



Code of Practice and Professional Ethics

for

**Integrated Environmental Assessment
and Audit Experts**

Citation

1. This Code of Practice may be cited as the Code of Practice and Professional Ethics for Integrated Environmental Assessment Experts.

Interpretation/Definitions

2. In this Code of Practice, unless the context otherwise requires:
 - “*Act*” means the Environmental Management and Coordination Act, 1999
 - “*Authority*” means the National Environment Management Authority established under Section 7 of the Act
 - “*Code of Practice*” means the Code of Practice and Professional Ethics for Integrated Environmental Assessment and Audit Experts
 - “*Committee*” means the Environmental Experts Advisory Committee established within this Code of Practice
 - “*Environmental Expert*” means an individual person or firm of experts who has/have requisite qualifications prescribed by the Act and relevant Regulations made there under, and duly registered and Licenced by the National Environment Management Authority;
 - “*Environmental Impact Assessment (EIA)*” means .a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment
 - “*Environmental Audit (EA)*” means a systematic evaluation of activities and processes of an ongoing project to determine how far these activities and programmes conform with the approved environmental management plan of that specific project and sound environmental management practices
 - “*Environmental Management Plan (EMP)*” means a detailed plan proposing measures for eliminating, minimizing or mitigating adverse impacts on environment including the cost, timeframe, responsibility and monitoring mechanisms
 - “*Integrated Environmental Assessments*” includes Environmental Impact Assessment, Archeological Assessment, Social impact assessment, Health Impact Assessment and Cultural Impact Assessments.
 - “*Operator*” means a person who manages a working enterprise, system or industrial establishment.
 - “*Proponent*” means a person proposing or executing a project, programme or an undertaking specified in the Second Schedule of the Act.

Objectives of the Code of Practice

3. The Objectives of this Code of Practice are:
 - (a) To provide a system of nurturing competence, knowledge, professional conduct, consistency, integrity and ethics in the carrying out of environmental assessments and environmental audits
 - (b) To ensure that the preparation of environmental assessments and environmental audits reports is carried out in an independent, professional, objective and impartial manner.
 - (c) To provide for the regulation and discipline of Environmental Assessment Experts.

Application of the Code of Practice

4.
 - (1) For the purpose of systematic nurturing of competence, promotion of knowledge, observance of professional conduct, consistency and integrity of environmental management practice in Kenya. Environmental Experts in accordance with the provision of relevant Regulations, may establish professional associations to complement and implement the objectives of the Code of Practice.
 - (2) An Environmental Expert shall act professionally, accurately, fairly and in an unbiased manner in undertaking his work.
5.
 - (1) This Code of Practice shall apply to:
 - (a) All registered and licenced individual Environmental Assessment Experts
 - (b) Firm of Experts, registered and licenced by the National Environment Management Authority.
 - (2) The Director General, in consultation with relevant stakeholders, may, from time to time, amend this code of practice and professional ethics for the proper conduct of Environmental Assessment Experts.

Receiving Instructions

6. No Environmental Assessment Expert shall act for any project proponent or operator, unless he has received written instructions from such project proponent, operator or his authorized agents.

Carrying-out of Instructions

7.
 - (1) An Environmental Assessment Expert shall not unreasonably delay the carrying out of instructions received from the project proponent or operator.
 - (2) An Environmental Assessment Expert shall discharge his/her responsibilities to the project proponent, or operator with due diligence and integrity.

Withdrawal of Instructions

8. (1) An Environmental Assessment Expert may withdraw from conducting of an environmental assessment or audit where, without prejudice to the contractual obligations between the project proponent and the Expert when:
 - (a) the project proponent or operator, withdraws instructions, in writing, from the Environmental Assessment Expert
 - (b) the project proponent or operator, instructs the Expert to undertake an environmental assessment or audit in a manner contrary to the Expert's professional ethics or the laws of Kenya
 - (c) the project proponent or operator disregards or breaches an agreement or obligation as to the Environmental Assessment Expert's fees.
- (2) Subject to the terms of the contract between the project proponent, or operator and the Environmental Assessment Expert, an Environmental Assessment Expert, shall issue a minimum seven-day written notice to the project proponent, owner or operator, of his or her intention to withdraw, with reasons thereof.
- (3) An Environmental Assessment Expert, who withdraws services under sub-regulation (2), and who has received advance fees from the project proponent or operator, shall refund to the project proponent or operator such fees that have not been earned.
- (4) An Environmental Assessment Expert who withdraws services under sub-regulation (2), and who has received documents from the project proponent or operator, shall return all such documentation to the project proponent or operator.

Collection of Data

9. (1) An Environmental Assessment Expert shall take all due care and diligence to collect the relevant data to assess the environmental issues in the various stages of the Environmental assessment or audit process.
- (2) An Environmental Assessment Expert shall not include in the report, without acknowledgement of the source, any data that is not the result of their findings.

