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MOMBASA COUNTY BILLS, 2017

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THE MOMBASA COUNTY WASTE MANAGEMENT BILL, 2017**A Bill for**

AN ACT of the County Assembly of Mombasa to regulate, manage and provide for waste management measures for a sustainable environment; to provide for waste management information systems; and for connected purposes.

ENACTED by the County Assembly of Mombasa as follows—

PART I – PRELIMINARY**Short title**

1. This Act may be cited as the Mombasa County Waste Management Act, 2017 and shall come into operation upon publication.

Interpretation

2. In this Act, unless the context indicates otherwise—

“by-product” means a substance that is produced as part of a process that is primarily intended to produce another substance or product and that has the characteristics of an equivalent virgin product or material;

“chief officer” means the Chief Officer for the time being responsible for environment

“clean production” means the continuous application of integrated preventative environmental strategies to processes, products and services to increase overall efficiency and to reduce the impact of such processes, procedures and services on health and the environment;

“commence” means the start of any physical activity, including site preparation or any other activity on the site in furtherance of a waste management activity, but does not include any activity required for investigation or feasibility study purposes as long as such investigation or feasibility study does not constitute a waste management activity;

“container” means a disposable or re-usable vessel in which waste is placed for the purposes of storing, accumulating, handling, transporting, treating or disposing of that waste, and includes bins, bin-liners and skips;

“contaminated” means the presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the environment adversely;

“county” means the County Government of Mombasa;

“decommissioning” in relation to waste treatment, waste transfer or waste disposal facilities, means the planning for and management and remediation of the closure of a facility that is in operation or that no longer operates;

“Department” means the Department for the time being responsible for matters dealing with environment;

“director” means a director appointed under section 6 herein;

“disposal” means the burial, deposit, discharge, abandoning, dumping, placing or release of any waste into, or onto, any land;

“domestic waste” means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential, educational, health care, sport or recreation purposes;

“environment” means the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;

“extended producer responsibility measures” means measures that extend a person’s financial or physical responsibility for a product to the post-consumer stage of the product, and includes—

- (a) waste minimisation programmes;
- (b) financial arrangements for any fund that has been established to promote the reduction, re-use, recycling and recovery of waste;
- (c) 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;

“Executive Member” means the county executive committee member for the time being responsible for matters dealing with environment;

“hazardous waste” means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;

“holder of waste” means any person who imports, generates, stores, accumulates, transports, processes, treats, or exports waste or disposes of waste;

“incineration” means any method, technique or process to convert waste to flue gases and residues by means of oxidation;

“industry” includes commercial activities, commercial agricultural activities, mining activities and the operation of power stations;

“information” means and includes all data, samples, documents and materials pertaining to waste;

“integrated waste management plan” means a plan prepared in terms of section 7;

“investigation area” means an area identified as such in terms of section 31;

“life cycle assessment” means a process where the potential environmental effects or impacts of a product or service throughout the life of that product or service is being evaluated;

“minimisation”, when used in relation to waste, means the avoidance of the amount and toxicity of waste that is generated and, in the event where waste is generated, the reduction of the amount and toxicity of waste that is disposed of;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing wastes so as to effect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is subject to a licence under this Act;

“priority waste” means a waste declared to be a priority waste in terms of section 10;

“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 to utilise articles from the waste stream again for a similar or different purpose without changing the form or properties of the articles;

“storage” means the accumulation of waste in a manner that does not constitute treatment or disposal of that waste;

“treatment” means any method, technique or process that is designed to—

- (a) change the physical, biological or chemical character or composition of waste; or
- (b) remove, separate, concentrate or recover a hazardous or toxic component of waste; or
- (c) destroy or reduce the toxicity of waste, in order to minimise the impact of the waste on the environment prior to further use or disposal;

“waste” means any substance, whether or not that substance can be reduced, re-used, recycled and recovered—

- (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (b) which the generator has no further use of for the purposes of production;
- (c) that must be treated or disposed of;
- (d) that is identified as a waste by the Executive Member by notice in the *Gazette*, and includes waste generated by the mining, medical or other sector, but—
 - (i) a by-product is not considered waste; and
 - (ii) any portion of waste, once re-used, recycled and recovered, ceases to be waste;

“waste disposal 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;

“waste management activity” means any activity listed in or published by notice in the *Gazette* under section 15, and includes—

- (a) the importation and exportation of waste;
- (b) the generation 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 management licence” means a licence issued under this Act;

“waste management services” means waste collection, treatment, recycling and disposal services;

“waste minimisation programme” means a programme that is intended to promote the reduced generation and disposal of waste;

Objects of the Act

3. The objects of this Act are—

- (a) to protect the health, well-being of Mombasa residents and the environment by providing reasonable measures for—
 - (i) minimising the consumption of natural resources;
 - (ii) avoiding and minimising the generation of waste;
 - (iii) reducing, re-using, recycling and recovering waste;
 - (iv) treating and safely disposing of waste as a last resort;
 - (v) preventing pollution and ecological degradation;
 - (vi) securing ecologically sustainable development while promoting justifiable economic and social development;
 - (vii) promoting and ensuring the effective delivery of waste services;
 - (viii) rehabilitate land where contamination presents, or may present, a significant risk of harm to health or the environment; and
 - (ix) achieving integrated waste management reporting and planning;
- (b) to ensure that people are aware of the impact of waste on their health, well-being and the environment.

