



THE SUSTAINABLE WASTE MANAGEMENT BILL, 2019

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THE SUSTAINABLE WASTE MANAGEMENT BILL, 2019

A Bill for

AN ACT of Parliament to establish an appropriate legal and institutional framework for the efficient and sustainable management of waste in the framework of the green economy, the realization of the zero waste goal, the Constitutional provision of the right to a clean and healthy environment for all, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows-

PART I-PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Sustainable Waste Management Act, 2019 and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires—

No. 8 of 1999.

“Authority” means the National Environment Management Authority established under the Environmental Management and Coordination Act, 1999;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to environment;

“County Environment Committee” means a committee established under section 29 of the Environmental Management and Coordination Act, 1999;

“National Environment Complaints Committee” means the National Environment Complaints Commission established under section 31 of the Environmental Management and Coordination Act, 1999;

“Council” means the Council established under section 6;

“domestic waste” means waste generated from residences and are not hazardous;

“extended producer responsibility” means measures that extend a producer, an importer, a seller, a firm, either financial or physical responsibility to the post-consumer stage of the product lifecycle, and includes—

- (a) eco-design of products for waste reduction
- (b) waste minimisation programmes;

- (c) deposit – refund and take back schemes;
- (d) financial arrangements for any fund that has been established to promote the reduction, re-use, recycling and recovery of waste;
- (e) awareness programmes to inform the public of the impacts of waste emanating from the product on health and the environment; and
- (f) any other measures to reduce the potential impact of the product on health and the environment, including improved product design for better recyclability;
- (g) defines different actors as follows:
 - a. Manufacturers: Makers of plastic packaging or products
 - b. Importers: Importers of plastic packaging
 - c. Raw material suppliers: Importers or manufacturers of plastic pellets
 - d. Users: Companies using plastic packaging in the sales and distribution of their products.
 - e. Retailers: Companies re-selling goods.

‘gate fees’ are levies charged at a waste management facility for the handling of the waste delivered based on a volume or weight basis.

“industrial waste” means waste arising from processing and manufacturing industries or trade undertakings and can take the form of liquid, non-liquid, solid and gaseous substances;

“lead agencies” has the meaning assigned to it under section 2 of the Environmental Management and Co-ordination Act, 1999;

“ministry” means the ministry responsible for environment;

“materials recovery facility” means a specialized plant that receives, separates and prepares recyclable materials for subsequent recycling.

“National Environmental Tribunal” means the Tribunal established under section 125 the Environmental Management and Coordination Act, 1999;

“payments for environmental services” also known as payments for ecosystem services means payments to farmers or landowners

who have agreed to take certain actions to manage their land or watersheds to provide an ecological service as an incentive to farmers and land owners to encourage the conservation of natural resources;

“pollution” has the meaning assigned to it under section 2 of the Environmental Management and Co-ordination Act, 1999;

No. 18 of 2013.

“polluter-pays principle” means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, the cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the pollution is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;

“precautionary principle” means that where there are threats of damage to the environment, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation;

“private sector entity” means a body or person with functions of a private nature, and includes bodies registered under the Public Benefits Organisations Act, 2013;

“public entity” means —

(a) the Government, including the national or county Government, or any department, State organ or agency service or undertaking of the national or county Government;

(b) the Parliamentary Service;

(c) any corporation, council, board, committee or other body which has power, to act under and for the purposes of any written law relating to undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law; or

(d) a corporation, the whole or a controlling majority of the shares of which are owned by a person or entity that is a public body by virtue of any of the preceding paragraphs of this definition;

(e) statutory public bodies;

“waste segregation at source” means the process of separating usable materials from waste to ensure high quality of materials, maximize reuse, recycling and materials and to protect environment

and human health.

“recovery” means the controlled extraction of a material or the retrieval of energy from waste to produce a product;

“recycle” means a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material;

“re-use” means the action or practise of using something again, whether for its original purpose or to fulfil a different function;

“sustainable waste management” means using material resources efficiently to cut down on the amount of waste produced, and where waste is generated dealing with it in a way that actively contributes to the economic, social and environmental goals of sustainable development;

“toxic substances” means any substance, which on entry into an organism through ingestion, inhalation and dermal contact is injurious, causes physiological, or biochemical disturbances or otherwise causes deterioration of the functions of the organism in any way;

“waste” means—

- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as municipal waste, domestic waste, waste from agriculture, horticulture waste, aqua culture waste, forestry waste, medical waste, chemical, hazardous and toxic industrial waste, pesticide and toxic substances, but does not include radioactive waste; or
- (b) any other substance, material or object that is not mentioned above but may be defined as a waste by the Cabinet Secretary by notice in the *Gazette*;
- (c) any waste or portion of waste, referred to in paragraphs (a) and (b) ceases to be a waste—
 - (i) once an application for its re-use, recycling or recovery has been approved by the Authority or, after such approval, once it is, or has been re-used, recycled or recovered;

- (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered; and
- (iii) where the Cabinet Secretary has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste;

“waste management facility” means any site or premise used for the accumulation of waste with the purpose of disposing of that waste at that site or on that premise, reducing, recycling, reusing, storage, conversion into other useful products like energy, manure and disposal of waste; more specific facilities include:

- Composting plant
- Mixed recovery facility (for waste sorting)
- Recycling facility (for processing sorted waste materials into raw materials)
- Waste-to-energy facility (for converting waste to energy)
- Sanitary landfill

“waste management activity” means any activity administrative and operational and includes—

- (a) the importation and exportation of waste;
- (b) the segregation of waste, including the undertaking of any activity or process that is likely to result in the generation of waste;
- (c) the accumulation and storage of waste;
- (d) the collection and handling of waste;
- (e) the reduction, re-use, recycling and recovery of waste;
- (f) the trading in waste;
- (g) the transportation of waste;
- (h) the transfer of waste;
- (i) the treatment of waste; and
- (j) the disposal of waste;

“waste management service providers” are legal entities or registered individuals and community groups or associations licensed to collect, transport waste, run and operate materials recovery facilities, recycle, treat and dispose waste to engineered landfills.

‘waste hierarchy’ is a hierarchy that prioritises waste prevention, reduction and re-use, followed by recycling and composting as the second preferred options, followed by waste disposal and energy generation, as the last least environment-friendly options.

“waste minimization or reduction programme” means a programme that is intended to promote the reduced generation and

disposal of waste; and

“waste valorisation” means any activities aimed at turning waste into useful products including materials, chemicals and sources of energy and also by reusing, recycling, or composting from wastes; and

“zero waste principle” diversion of waste materials from landfills, incinerators and environment through eco-design and managing products and processes to reduce the volume and toxicity of waste and materials, and conserve and recover all resources, and not burn or bury them, so that waste is understood as a resource that can be harnessed to create wealth, employment and reduce pollution of the environment.

“Sanitary Landfill” - an engineered, controlled and regulated disposal site for unrecyclable waste with basic operations and site management that include controlled access, recording facilities for incoming waste, and effluent and soil, water and air pollution controls.

Preamble.

