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The “zero waste principle” aligns with constitutional principles of sustainable development, emphasizing the responsible use of resources.”

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“The requirement for conformity with the Act ensures a consistent approach to waste management across the counties, promoting a unified national strategy while accommodating regional variations.”

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“Producers must fulfill their obligations individually or through compliance schemes, reflecting international best practices in waste management.”



SUSTAINABLE WASTE MANAGEMENT

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Disclaimer: This Article does not form part of a Legal Opinion and is purely informative.

INTRODUCTION

The Sustainable Waste Management Act of 2022 has become a significant legislative milestone that represents an important step towards environmental stewardship and the protection of Kenya's natural resources. The Act provides a thorough legislative and administrative framework for the sustainable management of waste. Its fundamental goal is to uphold the constitutional guarantee that every citizen has a right to a clean and healthy environment. Further, it also has significant implications for Kenya's environmental sustainability. In this article, we examine the main elements and ramifications of the Sustainable Waste Management Act of 2022, examining how it would change the way the country handles waste management and, in turn, help all Kenyans live healthier and greener futures.

General Principles and Objectives

The Act's Sections 3 and 4 lay out a thorough set of objectives and guiding principles that demonstrate its dedication to modernising the country's waste management procedures and promoting environmental sustainability. The Act encourages resource conservation and sustainable waste management practises. It also addresses pollution in the air, land, water, and marine environments, prioritises efficient waste services for organised urban and rural spaces, creates green job opportunities in waste management and recycling, establishes eco-friendly waste management infrastructure, and improves public health by ensuring cleaner environments and reduced pollution. The general concepts embodied in the Act are consistent with both domestic law and the nation's constitutional responsibilities as well as with international environmental law standards. In addition to reflecting environmental standards, the declaration of the "right to a clean and healthy environment" is in line with Kenya's environmental governance framework, the Environmental Management and Coordination Act (EMCA), which was passed in 1999.



Article 42 of the 2010 Constitution is reiterated in the Act, emphasizing how every citizen has an inherent right to live in a clean and healthy environment. The inclusion of the "precautionary principle" is consistent with the precautionary mindset present in both EMCA and international treaties. The "polluter pays principle" is aligned with the provisions of the Act, which hold polluters accountable for environmental harm. A further benefit of "payment for ecosystem services" is that it aligns with Kenya's commitment to EMCA-mandated sustainable land and resource management. The "zero waste principle" further emphasises resource management in accordance with the fundamental principles of sustainable development. The emphasis on "sustainable waste management goals" also serves to emphasise the legal and constitutional responsibility to protect the environment and advance sustainable development.

Policy, Coordination and Oversight of Waste Management

Part II's provisions of the Act create a strong framework for waste management policy, coordination, and oversight that reflects a holistic strategy for resolving environmental issues and advancing sustainability.

Role of the Cabinet Secretary: Section 5 grants the CS a crucial role in determining Kenya's waste management environment. This entails formulating policies after consulting county governments, encouraging cooperative regulation development with counties and the National Environmental Management Authority (NEMA), ensuring compliance with international waste management obligations, and managing the Act's administration. This position emphasises the value of centralised administration and coordination in establishing sustainable waste disposal procedures.

Waste Management Council: Section 6 establishes the Waste Management Council (WMC). Its varied membership, which includes representatives from numerous sectors, encourages inclusivity and decision-making competence. The Council's mandate, which includes encouraging sustainable practises, proposing national waste management targets, and strengthening intergovernmental collaboration, assures a comprehensive strategy for solving Kenya's waste management issues. For the national waste management policy to be in line with local, regional, and international objectives, a multidimensional approach is essential. The council's duties cover crucial aspects of waste management, including coordinating intergovernmental efforts, monitoring the implementation of strategies, and mobilising resources for the industry. The WMC's role recognises the need for regional cooperation to successfully address waste management concerns through its mandate in establishing inter-county waste management partnerships. Its capacity to suggest incentives for eco-friendly waste management highlights the significance of coordinating financial incentives with environmental objectives.

