



LEGAL NOTICE NO.....

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT
(No. 8 of 1999)**

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (SAND
HARVESTING CONTROL AND MANAGEMENT) REGULATIONS 2021**

ARRANGEMENT OF REGULATIONS

Regulation

PART I – PRELIMINARY PROVISIONS

1. Citation.
2. Interpretation.
3. Application.
4. Purpose of the Regulation.

PART II- MANAGEMENT OF SAND HARVESTING

5. Management of Sand Harvesting
6. Functions of the Authority.
7. Sand harvesting sites
8. On-farm sand harvesting and Lakeshores/s Sand Harvesting
9. Sale of sand
10. Transportation of sand
11. Monitoring and restoration of designated sand harvesting sites

PART III—SAND HARVESTING COMMITTEES

12. Establishment and Composition of the Sand Harvesting Committees.
13. Functions of the Sand Harvesting Committees.
14. Conduct of the affairs of the Sand Harvesting Committees.
15. Registered entities

PART IV – LICENCING PROVISIONS

16. Requirement of an Environmental Impact Assessment licence
17. Suspension, cancellation of the licence.
18. Provision of a deposit bond
19. Banned sites for sand harvesting
20. Environmental Audit

PART VII– MISCELLANEOUS

21. Resolution of disputes
22. Appeals to the National Environment Tribunal
23. Offences and Penalties.
24. Liability on transfer.
25. Transitional Clause.

SCHEDULE

Form 1- Application for a permit to transport sand

Form 2- Permit to transport sand

Form 3- Suspension/Revocation/Suspension of Permit.

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999
(No. 8 of 1999)

IN EXERCISE of the powers conferred by section 147 (1) of the Environmental Management and Co-ordination Act, 1999, the Cabinet Secretary for Environment and Forestry, on the recommendation of the Authority and upon consultation with the lead agencies, makes the following Regulations—

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (SAND HARVESTING CONTROL AND MANAGEMENT) REGULATIONS, 2021

PART I – PRELIMINARY PROVISIONS

- Citation. 1. These Regulations may be cited as the Environmental Management and Co-ordination (Sand Harvesting Control and Management) Regulations, 2021.
- Interpretation. 2. In these Regulations, unless the context otherwise requires—
- No. 8 of 1999. “abandoned land” means a degraded environment where the perpetrator is not identifiable;
- “Act” means the Environmental Management and Coordination Act, 1999;
- “affected media” means land, water, air, or any other natural resource that has been polluted, contaminated or degraded;
- “applicant” means any person who submits an Application to the Authority for consideration and approval;
- “Authority” means the National Environment Management Authority established under section 7 of the Act;
- “Cabinet Secretary” means the Cabinet Secretary responsible for environmental matters;
- “Committee” means the Sand Harvesting Committee established under this Regulation;
- “Director-General” means the Director-General of the Authority appointed under the Act;
- “environmental emergency” means the sudden-onset of disasters, accidents or unexpected condition or situation resulting from technological or human-induced factors, or a combination of both, that in the reasonable opinion of the Authority, materially or adversely, or is likely to materially or adversely cause severe damage to all or to a significant part thereof, or which presents a physical threat to persons or property or the environment;

The Environmental Management and Coordination (Sand Harvesting Control and Management) Regulations, 2022

“facility” means a place where any of the activities listed is undertaken;

“good environmental practice” means a practice that is in accordance with the provisions of the Act or any other existing law;

"operator" means a registered proprietor of the activities listed;

“proponent” means a person proposing any project, programme or undertaking listed under the Second Schedule of the Act;

“remediation” means rehabilitation, clean-up, restoration, post-care, maintenance and compatible after-use activities;

“Restoration Fund” means the National Environment Restoration Fund established under the Act;

“Tribunal” means the National Environment Tribunal established under the Act;

Application of the Regulations.

3. These Regulations shall apply to all sand harvesting activities in Kenya.

Purpose of the Regulations.

4. The purpose of these Regulations is to ensure—

- (a) sustainable utilization of the sand resource;
- (b) good environmental practices;
- (c) proper management of the environment;
- (d) sustainable development.

PART II— MANAGEMENT OF SAND HARVESTING

Management of Sand Harvesting.

5. The Authority may engage with Lead Agencies and County governments to ensure effective management, sustainable utilization of sand resource and ensure effective implementation of these Regulations.

Functions of the Authority

6. (1) The Authority shall undertake the following functions in respect to the sustainable management of sand harvesting in Kenya

- (a) supervise and coordinate Lead Agencies and County governments to ensure effective management, sustainable utilization of sand resource;
- (b) monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment (access roads,

The Environmental Management and Coordination (Sand Harvesting Control and Management) Regulations, 2022

riverbanks, catchment areas among others) to ensure environmental sustainability.

