

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 realization of the Constitutional provision on 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 measures” means measures that extend a person's or a firm's financial or

physical responsibility for a product to the post-consumer stage of the product, and includes—

- (a) waste minimisation programmes;
- (b) deposit – refund and take back schemes;
- (c) financial arrangements for any fund that has been established to promote the reduction, re-use, recycling and recovery of waste;
- (d) awareness programmes to inform the public of the impacts of waste emanating from the product on health and the environment; and
- (d) any other measures to reduce the potential impact of the product on health and the environment;

“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 marketing to end-user manufacturers;

“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;

“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;

No. 18 of 2013.

“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;

“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 of, 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;

“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 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” means designing 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.

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;
- (b) improving the health of all Kenyans by ensuring a clean and healthy environment;
- (c) reducing air, land, fresh water and marine pollution;
- (d) promoting and ensuring the effective delivery of waste services;
- (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) establishing environmentally sound infrastructure and systems for waste management;
- (g) promoting sustainable procurement practices;
- (h) mainstreaming resource efficiency principals in sustainable consumption and production practices; and
- (i) inculcating 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) the precautionary principle;

- (c) the polluter pays principle;
- (d) payment for ecosystems services;
- (e) access to information on waste management;
- (f) zero waste principle;
- (g) achieving sustainable development goals; and
- (h) poverty alleviation and job creation especially for the youth, women and people with disabilities.

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

Ministry.

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 Waste Management Council.

(3) Membership of the Council shall include, but not be limited to one representative from —

- (a) the Ministry of Environment and Forestry,
- (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) the waste recycling industry nominated by Kenya Private Sector Alliance; and
- (i) non-governmental organization that works on sustainable waste management or the circular economy nominated by the NGO council.

(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) provide analytical support on waste management to the various sector ministries, agencies and county governments;

(b) serve as the national knowledge and information management center for disseminating knowledge and information on waste management;

(c) 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;

(d) coordinate adherence to the country's international obligations under the waste and chemicals conventions including associated reporting requirements;

(e) develop a national strategy to reduce land-based pollution to the marine environment; and

(f) provide, on recommendation of the Cabinet Secretary, technical assistance based on needs identified by county

governments.

(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 activities; and
- (e) research, awareness creation and training on sustainable waste management activities;
- (f) establish a national waste information system for the recording, collection, 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, re-used, recycled, recovered and disposed of;
 - (ii) a register of waste management, recycling and other related activities that have been licensed;
 - (iii) the status of the generation, collection, reduction, re-use, recycling and 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 effective administration of this

Act.

(2) The Authority shall develop an action plan for the implementation of the National Waste Management Strategy within one year after the entry into force of this Act.

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 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 a well-managed central collection centres for materials that can be recycled.
- (6) The County Governments shall establish and improve waste management infrastructure to promote source segregation, collection, reuse, setup for materials recovery.
- (7) 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 County Planning and budgeting.

PART III – MEASURES AND ACTIONS

Policies,

9. (1) The Cabinet Secretary shall, in consultation with the

regulations and standards formulated by the Government.

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;

(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 waste to energy and manure projects; and

(vii) facilitation of collection of different types of wastes such as medical 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 secure and sanitary waste management for which the County shall allocate at least twenty acres of land, in one or more lots, for setting up a waste recovery industry and sanitary land fill for safe final disposition of non-recoverable waste; and
- (c) investment opportunities in sustainable waste management especially in waste collection, separation, treatment, processing, recovery and sanitary final disposal facilities.

Take back schemes.

11. (1) Products and packaging that may cause negative impacts on the environment and may be re-used or processed shall be returned to the seller after their use.

(2) Products and packaging referred to in subsection (1) shall be marked by a special label.

(3) The seller of products referred to in subsection (2) shall take back the used products and packaging.

(4) The seller of products referred to in subsection (1) shall conclude a contract for receipt or purchase of the used products and packaging with the producer, importer or another authorized legal entity that shall process the used products and the packaging.

(5) The Producer and importer of products and packaging referred to in subsection (1) may establish system for products and packaging return for products and packaging referred to in subsection (1).

(6) The buyer shall return to the seller or to the producer or importer, as the case may be, or to the legal entity the used products and packaging referred to in subsection (1).

(7) 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 compulsory return, as well as the manner of public information

thereon.

Establishment of material recovery facility.

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

(2) The material recovery facility shall receive mixed waste 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) The Cabinet Secretary shall, in consultation with the Authority and the County Governments make regulations for the proper management of material recovery facilities.

PART IV – DUTIES RELATING TO WASTE MANAGEMENT

Duty of the Ministry.

13. (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) The non-recoverable fraction of waste must be safely treated for final disposal at a secure facility.

(3) In compliance with subsection (1), the National Government 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.

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

Duty of public entities.