NEMA's functions: NEMA is entrusted with creating standards, dissemination knowledge, enforcing laws, granting licenses, conducting research, and creating a comprehensive waste information system under Section 8. NEMA is a central player in Kenyan regulation, education, and advancement of sustainable waste management practices as a result of its multifaceted role. The development of a national waste information system emphasizes the significance of transparent waste management and data-driven decision-making.



Functions of County Governments: County governments are given control for waste management under Section 9 of the Act, which emphasizes their role in creating the necessary infrastructure, keeping data, and incorporating waste management into local planning and budgeting. By mandating compliance with the Act, counties are required to manage waste in a uniform manner, supporting a cohesive national policy while accommodating regional differences.

Measures and Actions

Part III of the Act introduces critical measures and actions to regulate waste management, emphasizing sustainability and environmental responsibility.

Policies, Regulations, and Standards by the CS: Section 10 grants the CS the authority to make rules and policies for efficient administration after consulting with the NEMA and county governments. These regulations, in particular, deal with the closing of open dumps, sustainable waste management practices, the development of markets for recycled goods, and the promotion of EHS standards. These rules are essential for promoting recycling, encouraging ecologically friendly waste management practices, and protecting the general welfare of waste handlers and the community.

County Government Involvement: According to Section 11, County governments are charged with creating their legislation within two years of the Act's introduction, which gives them a substantial role in waste management. By allowing for the adaptation of waste management strategies to local conditions and needs, this decentralization of power promotes community involvement and ownership in waste management projects.

Waste Classification and Segregation: Section 12 requires that non-hazardous waste be divided into organic and non-organic components, with standards for unambiguous labelling and color coding. This strategy encourages proper waste handling and collection techniques, which helps to lower environmental contamination. Additionally, the handling of hazardous waste complies with the EMCA 1999 and other pertinent laws. To ensure compliance with the waste segregation requirements, penalties for non-compliance act as a deterrent.

Extended Producer Responsibility (EPR): To hold companies accountable for the environmental effects of their products, Section 13 introduces EPR concepts. Producers are required to meet their duties either on an individual basis or through compliance programmes that take into account global best practices for waste management. The upcoming EPR laws are anticipated to create a framework for successful implementation, encouraging product design that takes waste reduction and end-of-life management into account.

Materials Recovery Facilities: Each county government must set up a materials recovery facility under Section 14 in order to sort, separate, compost, and recycle waste. NEMA's licencing of these establishments assures adherence to operational and environmental standards. The upcoming regulations will provide additional guidance for the construction and operation of materials recovery facilities, highlighting their importance for environmentally responsible waste management.



Waste Management Functions

Part IV of the Act outlines the specific roles and responsibilities of various entities involved in waste management. These include:

The CS: Section 15 authorizes the CS to prescribe actions that will lessen waste and encourage reuse, recycling, and recovery that is environmentally responsible. Included in this are the establishment of regulations, the development of model county waste management laws, and a national waste management strategy. The strategy's five-year review cycle ensures adaptation to changing conditions.

Accounting Officers of Public Entities: In managing waste, public bodies' accounting officials are crucial. They must comply with waste management plans and ensure waste minimization, cleaner manufacturing techniques, appropriate waste collection, segregation, and disposal under Section 16. Fines or jail time are imposed for noncompliance, emphasizing the need for public institutions to take responsibility for waste generation and disposal.

County Governments: The obligations listed in Section 17 for County governments are extensive and include passing laws promoting sustainable waste management, establishing facilities for waste recovery and recycling, providing incentives for waste collection and separation at the point of generation, incorporating waste management into urban planning, and maintaining waste management data. These rules give counties the freedom to manage their waste in a way that meets specific local requirements and conditions while yet adhering to national standards. Furthermore, Section 18 mandates that the County governments to create integrated waste management plans every five years and incorporate them into their development plans. Incorporating waste management into the larger county development strategies is therefore ensured.

