

Compliance to EPR legislation

By

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Policies and legislation

- EMCA 1999 – Linear model of waste management
- Sustainable Waste Management Policy 2021– Circular model
- SWM Act 2022 – Circular model and mandatory EPR
- Draft EPR regulations – Polluter pay principle

Policy and legislation

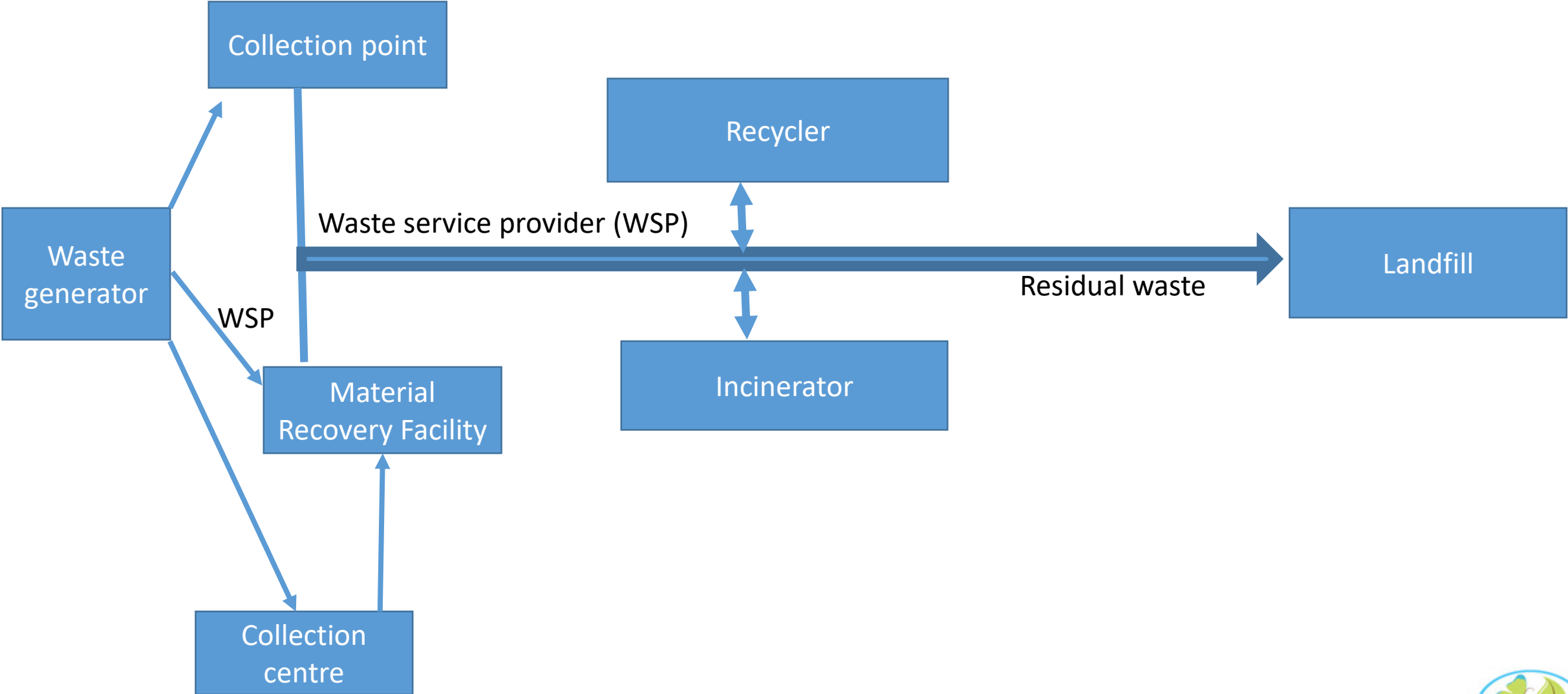
- Sustainable Waste Management Policy 2021 and SWM Act 2022 requires
 1. Target setting for waste by National Waste Management Council
 2. Waste segregation at source
 3. Valuable Resources recovery at Material Recovery facility
 4. Development of waste management plans by private actors
 5. Annual reporting for all private sector actors on waste management
 6. Mandatory EPR obligations for all products and packaging
 7. Data management
- Collected waste to be managed as guided by Environmental Management and Coordination Act 1999 revised 2015 and Waste Management regulations 2006.

