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THE SUSTAINABLE WASTE MANAGEMENT ACT

CHAPTER 387C

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CHAPTER 387C

SUSTAINABLE WASTE MANAGEMENT ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title
2. Interpretation
3. Objects of the Act
4. General principles

PART II – POLICY, CO-ORDINATION AND
OVERSIGHT OF WASTE MANAGEMENT

5. Role of the Cabinet Secretary
6. Waste Management Council
7. Functions of the Council
8. Functions of the Authority
9. Functions of county governments

PART III – MEASURES AND ACTIONS

10. Policies, regulations and standards by the Cabinet Secretary
11. Policies, regulations and standards by county governments
12. Waste classification and segregation
13. Extended producer responsibility
14. Materials recovery facilities

PART IV – WASTE MANAGEMENT FUNCTIONS

15. Functions of the Cabinet Secretary
16. Functions of accounting officers of public entities
17. Functions of county governments
18. Waste management plans
19. Duties of private sector entities
20. Duty to segregate and dispose waste
21. Duties of waste service providers

PART V – PUBLIC PARTICIPATION
AND ACCESS TO INFORMATION

22. Access to information
23. Public participation

PART VI – FINANCIAL PROVISIONS

24. Fees to be allocated to county waste management facilities
25. Incentives for waste management

PART VII – MONITORING AND COMPLIANCE

26. Monitoring and evaluation by the Authority
27. Compliance and enforcement
28. Role of the National Environment Complaints Committee

Sustainable Waste Management

29. Partnership programmes

PART VIII – GENERAL PROVISIONS

30. Restoration

31. Dispute resolution

32. General penalty

PART IX – PROVISIONS ON DELEGATED POWERS

33. Regulations

PART X – MISCELLANEOUS MATTERS

34. Integrating waste management into school curricula

35. Transitional provisions

SCHEDULES

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COUNCIL

PROVISIONS ON PUBLIC CONSULTATION

CHAPTER 387C

SUSTAINABLE WASTE MANAGEMENT ACT

[Date of assent: 6th July, 2022.]

[Date of commencement: 26th July, 2022.]

An Act of Parliament to establish the legal and institutional framework for the sustainable management of waste; ensure the realisation of the constitutional provision on the right to a clean and healthy environment and for connected purposes

[Act No. 31 of 2022.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Sustainable Waste Management Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Authority" means the National Environment Management Authority established under section 7(1) of the Environmental Management and Co-ordination Act (Cap. 387);

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to waste management;

"National Environment Complaints Committee" means the National Environment Complaints Committee established under section 31(1) of the Environmental Management and Co-ordination Act (Cap. 387);

"Council" means the Waste Management Council established under section 6(2);

"domestic waste" means waste, other than hazardous waste, generated from a domestic residence;

"e-waste" also referred to as waste electrical and waste electronic equipment means waste resulting from electrical and electronic equipment including components and sub-assemblies thereof;

"extended producer responsibility" means an environmental management approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product life cycle;

"hazardous waste" has the meaning assigned to it under the Environmental Management and Co-ordination Act (Cap. 387);

"industrial waste" means waste arising from processing or manufacturing or any trade undertaking in the form of liquid, non-liquid, solid or gaseous substances;

"materials recovery facility" means a specialised facility that receives, separates and prepares recyclable material for marketing to end user manufacturers;

"National Environment Tribunal" means the National Environment Tribunal established under section 125(1) of the Environmental Management and Co-ordination Act (Cap. 387);

"non-organic waste" means dry recyclable and non-recyclable materials;

"organic waste" means compostable materials derived from plants and animals;

"payment for environmental services" and "payment for ecosystem services" mean payments to farmers or land users 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 (Cap. 387);

"private sector entity" means a person, firm or corporate entity with functions of a private nature including entities registered under the Non-Governmental Organizations Co-ordination Act (Cap. 134);

"producer" means an entity that introduces goods, products and packaging into the country using authorised means by manufacturing, importing, converting, filling, refilling, repackaging or rebranding;

"public entity" means—

- (a) the government including the national and county governments, or any State organ, department, agency, service or undertaking of a national or county government;
- (b) Parliament or a county assembly;
- (c) any corporation, council, board, committee or other body which has power to act under or 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 monies raised by rates, taxes or charges in accordance with such law; or
- (d) a public body established under any written law;

