



REGULATORY IMPACT STATEMENT
THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION
(WATER QUALITY) REGULATIONS, 2023

INTRODUCTION

The Environmental Management and Coordination (Water Quality) Regulations of 2006, which has been in existence for over a decade is anchored in Section 71 of the Environmental Management and Coordination Act, 1999 (hereinafter 'EMCA') and came into effect through Legal Notice 120 of 2006. The general purpose of the regulations is to prohibit discharge of effluent into the environment contrary to the established standards and provides guidelines and standards for water for different uses.

Urbanization, along with the associated industrialization and socio economic activities has led to increased demand for clean water and subsequent increased effluent discharge. The Constitution of Kenya, 2010 confers the citizens the right to a clean and healthy environment and the right to clean and safe water in adequate quantities. This has necessitated the need to have the Regulations reviewed to address existing gaps that have become apparent in addition to the need to align the regulations to the provisions of the Constitution and the Act.

The Authority in accordance with its mandate and as provided for under Section 71 of EMCA has proposed to undertake a review of these Regulations through a technical committee. The committee comprises of experts with divergent background touching on water quality and they are tasked with identifying the gaps in the Regulations, coming up with remedies for such gaps, collecting views from members of the public and preparing a draft Regulation with the proposed changes.

A. OBJECTIVES OF THE PROPOSED REGULATIONS

- i.* To align the regulations with the provisions of the Constitution of Kenya, 2010 and the Act.

- ii.** To preserve and promote a clean and healthy environment for sustainable development.
- iii.** To provide standards on the quality of potable water and waste water discharge into the environment.
- iv.** To establish a legal framework for the management of waste water in the country.
- v.** To safeguard sources of water by preventing pollution.
- vi.** To promote the adoption of effective waste water treatment technologies.
- vii.** To align and harmonize the allowable riparian setbacks with other Legal frameworks.

B. EFFECTS OF THE PROPOSED REGULATIONS

The effects of the proposed regulations can be categorized as follows:

i. Economic Effects

- ❖ There will be minimal financial implication to the Kenyan public arising from effluent discharge license fees as shall be prescribed by the Authority.
- ❖ Use of economic incentives to promote compliance with the water quality regulations.
- ❖ Encourage uptake of innovations and technologies to address water pollution.
- ❖ Enhance ease of doing business and provides opportunity for economic development and job creation.
- ❖ Provides a good investment climate and favourable living environment.
- ❖ The reduction the healthcare costs of diseases arising from the impact of water pollution.
- ❖ The productivity index is enhanced.
- ❖ Supports the government policy objectives for sustainable development.
- ❖ Provides for opportunities for mapping out facilities that are required to comply with the water quality regulations.

ii. Social Effects

- ❖ By enhancing positive social behaviour and ethos within the community for promotion of a clean and healthy environment for all in the Country.
- ❖ By promoting stakeholder engagements, public participation, transparency and social acceptability in water abstraction activities (social licenses), it will mitigate against conflicts and social unrests.
- ❖ It will enhance synergy and interagency co-ordination among MCDAs, especially with Water Resources Authority in environmental management and thus avoid institutional conflict and duplication of responsibilities.
- ❖ Allow Citizens to enjoy a clean, safe, and healthy water resource and environment as enshrined in the Constitution.
- ❖ Enhances sanitation.

iii. Environmental Effects

- ❖ It ensures the right to a clean and healthy environment while promoting sustainable development.
- ❖ There will be adequate and safe water for ecosystems such as forests, wetlands, fisheries and wildlife for environmental sustainability.
- ❖ Fosters domestication of Sustainable Development Goals, relevant International treaties and conventions and the World Health Organization standards and guidelines.
- ❖ Puts in place preventive measures against destruction of the environment through water pollution averting potential future risks to human health and the environment.