Duty of the County

4. The County 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 before being safely treated and disposed of.

Waste service standards

5. (1) The County shall exercise its executive authority and perform its duty in relation to waste services, including waste collection, waste storage and waste disposal services, by—

- (a) adhering to all national and county standards;
- (b) integrating its waste management plans with its integrated development plans;
- (c) ensuring access for all to such services;
- (d) providing such services at an affordable price, in line with its tariff policy; and
- (e) ensuring sustainable services through effective and efficient management.

(2) In exercising its executive authority contemplated in subsection (1), the county may amongst other things, set—

- (a) standards for the separation, compacting and storage of solid waste that is collected as part of the county service or that is disposed of at a county waste disposal facility;
- (b) standards for the management of solid waste that is disposed of by the county or at a waste disposal facility owned by the county, including requirements in respect of the avoidance and minimisation of the generation of waste and the re-use, recycling and recovery of solid waste;
- (c) standards in respect of the directing of solid waste that is collected as part of the county service or that is disposed of by the sub-county or at a county waste disposal facility to specific waste treatment and disposal facilities; and
- (d) standards in respect of the control of litter.

PART II— ADMINISTRATION OF WASTE MANAGEMENT**Waste Management Unit**

6. (1) The County Public Service Board shall appoint a Director responsible for co-ordinating matters pertaining to waste management in the County government.

(2) The Director shall designate in writing an officer in the county as the devolved unit waste management officer responsible for co-ordinating matters pertaining to waste management.

(3) Waste management officers must co-ordinate their activities with other waste management activities in the manner set out in the County waste management strategy established in terms of section 7 or determined by the Executive Member by notice in the *Gazette*.

Integrated waste management plan

7. (1) The Department responsible for waste management shall prepare an integrated waste management plan for every five years which shall be implemented in annually.

(2) The Department may incorporate its integrated waste management plan in any relevant County environmental plan.

(3) The Chief Officer may within 30 days of receiving an integrated waste management plan or an amendment to an integrated waste management plan—

- (a) request the department to adjust the plan or the amendment in accordance with the Director's 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 with, or negates the County integrated waste management plan; or
- (b) request the department to comply with a specific provision of this Act relating to the process of drafting or amending integrated waste management plans if the department has failed to comply with the process or provision; or
- (c) approve the plan or amendment.

Reporting on implementation of integrated waste management plan

8. (1) Annual performance reports on the implementation of the integrated waste management plan shall be submitted to the Chief Officer for approval.

(2) The annual performance report that the Department submits in terms of subsection (1) must contain information on the implementation of the integrated waste management plan, including information on—

- (a) the extent to which the plan has been implemented during the period;
- (b) the waste management initiatives that have been undertaken during the reporting period;
- (c) the delivery of waste management services and measures taken to secure the efficient delivery of waste management services, if applicable;
- (d) the level of compliance with the plan and any applicable waste management standards;
- (e) the measures taken to secure compliance with waste management standards;
- (f) waste management awareness campaigns amongst the citizens;
- (g) identified waste management partnership with other inter-governmental agencies;
- (h) public input on implementation of the waste management services and activities;
- (i) training and capacity building activities undertaken;
- (j) the waste management monitoring activities;
- (k) the actual budget expended on implementing the plan;
- (l) the measures that have been taken to make any necessary amendments to the plan; and
- (m) any other requirements as may be prescribed by the Executive Member.

(3) The annual performance report prepared must contain information on the implementation of the county integrated waste management plan, including the information set out in subsection (2) in so far as it relates to the performance of the department.

Waste Management

9. (1) Unless otherwise provided for in this Act, any person who undertakes an activity involving the reduction, re-use, recycling or recovery of waste must, before undertaking that activity, ensure that the reduction, re-use, recycling or recovery of the waste—

- (a) uses less natural resources than disposal of such waste; and

- (b) to the extent that it is possible, is less harmful to the environment than the disposal of such waste.
- (2) The Executive Member may, after consultation with the Executive Member of Trade and Industry and by notice in the *Gazette*, require any person or category of persons to—
 - (a) provide for the reduction, re-use, recycling and recovery of products or components of a product manufactured or imported by that person; or
 - (b) include a determined percentage of recycled material in a product that is produced, imported or manufactured by that person or category of persons.
- (3) Before publishing a notice in terms of subsection (2), or any amendment to the notice, the Executive Member must follow a consultative process.

PART III—WASTE MANAGEMENT MEASURES

Declaration of priority wastes

- 10.** (1) The Executive Member may, by notice in the *Gazette*, declare a waste to be a priority waste if the Executive Member on reasonable grounds believes that the waste poses a threat to health, well-being or the environment because of the quantity or composition of the waste and—
- (a) that specific waste management measures are required to address the threat; or
 - (b) that the imposition of specific waste management measures in respect of the waste may improve reduction, re-use, recycling and recovery rates or reduce health and environmental impacts.
- (2) The Chief Officer may in writing request the Executive Member to declare a waste to be a priority waste in the manner contemplated in subsection (1).
- (3) A notice under subsection (1) or (2) must specify the waste management measures that must be taken.
- (4) The measures contemplated in subsection (4) may include—
- (a) a requirement for identified persons falling within a category of persons to prepare an industry waste management plan in terms of section 24 in respect of the declared priority waste;
 - (b) measures for the management of the priority waste;
 - (c) measures for the minimisation, storage, re-use, recycling and recovering, treatment and disposal of the priority waste;

- (d) requirements for the registration and monitoring of, and reporting on, priority waste; and
- (e) any other measures that the Executive Member believes are necessary to manage the threat that is presented by the waste or to achieve the objects of this Act.