3. This Act shall be read together with the following related legislation—

- (a) the Constitution of Kenya;
- (b) the Environmental Management and Co-Ordination Act, 1999;
- (c) the Water Act, 2016;
- (d) the Public Procurement and Asset Disposal Act, 2015;
- (e) Public Health Act;
- (f) the Public Finance Management Act;
- (g) County government Act, 2012;
- (h) Kenya’s Nationally Determined Contribution to the Paris Climate Agreement;
- (i) any other relevant law; and
- (j) related policies under the Ministry.

Objectives.

4. The objectives of this Act are—

- (a) promoting sustainable waste management through application of

the waste management hierarchy;

- (b) promoting circular economy and ensuring effective delivery of waste management services;
- (c) establishing environmentally sound infrastructure and systems for effective waste management;
- (d) reducing air, land, fresh water and marine pollution;
- (e) creating an enabling environment for green economy jobs in the waste management, recycling and recovery industry especially for youth, women and persons with disability;
- (f) promoting sustainable procurement practices;
- (g) mainstreaming resource efficiency principals in sustainable consumption and production practices; and
- (h) improving the health of all Kenyans by ensuring a clean and healthy environment;
- (i) Inculcate responsible public behaviour on waste and environment.

General Principles.

5. The general principles of this Act are—

- (a) promoting the constitutional right to a clean and healthy environment;
- (b) waste hierarchy
- (c) the precautionary principle;
- (d) the polluter pays principle;
- (e) payment for ecosystems services;
- (f) access to information on waste management;
- (g) zero waste principle;
- (h) achieving sustainable development goals; and
- (i) Extended producer responsibility
- (j) Poverty alleviation and decent job creation especially for the youth, women and people with disabilities.

**PART II – POLICY, COORDINATION AND OVERSIGHT OF
WASTE MANAGEMENT**

Oversight and
Coordination of
Waste Management

- 6.** (1) The Ministry shall be responsible for —
- (a) policy development on matters related to waste management in consultation with county governments;
 - (b) development of regulations in consultation with the Authority; and
 - (c) Oversight and coordination of the implementation of this Act.
- (2) The Cabinet Secretary shall, within one year after the entry into force of this Act, establish a National Waste Management Council.
- (3) Membership of the Council shall include, but not be limited to one representative from —
- (a) the Ministry responsible for Environmental Matters
 - (b) the National Environment Management Authority;
 - (c) the National Environment Complaints Committee;
 - (d) the Office of the Attorney General;
 - (e) the National Treasury;
 - (f) the Chair of the Environment Committee of the Council of Governors;
 - (g) the Chair of County Executive Committee Members in charge of environment caucus;
 - (h) A Waste Recycling Industry representative nominated by Kenya Private Sector Alliance;
 - (i) Non-governmental organization that works on sustainable waste management or the circular economy nominated by the NGO council.
 - (j) A representative of manufacturers producer responsibility organization or manufacturer nominated by Kenya Association of Manufacturers
 - (k) A Member of Waste Management Service Providers with

expertise on waste management nominated by more representative waste management services association or waste based community organization.

- (1) Co-option of 1 waste management expert with technical understanding of waste management planning, assessments, technologies, audit and reporting.
- (4) The Cabinet Secretary shall be the chair of the Council.
- (5) The Cabinet Secretary shall establish a Waste Management Secretariat of the Council.
- (6) The Cabinet Secretary shall assign the Council duties and responsibilities as the Cabinet Secretary deems fit.
- (7) Without prejudice to the generality of subsection (6), the Council shall perform the following duties and functions—
 - (a) Co-ordinate and oversee the implementation of the national zero waste plans, policy and laws and report on the achievement of target goals, strategies and activities.
 - (b) Shall Develop a 5 year national zero waste action plan for the country setting out clear targets for waste management including strategies to reduce land-based pollution to the marine environment; for the country
 - (c) The Zero Waste Action Plan be reviewed every 3 years and new targets set based on the waste hierarchy national for county governments and private entities, extended producer responsibility schemes, producer responsibility organisations, material recovery facilities and landfills.
 - (d) Receive the Annual zero waste status progress reports from 47 the county Governments' Public Entities, Private Entities and National Environment Management Authority, Producer Responsibility Organizations, Extended Producer Responsibility schemes reports and State of materials recovery facilities in the country and landfills.
 - (e) Shall review annually the effectiveness and progress of waste management systems established at national and county government level, compliance and enforcement by NEMA.
 - (f) Shall review annually all waste management complaints presented to the National Environmental complaints committee and step taken to resolve them.

- (g) Provide strategic technical advice and analytical support on waste management to the various sectors, private sector waste service providers, ministries, agencies and county governments;
- (h) provide analytical support on waste management to the various sector ministries, agencies and county serve as the national knowledge and information management center for disseminating knowledge and information on waste management;
- (i) Provide, on recommendation of the Cabinet Secretary, technical assistance based on waste management needs identified by county governments, waste management service providers, youth groups and community based organizations and extended and producer responsibility organizations’
- (j) Shall develop a public engagement strategy to advance sustainable waste management for realization of zero waste status.
- (k) Organize an annual consultative forum on waste management to take stock of progress toward implementation of the waste hierarchy priority targets.
- (l) Coordinate adherence to the country’s international obligations under the waste management, nationally determined contribution of waste and chemicals conventions including associated reporting requirements;
- (m) in collaboration with other agencies at the international, national and county government levels—
 - (i) identify sustainable waste prevention, reduction, reuse recycling and disposal strategies in relevant sectors;
 - (ii) optimize opportunities to mobilize finance for sustainable waste management;
 - (iii) ensure co-ordination across all national and county government bodies engaged in activities related to sustainable waste management;
- (8) The Cabinet Secretary shall, within a period of one year, formulate regulations to operationalize the Council.

National
Environment
Management
Authority.

7. (1) The Authority shall be responsible for—

- (a) development of standards and guidelines on waste management;

- (b) generating and disseminating waste information for the public in consultation with county governments;
 - (c) compliance and enforcement of waste management legislation in coordination with county governments;
 - (d) Licensing of waste management facilities including recycling plants, waste treatment plants and materials recovery facilities, incinerators and waste to energy facilities.
 - (e) Maintain a regularly updated waste management database of private entities engaged in waste management services.
 - (f) Research, awareness creation and training on sustainable waste management activities;
 - (g) establish a national waste information system for the recording, collection, management and analysis of data and information including—
 - (h) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, re-used, recycled, recovered and disposed of;
 - (i) a register of waste management, recycling and other related activities that have been licensed;
 - (ii) the status of the generation, collection, reduction, re-use, recycling and recovery, transportation, treatment and disposal of waste;
 - (iii) the impact of waste on health and the environment;
 - (iv) the levels and extent of waste management services provided by counties;
 - (v) information on compliance with this Act; and
 - (vi) any other information that is necessary for the purposes of effective administration of this Act.
- (2) Shall publish annually a list of locations and contact information for managers of all established and licensed waste collection centres' and transportation companies, material recovery facilities, recycling facilities, engineered landfills, dumpsites and waste-to energy facilities.
- (3) The Authority in consultation with the Ministry and Counties shall develop regulations for licensing requirements for materials recovery facilities, waste treatment facilities, landfills and waste to energy facilities.

County Governments.