Private Sector Entities: Private sector entities are required by Section 19 to create waste management strategies, disclose waste volumes and management techniques, and adhere to cleaner production standards. The importance of corporate responsibility in waste management is underscored by the fines and penalties that result from noncompliance.

Duty to Segregate and Dispose Waste: Waste generators are required to separate waste at the source and only dispose of it at authorized disposal facilities or specified collection locations. To encourage appropriate waste management at the individual level, non-compliance carries fines or terms of imprisonment (Section 20).

Duties of Waste Service Providers: Waste management companies/providers are obligated to transport collected waste to authorized facilities and handle separated waste in compliance with the Act. They are subject to fines or imprisonment for failing to do so, underscoring their crucial role in preserving the integrity of the waste management system (Section 21).

Public Participation and Access to Information

Part V of the Act highlights the importance of transparency and public involvement in waste management.

Access to information (Section 22): This clause emphasizes NEMA's duty to preserve waste management records while preserving confidentiality when necessary. It gives people the option to request access to these records in writing and submit it to NEMA. Importantly, it enables NEMA to set justifiable costs for handling access requests, striking



a balance between the need for openness and legitimate administrative concerns.

Public Participation (Section 23): Public participation in waste management is consistent with global standards for environmental governance. The Second Schedule's guiding principles are emphasized by the Act, ensuring that public consultation is inclusive, open, and responsible. In keeping with constitutional goals, this encourages community participation in decision-making processes, improving the overall effectiveness and fairness of waste management policies and practices in Kenya.

Financial Provisions

Part VI addresses financial aspects and incentives for responsible waste management as follows:

Fees Allocation (Section 24): Each county government is required by this clause to use all waste collection and tipping fees, as well as any other fees incurred for waste deposited at county-owned waste management facilities, to enhance waste management programmes and services. This clause encourages financial sustainability for local waste management infrastructure and services by requiring that fees earned are reinvested in waste management.

Incentives for Waste Management: Section 25 acknowledges the need to encourage eco-friendly waste management techniques. It gives the CS permission to establish incentives for locally and internationally sourced sustainable waste management machinery and materials after consulting with the appropriate finance authority. The Act also encourages private investment through incentives in material recovery and recycling initiatives. The CS has the authority to establish these incentives and laws to promote the use of recovered or recycled materials, assisting in the growth of a circular economy and minimizing the negative effects on the environment.

Monitoring and Compliance

Part VII primarily focuses on monitoring, compliance and enforcement.

Monitoring and Evaluation: According to Section 26, the NEMA is in charge of overseeing and evaluating how well private entities and county governments are adhering to their waste management duties. NEMA is also given the authority to develop regulations that outline the reporting requirements for private entities. This clause emphasizes the significance of oversight and accountability in ensuring that all pertinent parties fulfil their waste management commitments.

Compliance and Enforcement: The crucial role of enforcing adherence to the Act is also given to NEMA. It is granted the authority to enter private premises to look into compliance. Those who obstruct or give false information to the NEMA are guilty of crimes and risk penalties or imprisonment. This section emphasizes how seriously the Act takes compliance and how determined it is to hold people accountable for their waste management duties (Section 27).

Role of the National Environment Complaints Committee: According to Section 28, the NECC is required to create a complaints and redress procedure for waste management. This mechanism gives individuals and entities a means to express their concerns about waste management practices and look for solutions.

Partnership Programmes: The Act encourages joint initiatives between the NEMA, county governments, and sectors and entities that produce



waste. These initiatives seek to inform and promote adherence to waste management regulations. The Act also promotes pooling of waste treatment and disposal facilities and inter-county cooperation on waste management. The development of regulations for these cooperative frameworks emphasizes once more how crucial cooperation is to the achievement of sustainable waste management objectives (Section 29).