"recovery" means the controlled extraction of a material or retrieval of energy from waste for the production of another product;

"recycle" means the process by which materials are reclaimed from waste for further use as product, raw materials or input in the production process;

"re-use" means the action or practice of using something again whether for its original purpose or to fulfil a different function;

"sustainable waste management" means using material resources efficiently as prioritized by waste hierarchy, circular economy and clean production in order to reduce the amount of waste that is generated, deposited or discarded in the environment including the management of materials that would otherwise have been dumped or wasted in a way that contributes to environmental, social and economic goals of sustainable development;

"take-back scheme" means a scheme for the collection, transportation and return of products or packaging from end users and consumers;

"toxic substance" means any substance which, on entry into an organism through ingestion, inhalation or dermal contact, is injurious, causes physiological

or biochemical disturbance, or otherwise causes deterioration of the functions of the organism in any way;

"waste" means—

- (a) any substance, material or object that is intended or required to be discarded or disposed of by its holder, whether or not it can be reused, recycled or recovered and include municipal waste, domestic waste, waste from agriculture, construction waste, commercial waste, waste from horticulture, aquaculture and forestry, medical waste, chemical waste, hazardous waste, toxic waste, industrial waste, pesticides, e-waste and toxic substances but does not include radioactive waste;
- (b) a substance, material or object that may be designated as waste by the Cabinet Secretary in consultation with the Authority by notice in the *Gazette*;

Provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—

- (i) once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;
- (ii) where approval for reuse, recycling or recovery is not required, it has been reused, recycled or recovered; or
- (iii) where the Cabinet Secretary in consultation with the Authority has, by notice in the *Gazette* and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste;

"waste hierarchy" means the order of priority for efficient use of resources and minimisation of pollution by avoidance, reduction, reuse, repair, refurbishment, recycling, recovery and finally treatment for safe disposal;

"waste management facility" means a site or premises licensed in accordance with this Act for the purposes of receiving, accumulation, depositing, recovery, recycling, treatment, storage and disposal of waste and includes waste processing areas, transfer stations, reusing areas, materials recovery facilities, recycling plants, food waste treatment facilities, composting plants, waste disposal areas, waste-to-energy facilities and sanitary landfills;

"waste management activity" means any administrative or operation activity for the—

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

"waste minimisation programme" or "waste reduction programme" means a programme that is intended to promote reduction in generation and disposal of waste;

"waste service providers" includes collectors, transporters, waste processors, material recovery operators, recyclers and landfill operators; and

"waste valorisation" means any activity aimed at converting waste, including materials, chemicals and sources of energy, into useful products by reusing, recycling or composting the waste.

3. Objects of the Act

The objects of this Act shall be to—

- (a) promote sustainable waste management;
- (b) improve the health of all Kenyans by ensuring a clean and healthy environment;
- (c) reduce air, land, fresh water and marine pollution;
- (d) promote and ensure the effective delivery of waste services;
- (e) create an enabling environment for employment in the green economy in waste management, recycling and recovery;
- (f) establish an environmentally sound infrastructure and system for sustainable waste management;
- (g) promote circular economy practices for green growth;
- (h) mainstream resource efficiency principles in sustainable consumption and production practices; and
- (i) inculcate responsible public behaviour on waste and environment.

4. General principles

The general principles of this Act are—

- (a) promoting the right to a clean and healthy environment;
- (b) the precautionary principle where the lack of scientific certainty shall not be used to postpone measures to prevent environmental degradation where there are threats of damage to the environment;
- (c) the polluter pays principle in which the cost of cleaning up any element of the environment that has been damaged by pollution, the cost of the beneficial uses of the environment that have been lost as a result of the pollution, and any other costs associated with or incidental to the pollution shall be paid by the polluter;
- (d) payment for ecosystem services or payment for ecological services in which payments are made to farmers or landowners who have agreed to take certain actions to manage land or watersheds in order to provide ecological services as an incentive to conserve natural resources;
- (e) zero waste principle in which products and processes are designed and managed to reduce the volume and toxicity of waste and materials, and to conserve and recover all resources, and to prevent the burning or burying of resources, in order to treat waste as a resource that can be harnessed for wealth creation, employment and the reduction of pollution; and

- (f) achieving sustainable waste management goals.