(c) undertake any other activity, as may be conferred on it under the Act or any other law.

Sand Harvesting Sites.

7. Sand Harvesting shall only be undertaken at sites designated by the County sand harvesting committees.

On farm Sand Harvesting and Lakeshore Sand Harvesting.

8. On-farm Sand harvesting and Lakeshore/Seashore Sand Harvesting shall be carried out as follows:

(a) Scooping/ harvesting of sand should not exceed six (6) feet in depth.

(b) Designated sand collection sites should be at least 50 metres from the riparian setback lines of the riverbanks or dykes for on-farm sand harvesting.

(c) Designated sand collection sites should be at least 50 metres from the riparian setback lines of the lakeshores for sand harvesting.

(d) Scooping /harvesting should be done concurrently with restoration of areas previously harvested. Such restoration will be undertaken with guidance from the County Sand harvesting Committee.

(e) The scooping/harvesting should be strictly open-cast harvesting.

(f) Where underground tunnelling or extraction of sand is to be undertaken, appropriate extraction technology should be applied to safeguard human safety.

Sale of Sand

9. (1) The County Sand Harvesting committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Restrictive Trade Practices Act and the market forces of the day.

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

Transportation of sand

10. 1) Any person who wishes to remove and/ or transport sand will fill an application form available at the NEMA County Environment Office.

2) Upon the approval of the application, the Authority will issue the applicant with a permit as prescribed in Form 1 appearing in the First Schedule upon payment of a prescribed processing fee of Kshs. 3, 000/=.

The Environmental Management and Coordination (Sand Harvesting Control and Management) Regulations, 2022

3) The period of the validity of the permit to remove and/ or transport sand will be indicated in the permit.

4) No person will remove or transport sand, or cause sand to be removed or transported, unless such person is in possession of the relevant permit.

5) Where a vehicle is used for the transport of sand the permit document will remain in the custody of the driver while the sand is on transit.

6) The permit issued will be made available to any public officer upon request for verification.

7) Any person who transports sand without a permit commits an offence and is liable to a fine not exceeding Kshs. 1, 000, 000/= or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

Monitoring
restoration of
designated sand
harvesting sites

11. (1) The Authority with the relevant County Sand Harvesting Committee will monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment (access roads, riverbanks, catchment areas among others) to ensure environmental sustainability.

(2) The monitoring of the rehabilitation of the sand harvesting site shall be done in accordance of the rehabilitation plan submitted by the proponent.

(3) Upon the monitoring of the rehabilitation of the designated sand harvesting sites, the Authority may issue such improvement orders or take such other measures as will ensure compliance with the conditions of the licence and the Act.

Provided that the Authority may also issue a certificate of compliance where the licence conditions/rehabilitation plan have been complied with.

PART III—SAND HARVESTING COMMITTEES

Establishment
and Composition
of the Sand
Harvesting
Committees

12. (1) There is established a County Sand Harvesting and Management Committee consisting of—

i) a chairperson representing the County executive committee member the responsible for matters relating to natural resources;

ii) an officer of the Authority whose area of jurisdiction falls wholly or partially within the county who shall be the Secretary of the Committee;

ii) the chief officer responsible for matters relating to finance;

iii) a representative of sand dealers appointed by the County Executive

The Environmental Management and Coordination (Sand Harvesting Control and Management) Regulations, 2022

- Committee member responsible for natural resources;
- iv) a representative of special interest groups appointed by the County Executive Committee member responsible for natural resource; and
 - v) two representatives of the sand harvesting associations of either gender appointed by the County Executive Committee member responsible for natural resources;
 - vi) a representative of the local water resource users association or Beach Management units
 - vii) a representative of a civil society organization based within the county appointed by the county executive member responsible for natural resources.

(2) In the absence of the chairperson, the committee shall elect a chairperson from its quorum.

(3) The quorum of the Committee for purposes of the meeting shall be five members.

Functions of the Sand Harvesting Committees.

13. (1) The Committee shall

- a) maintain a register of all sand dealers;
- b) advise the County Governor on the structure and operations of sand harvesting and related activities;
- c) ensure that sand harvesting activities are compliant with the Act and any national norms and standards;
- d) ensure sustainable exploitation and utilisation of sand resources and other excavated material;
- e) collaborate with other environmental agencies in management of environment;
- f) formulate environmental conservation programmes in relation to sand harvesting;
- g) recommend to the County Governor designated sand harvesting areas for gazettment;
- h) perform any other functions assigned by the County Governor.

Conduct of the affairs of the Sand Harvesting Committee.