(5) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Executive Member must consult with a person or category of persons that may be affected by the notice, and follow a consultative process.

(6) Subsection (5) need not be complied with if the notice is amended in a non-substantive manner.

Dealing with priority waste

11. (1) No person may import, manufacture, process, sell or export a priority waste or a product that is likely to result in the generation of a priority waste unless that waste or product complies with—

- (a) the waste management measures;
- (b) an industrial waste management plan which has been submitted in accordance with the requirements of a notice; or
- (c) any other provisions of this Act.

(2) No person may recycle, recover, treat or dispose of a priority waste unless it is in accordance with this Act.

General duty in respect of waste management

12. (1) A holder of waste must, within the holder's power, take all reasonable measures to—

- (a) avoid the generation of waste, where such generation cannot be avoided, to—
 - (i) minimise the toxicity
 - (ii) amounts of waste that are generated;
- (b) reduce, re-use, recycle and recover waste;
- (c) where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner;
- (d) manage the waste in such a manner that it does not negatively affect health or the environment or cause a nuisance through noise, odour or visual impacts;

- (e) prevent any employee or any person under his or her supervision from
contravening this Act; and
- (f) prevent the waste from being used for an unauthorised purpose.

(2) Any person who sells a product that may be used by the public and that is likely to result in the generation of hazardous waste must take reasonable steps to inform the public of the impact of that waste on health and the environment.

(3) The measures contemplated in this section may include measures to—

- (a) investigate, assess and evaluate the impact of the waste in question on health or the environment;
- (b) cease, modify or control any act or process causing the pollution, environmental degradation or harm to health;
- (c) comply with this Act;
- (d) eliminate any source of pollution or environmental degradation;
and
- (e) remedy the effects of the pollution or environmental degradation.

Extended producer responsibility

13. (1) The Executive Member may, in order to give effect to the objects of this Act, by notice in the *Gazette*—

- (a) identify a product or class of products in respect of which extended producer responsibility applies;
- (b) specify the extended producer responsibility measures that must be taken in respect of that product or class of products; and
- (c) identify the person or category of persons who must implement the extended producer responsibilities measures contemplated in paragraph (b).

(2) The Executive Member may in a notice under subsection (1) specify—

- (a) the requirements in respect of the implementation and operation of an extended producer responsibility programme, including the requirements for the reduction, re-use, recycling, recovery, treatment and disposal of waste;
- (b) the financial arrangements of a waste minimisation programme;

- (c) the institutional arrangements for the administration of a waste minimisation programme;
- (d) the percentage of products that must be recovered under a waste minimisation programme;
- (e) the labelling requirements in respect of waste;
- (f) that the producer of a product or class of products identified in that notice must carry out a life cycle assessment in relation to the product, in such manner or in accordance with such standards or procedures as may be prescribed; and
- (g) the requirements that must be complied with in respect of the design, composition or production of a product or packaging, including a requirement that—
 - (i) clean production measures be implemented;
 - (ii) the composition, volume or weight of packaging be restricted; and
 - (iii) packaging be designed so that it can be reduced, re-used, recycled or recovered.

(3) Before publishing a notice under subsection (1) or any amendment to the notice, the Executive Member must—

- (a) consult affected producers;
- (b) take into account the County's obligations in terms of any applicable inter-governmental agreements; and
- (c) consider relevant scientific information.

Listed waste management activities

14. (1) The Executive Member may by notice in the *Gazette* publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment.

(2) The Executive Member may amend, alter, remove, add or change the list.

(3) Before publishing a notice under subsection (1) or any amendment to such notice, the Executive Member shall consult the person engaging in the activity that is likely to have a detrimental effect on the environment.

Consequences of listing waste management activities

15. Any waste management activity to be commenced, undertaken or conducted shall be in accordance with the requirements of this Act and a license issued in respect of that activity.

General requirements for storage of waste

16. Any person who stores waste must at least take steps, unless otherwise provided by this Act, to ensure that—

- (a) the containers in which any waste is stored, are intact and not corroded or in any other way rendered unfit for the safe storage of waste;
- (b) adequate measures are taken to prevent accidental spillage or leaking;
- (c) the waste cannot be blown away;
- (d) nuisances such as odour, visual impacts and breeding of vectors do not arise;
- (e) pollution of the environment and harm to health are prevented.
- (f) maintain general cleanliness of the containers and areas surrounding; and
- (g) ensure waste is contained in the container and not overflowing to the area surrounding

Storage of general waste

17. Any person who generates general waste that is collected by a county must place the waste in a container approved, designated or provided by the county for that purpose and in a location approved or authorised by the county.

Waste collection services

18. (1) Waste collection services are subject to—

- (a) the need for an equitable allocation of such services to all people in the County;
- (b) the obligation of persons utilising the service to pay any applicable charges;
- (c) the right of county to limit the provision of general waste collection services if there is a failure to comply with reasonable conditions set for the provision of such services, but where the county takes action to limit the provision of services, the limitation must not pose a risk to health or the environment; and

- (d) the right of the county to differentiate between categories of users and geographical areas when setting service standards and levels of service for the provision of the services.

(2) The county, subject to this Act, and as far as is reasonably possible, provide containers or receptacles for the collection of recyclable waste that are accessible to the public.