Waste generator functions (section 12, 20)

Every waste generator shall

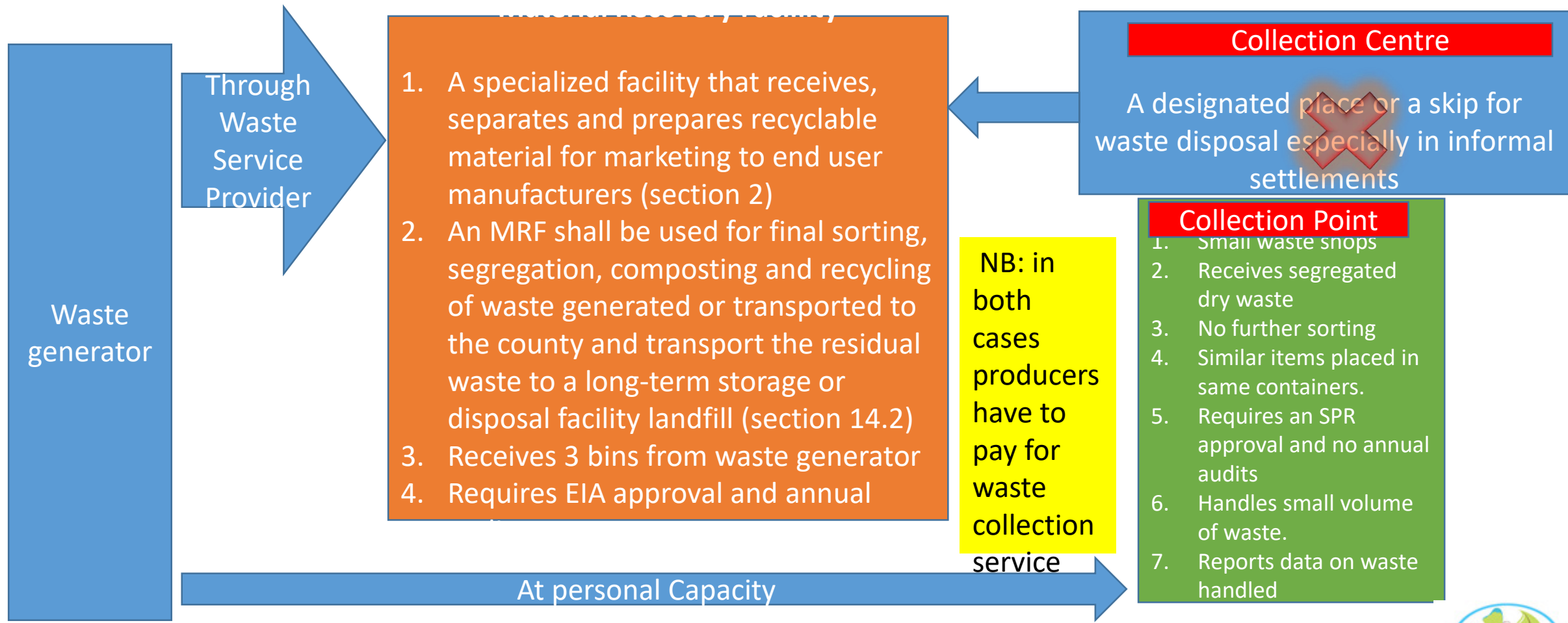
1. **Segregate waste** at source (section 20)
2. Non-hazardous waste to be segregated into organic and **inorganic fractions** (section 12)
3. Segregated waste shall be placed in properly labeled and color coded receptacles, bins, containers and bags (section 12).
4. Dispose waste to only licensed **waste service providers** or at **collection points** designated by the County Government or NEMA (section 20)
5. Non compliance will lead to a fine not exceeding Kshs 20,000 or imprisonment not exceeding six months or both (section 20).

Inorganic waste flow diagram



Collection of valuables recovered from waste

A person who generates waste in Kenya shall dispose the waste to only licensed waste service providers or at designated collection points (Section 20)



Extended Producer Responsibility (section 13)

- 13(1) Every producer shall bear extended producer obligations to reduce pollution and environmental impacts of the products they introduce into the Kenyan market and waste arising therefrom.
- (2) Every producer shall fulfill their extended producer responsibility obligations individually or collectively in a compliance scheme.
- (3) The Cabinet Secretary shall, within two years of the coming into operation of this Act make regulations on extended producer responsibility.