14. The Committee may develop its own procedures for conducting its affairs.

Registered entities

15 All sand harvesting dealers must be registered in either an association, group or cooperatives and must:-

- (i) have a valid certificate of registration by the relevant state agency;
- (ii) have sand related activity as one of the principal objectives of formation;

PART IV – LICENCING PROVISIONS

- Requirement of an Environmental Impact Assessment licence
- 16.** (1) No person shall cause or permit removal of sand from any river, lake, ocean, farm or other land for the purposes of sale unless such a person is issued with a valid Environmental Impact Assessment licence under this Act.
- (2) A person who contravenes this Regulation commits an offence.
- Suspension, cancellation of the licence.
- 17.** The Authority may, after the issuance of an environmental impact assessment licence may suspend, cancel or revoke such licence in accordance with the Act.
- Provision of a deposit bond
- 18.** All proponents for sand harvesting activities shall prior to obtaining an Environmental Impact Assessment licence deposit a deposit bond in accordance with the Act.
- Prohibited sites
- 19** An environmental impact assessment license for sand harvesting cannot be issued in relation to the following sites; -
- a) cemeteries;
 - b) way leaves;
 - c) cultural sites;
 - d) ecological sensitive areas such as gazetted sites; and
 - e) any other areas prohibited by law.
- Environmental Audit
- 20.** All licensed sand harvesting sites shall be subjected to environmental audits in accordance with the provisions of the Act.

PART IV – MISCELLANEOUS PROVISIONS

- Resolution of disputes
- 21.** The County Sand Harvesting Committee shall endeavour to resolve all disputes referred to it in a way that promotes alternative dispute resolution
- Appeals to the National
- 22.** .(1) A person who is aggrieved by—

The Environmental Management and Coordination (Sand Harvesting Control and Management) Regulations, 2022

Environment
Tribunal.

- (a) a decision of the County Sand Harvesting Committee
- (b) the revocation, suspension and cancellation of a license;

- (c) the imposition of any condition, limitation or restriction in the approval conditions pertaining to the licence

may appeal to the Tribunal in accordance with the Act.

Offences and
Penalties

23. A person convicted of an offence under these Regulations whose penalty is not provided for, shall be liable to a fine not exceeding two million or to imprisonment for a period not exceeding four years or to both such fine and imprisonment.

Liability on
transfer.

24. An EIA Licence for a sand harvesting activity may be transferred by the holder to another person and in accordance with the provisions of the Act.

Transitional
Clause.

25. Any person who is carrying out a sand harvesting activity shall, within six months of the commencement of these Regulations comply with the provisions of these Regulations.

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The Environmental Management and Coordination (Sand Harvesting Control and Management) Regulations, 2022

SCHEDULE



FORM 1

APPLICATION TO TRANSPORT SAND (TO BE FILLED BY INDIVIDUAL, REGISTERED GROUP, COMPANY)

APPLICATION NO. NEMA/

PART 1

PERSONAL DETAILS

Name

IDPIN.....

GROUP/COMPANY REGISTRATION

NO.....

Physical Address.....

Tel. Postal address.....

DETAILS ON TRANSPORTATION OF SAND

Destination (Place where sand is being taken)

Detail of the vehicle:

i) Registration No.....

ii) Make and model

iii) Tonnage

SIGNED..... DATE

DIRECTOR GENERAL

Attachments:

i) Copy of motor vehicle logbook

ii) Copy of company/group registration certificate/National ID



FORM 2

PERMIT TO TRANSPORT SAND
(TO BE ISSUED TO SAND TRANSPORTERS)

APPROVAL NO. NEMA/

THIS IS TO CERTIFY THAT

M/S.....ID/PIN/REG.NO.....

.....of P. O. Box

Tel.

Has this day of

(MONTH).....20 (YEAR)

been granted this permit to transport sand in the area as described below:

.....
...

Pursuant to Application No. NEMA/

And whose area of jurisdiction falls under _____ (county) for a period

of

(NOT EXCEEDING THREE (3) MONTHS)

Subject to the following conditions

The Environmental Management and Coordination (Sand Harvesting Control and Management) Regulations, 2022

-
1.
 2.
 3.
 4.

SIGNED & STAMPED**DATE**.....

DIRECTOR GENERAL

KYAKA DRAFT 2022



FORM 3

**SUSPENSION/CANCELLATION/REVOCATION OF PERMIT TO TRANSPORT SAND
(TO BE ISSUED TO SAND TRANSPORTERS)**

NOTICE IS HEREBY GIVEN TO

M/S.....ID/PIN/REG.NO.....

of P. O. Box Tel

whose Permit No. _____ issued on..... (Day) (Month)____ (Year)

to transport sand _____
in _____ (County)

Is hereby suspended for 1 Month

OR

Revoked

OR

Cancelled for 3 months with IMMEDIATE EFFECT for the following reasons:

1.
2.
3.

SIGN:**DATE**

DIRECTOR GENERAL

OFFICIAL STAMP

KYAKA DRAFT 2022

KYAKA DRAFT 2022