Collection of waste

19. No person may collect waste for removal from premises unless such person is—

- (a) a county service provider;
- (b) licensed or authorised by law to collect that waste, where authorisation is required; or
- (c) not prohibited from collecting that waste.

Duties of persons transporting waste

20. (1) The Executive Member may, by notice, require any person or category of persons who transports waste for gain to—

- (a) register with the relevant waste management officer in the Department;
- (b) furnish such information as is specified in that notice or as the waste management officer may reasonably require; and
- (c) provide logs or registers, on demand, showing transportation to the designated landfill.

(2) Any person engaged in the transportation of waste must take all reasonable steps to prevent any spillage of waste or littering from a vehicle used to transport waste.

(3) Where waste is transported for the purposes of disposal, a person transporting the waste must, before offloading the waste from the vehicle, ensure that the facility or place to which the waste is transported, is authorised to accept such waste or at a designated waste disposal site.

(4) Where hazardous waste is transported for purposes other than disposal, a person transporting the waste must, before offloading the waste from the vehicle, ensure that the facility or place to which the waste is transported, is authorised to accept such waste and must obtain written confirmation that the waste has been accepted.

(5) In the absence of evidence to the contrary which raises a reasonable doubt, a person who is in control of a vehicle, or in a position to control the use of a vehicle, that is used to transport waste for the

purpose of offloading that waste, is considered to knowingly cause that waste to be offloaded at the location where the waste is deposited.

Prohibition of unauthorised disposal

21. (1) No person may—

- (a) dispose of waste, knowingly or negligently cause or permit waste to be disposed of, in or on any land, water body or at any facility unless the disposal of that waste is at a designated site; or
- (b) dispose of waste in a manner that is likely to cause pollution, damage, degradation of the environment or harm to health or restrict access use of land.

(2) Subsection (1) need not be complied with if—

- (a) the waste was generated as a result of normal household activities and—
 - (i) the county does not render a waste collection service in that area; and
 - (ii) the most environmentally and economically feasible option for the management of the waste was adopted; or
- (b) the disposal of the waste was done to protect human life or as a result of an emergency beyond that person's control.

Littering

22. (1) An owner of privately owned land to which the general public has access, must ensure—

- (a) that sufficient containers or places are provided to contain litter that is discarded by the public; and
- (b) that the litter is disposed of before it becomes a nuisance, a ground for a complaint or causes a negative impact on the environment.

(2) No person may—

- (a) throw, drop, deposit, spill or in any other way discard any litter into or onto any public place, land, stream, watercourse, street or road, or on any place to which the general public has access, except in a container or a place specifically provided for that purpose; or
- (b) allow any person under that person's control to do any of the acts contemplated in subsection(a).

(3) A person who contravenes this section is guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or imprisonment to a term not exceeding six months, or to both.

Preparation of industry waste management plans by certain persons

23. (1) Where any activity results in the generation of waste that affects more than one sub-county or where such activity is conducted in more than one sub-county, the Executive Member may by written notice require a person, or by notice in the Gazette require a category of persons or an industry, that generates waste to prepare and submit an industry waste management plan to the Executive Member for approval.

(2) The Executive Member may, in respect of any activity within the sub-county concerned that results in the generation of waste, by written notice require a person, or by notice in the Gazette require a category of persons or an industry, that generates waste to prepare and submit an industry waste management plan to Executive Member the for approval.

(3) When exercising a power under subsection (1) or (2), the Executive Member shall consider the following—

- (a) the impact or potential impact of the waste on health and the environment that is generated by the applicable person, category of persons or industry;
- (b) the environmentally sensitive nature of a natural resource or the amount of natural resources that is consumed in the manufacturing or production processes that result in the waste; and
- (c) the manner in which an industry waste management plan may contribute to—
 - (i) the avoidance or minimisation of the generation of waste;
 - (ii) the reduction of negative impacts on health and the environment; and
 - (iii) the conserving of natural resources.

(4) The Executive Member must, before exercising a power under subsection (1) or (2), consult the person, category of persons or industry to be affected.

(5) The Executive Member may give directions that an industry waste management plan must be prepared by an independent person for the cost of the person, category of persons or industry contemplated in subsection (1) or (2).

- (6) (a) A person, category of persons or industry contemplated in subsection (1) or (2) may elect to prepare an industry waste management plan for approval in terms of this section without being required to do so by the Executive Member or .
- (b) When a person, category of persons, or industry submits an industry waste management plan in terms of subsection (a), subsections (3), (4) and (5) apply with the changes required by the context.

Preparation of industry waste management plans by organs of the County

24. (1) The Executive Member may, by notice in writing, require an industry waste management plan to be prepared by the department responsible for environmental affairs, within a stipulated timeframe.

(2) When exercising a power under subsection (1) or (2), the Executive Member shall consider whether—

- (a) the diversity, complexity and competitive nature of the industry concerned would make it impractical for a category of persons other than the department responsible for environmental affairs to prepare the plan;
- (b) the knowledge or experience of the persons who are likely to be affected by the plan in the areas of waste reduction, re-use, recycling and recovery is limited;
- (c) the persons who are likely to be affected by the plan comprise of small, medium or micro enterprises; or
- (d) the person required to prepare a plan in accordance with this section, or to revise or amend the plan in terms of section 29(1), has failed to do so.

(4) The Executive Member may recover the costs of preparing an industry waste management plan from—

- (a) the person contemplated in this section who, after written notice, failed to prepare the plan; or
- (b) the person who is required to prepare, revise or amend the plan in terms of section 27(1), but has failed to do so.