Further information

- Draft EPR regulations ready – being drafted by the AG and will be signed by the CS soon.
- In the meantime, section 13.1 and 13.2 are active
- Ideally, implementation for most legislation commence with compliance, but in this case, enforcement will come first due to lack of EPR regulations.
- NEMA intends to implement EPR as per section 13 of SWM Act immediately.

Why not wait for EPR regulations 2023?

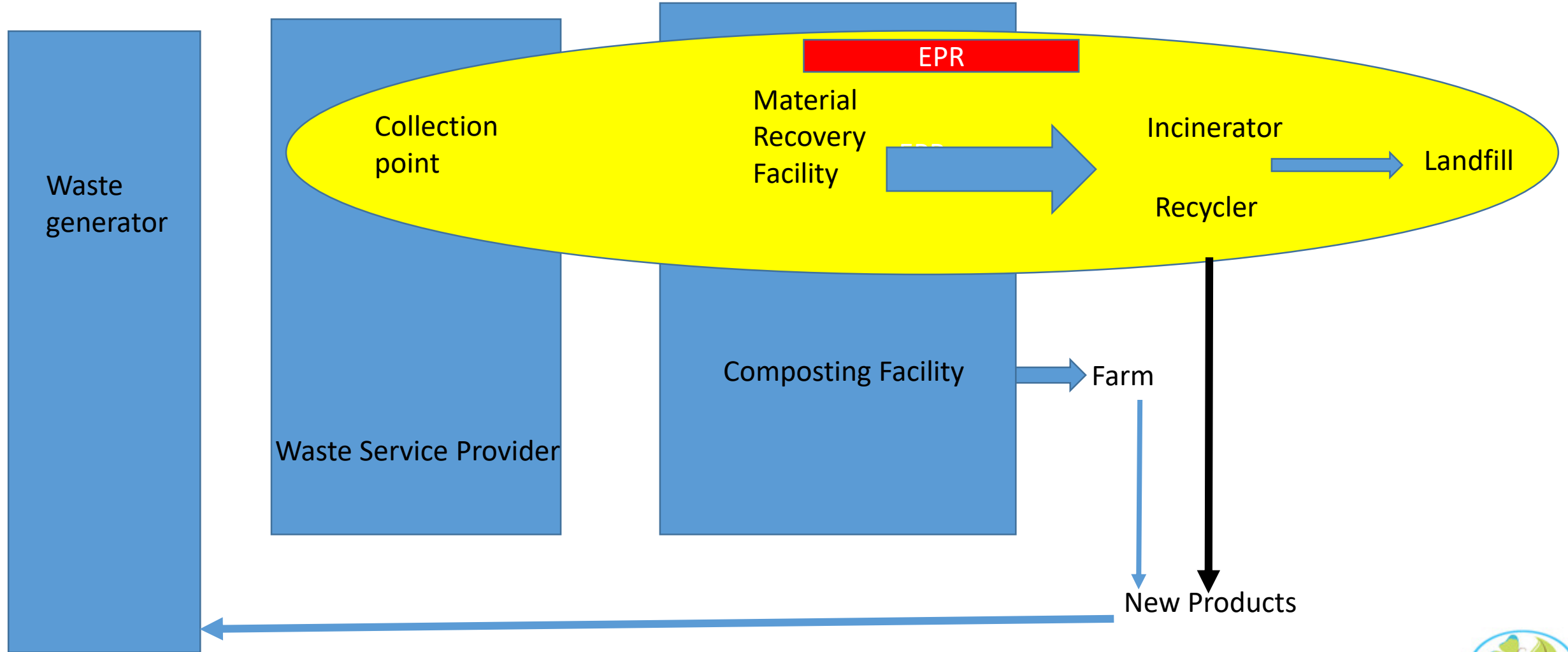
- Section 13 of SWM Act is active.
- Kenya has in the past implemented 2 voluntary EPR Schemes since 2018 without legislation namely
 1. PETCO – mopped over 30000 tonnes of PET since 2018
 2. KEPRO – Mopped 9000 tons of LDPE worth Kshs 85 million in 32 counties.
- Challenge – joyriders
- SWM Act 2022 Section 13 establishes **mandatory EPR for all producers**
- Producers to demonstrate compliance to section 13 of the Act