PART II – POLICY, CO-ORDINATION AND
OVERSIGHT OF WASTE MANAGEMENT

5. Role of the Cabinet Secretary

The Cabinet Secretary shall be responsible for—

- (a) policy on sustainable waste management in consultation with county governments;
- (b) the development of regulations in consultation with the Authority and county governments;
- (c) co-ordinating adherence to international obligations with regards to waste management, nationally determined contribution of waste and chemicals conventions; and
- (d) oversight and co-ordination of the administration of this Act.

6. Waste Management Council

(1) There shall be a council to be known as the Waste Management Council which shall be established by the Cabinet Secretary within one year of the coming into operation of this Act.

(2) The Council shall comprise of—

- (a) a Chairperson appointed by the President;
- (b) one person nominated by the Council of County Governors who shall be the vice-chairperson;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to waste management or a designated representative;
- (d) the Principal Secretary in the Ministry for the time being responsible for National Treasury or a designated representative;
- (e) the Director-General of the Authority;
- (f) four other persons appointed by the Cabinet Secretary being—
 - (i) one person nominated by the registered association representing the largest number of entities in the private sector;
 - (ii) one person nominated by the registered association representing the largest number of entities in the manufacturing sector; and
- (g) two persons with professional qualifications in waste management, one of whom shall represent civil society organizations.

(3) The Council may co-opt not more than three members at any given time with relevant expertise when needed, who shall advise the Council on specific matters relating to sustainable waste management.

(4) Except for members appointed under subsection (2)(c), (d) and (e), a person shall be qualified for appointment as chairperson or member of the Council if such person—

- (a) is a citizen of Kenya;
- (b) holds relevant academic and professional qualifications including a university degree in waste management, environmental

engineering; environmental management, environmental studies, biology, chemistry or civil engineering;

- (c) has at least ten years' experience in the relevant field; and
- (d) fulfils the requirements of Chapter 6 of the Constitution.

(5) In making appointments of the members to the Council, the Cabinet Secretary shall observe regional balance, gender, age, disability and ethnic balance.

(6) A person shall not be qualified for appointment as chairperson or member of the Council if such person—

- (a) is a member of Parliament or a county assembly;
- (b) is a member of a local authority;
- (c) is an undischarged bankrupt; or
- (d) has been removed from office for contravening the provisions of the Constitution or any other written law.

(7) The office of the chairperson or a member of the Council shall become vacant if the holder—

- (a) dies;
- (b) resigns from office in writing addressed to the Cabinet Secretary;
- (c) is absent from three consecutive meetings of the Council without good cause; or
- (d) is removed from office under subsection (8).

(8) A person may be removed as a chairperson or member of the Council if that person—

- (a) is absent without permission of the Chairperson or the Cabinet Secretary in the case of the Chairperson, from three consecutive meetings of the Council;
- (b) contravenes the provisions Chapter Six of the Constitution;
- (c) is incapacitated by prolonged physical or mental illness and is unable to discharge the duties of his or her office;
- (d) is convicted of an offence and imprisoned for a term of more than six months;
- (e) fails to comply with the provisions of the Act relating to disclosure of interest; or
- (f) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors.

(9) The Chairperson and the members of the Council appointed under subsection 2(f) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(10) The conduct of business of the Council shall be in accordance with the First Schedule.

(11) The Cabinet Secretary shall establish a waste management secretariat for the waste management council.

7. Functions of the Council

- (1) The Council shall—

- (a) enhance inclusive inter-governmental coordination for sustainable waste management;
- (b) review progress in implementation of the national sustainable waste management strategy;
- (c) recommend to the Cabinet Secretary the national waste management recycling and recovery targets;
- (d) synchronise the development of waste management infrastructure;
- (e) mobilise resources for financing of the waste management sector;
- (f) promote inter county waste management partnerships in consultation with county governments;
- (g) recommend to the Cabinet Secretary incentives to promote sustainable waste management; and
- (h) perform such other functions as may be assigned by the Cabinet Secretary.

(2) The Cabinet Secretary shall, within one year of the coming into operation of this Act, make regulations for the operationalisation of the Council.