General Provisions

These cover crucial facets of responsibility and conflict resolution. The failure to manage waste in accordance with the Act is punishable under Section 30 by having to not only clean up the site, but also return it to its pre-waste condition. This duty gains legal weight upon the NEMA's issuance of a restoration order, guaranteeing that environmental damage is addressed and remedied.

The Act provides a means for individuals or entities to file complaints about licence refusals, conditions or restrictions, fines, or restoration orders. In order to promote fairness and responsibility in the application of waste management legislation, the National Environment Tribunal (NET) acts as an impartial body to settle such disputes (Section 31).

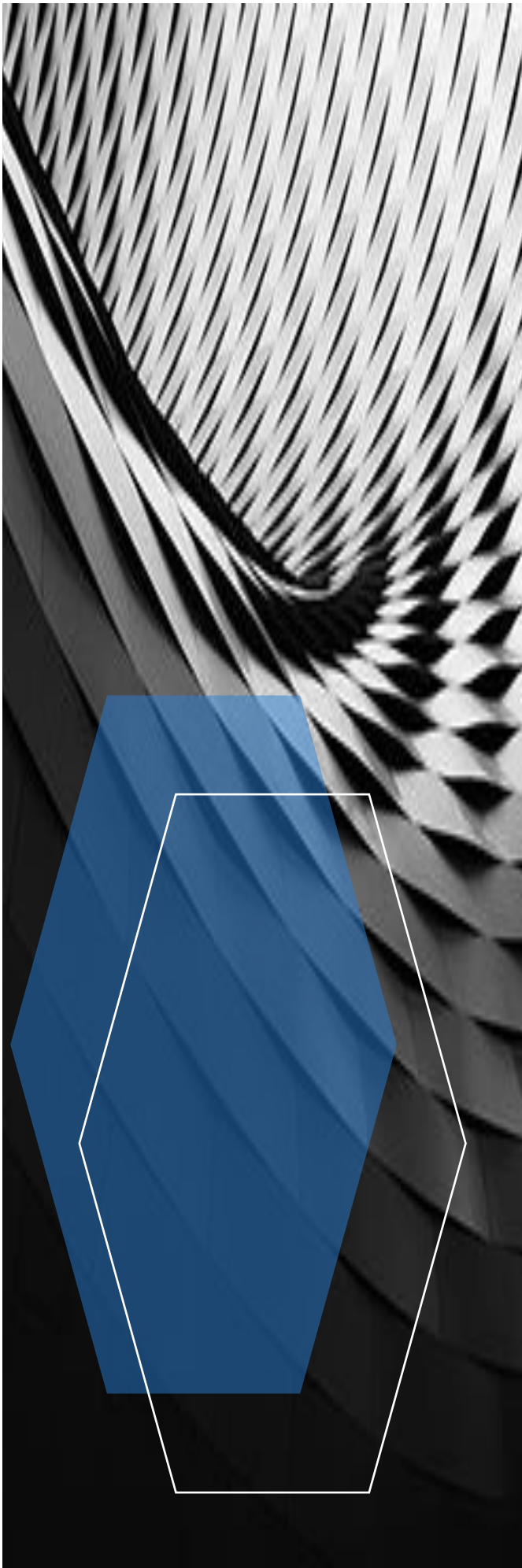
Section 32 establishes a general penalty clause for violations that aren't addressed in detail, highlighting how important it is to follow waste management standards. It emphasises the Act's commitment to discouraging infractions and promoting environmental protection by establishing significant fines and possible imprisonment. This clause serves as a deterrent and emphasises how crucial it is to follow the Act's rules.