14. (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) 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;
 - (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.

(3) 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 government.

15. (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;
- (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 up waste recovery and recycling facilities and sanitary landfills for secure final disposal of non-recoverable waste;
- (c) incentivize collection and separation of waste at source in neighbourhoods and informal settlements;
- (d) ensure cities plan for waste management facilities as part of city expansion;
- (e) prepare county waste management plan and quarterly monitoring reports for cities, urban areas municipalities and administrative units; and
- (f) report annually to the Authority and the County Assembly on the implementation of the County Waste Management Act and regulations

thereunder.

(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.

Waste management plan.

16. (1) Each County shall prepare and submit to the Authority an integrated waste management plan every five years to be reviewed after every thirty months.

(2) A County shall incorporate its integrated waste management plan in the county integrated development plan.

(3) Each County shall—

(a) submit its integrated waste management plan to the Authority and the County Assembly for approval: and

(b) include the approved integrated waste management plan in its integrated development plan.

(4) The Authority may within ninety working days of receiving an integrated 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 proposal if the plan or amendment—

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

(ii) is in conflict with, or is not aligned to, or negates another county's integrated waste management plan or the national waste management strategy; 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

(c) approve the plan or amendment.

Duty of private sector entities.

17. (1) A private sector entity shall prepare a waste management plan and prepare quarterly monitoring reports.

- (2) 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 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;
 - (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, 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) 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;
 - (e) the entity cleans up and restores the site the it was

using to its natural state.

(3) 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.

(4) 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.

(5) If after the private entity or any of its officers is convicted of an offence under subsection (2), 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.

Duty of citizens.

18. (1) Every citizen shall ensure that—

(a) the waste that they generate is managed in accordance with the provisions of this Act;

(b) they take all reasonable measures to avoid the generation of waste and where such generation cannot be avoided to—

(i) reduce, re-use, recycle and recover waste

(ii) to adopt circular economy in the management of waste;

(iii) to segregate waste at source;

(iv) to minimise the amount of waste that are generated;

(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 facility as is provided for by the relevant County Government and the Authority; and

(d) they manage their waste in such a manner that does not endanger their health or the environment or cause a nuisance through noise, odour or visual impacts.

(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.

19. (1) The Authority 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 under this Act.

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

Public participation.

20. 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.

21. 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.

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

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

- (a) 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 may establish an award scheme for recognition of owners or operators of waste collection, separation, recycling and composting facilities 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 for youth, women and disabled people 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 youth waste collection initiatives, Uwezo revolving fund for youth, youth

cooperatives to facilitate collection and separation in resource scarce neighbourhoods and informal settlements among others.

PART VII – MONITORING AND COMPLIANCE

Monitoring and evaluation.

23. (1) The Authority shall regularly monitor and review the performance of private entities and counties in carrying out their duties under this Act.

(2) The Authority shall develop regulations governing the nature and procedure for reporting on performance by private entities,

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

(a) require a private entity 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

(b) require any 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 future performance with those duties.

Compliance and Enforcement

24. (1) The Authority shall—

(a) monitor, investigate and report on whether public and private entities 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 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 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.

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

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

Partnership programme.

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

(2) The Authority 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 VIII—GENERAL PROVISIONS

Restoration.

27. (1) A person 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 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.

28. 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.

29. A person 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.

30. The Cabinet Secretary in consultation with the Authority, County Governments and lead agencies, 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.

31. The Cabinet Secretary, in consultation with the Cabinet Secretary responsible for Education 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.

32. (1) The Cabinet Secretary shall, in consultation with the Authority, 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;
- (b) take back schemes;
- (c) transiting existing dumpsite to sanitary landfill;
- (d) waste segregation categories and colour codes;
- (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.

33. (1) The Cabinet Secretary shall, in consultation with the counties, develop a timetable for the counties to adopt this Act and regulations thereunder.

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

(3) Regulations relating to waste 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.

2. 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.

3. 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.
- 4.** 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).
- 5.** 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 in the framework of the green 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 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 sites.

PART III (clauses 9-12) sets out the measures and activities to be undertaken under the Act including the making of regulations to implement the Act, establishment of county waste management funds in accordance with the public finance management act. The act also provides for take back schemes products or packaging that may cause negative impacts on the environment and may be re-used or processed are returned to the seller.

PART IV (clauses 13-18) sets out the actual duties relating to waste management and provides the 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 is 5% of their net income and ksh 200000 for the officer 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.

Part V (Clauses 19-20) provides for public participation and access to related information on waste management kept by the Authority.

Part VI (Clauses 21-22) 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 23-26) gives the Authority the mandate of monitoring and evaluating the performance of public and private entities 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 27-29) 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 30-33) sets out the miscellaneous provision on development of the public engagement strategy, integration of waste management in the school curricula 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.