Some considerations in EPR roll out plan

1. Waste management value chain
2. Availability of facilities to receive and process waste
3. Public awareness
4. Movement of recovered materials
5. Compensation for collection service (to waste pickers)
6. Evidence / data

Waste flow and EPR

1. A person who generates waste in Kenya shall dispose the waste to only licensed waste service providers or at designated collection points (Section 20).
2. County governments shall provide central collection centres for materials that can be recycled (Section 9.4)

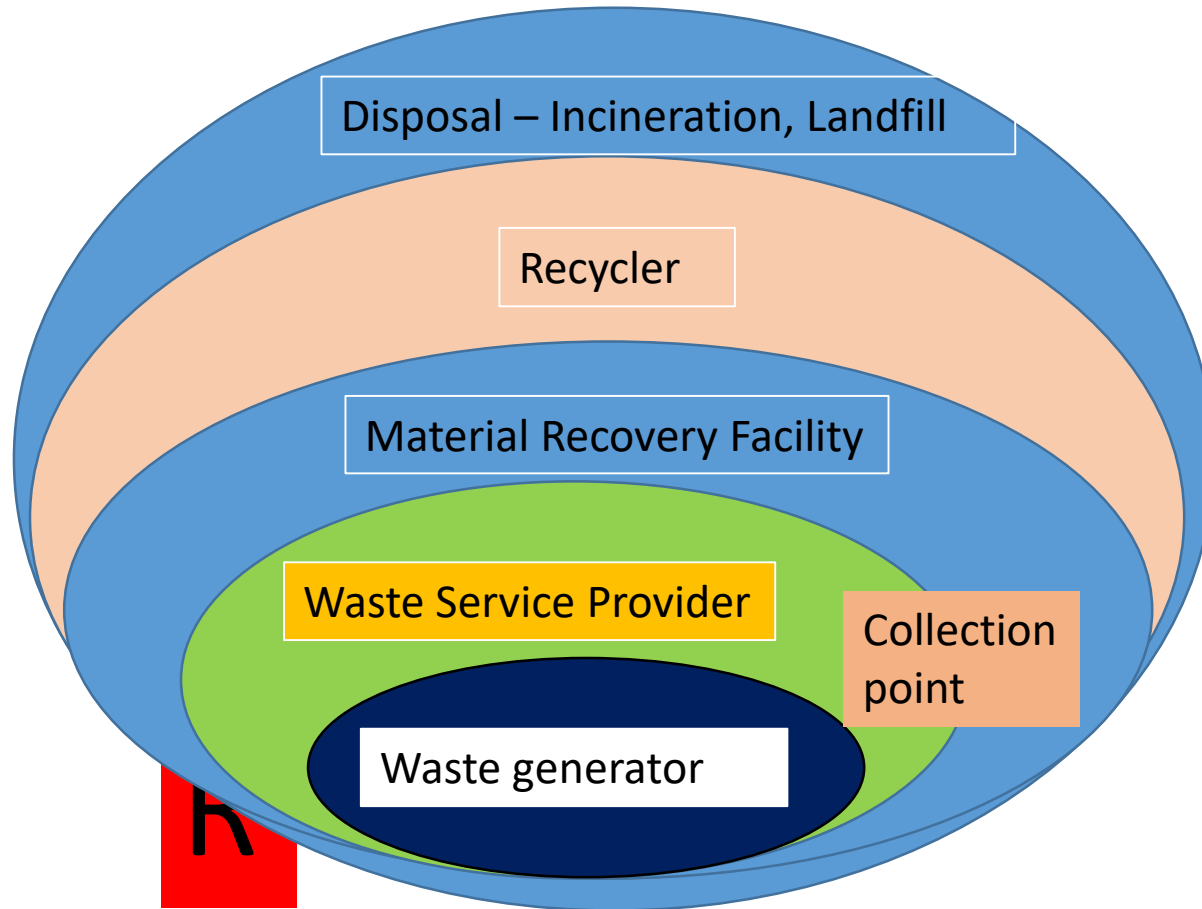


Communication to producers

Public notice

- As you are aware the Sustainable Waste Management Act became effective on 22nd July 2022. Section 13 of the Act requires every producer to bear mandatory extended producer obligations to reduce pollution and environmental impacts of the products they introduce into the Kenyan market and waste arising therefrom. Every producer shall fulfill their extended producer responsibility obligations individually or collectively in a compliance scheme.
- The producer is defined in the Act as an entity that introduces goods, products and packaging into the country using authorised means by manufacturing, importing, converting, filling, refilling, repackaging or rebranding.
- The Authority has commenced inspection and enforcement on compliance to this Act. In this regard Producers are requested to submit to the Authority the plan that they are using to implement Extended Producer Responsibility Obligations. You may submit the plan as an individual or collective scheme.