Consultations and Guidelines

10. (1) In adhering with regulations and guidelines on the preparation of environmental assessments and environmental audits, an Environmental Assessment Expert shall consult widely with all relevant agencies, stakeholders, interested parties and the general public on all matters that are likely to affect them.
- (2) An Environmental Assessment Expert shall follow relevant regulations or guidelines and written directives issued by the Authority.

Contents of Reports and References

11. (1) An Environmental Assessment Expert shall, based on the Terms of Reference, include all matters as required, by relevant statutory provisions, before submitting such reports to the project proponent or operator.
- (2) An Environmental Assessment Expert shall, in undertaking an environmental assessment or audit, bear in mind any previous environmental assessments or audits of a similar project made under the relevant regulations, but shall not copy the previous documents wholesale.
- (3) An Environmental Assessment Expert in making reference to other environmental assessment or environmental audit shall acknowledge the sources of the references.

Responsibility of Lead Environmental Experts

12. (1) An Environmental Lead Expert shall be responsible for his work undertaken on behalf of the project proponent or operator.
- (2) An Environmental Lead Expert shall devote sufficient time for conducting the work.
- (3) An Environmental Lead Expert shall guide the project proponent, or operator throughout the preparation of the environmental impact assessment and/or environmental audit, and/or during implementation of the environmental management plan.
- (4) An Environmental Lead Expert shall disclose to any client or employer any relationships of conflicting or competing interests that may influence his judgment prior to the carrying out of work.

Membership

13. (1) All Environmental Assessment Experts shall be members of a recognized Environmental Experts professional body.
- (2) All Environmental Assessment Experts shall subscribe to a recognized Environmental Assessment Experts professional body.
- (3) All registered Environmental Assessment Experts shall obtain an annual practising licence from NEMA valid for the current calendar year.

Misconduct of Environmental Experts

14. (1) An Environmental Assessment Expert who contravenes a provision of the Code of Practice and Professional Ethics commits professional misconduct and shall be subject to disciplinary action by the Authority as appropriate.
- (2) A registered Environmental Assessment Expert shall be guilty of misconduct if such an Expert:
 - (a) knowingly accepts any work which involves the giving or receiving of bribes or inducements
 - (b) knowingly accepts to take up or complete work partly done by another Expert where;
 - i. There is an existing contract of engagement between a proponent and that other expert.
 - ii. To the best of his knowledge there exists unconcluded disciplinary proceedings the Environmental Experts Advisory Committee
 - (c) undertakes specialist work without sufficient knowledge or experience of the subject or expert assistance
 - (d) conducts oneself in a manner which the Authority deems, after due inquiry, incompetent, or grossly negligent in connection with the work performed by him as per the provisions of this Code of Practice
 - (e) gives expert evidence in the courts, tribunals or before other judicial bodies where he or she has personal or vested interest, unless such Environmental Expert has disclosed the nature of the interest when expressing his or her opinion
 - (f) Discloses or misuses information marked as confidential by the project proponent or operator
 - (g) abandons work already started without giving a satisfactory explanation and a seven-day minimum notice to the client
 - (h) knowingly acts for two parties with declared conflicting or competing interests, where such disclosure is requested in writing by the clients in the course of securing business from the client
 - (i) withholds reports, information and other materials connected to the project from an employer or client if the other party has fulfilled his part of the contract
 - (j) claims as his own another Expert's ideas, designs and concepts unless such concepts, designs or ideas are duly acknowledged.
- (3) An Environmental Assessment Expert shall commit professional misconduct for purposes of this Code of Practice, where he is found guilty of professional misconduct by another professional body to which that Environmental Expert is also a member.

- (4) A Environmental Assessment Expert is deemed to have committed an offence and shall be disciplined in accordance with provisions of the Code of Practice and Professional Ethics when they:
- (a) practices or carries out any activity relating to the conduct of environmental Assessment or environmental audit without a valid practicing Licence.
 - (b) makes a false statement with the intention of obtaining a practising Licence.
 - (c) makes a false statement regarding the conduct of an environmental assessment or environmental audit.
 - (d) signs any environmental assessment report or environmental audit without having prepared it.
 - (e) issues statements that malign other Environmental Experts' character;

Environmental Experts Advisory Committee

15. (1) The Director General shall establish a Committee to be known as the Environmental Experts Advisory Committee.
- (2) The Committee shall consist of the following members:
- (a) the Director in charge of Legal Services of the Authority, who shall be the Chair
 - (b) the Director, in charge of Environmental Education, Information and Public Participation Department
 - (c) 2 Environmental Experts nominated by the Professional Associations of Environmental Expert.
 - (d) the Director in charge of, Compliance and Enforcement of the Authority
 - (e) 2 representatives of the private sector.
- (3) A Secretary to the Committee who shall be duly appointed by the Director General.
- (4) The members of the Committee appointed in sub-clause (b), (c), (e) and (f) above, shall hold office for a period of three years and may be eligible for reappointment for one additional term.
16. The functions of the Committee shall be to:
- (a) advise NEMA on matters regarding registrations, Licensing, practice and conduct of environmental assessment and environmental audit experts;
 - (b) advise NEMA on matters regarding establishment, maintenance and monitoring of professional standards for environmental practice;
 - (c) review complaints raised against Environmental Experts and advise NEMA on matters regarding inquiry, investigation and disciplinary action as is necessary for ensuring the maintenance of professional standards, ethics and integrity;
 - (d) advise NEMA on any other relevant issue.