8. Functions of the Authority

(1) The Authority shall—

- (a) develop standards and guidelines on sustainable waste management;
- (b) generate and disseminate waste information for the public in consultation with county governments;
- (c) enforce waste management legislation in consultation with county governments;
- (d) save for where county governments have jurisdiction, issue licenses for waste management activities;
- (e) conduct research, awareness creation and training on sustainable waste management; and
- (f) establish a national waste information system for recording, collecting, management and analysis of data and information including—
 - (i) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, reused, recycled, recovered or disposed of;
 - (ii) a register of licensed waste management, recycling and other related activities;
 - (iii) the status of the generation, collection, reduction, reuse, recycling, recovery, transportation, treatment and disposal of waste;
 - (iv) the impact of waste on health and the environment;
 - (v) the levels and extent of waste management services provided by counties;
 - (vi) information on compliance with this Act; and
 - (vii) any other information that is necessary for the purposes of the effective administration of this Act.

(2) The Authority shall provide analytical reports and support on waste management to ministries, agencies and counties and serve as the national

knowledge and information management centre for disseminating information on sustainable waste management.

9. Functions of county governments

(1) County governments shall be responsible for implementing the devolved function of waste management and establishing the financial and operational conditions for the effective performance of this function.

(2) County governments shall ensure that county waste management legislation is in conformity with this Act within a period of one year of the coming into operation of this Act.

(3) County governments shall ensure that the disposal of waste generated within the county is done within the county's boundaries except where there is an agreed framework for inter-county transportation and disposal of waste.

(4) County governments shall provide central collection centres for materials that can be recycled.

(5) County governments shall establish waste management infrastructure to promote source segregation, collection, reuse, and set up for materials recovery.

(6) County governments shall maintain data on waste management activities and share the information with the Authority.

(7) County governments shall mainstream waste management into county planning and budgeting.

(8) County governments shall develop, manage and maintain designated disposal sites and landfills.

(9) County governments shall maintain a register of all waste service providers operating within their boundaries.

PART III – MEASURES AND ACTIONS

10. Policies, regulations and standards by the Cabinet Secretary

(1) The Cabinet Secretary shall, within two years of the coming into operation of this Act and in consultation with the Authority and county governments, make policies and regulations for the proper administration of this Act.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, in consultation with the Authority and county governments, make regulations prescribing—

- (a) the closure of open dumpsites;
- (b) procedures for sustainable waste management;
- (c) the expansion of the market for recycled products and incentives to expand the market for pre-consumer and post-consumer recycled products through incentives, government procurement preferences and other policies; and
- (d) the promotion of health, safety and environmental standards including—
 - (i) labour and health standards for waste handlers;
 - (ii) quality and certification standards for organic waste;
 - (iii) operational standards for dumpsites;
 - (iv) the classification of engineered sanitary landfills;

- (v) the formation of waste collection, materials recovery and recycling savings and credit co-operative organisations;
- (vi) the facilitation of waste-to-energy and waste-to-manure projects; and
- (vii) the facilitation of the collection of different types of wastes including medical waste, chemical waste and construction waste.

11. Policies, regulations and standards by county governments

(1) County governments shall, in consultation with relevant national government agencies, the public and other stakeholders, develop county legislation within two years of the coming into operation of this Act.

(2) Notwithstanding the generality of subsection (1), county governments may make regulations prescribing—

- (a) the use of land within the jurisdiction of the county government for waste management; and
- (b) investment in sustainable waste management including waste collection, separation, treatment, processing, recovery and sanitary final disposal of waste.

12. Waste classification and segregation

(1) All public and private sector entities shall segregate non-hazardous waste into organic and non-organic fractions.

(2) The segregated waste shall be placed in properly labeled and colour coded receptacles, bins, containers and bags.

(3) All waste service providers shall collect, handle and transport segregated waste as provided for under this Act.

(4) Hazardous waste will be handled and managed as prescribed by the Environmental Management and Co-ordination Act (Cap. 387) and any other relevant written law.

(5) A waste service provider who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both.

(6) The Cabinet Secretary shall, in consultation with the Authority and county governments, *Gazette* the National Colour Coding System for waste management.

13. Extended producer responsibility

Every producer shall bear extended producer responsibility obligations to reduce pollution and environmental impacts of the products they introduce into the Kenyan market and waste arising therefrom.

(2) 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.

14. Materials recovery facilities

(1) Each county government shall establish a materials recovery facility.