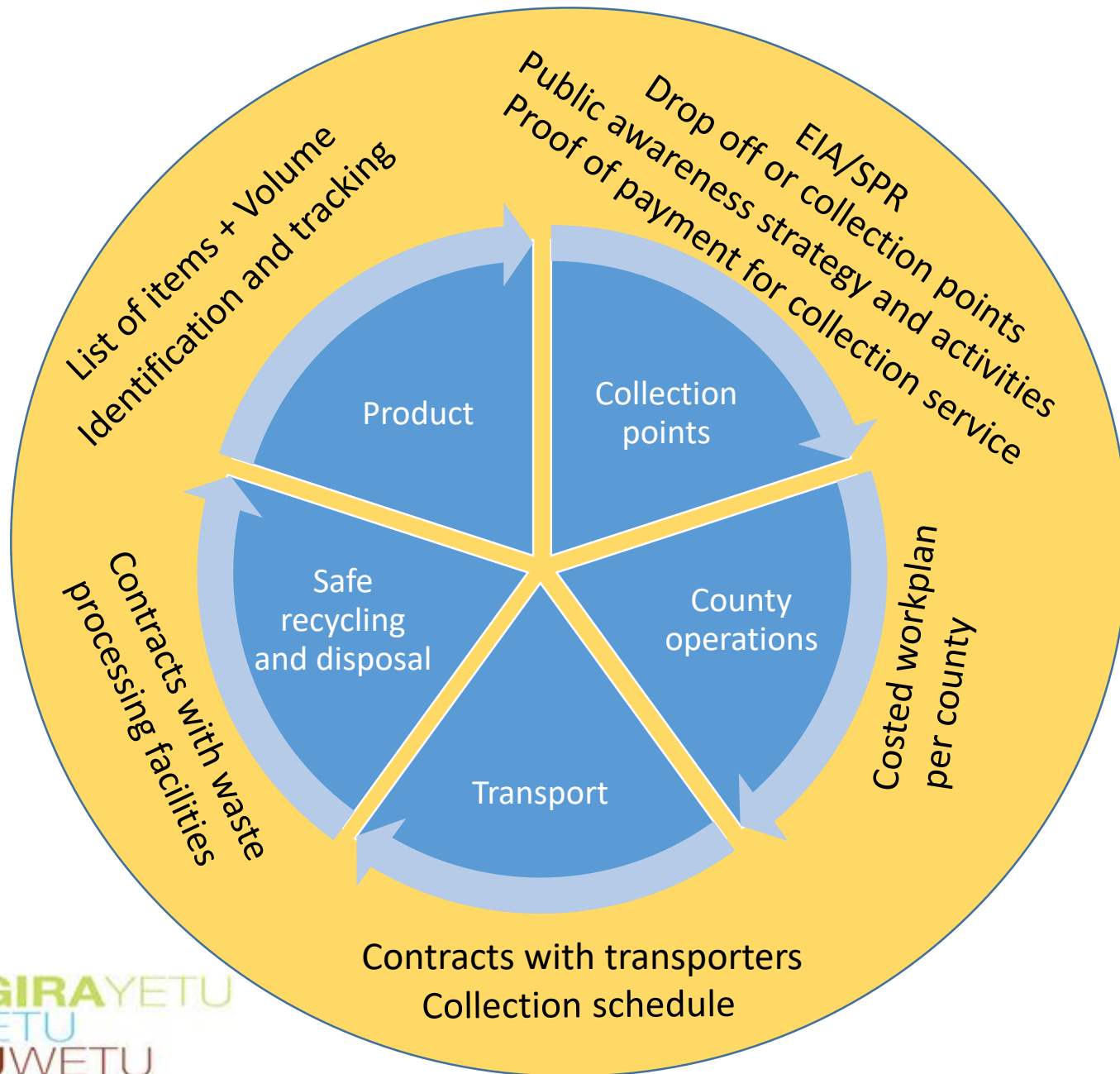
Extended Producer Responsibility (EPR)



