary condition;
- ❖ Adoption of internationally recognized standards on waste management

ii. Non Regulatory options

- ❖ The Authority to continue to enhance education and awareness of best environmental practices;
- ❖ Enforcement by the relevant Ministries, Counties, Departments, and Agencies (MCDAs) on sectorial issues under their jurisdiction;
- ❖ Negotiated compliance arrangements;
- ❖ Compliance assistance programmes.
- ❖ Compliance promotion;
- ❖ Voluntary/Self-regulation practices by members of the public, owners and operators;

D. ASSESSMENT OF THE COSTS AND THE BENEFITS OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION

(WASTE MANAGEMENT) REGULATIONS, 2023

i. Cost of the Regulation

- ❖ Capacity enhancement
- ❖ Education and awareness
- ❖ Research and innovation
- ❖ Enforcement and monitoring

ii. Benefits of the Regulation

a. Economic Benefits

- ❖ Encourage uptake of innovation and technologies to address waste pollution;
- ❖ Enhance ease of doing business and provides opportunity for economic development and green job creation.
- ❖ Provides good investment climate.
- ❖ To ease the burden of disease arising from the impact of waste pollution.
- ❖ Productivity index is enhanced.
- ❖ Supports the government policy objectives for sustainable development.

b. Social Effects

- ❖ Improvement of living standards through income generation created from the green jobs.
- ❖ Improve security through vulnerable groups engagement in income generating activities throughout the waste management value chain.
- ❖ Reduction of communicable illnesses, respiratory ailments, cancer, sanitary conditions and other adverse health effects.
- ❖ Enhancing positive social behavior and consideration within the community for promotion of a clean, safe, healthy and sustainable environment for all.

- ❖ Mitigate against conflict and social unrest by promoting stakeholder engagements, public participation, transparency and social acceptability (community buy in)
- ❖ Enhance synergy and interagency co-ordination among MCDAs, especially with County Governments in environmental management and thus avoid institutional conflict and duplication of responsibilities.
- ❖ It ensures the tranquility of their surroundings and their psychological wellbeing by improving the environment aesthetic value.
- ❖ Allow Citizens to enjoy their hard earned assets by enjoying a serene and aesthetic surrounding.
- ❖ The Regulation will elevate the standards of living of the people by prescribing measures for proper segregation, separation, collection, recycling, treatment and disposal of waste in the country.

c. Environmental Effects

- ❖ It ensures the right to a clean, safe, healthy and sustainable environment for all.
- ❖ Fosters domestication of relevant International treaties and conventions such as the Basel Convention On The Control Of Trans Boundary Movements Of Hazardous Wastes 1992, the Bamako Convention On The Ban Of The Importation Into Africa And The Control Of Trans Boundary Movement And Management Of Hazardous Waste Within Africa, 1991, Stockholm Convention On Persistent Organic Pollutants, 2004 and Rotterdam Convention on Prior Informed Consent, 2004, the Minamata Convention on Mercury 2013.
- ❖ Puts in place preventive measures against destruction of the environment caused by waste pollution and averts potential future risks to the environment.

E. REASONS WHY OTHER MEASURES ARE NOT APPROPRIATE

- ❖ Existing gaps and inadequacies in the current regulations.
- ❖ The compliance status among the regulated community is wanting and hence the need to enhance enforcement of the prescribed regulations and standards.
- ❖ Emerging waste streams such as sanitary waste, asbestos etc that were hitherto not captured in the scope of the 2006 Regulation
- ❖ Low self-regulation by the regulated community
- ❖ The Constitution squarely puts the mandate on the government on ensuring a clean, safe, healthy and sustainable environment to Kenyans.
- ❖ The substantive legislation (EMCA, 1999) provides for the development of regulations for its implementation.

F. ANY OTHER MATTERS SPECIFIED BY THE REGULATION

- ❖ Realization of the circular economy.
- ❖ Proposal to reduce the fee charged for export permits
- ❖ Proposal to have the fee chargeable for export permits calculated on a consignment basis or on the volume of a consignment
- ❖ Proposal to only require a PIC for hazardous waste on transit through the Kenyan territory and not to require an export permit
- ❖ Incorporates the different emerging streams of waste
- ❖ Eliminating the use of toxic raw materials
- ❖ Incorporating environmental concerns in the design and disposal of a product.

G. ADEQUACY OF THE REGULATORY IMPACT ASSESSMENT- INDEPENDENT ADVICE

To undertake the regulatory impact assessment and to guide on the formulation of the Regulations, the Director General NEMA constituted a

technical committee with membership drawn from officers of varied expertise within the Authority.

The Terms of Reference for the technical committee were;

- ❖ Review of the existing Environmental Management and Co-ordination (Waste Management) Regulations, 2006;
- ❖ Ensure that all staff members are consulted and their input incorporated in the Regulation;
- ❖ Ensure that the Lead Agencies are consulted and their input considered in the Regulation;
- ❖ Ensure that public participation is effected in the process of reviewing the Regulation;
- ❖ Co-ordinate the finalization and Gazettement of the Regulation;
- ❖ To undertake stakeholder consultations in the process of delivering amended Regulation.
- ❖ Prepare the Regulatory Impact Statement for the Regulation
- ❖ Coordinate the finalization of the instrument and the Gazette notice.
- ❖ Prepare the Draft Explanatory Memorandum
- ❖ Perform any other task related to the amendment of the Regulation until finalization.

In order to effectively execute the above mentioned TORs, the technical committee has scheduled to undertake the following activities;

- i. Comprehensive literature review
- ii. Technical committee meetings
- iii. Rigorous stakeholder consultations was done in line with the Statutory Instrument Act, 2013.
- iv. Drafting sessions

This was undertaken by the Technical Committee on behalf of Director General, NEMA.

H. CONCLUSION

The review of the Regulation is particularly important to enable alignment with the Constitution of Kenya, 2010 which is the supreme law of the land in realizing the goal to a clean, safe, healthy and sustainable environment. To achieve this there is need to embrace circular economy, sustainable production and consumption and to extract maximum value from waste for green jobs and wealth creation. The review of this Regulation will enhance environmental sustainability in Kenya.

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