8. (1) The County Governments shall be responsible for implementing the devolved function of waste management in accordance with all relevant national and county policies, laws, regulations and standards, and establishing the financial and operational conditions to effectively carry out this mandate.
- (2) The County Governments shall bring their waste management laws into conformity with the national law within a period of one year after the entry into force of this Act.
- (3) The County Governments shall dispose of their waste within their county borders except where there is an agreed framework for inter-county transport and management of waste.
- (4) For reasons of benefits from economies of scale, counties are encouraged to cluster into metropolises and pool resources for more effective waste management and designate at least twenty acres of land, in one or more lots that will be *Gazetted* as waste management sites.
- (5) The County Governments shall provide land where mixed recovery facilities and sanitary landfills can be set-up through public-private partnerships.
- (6) The County Governments shall establish and improve waste management infrastructure to promote source segregation, collection, reuse, setup for materials recovery.
- (7) The County Governments shall ensure that gate fees at landfills (and dumpsites until landfills are established) will be higher than those required to operate mixed recovery facilities. This will ensure that waste collectors will be incentivised to take their waste to mixed recovery facilities.
- (8) The County Governments shall license waste collectors that take their waste to mixed recovery facilities.
- (9) The county government shall maintain data on waste management activities and share the information with the Authority through information system developed under section 7(1)(f).
- (8) The County Governments shall mainstream waste management into sectorial plans, county integrated development plans, annual development plans, budgeting and in the county integrated monitoring and valuation systems.

PART III – MEASURES AND ACTIONS

Policies, regulations and standards formulated by the Government.

9. (1) The Cabinet Secretary shall, in consultation with the Authority, make policies and regulations, within a period of thirty-six months from the entry into force of this Act, for the proper management of this Act.

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary shall, in consultation with the Authority, make Regulations prescribing—

(a) the closure of open dumpsites including policies, goals, targets, timelines and location;

(b) procedures for waste management by application of waste management hierarchy;

(c) the expansion of the market for recycled products and incentives to expand the market for pre and post-consumer recycled products such as plastics, paper and construction materials through tax incentives, government procurement preferences and other policies;

(d) the promotion of health, safety and environmental standards including—

(i) labor and health standards especially for waste pickers;

(ii) quality and certification standards for organic compost;

(iii) intermediate operational standards for currently operating dumpsites;

(iv) classification of engineered sanitary landfills;

(v) formation of waste collection and material recovery and recycling Savings and Credit Cooperative Organizations;

(vi) facilitation of composting and recycling projects; and

(vii) facilitation of collection and take back schemes for different types of wastes streams such as plastic waste, medical waste, e-waste, chemical waste construction waste among others.

Policies, regulations and standards formulated by the Counties.

10. (1) The County governments shall, in consultation with the relevant government agencies, the public and other relevant stakeholders, develop county legislation, within a period of two years from the entry into force of this Act.

(2) Without prejudice to the generality of the foregoing, the County governments may make regulations prescribing—

- (a) the establishment of a County Waste Fund which shall be capitalized by waste levies and fees from facilities developed by the counties and that meet the requirements of this Act, for the sole purpose of investment in waste management programs as determined by the County Environment Committee established under section..... of Environmental Management and Coordination Act.
- (b) Sufficient county land for mixed recovery facilities, composting plants and sanitary landfills for which the County shall allocate at least twenty acres of land, in one or more lots. At least 50% of the land will be reserved for mixed recovery facilities and composting plants to promote the waste hierarchy principle.
- (c) Investment opportunities in sustainable waste management especially in waste collection, separation, treatment, processing, recovery and sanitary final disposal facilities.

PART IV - DUTIES RELATING TO WASTE MANAGEMENT

The Zero Waste Management Plan.

11. (1) Each County with support of the County Environmental Committee shall prepare and submit an integrated zero waste management plan every five years to be reviewed annually.

(2) A County shall incorporate its integrated zero waste management plan in the county integrated development plan and the County Annual Development Plan.

(3) Each County shall—

(a) submit its integrated zero waste management plan to the National Waste Management Council and the County Assembly for approval: and

(b) Include the approved integrated zero waste management plan targets in its county integrated development plan and annual county development plan.

(4) The National Waste Management Council may within sixty working days of receiving an integrated zero waste management plan or an amendment to an integrated waste management plan—

(a) request a County government to adjust the plan or the amendment in accordance with the national zero waste management plan or propose the plan amendment if it—

(i) does not comply with a requirement of this Act; or

(ii) is in conflict with, or is not aligned to, or negates the national

zero waste management plan or the national waste management targets;
or

(b) request a County to comply with a specific provision of this Act relating to the process of drafting or amending integrated waste management plans if the County has failed to comply with the process or provision; or approve the plan or amendment.

(3) All material recovery facilities shall submit a 3 year waste management plan with clear linkages to waste collectors, recyclers and landfills for the area of coverage as part of the licensing requirements to the Authority.

(4) All Extended Producer Responsibility Schemes and Organisations' shall submit a 3 year waste management plan with clear collection and recycling targets and linkages to recyclers and collection system and green disposal measures to the Authority.

(5) All public entities, private entities, shall submit a 3 year waste reduction plan and status of achievement to the Authority.

(6) All waste management service providers, community based organisations, waste associations, co-operatives' and youth groups shall submit a 5 year waste management plan and an annual progress report of services provided, area of jurisdiction, customer service charter, and performance levels as part of licensing and renewal requirements.

Extended Producer
Responsibility
Schemes

12. (1) Recoverable, recyclable products and packaging and other specified products that may cause undue negative impacts to the environment shall be returned to the seller and producer after their post-consumer use.

(2) All manufacturers, importers, raw material suppliers, users and retailers for plastic packaging shall be part of an 'Extended Producer Responsibility Scheme' within two years of the passing of this bill.

(3) Producers, Importers and Distributors may establish a collective producer responsibility organisation authorised and registered by the Ministry responsible for environmental matters to administer their extended producer responsibility.

(4) Only one national extended producer responsibility scheme shall exist for one waste stream. Producer Responsibility Organisation shall be not-for-profit organisations.

(5) Products and packaging referred to in subsection (1) shall be marked by a special refund label for identification and implementation of take back system, authorised by the Cabinet Secretary to be applied by

all producers, sellers and importers.

(6) All producers, importers or sellers shall meet the cost of collecting back, recycling and proper disposal of products and packaging referred to in subsection (1). The deposit refund rate shall be set and gazetted by the Minister in consultation with Stakeholders and the National Waste Management Council.

(7) Companies who are not members of an EPR shall pay a levy to the government based on the kilograms of products and packaging used, distributed or sold. This levy shall be at least double the amount charged by an EPR and not less than KES 10,000 per ton of the product or packaging. Private entities who are part of an approved EPR and are of good standing shall not have to pay such levies.

(8) The Ministry in consultation with the standards body may prescribe new standards design standards for products referred to in subsection (1) including plastic packaging that promote eco-design and recyclability of such products and packaging.

(9) All manufacturers, importers, distributors', raw material suppliers, users and retailers shall keep track of quantities of products referred to in subsection (1) that are produced, sold or distributed and received back, recycled and disposed.

(10) The Cabinet Secretary shall prescribe regulations on products and packaging referred to in subsection (1), the manner and the form of marking the product and the packaging for increased recyclability, as well as the manner of public information thereon.