(2) A materials recovery facility shall be used for final sorting, segregation, composting and recycling of waste generated or transported to the county and transport the residual waste to a long-term storage or disposal facility or landfill.

(3) A materials recovery facility shall be licensed by the Authority.

(4) The Cabinet Secretary shall, in consultation with the Authority and county governments, make regulations for the establishment and proper management of materials recovery facilities.

PART IV – WASTE MANAGEMENT FUNCTIONS

15. Functions of the Cabinet Secretary

(1) The Cabinet Secretary shall prescribe measures for the reduction of waste, and the environmentally sound reuse, recycling and recovery of waste.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall —

- (a) develop regulations on waste management;
- (b) in consultation with county governments, publish model county waste management laws and regulations; and
- (c) develop a National Waste Management Strategy.

(3) The Cabinet Secretary shall develop a national waste management strategy and action plan within two years of the coming into force of this Act, which shall be reviewed every five years.

16. Functions of accounting officers of public entities

(1) The accounting officer of a public entity shall be responsible for the management of waste generated in the entity in accordance with this Act.

(2) Notwithstanding the generality of subsection (1), an accounting officer of a public entity shall ensure that—

- (a) any person who is in charge of or controls a facility or premises which is under the jurisdiction of the accounting officer and which generates waste shall minimise the waste generated by adopting the following cleaner production principles including—
 - (i) improvement of production processes through conservation of raw materials and energy;
 - (ii) eliminating the use of toxic raw materials;
 - (iii) reducing toxic emissions and waste;
 - (iv) monitoring the product cycle by—
 - (A) identifying and eliminating potential negative impacts of the product;
 - (B) enabling the recovery and reuse of the product;
 - (C) reclamation and recycling; and
 - (D) incorporating environmental concerns in the design process and disposal of a product;
- (b) any person whose activities generate waste shall collect, segregate and dispose of or cause to be disposed of the waste in accordance with this Act;

- (c) any person whose activities generate waste ensures that the waste is transferred to a person who is licensed to transport and dispose of the waste in accordance with this Act;
- (d) the entity cleans up and restores the site to its natural state or near its natural state;
- (e) the entity prepares a waste management plan and integrates the plan in its corporate strategy and plan; and
- (f) the entity has provided waste receptacles at its premises for organic, plastic and general dry waste and the waste generated is recycled through a licensed service provider.

(3) Notwithstanding the provisions of this section, a person in charge of an entity who, in the discharge of his or her duties, is involved in waste generation or disposal processes shall be responsible for his or her actions and omissions.

(4) A person in charge of a public entity that discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or a term of imprisonment not exceeding one year or both.

(5) An officer of an entity who discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding six months or both.

17. Functions of county governments

Each county government shall—

- (a) enact a county sustainable waste management legislation within two years of the coming into operation of this Act;
- (b) establish waste recovery and recycling facilities and sanitary landfills for the disposal of non-recoverable waste;
- (c) incentivise the collection and separation of waste at source in neighbourhoods and informal settlements;
- (d) ensure that cities plan for waste management facilities as part of city expansion;
- (e) prepare a county waste management plan and quarterly monitoring reports for cities, urban areas, municipalities and administrative units; and
- (f) submit annual reports to the Authority and county assembly on the implementation of the county waste management plan; and
- (g) maintain data on waste management service provision by waste management service providers and share the information at least once in each year through the national waste information system developed under section 8(1)(f).

18. Waste management plans

(1) Each county government shall prepare and submit to the county assembly for approval an integrated county waste management plan once every five years.

(2) Each county government shall include the approved integrated county waste management plan in the integrated county development plan.

19. Duties of private sector entities

(1) A private sector entity shall prepare a three-year waste management plan and submit an annual monitoring report to the Authority which shall specify—

- (a) the actual quantities of waste generated by the entity;
- (b) the waste management methods applied by the entity; and
- (c) any other information that the Authority may require.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, within six months of the coming into force of this Act, *Gazette* the category of private sector entities that shall be required to prepare waste management plans which shall be based on the volume of production of waste.

(3) A private sector entity that fails to comply with the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine of not more than two hundred thousand shillings and the person responsible for the private sector entity shall, in addition to the fine imposed on the entity, be liable to imprisonment for a term not exceeding three months.