(5) The department may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan.

(6) The department must follow a consultative process unless that plan is being prepared as a result of a person who was required to prepare that plan failing to do so, in which case section 27(2) applies.

Contents of industry waste management plans

25. (1) The Executive Member, in a notice contemplated in section 23 (1) or 24 (1) shall specify the information that must be included in the industry waste management plan.

(2) The information that the Executive Member specifies in terms of subsection (1) may include the following—

- (a) the amount of waste that is generated;
- (b) measures to prevent pollution or ecological degradation;
- (c) targets for waste minimisation through waste reduction, re-use, recycling and recovery;
- (d) measures or programmes to minimise the generation of waste and the final disposal of waste;
- (e) measures or actions to be taken to manage waste;
- (f) the phasing out of the use of specified substances;
- (g) opportunities for the reduction of waste generation through changes to packaging, product design or production processes;
- (h) mechanisms for informing the public of the impact of the waste-generating products or packaging on the environment;
- (i) the extent of any financial contribution to be made to support consumer-based waste reduction programmes;
- (j) the period that is required for implementation of the plan;
- (k) methods for monitoring and reporting; and
- (l) any other matter that may be necessary to give effect to the objects of this Act.

Notification of industry waste management plans

26. (1) Any person required to produce an industry waste management plan in terms of section 24 must take appropriate steps to bring the contents of a proposed industry waste management plan to the attention of the county, interested persons and the public and must follow any directions given by the Executive Member, regarding the consultation process that must be followed.

(2) The department required to prepare an industry waste management plan in terms of section 24 as a result of a person who was required to prepare that plan failing to do so shall bring the contents of a proposed industry waste management plan to the attention of interested persons and the public.

(3) Any comments submitted in respect of an industry waste management plan must be considered by the person responsible for preparing the plan, and a copy of all comments must be submitted to the Executive Member, together with the plan.

Consideration of industry waste management plans

27. (1) The Director, acting in terms of section 23(1) or 24(1), may on receipt of an industry waste management plan—

- (a) approve the plan in writing, with any amendments or conditions, and give directions for the implementation of the plan;
- (b) require additional information to be furnished and a revised plan to be submitted within timeframes specified by the Executive Member for approval;
- (c) require amendments to be made to the plan within timeframes specified by the Executive Member; or
- (d) reject the plan with reasons if it does not comply with the requirements of a notice in terms of section 23(1) or (2) or 24(1) or (2), as the case may be.

(2) Any failure to comply with a requirement referred to in subsection (1)(b) or (c) within the timeframes specified by the Director is regarded as constituting a failure to submit an industry waste management plan.

(3) An industry waste management plan that has been rejected in terms of subsection (1) (d) may be amended and resubmitted to the Director within 30 days.

(4) On receipt of any information or amendments requested in terms of subsection (1)(b) or (c), or any amended industry waste management plan resubmitted in terms of subsection (2) for the first time, the Director shall reconsider the plan.

(5) An approval in terms of subsection (1)(a) shall specify the period for which the approval is issued, which period may be extended by the Director.

Specification of measures to be taken

28. (1) If the Executive Member rejects an industry waste management plan in terms of section 27 more than once, or if any person who is required in terms of section 23(1) or (2) to prepare an industry waste management plan fails to do so, or if a person fails to revise or amend a plan as required by the Executive Member, the Executive Member may, by notice in writing and without any criminal proceedings being affected, specify the waste management measures that must be taken by that person to ensure that that person is not unduly advantaged by the failure to submit a plan.

(2) When specifying the waste management measures to be taken in terms of subsection (1), the Executive Member shall align the measures to be taken with the measures that are set out in any other approved industry waste management plan and industry standards that is related to the activities of the person whose plan has been rejected more than once or who failed to submit a plan.

Review of industry waste management plans

29. (1) An industry waste management plan that has been required by the Executive Member in terms of section 23(1) or 24(1), shall be reviewed at intervals specified in the approval or at intervals specified by the Executive Member by notice in writing or in the *Gazette*.

(2) When specifying a review period for an industry waste management plan prepared by a person, the Director shall take cognisance of the review periods that have been specified in any related waste management licence.

Application of this Act to contaminated land

30. The provisions of this Act apply to the contamination of land where the contamination—

- (a) occurred before the commencement of this Act;
- (b) originated on land other than land referred to in section 34;
- (c) arises or is likely to arise at a different time from the actual activity that caused the contamination; or
- (d) arises through an act or activity of a person that results in a change to pre-existing contamination.

Identification and notification of investigation areas

31. (1) The Executive Member, may after consultation with any other county department concerned, by notice in the *Gazette*, identify as investigation areas—

- (a) land on which high-risk activities have taken place or are taking place that are likely to result in land contamination;
- (b) land that the Executive Member on reasonable grounds believes to be contaminated.

(2) A notice under subsection (1) by the Executive Member applies within the County.

(3) Before publishing a notice under subsection (1), or any amendment to the notice, the Executive Member must follow a consultative process.

(4) An owner of land that is significantly contaminated, or a person who undertakes an activity that caused the land to be significantly contaminated, must notify the Director as soon as that person becomes aware, of that contamination.

(5) The Executive Member may issue a written notice to a particular person identifying specific land as an investigation area if the Executive Member or on reasonable grounds believes that the land is or is likely to be contaminated.