(11) All extended producer schemes and producer responsibility Organisation shall submit an annual report to NEMA and to the National Waste Management Council.

(12) The Cabinet Secretary shall develop regulations for authorisation of extended producer responsibility schemes, deposit refund systems, registration of producer responsibility organisations, membership, performance standards, accountability and reporting mechanism within 1 year of the passing of this bill.

Establishment of material recovery facility.

13. (1) There shall be established a material recovery facility in every County on any suitable public space to be determined by the County Assembly.

(2) The material recovery facility shall receive sorted waste streams for final sorting, segregation, composting, and recycling and the resulting residual wastes shall be transferred to a long-term storage or

disposal facility or sanitary landfill.

(3) That all waste shall only be disposed at sanitary landfills or waste-to-energy facilities after having been sorted and treated at a material recovery facility.

(4) That within two years of the passing of this bill at least 40% of waste collected in Kenya shall go to mixed recovery facilities. This number shall increase to 60% within 5 years and to 100% within 10 years.

(5) All residual waste shall be treated to reduce its volume and toxicity before final disposal to a sanitary landfill.

(6) Material recovery facilities shall, be licensed by the Authority and when possible, be operated under a public-private partnership model.

(7) Landfills shall have higher gate fees than mixed recovery facilities as to promote the usage of the latter for recycling and composting in line with zero waste principle.

(8) The Cabinet Secretary shall, in consultation with the Authority and the County Governments make regulations for establishment, licensing the proper management and reporting requirements⁷ for material recovery facilities.

Establishment of
composting plants

14. (1) There shall be established a composting plant for organic waste in every County on any suitable public space to be determined by the County Assembly.

(2) The composting shall receive sorted organic waste from mixed recovery facilities or from markets producing clean organic waste.

(3) That within two years of the passing of this bill at least 40% of organic waste collected in Kenya shall go to mixed recovery facilities. This number shall increase to 60% within 5 years and to 100% within 10 years.

(4) The Cabinet Secretary shall, in consultation with the Ministry responsible for Agriculture, the Authority and the County Governments make regulations for the proper management of composting plants.

(5) Composting plants shall, when possible, be operated under a public-private partnership model.

(6) The government shall develop standards to promote the usage of compost as an organic soil amendment and fertilizer.

Green Waste
Disposal

(15) Waste that cannot be re-used, or reprocessed or recycled or be subjected to physical, chemical, thermal or biological treatment should be treated in order to reduce toxicity, volume and negative impact to human life, health and environment before final disposal.

- (1) Waste disposal shall be undertaken by a licensed public entity or a licensed material recovery operator on the basis of a license or contract for performing such works. The disposer shall ensure that:
- (2) All residual waste is pre-treated to capture any recyclable materials missed at source segregation to provide second opportunity to recover recyclates. Only residual waste without commercial value shall be treated and disposed to a sanitary landfill.
- (3) All private disposal shall adhere to set standards and all applicable legislation.
- (4) Disposal of waste in dumpsites, roadside, rivers, lakes or in the ocean is prohibited under this act.
- (5) Open burning of waste is prohibited under this act.
- (6) Disposal of e-waste, asbestos, radio-active and hazardous waste shall be by special permitting.
- (7) Any citizen, private entity or public entity who generates hazardous, industrial, hazardous or health care risk waste shall contract an accredited service provider to collect and dispose of such waste at a licensed hazardous waste disposal facility.
- (8) The cabinet secretary shall develop regulations for safe disposal of hazardous, e-waste, radioactive waste, medical waste, pesticides and other harmful and toxic waste.
- (9) The cabinet secretary shall develop guidelines for regulations for classification, licensing requirements, and standards for landfill site design, planning, operations and monitoring systems.
- (10)

Duty of the
Ministry.

16. (1) The Ministry, through the national organs and agencies responsible for implementing this Act, shall put in place measures that seek to reduce the amount of waste that is generated and, where waste is generated, to ensure that waste is re-used, recycled and recovered in an environmentally sound manner.

(2) Shall standardise regulation requirements of all waste value chain players including pickers, collectors, transporters, processors, treatment, recyclers, and disposal through proper classification and categorisation.

(3) Shall prescribe standard labelling, designate a single colour for all waste transportation trucks, and prescribe standard protective gear and customer service charters to ease identification of waste service providers.

(4) Shall prescribe the minimum waste streams for sorting at source to include plastics, organic and general waste. The Minister shall review the waste streams for sorting at source from time to time.

(4) Shall issue national waste collection and transportation schedules for different waste fractions segregated at the source.

(5) Carry out national public awareness campaign on waste segregation categories, colour codes and the importance of sorting at source, recycling and recovery of material from waste.

(6) Shall ensure that non-recoverable fraction of all waste is safely treated to reduce volume and toxicity before final disposal at a safely engineered landfill.

(7). Shall prescribe the form and contents of license application for waste treatment, storage, the minimum technical conditions, organisational capacities and environmental standards for waste treatment activities and facilities.

(8) Shall develop environmental health and safety standards for all waste treatment facilities, material recovery facilities, and landfills in consultation with ministry responsible for occupational standards.

(9) In compliance with subsection (1), Ministry shall—

- (a) develop regulations and milestone timelines on waste management;
- (b) in consultation with the county governments, publish model county Waste Management Acts and regulations; and
- (c) Develop a national sustainable waste management strategy and Zero Waste Action Plan.

(10) The Ministry shall publish an updated progress report on the status of waste management every two years.

Duty of public Entities.

17. (1) The person in charge of a public entity shall be primarily responsible for ensuring that the waste generated by that entity is managed in accordance with the provisions of this Act.

(2) Public Entities including public education and training institutions and hospitality establishments shall ensure that they recycle at least 50% of waste they generate through a licensed service provider.

(3) In the performance of the responsibility under subsection (1), an accounting officer of the public entity shall ensure that—

- (a) any person who is in charge or controls a facility or premises within their institutions which generates waste shall minimize the waste generated by adopting the following cleaner production principles including but not limited to—
- (i) improvement of production process through conserving raw materials and energy;
 - (ii) eliminating the use of toxic raw materials within such time as may be prescribed by the Authority;
 - (iii) Reducing toxic emissions and wastes; illegal dumping, open burning of waste by public entities is prohibited under this act.
 - (iv) monitoring the product cycle from beginning to end by—
 - (aa) identifying and eliminating potential negative impacts of the product;
 - (bb) enabling the recovery and re-use of the product where possible;
 - (cc) reclamation and recycling; and
 - (dd) Incorporating environmental concerns in the design, process and disposal of a product.
- (b) any person whose activities generate waste shall collect, segregate and dispose or cause to be disposed of such waste in the manner provided for under this Act and the regulations thereunder;
- (c) any person whose activities generates waste ensures that such waste is transferred to a person who is licensed to transport and dispose of such waste in accordance with the provisions of this Act;
- (d) any person whose activities generate waste, shall segregate such waste by separating hazardous waste and shall dispose of such wastes in such facility as is provided for by the relevant County Government and the Authority; and
- (e) the entity cleans up and restores the site to its natural state or near its natural state.
- (2) For the avoidance of doubt, a person in charge who in the

discharge of their duties, are involved in waste generation or waste disposal processes shall bear responsibility for their actions and omissions.