(4) A private sector entity shall—

- (a) adopt the following cleaner production principles including—
 - (i) improvement of production processes through conserving raw materials and energy;
 - (ii) limiting the use of toxic raw materials to safe laws within such time as may be prescribed by the Authority;
 - (iii) reducing toxic emissions and wastes; and
 - (iv) monitoring the product cycle from beginning to end by;
- (b) identify and eliminate potential negative impacts of the product;
- (c) enable the recovery and reuse of the product where possible;
- (d) reclaim and recycle;
- (e) incorporate environmental concerns in the design, process and disposal of the product;
- (f) collect, segregate and dispose of or cause to be disposed of the waste in accordance with this Act;
- (g) shall segregate waste by separating hazardous waste from non-hazardous waste and dispose of the waste in a facility provided by the county government or the Authority;
- (h) transfer the waste to a person who is licensed to transport and dispose of the waste in accordance with this Act;
- (i) clean up and restore the site it was using to its natural state;
- (j) prepare a waste management plan and integrate it in its corporate strategies and plans; and
- (k) provide waste segregation receptacles at its premises for organic, plastic and general dry waste.

(5) A private entity that generates waste shall segregate the waste by separating hazardous waste and dispose of the hazardous waste in a facility provided by the county government or the Authority.

(6) A private entity or any its officers that fails to manage waste in accordance with this Act commits an offence and on conviction, shall be liable to a fine—

- (a) of at least five per cent of the entity's net income registered in the previous tax year or five million shillings whichever is the higher; and
- (b) of at least two hundred thousand shillings for the entity's officers.

(7) Where a private entity or any of its officers has been convicted of an offence under subsection (3), and the entity continues to fail to comply with the provisions of this Act, the entity or the officer commits a further offence and for each day the failure continues on conviction, shall be liable to a fine -

- (a) not exceeding zero-point-five per cent of the entity's net income registered in the previous tax year, for the private entity; and
- (b) not exceeding twenty thousand shillings for the entity's officers.

20. Duty to segregate and dispose waste

(1) A person who generates waste in Kenya shall—

- (a) segregate the waste at source in accordance with the provisions of this Act; and
- (b) dispose the waste to only licensed waste service providers or at collection points designated in accordance with the provisions of this Act.

(2) A person who does not manage waste in accordance with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months or both.

21. Duties of waste service providers

(1) A waste service provider shall handle segregated waste in accordance with the provisions of this Act.

(2) A waste service provider shall deliver segregated waste collected to facilities licensed and designated in accordance with the provisions of this Act.

(3) A waste service provider who fails to handle or manage waste in accordance with this Act commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shilling or imprisonment for a term of six months or both.

PART V – PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

22. Access to information

(1) The Authority shall keep the records on waste management submitted to it and maintain their confidentiality where the circumstances so require.

(2) A person may have access to the records submitted to the Authority under this Act.

(3) A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records.

(4) The Authority may, with the approval of the Cabinet Secretary and by notice in the *Gazette*, prescribe reasonable fees to be levied for processing applications for access to information under this section.

23. Public participation

Public consultation and participation under this Act shall be conducted in accordance with the principles set out in the Second Schedule.

PART VI – FINANCIAL PROVISIONS

24. Fees to be allocated to county waste management facilities

Each county government shall allocate all waste collection and tipping fees or other charges levied on waste received at a county government waste management facility for the improvement of waste management activities and services.

25. Incentives for waste management

(1) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, introduce incentives—

- (a) for locally produced and imported sustainable waste management equipment and materials including collection machines, equipment for recycling, composting, transporting and waste compacting; and
- (b) to expand private investment in materials recovery and recycling activities.

(2) The incentives contemplated under subsection (1) shall apply to—

- (a) importers of sustainable waste management equipment, air pollution control equipment, recycling and composting equipment;
- (b) private investors to expand investment in waste recycling and enhance circular economy; and
- (c) private 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 matters relating to finance, prescribe incentives and make regulations for the preferential use of recovered or recycled materials over newly manufactured materials with no recycled content.

PART VII – MONITORING AND COMPLIANCE

26. Monitoring and evaluation by the Authority

(1) The Authority shall monitor and review the performance of private entities and county governments in carrying out their functions under this Act.

(2) The Authority shall develop regulations prescribing the procedure for reporting on compliance with this Act by private entities.