Site assessment and notification of investigation areas

32. (1) The Executive Member may in respect of an investigation area contemplated in section 31—

- (a) cause a site assessment to be conducted in respect of the relevant investigation area; or
- (b) in a notice published under section 31(1) or issued under section 31(5)—
 - (i) direct the owner of the investigation area; or
 - (ii) direct the person who has undertaken or is undertaking the high risk activity or activity that caused or may have caused the contamination of the investigation area, to cause a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report to the Director within a period specified in the notice.

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- (2) (a) A site assessment report must comply with any directions that may have been published or given by the Executive Member in a notice contemplated in section 31(1) or (5) and must at least include information on whether the investigation area is contaminated.
- (b) Where the findings of the site assessment report are that the investigation area is contaminated, the site assessment report shall consider among others the following information—
- (i) how the contamination has already impacted on health or the environment;
 - (ii) whether the substance present in or on the land are toxic, persistent or bio-accumulative or are present in large quantities or high concentrations or occur in combinations;
 - (iii) whether there are exposure pathways available to the substances;
 - (iv) whether the use or proposed use of the land and adjoining land increases or is likely to increase the risk to health or the environment;
 - (v) whether the substances have migrated or are likely to migrate from the land;
 - (vi) whether the acceptable exposure for human and environmental receptors in that environment have been exceeded;
 - (vii) whether any applicable standards have been exceeded; and
 - (viii) whether the area should be remediated or any other measures should be taken to manage or neutralise the risk.

(3) For the purposes of this section, land may be regarded as being contaminated at any particular time if the risk of harm to health or the environment could eventuate only in certain circumstances and those circumstances do not exist at the time that the site assessment is undertaken, but those circumstances are reasonably foreseeable.

Site Assessment Reports

33. (1) On receipt of a site assessment report contemplated in section 32, the Executive Member may decide that—

- (a) the investigation area is contaminated, presents a risk to health or the environment, and must be rehabilitated urgently;

- (b) the investigation area is contaminated, presents a risk to health or the environment, and must be rehabilitated within a specified period;
- (c) the investigation area is contaminated and does not present an immediate risk, but that measures are required to address the monitoring and management of that risk; or
- (d) the investigation area is not contaminated.

(2) If the Executive Member decides that an investigation area is contaminated and requires remediation, the Executive Member shall declare the land to be a remediation site and make such remediation order.

(3) If the Executive Member decides that the investigation area does not present an immediate risk, but that measures are required to address the monitoring and management of that risk, the Executive Member may make an order specifying the measures that must be taken.

(4) Unless otherwise directed, a remediation order under subsection (2), an order under subsection (3) or a directive under section 33 (1) must be complied with at the cost of the person against whom the order or directive is issued.

(5) The Executive Member may amend a remediation order if—

- (a) ownership of the land is transferred and the new owner in writing assumes responsibility for the remediation; or
- (b) new information or evidence warrants amending the order.

Orders to remediate contaminated land

34. (1) A remediation order issued under section 34(2) or an order issued under section 34(3) must describe, to the extent that it is applicable—

- (a) the person who is responsible for undertaking the remediation;
- (b) the land to which the order applies;
- (c) the nature of the contamination;
- (d) the measures that must be taken to remediate the land or the standards that must be complied with when remediating the land;
- (e) the period within which the order must be complied with;
- (f) whether any limitations in respect of the use of the land are imposed;

- (g) the measures that must be taken to monitor or manage the risk; and
- (h) any other prescribed matter.

(2) Before issuing a remediation order or an amended remediation order, the Executive Member must consult with any other county department concerned.

(3) The Executive Member may instruct any official within his or her Department to ensure that the remediation order is complied with.

Transfer of Rehabilitation sites

35. (1) No person may transfer contaminated land without informing the person to whom that land is to be transferred that the land is contaminated and, in the case of a rehabilitation site, without notifying the Executive Member and subject to provisions in section 33(5).

- (2) (a) For the purposes of ensuring compliance with this section, the Executive Member must notify the relevant county organ of any land that has been declared as a remediation site.
- (b) The notification contemplated in subsection (a) must identify the land sufficiently to enable the department to enter the necessary information in or on registers and documents kept by the department.

Contaminated land register

36. (1) The Executive Member shall keep a county contaminated land register of investigation areas at the department, which shall be easily accessible, that includes information on—

- (a) the owners and any users of investigation areas;
- (b) the location of investigation areas;
- (c) the nature and origin of the contamination;
- (d) whether an investigation area—
 - (i) is contaminated, presents a risk to health or the environment, and must be remediated urgently;
 - (ii) is contaminated, presents a risk to health or the environment, and must be remediated within a specified period;
 - (iii) is contaminated and does not present an immediate risk, but measures are required to address the monitoring and management of that risk; or

- (iv) is not contaminated;
- (v) the status of any remediation activities on investigation areas; and
- (vi) restrictions of use that have been imposed on investigation areas.

(2) The Executive Member may change the status of an investigation area contemplated in subsection (1)(d)(i) or (ii) as provided for in subsection (1)(d)(iii) or (iv) if a remediation order has been complied with or other reasonable grounds that justify such a change.

(3) The Director who has identified a rehabilitation site must furnish the relevant information to the Executive Member for recording in the County contaminated land register.

Recognition programmes

37. (1) A waste management officer may establish a programme for the public recognition of significant achievements in the area of waste avoidance, minimisation or other forms of waste management.

(2) The programme contemplated in subsection (1) may contain mechanisms to make the public aware of sound waste management practices.