Provisions on Delegated Powers

The CS is given considerable authority under this provision to create rules, which are essential for the Act's successful implementation. These regulations address a wide range of waste management issues, illustrating the Act's all-inclusive strategy for tackling waste-related issues. These include e-waste management, landfill conversion, recycling, waste transportation, and more. The clause emphasizes the value of consulting with NEMA and ensures collaboration in decision-making on waste management strategies. Additionally, it emphasizes how crucial it is for these regulations to adhere to fundamental legal and constitutional norms, protecting against the arbitrary or disproportionate use of regulatory authority. This provision emphasizes the Act's adaptability and flexibility to changing waste management procedures as well as the government's commitment to effectively and responsibly resolving environmental issues (Section 33).

Miscellaneous Matters

Some of the Act's most crucial aspects are covered in Sections 34 and 35. It requires the creation of a waste management curriculum that is sustainable in schools as a preventative step to address environmental awareness in the educational system. It addresses the transition to the new waste management framework, highlighting the significance of a coordinated approach and calls for a timeframe to ease the adoption of the Act and its regulations by county governments, guaranteeing a smooth transition without a disruption in waste management services. Last but not least, it acknowledges the ongoing applicability of current EMCA 1999 laws until equivalent regulations under this Act are passed, preserving legal continuity throughout the transition. These provisions demonstrate a thorough and well-thought-out approach to putting the Act into practice, taking into account the complexity of waste management at various levels.

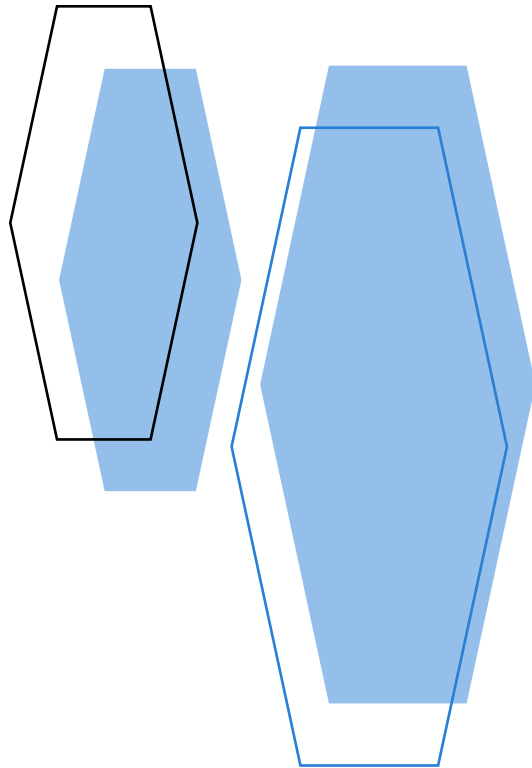


CONCLUSION

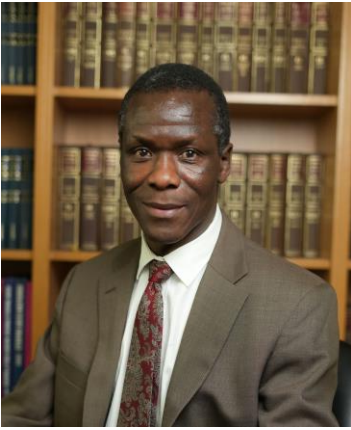
A thorough and innovative strategy for addressing Kenya's waste management problems is represented by the Sustainable Waste Management Act of 2022. Its requirements place an emphasis on sustainability, accountability, and public involvement and range from policy coordination and oversight to specific waste management tasks. The creation of a Waste Management Council, increased producer responsibility, materials recovery facilities, and strong monitoring and compliance systems are some of the key components. The Act places a strong emphasis on education and includes a sustainable waste management curriculum for schools. It also specifies a methodical transition from current regulations to guarantee a smooth implementation procedure. Overall, this Act establishes a solid foundation for Kenya's journey towards more accountable, effective, and sustainable waste management practices, displaying a dedication to environmental protection and community well-being.

The full Act is available here:

<http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=No.%2031%20of%202022>



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