EPR fees to manage logistics for seamless waste management including

1. Public awareness
2. Collection, transportation, recycling, composting, treatment and disposal
3. **Research and development**
4. Operate take back schemes
5. **Life cycle assessment**
6. **Ecodesign**
7. Product traceability
8. Monitoring and reporting
9. **Develop markets for secondary raw materials**
10. **Take measures to reduce impact of their product on health and environment**
11. **Embrace appropriate technologies**

EVIDENCE PARAMETERS FOR EPR IMPLEMENTATION



Contents of EPR Plan

1. The list of products introduced into the Kenyan market.
2. **If you are a member of a collective scheme, provide evidence of membership.**
3. Estimated annual volume/quantity of product(s) introduced into the market.
4. Mechanisms put in place for identification and tracking of your product(s).
5. List and location of your drop off or collection points per county (see criteria below for establishing a collection point). You can also use existing transfer stations licensed by NEMA.
6. Evidence of payment for waste collection service for each product
7. Planned awareness strategy and activities
8. Workplan per county and budget for fulfilling EPR obligations
9. Contracts with NEMA licensed waste transporters to move recovered products from collection points
10. Collection schedule from collection points
11. Contracts with waste processing facilities such as recyclers, incinerators, landfills.
12. EIA or Summary Project Report (SPR) approvals as advised from the County NEMA office.

Collection point establishment / operation criteria

1. Should only handle segregated dry items
2. Should be roofed, paved and in a well-drained location
3. Should be manned or secured from external interference
4. Waste should be stored in containers that are covered to avoid littering
5. Similar waste fractions should be placed in the same receptacle
6. Should declare and implement a collection schedule (provide collection contracts with licensed actors)
7. Should be accessible to the public
8. Should provide proof of payment for collection service
9. Display list of products collected and corresponding compensation for collection service.
10. Should declare data on volumes of waste collected and transported away
11. Approved by NEMA County Office through EIA or SPR

Timelines and penalty

- Producers to submit plan to the Authority within two months after NEMA issues public notice.
- Penalties
 - a person who contravenes this EPR provision may have their products removed from the market or prosecuted and fined as per the Act.

Readiness assessment

1. Public Notice – Ideas ready. Platform to publish?
2. Approval of EIA and SPR for collection points at county level – NEMA County offices have adequate capacity to process these applications.
3. Process EPR plans at Headquarters (completeness, register, data) - NEMA will designate a dedicated officer (technical and ICT) to undertake this task
4. Inspections – NEMA inspection Unit has the capacity to coordinate this aspect.
5. Sensitization for producers, NEMA field officers – will be done virtually in collaboration with private sector players such as KEPSA, KAM, KNCCI.

Role of counties

- Waste generation happens at county level
- Non-hazardous waste management is a devolved function
- Some hazardous fractions generated at domestic level e.g. batteries, bulbs, pesticides etc
- EPR schemes to be operationalized at county level
- County based workplans and progress reports
- Evidence per county to be presented to NEMA

Some ideas on establishment of collective EPR schemes

- Every producer to be a shareholder of the company
- similarity of products, their uses and the nature of waste arising therefrom
- establish appropriate mechanisms and structures for the management of each product.
- Market share - made up of not less than 30 percent of the registered producers
- formal agreements and cooperation frameworks for joint research, collection, take back schemes, appropriate infrastructure, end of life treatment and disposal mechanisms

Way forward

- Commence EPR Plan development
- Document EPR compliance evidence and submit to NEMA
- Establish collective schemes for related products
- Liaise with private sector to establish collection points, MRFs etc and use their infrastructure
- Share information on joyriders with NEMA for enforcement action
- Data management and reporting

Next steps

- NEMA to post presentations on its website
- NEMA to publish public notice and reporting template
- NEMA to use multi-stakeholder approach to enhance enforcement
- Timeline for submitting EPR compliance reports - 2 months after public notice on NEMA website
- NEMA to provide compliance assistance
- NEMA, KAM and KEPSA to provide help desks

Thank you for listening