PART IV— LICENSING OF WASTE MANAGEMENT ACTIVITIES

Licensing authority

38. (1) The department is the licensing authority where—
- (a) unless otherwise indicated by the Executive Member by notice in the *Gazette*, the waste management activity involves the establishment, operation, cessation or decommissioning of a facility at which hazardous waste has been or is to be stored, treated or disposed of;
 - (b) the waste management activity involves obligations in terms of an inter-county obligation, including the importation or exportation of hazardous waste;
 - (c) the waste management activity is to be undertaken by—
 - (i) a county department; or
 - (ii) a statutory body performing an exclusive competence of the county sphere of government;

- (d) the waste management activity will affect more than one county or traverse inter-county boundaries; or
- (e) two or more waste management activities are to be undertaken at the same facility and the Executive Member is the licensing authority for any one of those activities.

Application for waste management licences

39. (1) A person who requires a waste management licence must apply for the licence by lodging an application with the licensing authority, in the prescribed form.

(2) An application for a waste management licence must be accompanied by—

- (a) the prescribed processing fee; and
- (b) such documentation and information as may be reasonably required by the licensing authority.

(3) A person who requires a waste management licence for a waste management activity which involves the treatment of waste by incineration must submit, together with any documentation or information contemplated in subsection (2), information on—

- (a) the types of waste that will be incinerated;
- (b) the existence of any incinerators in the jurisdiction of the licensing authority which are authorised to incinerate waste which is substantially similar to that waste; and
- (c) alternative environmentally sound methods, if any, that could be used to treat that waste.

Criteria for applicants

40. In order to determine whether a person is a fit and proper person for the purposes of an application in terms of this Act, a licensing authority shall take into account all relevant facts, including whether—

- (a) that person has contravened or failed to comply with this Act, the Environment Management and Coordination Act or any other legislation applicable to waste management;
- (b) that person has held a waste management licence or other authorisation that has been suspended or revoked or that person has not complied with a material condition of such waste management licence or authorisation;
- (c) that person is or has been a director or senior manager of a company, firm or entity to whom paragraph (a) or (b) applies;

- (d) that person has the ability to comply with this Act and any conditions subject to which the application may be granted; and
- (e) the management of the waste management activity that is the subject of the application will be in the hands of a technically competent person.

Appointment of persons to manage waste management licence applications

41. (1) The licensing authority may by written notice to an applicant require that applicant, or by notice in the *Gazette* require applicants, at own cost, to appoint an independent and suitably qualified person to manage an application.

(2) If an applicant is required to appoint an independent person, the applicant must—

- (a) take all reasonable steps to verify that the person to be appointed is independent and has expertise in the managing of waste management licence applications; and
- (b) provide the appointed person with access to all information at the disposal of the applicant reasonably required for the application, whether or not that information is favourable to the applicant.

Procedure for waste management licence applications

42. (1) The licensing authority—

- (a) may, by written notice, require the applicant, at the applicant's cost, to obtain and provide it within a specified period with any other information in addition to the information contained in or submitted in connection with the application;
- (b) may conduct its own investigation on the likely effect of the waste management activity on health and the environment;
- (c) must invite written comments from any stakeholder that has an interest in the matter; and
- (d) must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.

(2) The applicant shall—

- (a) describe the nature and purpose of the waste management licence applied for;
- (b) give particulars of the waste management activity, including the place where it is or is to be carried out;

- (c) state where further information on the waste management activity can be obtained;
- (d) stating a reasonable period within which written representations on, or objections to, the application may be submitted, and the address or place where representations or objections must be submitted; and
- (e) contain such other particulars as the licensing authority may require.

Factors to be taken into account by licensing authority

43. When considering an application for a waste management licence, the licensing authority shall take into account all relevant matters and specifically the following;

- (a) the need for, and desirability of, the waste management activity and alternatives considered, including similar waste management activities, if any, that have already been licensed;
- (b) the pollution caused or likely to be caused by the activity that is the subject of the application, whether alone or together with existing operations or pollution and the effect or likely effect of that pollution on the environment, including health, social conditions, economic conditions and cultural heritage;
- (c) the best practicable environmental options available and alternatives that could be taken—
 - (i) to prevent, control, abate or mitigate pollution; and
 - (ii) to protect the environment, including health, social conditions, economic conditions and cultural heritage from harm as a result of the undertaking of the waste management activity;
- (d) any increased health and environmental risks that may arise as a result of the location where the waste management activity will be undertaken;
- (e) any reasons for a decision made in terms of regulations issued under the Environmental Management and Coordination Act, 1999;
- (f) whether the applicant is a fit and proper person as contemplated in section 40;
- (g) the applicant’s submissions;
- (h) any submissions received from state organs, interested persons and the public; and

- (i) any guidelines the licensing authority may wish to issue relevant to the application.

Decision of licensing authority on waste management licence applications

44. (1) The licensing authority may in respect of an application for a waste management licence—

- (a) grant the application;
- (b) reject the application;
- (c) reject the application where it does not comply with the requirements of this Act; or
- (d) review, renew, vary, suspend, revoke the license

(2) A decision to grant an application for a waste management licence in respect of a waste disposal facility is subject to the concurrence of the relevant department.

(3) Any decision by a licensing authority to grant an application for a waste management licence must be consistent with—

- (a) this Act, including the integrated waste management plan prepared in terms of this Act;
- (b) any applicable County environmental management policies and principles,
- (c) any applicable industry waste management plan;
- (d) the objectives of any applicable waste management plan; and
- (e) any regulations or requirements that have been set in terms of this Act or the waste management licence.