(4) The person in charge of a public entity that discharges waste contrary with the provisions of this section commits an offence and shall, upon conviction, be liable to a fine of Kshs. 200, 000 or to term of imprisonment not exceeding twelve months, or to both.

(5) An officer of an entity who discharges waste in a manner contrary with the provisions of this section commits an offence and shall, upon conviction, be liable for a fine of Kshs. 50, 000 or to a term of imprisonment not exceeding six months, or to both.

Duty of County Governments.

18. (1) The County Governments shall—

(a) enact county sustainable waste management legislation within one year after adoption of this Act and ensure implementation of regulations made thereunder;

(a) Establish an engineered landfill within its county boundaries unless an inter-county or metropolis (i.e., county economic bloc) agreement is in place for common disposal of waste in a jointly managed engineered landfill.

(b) Through the National Land Commission ensure that the county has set aside or acquire at least twenty acres of land in one or more lots as designated sites for setting mixed waste recovery facilities, composting plants and sanitary landfills as specified under clause 10 (2b).

(c) Shall put in place measures to ensure all citizens have access to waste collection services and receptacles.

(d) Shall prescribe harmonised the fees and tariffs to be paid by each category of waste generator in the county. All contracted waste management services provider shall adhere to this set fees.

(e) Adopt nationally prescribed design, size, construction and maintenance requirements for public waste receptacles.

(f) Prescribe additional waste fractions for sorting at source and collection schedules for both commercial and residential properties and public institutions' as appropriate in the county.

- (g) incentivize collection and separation of waste at source in neighbourhoods and informal settlements;
 - (h) ensure cities plan for recycling stations and waste management facilities as part of city expansion:
 - (i) County establishments recycle at least 50% of waste they generate through a licensed service provider
 - (j) Prepare county waste management plan and quarterly monitoring reports for cities, urban areas municipalities and administrative units;
 - (k) Shall supervise and manage waste management service providers operating in their jurisdiction to ensure they deliver effective waste management in compliance with the county's zero waste management policies and laws.
 - (l) Shall ensure that all waste collectors and transporters take their collected waste to materials recovery facilities if they exist in the county or in a neighbouring county with an inter-county waste cooperation agreement, and not directly to dumpsites.
 - (m) Set up data collection system of the county waste streams including volumes generated and how they are handled, registered service providers and linkages to other counties and ensure waste management county level is informed based on credible data.
 - (n) Report annually to the County Assembly and to the National Waste Management Council on the implementation of the County Waste Management Act and regulations thereunder.
 - (o) Shall publish annually a list of registered and licensed waste service providers in its jurisdiction
- (2) Where a county fails to undertake its waste management duties within one year of the entry into force of the Act, the national government may withhold all or part of the national allocation for waste management to that county until that county conforms with the provisions of this Act and undertake to manage the waste under the polluter pays principle.

Producing Waste

packaging into the country shall prepare a waste management reduction plan, prepare quarterly reports and submit annual reports to the Authority.

(2) All public event organisers shall submit a waste management plan to the Authority as part of licencing requirements for all waste to be generated during the public event and ensure that all waste is properly or engage a licensed waste provider to manage waste generated during the event.

(3) All private sector entities including institutions, businesses, commercial, trading, industrial, hospitality, residential, and property developers shall provide segregation receptacles for waste at their premises.

(4) Private entities including commercial properties, hospitality establishments and training institutions shall ensure that they recycle at least 50% of waste they generate through a licensed service provider.

(5) The owner or caretaker or manager of a building which generates construction waste shall ensure that all construction waste is properly disposed within 14 days and does not become a nuisance as result of accumulated waste.

(6) A private sector entity shall ensure that—

(a) any person who controls a facility or premises which generates waste, minimizes the waste generated by adopting the following cleaner production principles including but not limited to—

(i) improvement of production process through maximum extraction of value from raw materials and conservation of energy;

(ii) eliminating the use of toxic raw materials within its production or service delivery system;

(iii) reducing toxic emissions and harmful wastes; illegal dumping, open burning of waste is prohibited under this Act

(iv) monitoring the product cycle from beginning to end by—

(aa) identifying and eliminating potential negative impacts of the product;

(bb) enabling by design the recovery and re-use of the product where possible;

- (cc) reclamation and recycling; and
 - (dd) Incorporating environmental concerns in the design, process and disposal of a product.
- (b) any person whose activities generate waste, the person collects, segregates and disposes or causes to be disposed of such waste in the manner provided for under this Act and the regulations thereunder;
- (c) any person whose activities generates waste ensures that such waste is transferred to a person who is licensed to transport and dispose of such waste in accordance with the provisions of this Act; and
- (d) shall ensure that any bulky waste they generate by virtue of size, quantity or mass is properly disposed.
- (e) any person whose activities generate waste, segregates such waste by separating hazardous waste from non-hazardous waste and shall dispose of such wastes in such facility as is provided for by the relevant County Government and the Authority;
- (f) the entity cleans up and restores the site the it was using to its natural state.
- (7) Any private entity whose activities generate waste, shall segregate such waste by separating hazardous waste and shall dispose of such wastes in such facility as is provided for by the relevant County Government and the Authority.
- (8) A private entity or any of its officers that does not manage its waste in accordance with the provisions of this section commits an offence and shall, upon conviction, be liable to a fine—
- (a) of not less 5% of their net income registered in the previous tax year, or Ksh five million, whichever is higher, for the private entity; and
 - (b) of not less than Ksh 200,000, for any of its officers.
- (9) If after the private entity or any of its officers is convicted of an offence under subsection (4), the private entity continues to fail to manage waste in accordance with the provisions of this Act, the entity and each officer of the entity who is in default commits a further offence on each day on which the failure continues and on

conviction are each liable to a fine—

- (a) not exceeding 0.5% of their net income registered in the previous tax year, for the private entity; and
- (b) not exceeding Ksh 20,000, for any of its officers.

Duties of Private
Waste
Management
Service Providers

(20) (1) All waste management service providers, handlers, waste treatment, material recovery operators, recyclers, composers, processors and depositors shall be registered and licensed and provide proof of compliance with all licensing and registration requirements.

(2) All waste management service providers shall handle and manage waste and material extracted from waste in accordance with the provisions of this Act and in a manner that does not endanger citizens or their own health, pollute environment or cause a nuisance through noise, odour or visual impact;

(b) That they take all reasonable measures to adopt a circular approach to waste management and to avoid the generation of waste through mishandling of waste, mixing sorted waste, and that they provide quality services that protect human life, health and environment. In doing so they shall:

- (1) Prepare a 3 year waste management plan, and an annual implementation plan, keep monthly progress report, prepare and submit quarterly progress reports to the county government or the authority as may be applicable.
- (2) Provide separate waste segregation containers to enable sorting at source of prescribed waste streams with a minimum being 3 for organic waste, plastic and general waste.
- (3) Educate waste generators they serve, on the prescribed sorting categories and methods, waste colour codes and proper sorting at source.
- (4) Collect, transport sorted waste according to the nationally and county prescribed collection schedules’.
- (5) All waste transportation service providers must be registered and licensed as waste transporters’ and adhere to the prescribed registration requirements’ for waste transportation.
- (6) The waste transportation vehicles should be of the prescribed design, adequate in size and shall be maintained in a clean and sanitary condition. The designated waste transportation truck shall be easily identified with a single prescribed colour, sticker and label.