Institution of Complaints

17. (1) A person aggrieved by the conduct of an Environmental Assessment Expert in the carrying out of his work in accordance with the provisions of the Act or the relevant regulations there under, may file a complaint to the Director General.
- (2) All complaints against Environmental Experts shall be in writing and shall be transmitted to the Committee for determination within a period not exceeding one hundred and twenty days (120) of lodging the complaint.
- (3) The Director General, giving reasons thereof, may institute disciplinary proceedings *suo motto* or upon a complaint raised by a Lead agency, project proponent, owner, operator or any person or institution, against an Environmental Expert.

Right of Reply

18. (1) After the receipt of a complaint, the Director General may cause investigations to be carried out by the Environmental Experts Advisory Committee, to verify the truthfulness of the issues contained in the complaint and thereafter take the appropriate decision as provided for under this Code of Practice and Professional Ethics.
- (2) Upon receipt of the complaint, the Environmental Experts Advisory Committee, shall cause a statement to be prepared setting out the allegations, and give an opportunity for the Expert to show cause why he or she should not be disciplined. A copy of the allegations shall be transmitted to each member of the Committee, the complainant and to the Expert whose alleged misconduct is the subject of complaint.
- (3) Upon receipt of a complaint lodged against an Environmental Expert, the Authority shall under cover of a registered letter, notify the Expert of the complaint giving the grounds for the complaint.
- (4) The Environment Expert against whom a complaint has been lodged, shall file a response to the Committee within 21 days from receipt of such complaint.
- (5) The Authority may require the complainant to file further particulars of any of the matters complained of as may be necessary.

Fair Hearing

19. (1) The Secretary of the Committee shall give notice of the date, time and place fixed for inquiry to the complainant and the Environmental Assessment Expert whose conduct is the subject of inquiry.
- (2) Where an Environmental Assessment Expert whose conduct is the subject of inquiry fails to appear without any reasonable cause, either personally or through an appropriate authorized representative at the time and place fixed in the notice served to him, the inquiry may proceed to hear the matter notwithstanding the Environmental Assessment Expert's absence.

- (3) Where a Complainant whose complaint is the subject of inquiry fails to appear without any reasonable cause, either personally or through an appropriate authorized representative at the time and place fixed in the notice served to him, the inquiry may proceed to hear the matter notwithstanding the Complainants absence.
- (4) The Authority may of its own motion or upon a request by the Environmental Assessment Expert whose conduct is the subject of inquiry, adjourn the hearing upon such terms as it deems fit.
- (5) The Committee shall ensure fair hearing of the Environmental Assessment Expert whose conduct is the subject of complaint.
- (6) Without prejudice to the above provisions, the Committee may regulate its own procedure.

Disciplinary Actions

20. (1) Where Environmental Assessment Expert is found to have committed professional misconduct by the Environmental Expert Advisory Committee, the Director General, may at any time:
 - (a) strike-off the name of the Environmental Assessment Expert from the Register of Experts;
 - (b) suspend the Environmental Assessment Expert from practicing for a period not exceeding 12 months;
 - (c) order that the Environmental Assessment Expert pay a reasonable fine not exceeding KShs.100,000/- ;
 - (d) reprimand the Environmental Assessment Expert;
 - (e) any one or more of the above disciplinary actions.
- (2) The Authority shall give a notice of the date, time and place fixed for the communication of the disciplinary action. In any event, this communication shall be made within the time frame provided for in section (16) (2).

Appeals

21. (1) An Environmental Assessment Expert aggrieved by the decision of the Authority may appeal against such decision to the National Environmental Tribunal within 60 days of the decision by the Authority.
- (2) At the expiry of the appeal period, the Authority may publicize the disciplinary action taken against the Environmental Assessment Expert.

Capacity Development

22. An Environmental Assessment Expert shall keep abreast of emerging trends and issues in the Environmental field and must conduct his profession in accordance with the best available practice taking into account advances in science and technology.

23. Exploitation

No Environmental Assessment Expert shall exploit the inexperience, lack of understanding, illiteracy or other personal short coming of a project proponent, owner, operator, or the public, for his personal gain.

Interpretation

24. In the event of any conflict in the interpretation of the provisions of this Code of Practice, the Environmental Experts Advisory Committee shall issue an interpretation of the provisions thereof.



PROF. GEOFFREY WAHUNGU
DIRECTOR GENERAL