(3) Notwithstanding any other provision in this Act, the Authority may, by notice in the *Gazette*—

- (a) require a private entity that has waste management obligations to prepare reports on the status of the entity's performance of the entity's waste management obligations and prescribe the period for reporting; and
- (b) require a private entity 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 the entity's future performance of the entity's obligations.

27. Compliance and enforcement

(1) The Authority shall—

- (a) monitor, investigate and report on whether public and private entities are in compliance with the provisions of this Act; and

(b) monitor and enforce compliance with the provisions of this Act.

(2) In the performance of its functions under this Act, the Authority shall have all the powers necessary for the purpose of monitoring and investigation including the power to enter premises of any private entity and make an enquiry relating to compliance with this Act.

(3) A person commits an offence if that person—

- (a) hinders the Authority in the performance of its functions under this Act;
- (b) fails or refuses to give information that the person may lawfully be required to give to the Authority; or
- (c) gives false or misleading information to the Authority.

(4) A person who is convicted of an offence under subsection (3) shall be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years or to both.

28. Role of the National Environment Complaints Committee

(1) The National Environment Complaints Committee shall establish a complaints and redress mechanism for the purposes of this Act.

(2) A person making a complaint on waste management to the National Environment Complaints Committee may submit evidence.

29. Partnership programmes

(1) The Authority shall, in consultation county governments, establish a partnership programme with waste generating industries and sectors for continuous education on waste to encourage compliance.

(2) The county executive committee member responsible for environmental management in each county shall develop a framework for inter-county co-operation on waste management including the sharing of waste treatment facilities, materials recovery facilities and waste disposal facilities for approval by the county assembly.

(3) The Cabinet Secretary shall develop regulations for the framework for inter-county co-operation on waste management.

PART VIII – GENERAL PROVISIONS

30. Restoration

(1) A person who fails to manage waste in accordance with this Act shall be required to clean up and restore the site where the waste was being managed to its natural state.

(2) The Authority shall issue the person with a site restoration order if the person fails to clean up and restore the site in accordance with subsection (1).

(3) A restoration order issued under this section shall be effected in accordance with the Environmental Management and Co-ordination Act (Cap. 387).

31. Dispute resolution

Any person or an entity aggrieved by—

- (a) a refusal to grant a license under this Act;
- (b) the imposition of any condition, limitation or restriction on a license granted under this Act;
- (c) any fee payable under this Act; or

(d) the imposition of a restoration order in accordance with section 30, may, within sixty days of the occurrence of the event with which the person or entity is aggrieved, appeal to the National Environment Tribunal.

32. General penalty

A person who contravenes a provision of this Act for which a penalty has not been prescribed shall, on conviction, be liable to a fine of not less than two million shillings and not more than four million shillings or to imprisonment for a term not exceeding four years or to both.

PART IX – PROVISIONS ON DELEGATED POWERS

33. Regulations

(1) The Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may provide for—

- (a) anything required to be prescribed under this Act;
- (b) take back schemes;
- (c) the conversion of dumpsites into landfills;
- (d) categories of waste segregation;
- (e) design and identification of waste transportation vehicles;
- (f) materials recovery facilities;
- (g) collection schedules for sorted waste types;
- (h) importation and exportation of waste;
- (i) management of e-waste;
- (j) national colour coding system for waste; and
- (k) any other matter required under this Act.

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

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for the orderly conduct of the business and affairs of county governments, the Authority and the National Environment Complaints Committee;
- (b) the regulations made under this section shall be of such a nature and scope, and within the limits specified in this section; and
- (c) the principles and standards applicable to the regulations made under this section shall be those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).

PART X – MISCELLANEOUS MATTERS

34. Integrating waste management into school curricula

The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to education and the Authority, develop a curriculum on sustainable waste management within one year of the coming into operation of this Act.

35. Transitional provisions

(1) The Cabinet Secretary shall, in consultation with county governments, develop a timetable for county governments to adopt the Act and regulations made thereunder.

(2) The Authority shall publish a model county waste management legislation and related subsidiary legislation on such date as the Cabinet Secretary may appoint.

(3) Regulations relating to waste management under the Environmental Management and Co-ordination Act (Cap. 387), shall remain in operation until corresponding regulations under this Act have been published in the *Gazette*.

FIRST SCHEDULE

[s. 6(10)]

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COUNCIL**1. Meetings of the Council**

The Council shall meet quarterly.