- (7) All collected waste shall be transported to an authorised transfer station, licensed materials recovery facility, recycling facility, composting plant or an authorised green disposal facility. Vehicle shall not use for other purposes while transporting waste;
- (8) Waste service providers shall put in place customer charters setting out charging fees, collection schedules, and collection of extra waste or removal of bulky waste and contacts of persons of collecting waste from domestic units.
- (9) Shall provide proper identification and protective gear equipment for their employees and waste handlers.
- (10) Ensure employees undertake at least one certified waste management capacity building course annually.
- (11) Waste should be transported in an environmentally sound manner should not pollute air or land, ensure waste or material is not blown away, does not escape or spill. The materials being transported should be covered at all times
- (12) All waste shall be transported in trucks whose design, colours are approved by the authority to a designated material recovery facility.
- (13) All waste service providers transporting industrial -hazardous waste shall maintain a waste manifest.
- (14) All waste transportation trucks shall adhere to national air quality regulations and should not litter or pollute land, water or air during transportation of such waste or materials.
- (15) All Waster Service providers shall provide their services under close supervision by the licensing County Government or inter-county agreement regulation framework.
- (16) A waste management service provider or waste disposal service provider or any of its employees that does not handle and manage its waste in accordance with the provisions of this section commits an offence and shall, upon conviction, be liable to a fine—
 - a) of not less 5% of their net income registered in the previous tax year, or Ksh five million, whichever is higher, for the private entity; and
 - b) of not less than Ksh 200,000, for any of its employees.
- (17) If after the waste service management services provider or waste disposal service provider or any of its employees is convicted of an offence under subsection (19b and section 14), the waste service management services provider or disposal services provider

continues to fail to handle and manage waste in accordance with the provisions of this Act, the entity and each officer of the entity who is in default commits a further offence on each day on which the failure continues and on conviction are each liable to a fine—

- a) not exceeding 0.5% of their net income registered in the previous tax year, for the waste service provider and
- b) (b) not exceeding Ksh 20,000, for any of its officers.

Duty of citizens.

21. (1) Every citizen shall ensure that—

(a) the waste that they generate is managed in accordance with the provisions of this Act and in a manner that does not endanger their health or the environment or cause a nuisance through noise, odour or visual impact;

(b) they take all reasonable measures to adopt a circular approach to waste management and to avoid the generation of waste and where such generation cannot be avoided the citizen shall —

(i) minimise the amount of waste that generated;

(ii) reuse, reduce, recycle and recover material from waste

(iii) Segregate materials from waste at source as per the nationally prescribed waste streams;

(iv) Ensure the waste they generate is stored in appropriate waste receptacles provided by the government or waste service provider.

(v) Shall safely keep the waste receptacles' provided and on agreed collection date of a waste fraction, place the waste receptacle in an area accessible to the waste service provider.

(vi) Take in suitable measures to prevent accidental spillage, leakage, odour, animals interference, environmental pollution and harm by the waste they generate.

(vii) Return products and packaging under the extended prouder responsibility scheme, back to the distributor, producer or importer.

(viii) Littering and illegal dumping is prohibited under this Act, all waste must be discarded at designated public and private collection points.

(ix) Open burning of waste by citizens is prohibited under this Act.

(x) Properly dispose or cause to be disposed any bulky domestic waste by virtue of size, quantity, or mass.

(xi) Cooperate with resident associations and landlords to eliminate waste dumping within neighbourhoods.

(c) where waste must be disposed of, ensure that the waste is disposed of in accordance with the provisions of this Act and in such a facility as is provided for by the relevant County

Government and the Authority; and

(c) they manage their waste in such accordance to this Act.

(2) A person who does not manage waste in accordance with the provisions (c) above commits an offence and shall, upon conviction, be liable to a fine not exceeding Ksh 50,000 or to or a term of imprisonment not exceeding six months, or to both.

PART V – PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

Access to information by the public.

22 (1) The Authority and the National Waste Management Council Secretariat shall keep all records on waste management transmitted to it and may maintain their confidentiality if the applicable circumstances so require.

(2) Any person may have access to any records transmitted to the Authority or to the National Waste Management Council Secretariat under this Act.

(3) A person desiring access to such records referred to in subsection (1) may on application to the Authority, or the Waste Management Council Secretariat be granted access to the said records on the payment of a fee prescribed by the Cabinet Secretary.

(4) The National Waste Management Council shall publish a Annual National Zero Waste Status Report on the status of waste management in the country and the application of waste hierarchy targets and Circular Economy in the Country.

(7) Each County Government shall publish a county zero waste annual report on status of achievement of their integrated zero waste management plan in their county.

(8) All extended producer responsibility organisations' shall publish an annual report of their membership, collection, recovery and recycling targets and performance standards.

(9) The Authority shall publish an annual report on waste management services and compliance status of waste management service providers.

Public participation.

23. Public consultation and participation under this Act shall be conducted in accordance with the procedures set out in the Schedule and the Statutory Instruments Act, 2013.

PART VI – FINANCIAL PROVISIONS

Sustainable financing of waste management activities by County Governments.

24. Counties shall be required to allocate all waste collection and tipping fees or other charges levied on waste received at a waste facility for the improvement of waste management activities and services.

Incentives for improved waste management.

25. (1) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for finance, introduce incentives for imported and locally produced sustainable waste management equipment and materials, including equipment for recycling, composting, transporting and waste-compacting, and incentives to expand investment in take back options, material recovery and recycling facilities.

(2) The incentives under sub section (1) shall apply to—

- (a) local innovators, producers and importers of sustainable waste management equipment, air pollution control equipment, recycling and composting equipment;
- (b) investors to expand investment in waste recycling and enhance circular economy; and
- (c) operators of certain classes of waste management equipment, including equipment for recycling and composting;

(3) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for finance, prescribe incentives and make regulations for preferential use of recovered or recycled materials over newly manufactured materials with no recycled content, such as government procurement policy on stationery from registered producers utilizing a minimum percentage of recovered or recycled feedstock.

(4) The national government may condition transfers of funds or preferential access to finance and grants to the counties on the adoption of a sustainable county waste management regime in conformity with this Act.

(5) Each county shall establish an award scheme for citizens who credibly bring to the Authority cases of illegal dumping and littering.

(6) In compliance with subsection (5) above the county may create a website for the photos and toll-free hotline shall be established in each county within one year of entry into force of this Act.

- (7) The Cabinet Secretary in consultation with the National Waste Management Council may establish an award scheme for recognition of owners or operators of waste separation, collection, transportation, extended producer responsibility schemes, take-back schemes, deposit refunds schemes, recycling and composting facilities, material recovery facilities, landfills, waste reduction initiatives whose innovation, efficiency or compliance status has been exemplary.
- (8) The Cabinet Secretary, in consultation with County Governments and lead agencies shall establish mechanisms and incentives to facilitate the establishment of associations and community based organisations' for youth, women and persons with disability to engage in waste collection, sorting and recycling activities.
- (9) The Cabinet Secretary may establish a waste management portfolio for different types of initiatives such as community based waste collection initiatives, revolving fund and cooperatives to facilitate collection and waste separation in resource scarce, marginalised neighbourhoods and informal settlements among others.