C. STATEMENT OF OTHER PRACTICABLE MEANS OF ACHIEVING THE OBJECTIVES OF THE PROPOSED INSTRUMENT (NOISE AND EXCESSIVE VIBRATIONS POLLUTION (CONTROL) MANAGEMENT REGULATIONS 2023)

i. Regulatory Options

- ❖ County legislation;

- ❖ Guidelines and regulations from other lead agencies;
- ❖ Adoption of internationally recognized standards on water quality management.

ii. *Non Regulatory options*

- ❖ The Authority to continue to enhance education and awareness of best environmental practices.
- ❖ Enforcement by the relevant Ministries, Counties, Departments, and Agencies (MCDAs) on sectoral issues under their jurisdiction.
- ❖ Negotiated compliance arrangements.
- ❖ Compliance assistance programmes.
- ❖ Voluntary/Self-regulation practices by members of the public, facility owners and operators.

D. REASONS WHY OTHER MEASURES ARE NOT APPROPRIATE

- ❖ Existing gaps and inadequacies in the current regulations.
- ❖ National legislation is necessary for operationalizing the water quality standards as required in the Act and from which county legislation can be premised.
- ❖ Setting the minimum water quality standards from which other lead agencies can make reference to.
- ❖ The compliance status among the regulated community is wanting and hence the need to enhance enforcement of the prescribed regulations and standards.
- ❖ Low self-regulation by the regulated community.
- ❖ The Constitution squarely puts the mandate on the National Government on ensuring a clean and healthy environment for all.
- ❖ The substantive legislation (EMCA, 1999) provides for the development of regulations for its implementation.

E. ANY OTHER MATTERS SPECIFIED BY THE REGULATIONS

- ❖ Preparation and maintenance of an inventory of all natural water bodies for purposes of taking measures including the development of environmental management plans, to prevent and control degradation of such sources.
- ❖ Contravention of these Regulations is an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or such orders given by the court as provided for by the Act.
- ❖ All applications and licenses be accompanied by the prescribed fees as set out in the Eleventh Schedule to these Regulations.

F. ADEQUACY OF THE REGULATORY IMPACT ASSESSMENT- INDEPENDENT ADVICE

To undertake the regulatory impact assessment and to guide on the formulation of the Regulations, the Director General NEMA constituted a technical committee with membership drawn from officers of varied expertise within the Authority.

The Terms of Reference for the technical committee were;

- ❖ Preparation and maintenance of an inventory of all natural water bodies for purposes of taking measures including the development of environmental management plans, to prevent and control degradation of such sources.
- ❖ Fines and penalties for contravention of these Regulations.
- ❖ Prescription of licensing fees.

- ❖ Conduct and consolidate a gap analysis upon review of the Environmental Management and Co-ordination Act (Water Quality) Regulations, 2006;
- ❖ Conduct a desk review of all sectoral laws and legislation and best practices;
- ❖ Ensure that all staff members are consulted and their input incorporated in the review process;
- ❖ Ensure that the Lead Agencies are consulted and their input considered in the review process;
- ❖ Ensure that public participation is effected in the process of reviewing the Regulations;
- ❖ Co-ordinate the finalization and gazettment of the Regulations to reflect the identified gaps and stakeholders' views.
- ❖ Prepare the Regulatory Impact Statement for the Regulation.
- ❖ Coordinate the finalization of the instrument and the Gazette notice.
- ❖ Prepare the Draft Explanatory Memorandum.

- ❖ Perform any other task related to the amendment of the Regulations until finalization.

In order to effectively execute the above mentioned TORs, the technical committee was tasked with undertaking the following activities;

1. Comprehensive literature review and identification of gaps in the Water Regulations 2006.
2. Technical review committee meetings.
3. Stakeholders' consultations done in line with the Statutory Instrument Act, 2013.
4. Drafting sessions.

This was undertaken by the Technical Committee on behalf of Director General, NEMA.

G. CONCLUSION

The review of the Water Quality Regulations 2006 could not have come at a better time as population growth, climate change, technological advancements and the socio-economic development activities in the country have affected the effectiveness of the existing regulations on water quality. To this end, the Authority has taken all these factors into consideration and it is thus expected that the reviewed Regulations will not only improve the water standards in the country but will also be key in assisting the country to achieve the Sustainable Development Goals. The reviewed Regulations are, therefore, aligned to the Constitution of Kenya, EMCA and international best practices in environmental management.

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