2. Special meetings

The Chairperson may, at any time, convene a special meeting of the Council and shall do so within fifteen days of receiving a written notice for the meeting signed by at least three of the members.

3. Chairperson to preside

- (1) The chairperson shall preside at all meetings of the Council in which the Chairperson is present and in the case of his or her absence, the vice-Chairperson shall preside.
- (2) At a meeting of the Council at which neither the Chairperson nor the vice-Chairperson is present, the members of the Council present shall elect one of their members to preside, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereof.

4. Quorum

The quorum for the conduct of the business of the Council shall be two thirds of the members.

5. Voting

The decisions of the Council shall be by a majority of votes, and the chairperson of the meeting shall have an original and a casting vote.

6. Validity of proceedings

The validity of any proceedings of the Council shall not be affected by any vacancy among the membership thereof, or by reason of a defect in the appointment of a member.

7. Minutes of the meeting

Minutes of the proceedings at meetings of the Council shall be kept in such a manner as the Council directs and will be made available to the Cabinet Secretary.

8. Committees of the Council

The Council may establish such committees as may be necessary for the performance of the functions of the Council and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

9. Power of the Council to regulate own procedure

Subject to the provisions of this Schedule, the Council shall regulate its own procedure.

10. Disclosure of interest

If a member of the Council is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

11. Secondment

The Cabinet Secretary may, in consultation with the Council, and upon such terms and conditions as may be prescribed, second such officers, agents and other staff as may be necessary for the efficient discharge of the functions of the Council under this Schedule.

12. Experts and Consultants

The Council may engage consultants and experts, as it considers appropriate, to assist in the discharge of its functions under this Schedule.

13. Remuneration

The chairperson and members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary.

14. Reporting

(1) The Council shall submit an annual report to the Cabinet Secretary.

(2) Notwithstanding subparagraph (1), the Cabinet Secretary may, at any time, require a report from the National Waste Management Council on a particular matter.

15. Secretary

(1) The Cabinet Secretary shall second a senior officer from the Ministry to serve as Secretary to the Council.

(2) The Secretary shall—

- (a) be appointed by the Cabinet Secretary;
- (b) be an *ex officio* member of the Council with no right to vote;
- (c) be secretary to the Council;
- (d) subject to the directions of the Council, be responsible for the day to day management of the affairs of the Council; and
- (e) perform such other functions as the Council may, from time to time, determine.

- (3) The Secretary shall serve on such terms and conditions as the Cabinet Secretary may determine.

SECOND SCHEDULE

[s. 23]

PROVISIONS ON PUBLIC CONSULTATION

- 1.(1) Where this Act imposes a requirement for public consultation in matters relating to sustainable waste management policies, regulations, plans or actions, the respective national or county government entity or public entity shall publish a notice—
- (a) in the *Gazette*;
 - (b) in at least two newspapers with a nationwide circulation;
 - (c) in at least one newspaper with a circulation in the locality in which the policies, regulations, plans or actions relate;
 - (d) in at least one radio station broadcasting in the locality in which the policies, regulations, plans or actions relate; and
 - (e) via the county executive committee member responsible for environmental matters in the county.
- (2) The notice specified in subparagraph (1) shall—
- (a) set out a summary of the policy, regulation, plan or action;
 - (b) state the place where the details of the policy, regulation, plan or action may be inspected; and
 - (c) invite written comments on, or objections to, the policy, regulation, plan or action from any interested person and specify to whom and the date by which the comments are to be submitted.
2. The respective national and county government entity or private entity shall make arrangements for the public to obtain copies, at a reasonable fee, of documents relating to the policy, regulation, plan or action which are in the possession of the entity.
3. The respective national or county government entity or private entity shall consider the—
- (a) comments or objections received under paragraph (2); and
 - (b) comments or objectives received at a public meeting held in relation to the policy, regulation, plan or action, or received from any other source and in any other form.
4. The respective national or county government entity or private entity shall, by notice in the *Gazette*, inform any interested person of the decision relating to the policy, regulation, plan or action and the reasons thereof and the place where the decision may be accessed.
5. Where regulations under the Act so require, the respective national or county government entity or private entity shall convene a public meeting relating to the policy, regulation, plan or action before a decision is rendered on the policy, regulation, plan or action.