PART VII – WASTE ACCOUNTING AND REPORTING

Waste Accounting,
Reporting
Monitoring and
evaluation,

26. (1) The Authority shall establish a national waste accounting system that captures data of all waste volumes generated, waste fractions handled, technologies applied and management applied by all stakeholders including imported and exported waste.

(ii) The national waste accounting reports shall inform the development of the Annual Status of implementation of Zero Waste presented to the National Waste Management Council Annually.

(2) The Authority shall receive semi-annual reports from all operators of material recovery facilities, composting plants, recycling facilities, waste treatment plants sanitary landfills and waste-to-energy plants on the quantities of waste handled and how each fraction was handled and managed

(3).The Authority shall regularly monitor and review the performance of private entities including commercial, trading and industrial establishments and counties in carrying out their duties under this Act.

(4) Counties shall regularly monitor and review and receive reports of the licensed waste management service providers under their jurisdiction

(i) The Waste Service Providers' shall submit a semiannual report which shall form part of the County State of Environment Report presented to the County Assembly.

(ii)The report shall outline measures volumes of waste fractions handled, diversion rates both recycled and composted and the residual waste

disposed.

(iii) The report shall outline but not limited to areas of coverage for service delivery, operational systems in place, customer service charter, technologies used in delivery of services, staff capacity and technical skills acquired, and volumes of waste handled, transported and managed or disposed, consumer awareness on sorting at source, and performance levels towards zero waste.

(5) County Government shall submit annual reports approved by the County Assembly to the national waste management council with a copy to the Authority. The report shall include measures undertaken to implement the zero waste targets and shall include details licensed waste service providers in the county, materials collected within their jurisdiction, volume of recycled and disposed and progress towards zero waste status.

(6) The Extended Producer Responsibility- shall submit an annual report of their paid up membership, subscriptions fees, collection, take back scheme model, deposit refund system, recycling volumes and rates and diversion routes of the material collected. The national waste management council in consultation with the Authority, shall review the performance of extended producer responsibility schemes and take back schemes

(7) Public entities'- shall submit to the National Waste Management council and a copy to the Authority annual report of measures taken to implement the zero waste plan and performance levels.

(8) Waste Audit Assessors - The Authority in Consultation with the Ministry shall develop regulations governing waste audit assessors' nature and procedure for auditing and reporting on performance by private entities, public entities and extended producer responsibility schemes.

(9) Notwithstanding other provisions in this Act, the Authority may, by notice in the Gazette—

(a) require a private entity, water management facilities owner, recycler, producer responsibility organization, waste disposal, that is subject to waste management obligations to, at any time, prepare reports on the status of its performance of the waste management duties and prescribe the period for reporting; and

(d) Require any entity prescribe in (subsection 3a) that fails to comply with its waste management obligations to prepare a report within a specified time, on the actions it has taken, is taking or intends to take to secure future performance with those duties.

(10) The cabinet secretary shall prescribe the form and structure of the national waste management accounting system, county governments' reports, extended producer responsibility reports, private entities and public entities, community base organization's reporting and the manner in which the above reports shall be presented.

PART VIII – COMPLIANCE AND ENFORCEMENT

Compliance and
Enforcement

27. (1) The Authority shall—

(a) monitor, investigate and report on whether public and private entities or waste service providers or producer responsibility organisations' are in compliance with the assigned waste management duties;

(b) Monitor and enforce compliance with this Act and any regulations adopted thereunder.

(2) In the performance of this function, the Authority shall—

(a) have all powers necessary for purposes of monitoring and investigation including the power to enter premises of any private entity and make an enquiry; and

(b) at a reasonable hour, for the purposes of monitoring and investigation, enter any private land or premises to make an inspection or other task related to this function.

(3) A person or entity commits an offence if the person—

(a) fails to give or refuses to give access to the Authority;

(b) hinders the execution by the Authority of the duties under this Act or any other law;

(c) fails or refuses to give information that the person may lawfully be required to give to the Authority; or

(d) gives false or misleading information to the Authority.

(4) A person or entity who commits an offence under subsection (3) is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a period not exceeding five years, or to both.

Complaints by
citizens and private
entities and
Extended Producer
Responsibility
Schemes'

28. (1) The National Environmental Complaints Committee shall create a waste management complaints and redress mechanism.

(2) A person making a complaint or follow up may submit evidence to the National Environmental Complaints Committee.

Partnership
programme.

29. (1) The Authority, in consultation with Ministry and county

governments shall establish a partnership program with waste generating industries and sectors for continuous education on waste management to enable compliance.

(2) The National Waste Management Council and the Authority and Ministry shall disseminate policies, laws, regulations, standards and other materials on sustainable waste management especially on reduction, reuse, recycling and recovery of waste to encourage compliance.

PART IX—GENERAL PROVISIONS

Restoration.

30 (1) A person or entity who does not manage their waste in accordance with the provisions of this Act shall be required to clean up and restore the site to its natural state.

(2) Where the person or entity fails to clean up and restore the site the Authority shall issue a restoration order to the person.

(3) The Restoration order referred to in this Section shall be effected in accordance with provision of the Environment Management and Co-ordination Act.

Dispute resolution.

31. Any person or entity aggrieved by —

- (a) a refusal to grant a licence under this Act or regulations made hereunder;
- (b) the imposition of any condition, limitation or restriction on a licence under this Act or regulations made hereunder;
- (c) a revocation or suspension of a licence under this Act or regulations made hereunder;
- (d) the amount of money payable as a fee under this Act;
- (e) the imposition of an environmental restoration order by the Authority under this Act or regulations made hereunder:

May within sixty days of the occurrence of the event against which the person or entity dissatisfied, appeal to the National Environment Tribunal established under section 25 of the Environmental Management and Coordination Act.

General Penalty.

32. A person who or entity who commits an offence under this Act or regulations made thereunder for which no other penalty is specifically provided shall be liable, upon conviction, to imprisonment for a term of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment.

PART IX – MISCELLANEOUS PROVISIONS

Development
Public Engagement
Strategy.

33. The Cabinet Secretary in consultation with the National Waste Management Council, the Authority, County Governments, lead agencies, and private sector shall develop a public engagement strategy to advance sustainable waste management within one year of the entry into force of this Act.

Integrating waste
management into
school curricula.

34. The Cabinet Secretary, in consultation with the Cabinet Secretary responsible for Education and the Ministry and the Authority, shall develop a module on sustainable waste management to be included in educational reform or school curriculum at all levels within one year of entry into force of this Act.

Regulations.

35. (1) The Cabinet Secretary shall, in consultation with the Authority, and the National Waste Management Council make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this Act may provide for—

- (a) Anything required by this Act to be prescribed;
- (e) Waste segregation at source categories and sorting colour codes;
- (f) Waste Transportation Vehicles Design and Identification
- (g) Deposit Refund Scheme for Packaging
- (h) Extended Producer Responsibility Scheme
- (i) Producer Responsibility Organizations'
- (j) Material Recovery Facilities
- (k) Align incineration regulations in accordance to waste management hierarchy order
- (l) Waste Management Service Providers Standards
- (m) Waste Accounting, Audit and Reporting Requirements
- (n) Transiting Existing Dumpsites to Sanitary Landfills
- (o) Green Disposal and Sanitary landfill regulations
- (p) National Waste Management Council Operationalization
- (q) Regulations for management of hazardous and radioactive waste including electrical and electronic equipment.
- (r) Food Waste and Composting Regulations
- (e) any other matter required under this Act.

(3) For the purposes of Article 94(6) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Council to make regulations and give directions for the orderly conduct of business of the Council;

(b) the regulations made and directions given under this section shall be of such nature, scope and within the limits as specified under this section;

(c) the principles and standards applicable to the regulations made

under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Transitional Provisions.

36. (1) The Cabinet Secretary shall, in consultation with the counties, develop an implementation timeline for the counties to adopt this Act and regulations thereunder.

(2) The Authority shall publish a model county sustainable waste management act and implementing regulations on such date as the Cabinet Secretary may appoint.

(3) Regulations relating to waste management made under Environmental Management and Coordination Act shall remain in force until the corresponding regulations are made under this Act.

SCHEDULE (s.19)

PROVISIONS ON PUBLIC CONSULTATION

1. (1) Where this Act imposes a requirement for public consultation in matters relating to sustainable waste management policy, regulation, plans or action, the respective national or county government body or private entity shall publish a notice—

- (a) in the Gazette;
- (b) in at least two newspapers with national circulation;
- (c) in at least one newspaper circulating in the locality to which the waste management policy, regulation, plan or action relates;
- (d) in at least one Kenyan radio station broadcasting in that locality, and
- (e) via the County Environment Committee.

(2) The notice shall in each case—

- a) set out a summary of the policy, regulation, plan or action;
- b) state the premises at which the details of the policy, regulation, plan or action may be inspected;
- c) invite written comments on or objections to the policy, regulation, plan or action;
- d) specify the person or body to which the comments are to be submitted; and
- e) Specify a date by which the comments or objections are required

to be received.

3. The respective national or county government body or private entity shall make arrangements for the public to obtain copies, at a reasonable cost, of documents relating to policy, regulation, plans or action which are in the possession of the respective entities.

4. The respective national or county government body or private entity shall consider the—

(a) written comments or objections received on or before the date specified under paragraph 1(2)(e); and

(b) Comments, whether in writing or not, received at a public meeting held in relation to the policy, strategy, programme, plan or action at which the Council or respective public or private entity was represented, or by any other invitation, to comment.

5. The respective national or county government body or private entity shall publish, in accordance with paragraph 1 of this Schedule, notice of the fact that a copy of the written decision of the respective public or private entity relating to the policy, regulation, plans or action, and the reasons thereof, is available for public inspection at the same premises as were notified under paragraph 1(2)(b).

6. Where regulations made under this Act so require, the respective national or county government body or private entity shall cause a public meeting relating to a policy, strategy, programme, plan or action to be held before the respective public or private entity makes its decision on the policy, strategy, programme, plan or action.

MEMORANDUM AND OBJECT OF REASONS

The principal object of the Bill is to establish appropriate legal and institutional framework for the efficient and sustainable management of waste through application of the waste hierarchy within the framework of the green and circular economy, promote the realization of Kenya Vision 2030 zero waste goal and the realization of Article 42 of the Constitution on the right to a clean and healthy environment for all.

PART I (Clause 1-5) contains the preliminary provisions.

PART II (clause 6-8) sets out the roles and responsibilities of the Ministry, NEMA and the counties in waste management. The Ministry is to develop policy and regulations on waste management, establish funds for waste management and provide overall oversight and coordination of the implementation of the Act. The Bill also establishes a National Waste Management Council. The Authority shall develop standards and guidelines on waste management and disseminate information and be in-charge of compliance and enforcement of waste management. The county governments shall be responsible for implementing the devolved function of waste management in accordance with the relevant national laws and ensuring mainstreaming of waste management into county planning and budgeting and shall designate at least twenty acres of land to be gazetted as waste management facilities including materials recovery facilities.

PART III (clauses 9-10) sets out the measures and activities to be undertaken under the Act including in sustainable management of waste including the making of regulations to implement the Act, establishment of county waste management funds in accordance with the public finance management act.

PART IV (clauses 12-21) sets out the actual duties relating to establishment of material recovery facilities and composting plants for recovery of materials from waste. It sets it specific duties to implement the waste hierarchy in management of waste by public and private entities, county governments, and waste management service providers green disposal of waste. The section also provides for zero waste management plans, extended producer

responsibility, deposit refund and take back schemes recyclable products or packaging that may cause negative impacts on the environment and may be re-used or recycled to be returned to the seller producer or importer through take back schemes and deposit refund schemes. Section provides for penalties for non-compliance with the provisions of the Act. The penalty for public institutions is ksh 200,000 for the person in-charge of the public institution and 50,000 for the officer who disposes waste contrary to the provisions of the Act. The penalty for private entities and waste management service providers and waste disposal service providers is 5% of their net income and ksh 200000 for the officer or employee who disposes waste contrary to the provisions of the Act. The penalty for citizens who dispose waste contrary to the provisions of the Act is Ksh 50,000. The Act prohibits open burning of waste and littering.

Part V (Clauses 22-23) provides for public participation and access to related information on waste management kept by the authority, national waste management council, extended producer responsibility schemes and counties.

Part VI (Clauses 24-25) sets out the financial provisions under the Act and mandates counties to allocate all waste collection and tipping fees or other charges levied on waste received at a waste facility for the improvement of waste management activities and services. It also provides for the Cabinet Secretary to consult with the National Treasury on setting up of incentives for waste management activities.

Part VII (clauses 26-28) institutionalizes the reporting and accounting for waste management of the key stakeholders to facilitate progressive data and statistics that inform policy and planning for waste management. It gives the Authority the mandate of monitoring and evaluating the performance of public and private entities and county governments' the mandate to monitor and evaluate the performance of waste service providers. In carrying out their duties under the Act and gives the Authority powers to ensure compliance of the Act and gives the National Environmental Complaints Committee the mandate of setting up a complaints and redress mechanism.

Part VIII (Clauses 29-33) sets out the partnership and collaboration framework for the authority, the counties and the national waste management council in delivering their roles

and the public engagement strategy for successful implementation of this act. It empowers the Authority to issue Restoration Orders and provides for dispute resolution for any person aggrieved by the decision of the Authority and sets out the general penalty for offences under the Act where no penalty is provided for.

Part IX (Clauses 34-36) sets out the miscellaneous provisions’ to support implementation of this act, integration of waste management in the school curricula, transitional provisions and the power of the Cabinet Secretary to make Regulations for the implementation of the Act.

FINANCIAL CONSIDERATIONS

The enactment of this Bill shall occasion limited additional expenditure of public funds which shall be provided for in the annual estimates.

STATEMENT OF HOW THE BILL CONCERNS COUNTY GOVERNMENTS

The Bill concerns County Governments.

STATEMENT THAT THE BILL IS NOT A MONEY BILL WITHIN THE MEANING OF ARTICLE 114 OF THE CONSTITUTION

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Made the....., 2019.

KERIAKO TOBIKO,
Cabinet Secretary,
Ministry of Environment and Forestry.