(4) After a licensing authority has reached a decision in respect of an application for a waste management licence, it must within 20 days—

- (a) notify the applicant of the decision and give written reasons for the decision;
- (b) if the decision is to grant the application, issue a waste management licence; and
- (c) in a manner determined by the licensing authority, instruct the applicant to notify any persons who have objected to the application of the decision and the reasons for the decision.

(5) An application which is substantially similar to a previous application that has been rejected in terms of subsection (1)(b) may only be resubmitted if—

- (a) the new application contains new and material information not previously submitted to the licensing authority and subject to regulations made; or
- (b) a period of three years has elapsed since the application was lodged.

(6) An application which is rejected in terms of subsection (1)(c) may be amended and resubmitted to the licensing authority for reconsideration.

Issuing of waste management licences

45. (1) A waste management licence is subject to such conditions and requirements—

- (a) as specified in this section;
- (b) as the licensing authority may determine and specify in the licence; and
- (c) as the Director has prescribed for the waste management activity in question.

(2) The licensing authority may issue a single waste management licence where the applicant has applied to undertake more than one waste management activity at the same location.

(3) The issuing of a waste management licence for a waste disposal facility is subject to the inclusion in the licence of any conditions issued by other county department regarding any measures necessary to protect a water resource.

Contents of waste management licences

46. A waste management licence shall contain the following—

- (a) the waste management activity in respect of which it is issued;
- (b) the premises or area of operation where the waste management activity may take place;
- (c) the person to whom it is issued;
- (d) the period from which the waste management activity may commence;
- (e) the period for which the licence is issued and period within which any renewal of the licence must be applied for;

- (f) the name of the licensing authority;
 - (g) the periods at which the licence may be reviewed, if applicable;
 - (h) the amount and type of waste that may be generated, handled, processed, stored, reduced, re-used, recycled, recovered or disposed of;
 - (i) if applicable, the conditions in terms of which salvaging of waste may be undertaken;
 - (j) any other operating requirements relating to the management of the waste; and
 - (k) monitoring, auditing and reporting requirements.
- (2) A waste management licence may—
- (a) specify conditions in respect of the reduction, re-use, recycling and recovery of waste;
 - (b) specify conditions for the decommissioning of a waste disposal facility or cessation of the waste management activity;
 - (c) require the holder of a waste management licence to establish committees for the participation of interested and affected parties;
 - (d) provide that the licence is subject to the holder of a waste management licence providing an environmental management plan, contemplated in the Environmental Management and Coordination Act, 1999 to the satisfaction of the licensing authority;
 - (e) require the holder of a waste management licence to undertake remediation work;
 - (f) specify the financial arrangements that the holder of a waste management licence must make for the undertaking of remediation work during the operation of the waste management activity or on decommissioning of the waste management activity;
 - (g) require the holder of the waste management licence to comply with all lawful requirements of an environmental management inspector carrying out his or her duties in terms of the County Environmental Management Act, including a requirement that the licence holder must, on request, submit to the inspector a certified statement indicating—

- (i) the extent to which the conditions and requirements of the licence have or have not been complied with;
 - (ii) particulars of any failure to comply with any of those conditions or requirements;
 - (iii) the reasons for any failure to comply with any of those conditions or requirements; and
 - (iv) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure; and
- (h) include any other matters which are necessary for the protection of the environment.

Transfer of waste management licences

47. (1) If ownership of a waste management activity for which a waste management licence was issued is transferred, the holder may, with the permission of a licensing authority, transfer the licence to the new owner of the waste management activity.

(2) A person applying for permission to transfer a waste management licence must lodge the application with the licensing authority.

(3) The application must be in the form required by the licensing authority.

(4) An application for the transfer of a waste management licence must be accompanied by—

- (a) the prescribed processing fee; and
- (b) such documentation and information as may be reasonably required by the licensing authority.

(5) If the environment or the rights or interests of other parties are likely to be adversely affected, the Executive Member must, before deciding the application for transfer, request the applicant to conduct a consultation process that may be appropriate in the circumstances to bring the application for the transfer to the attention of relevant organs of state, interested persons and the public.

(6) When considering an application for the transfer of a waste management licence, the licensing authority may request any additional information, and must take into account all relevant matters, including whether the person to whom the licence is to be transferred is a fit and proper person as provided in this Act.

(7) If the licensing authority's decision is to grant permission for the transfer of the waste management licence, the licensing authority—

- (a) must issue an amended licence which reflects the details of the person to whom the licence is being transferred; and
- (b) may make such amendments to the licence as are necessary to ensure that the purpose of any financial arrangements that are required in that licence are given effect to.
- (c) must ensure that the liability incurred by the transferor has been dispensed with or duly transferred to the transferee

Review of waste management licences

48. (1) A licensing authority shall review a waste management licence at intervals specified in the licence, or when circumstances demand that a review is necessary.

(2) The licensing authority shall inform the holder of the waste management licence, in writing, of any proposed review and the reason for such review if the review is undertaken at another interval than is provided for in a waste management licence.

(3) A waste management officer may require the holder of the waste management licence to compile and submit a waste impact report provided in this Act.

Variation of waste management licences

49. (1) A licensing authority may, by written notice to the holder of a waste management licence, vary the licence—

- (a) to prevent pollution;
- (b) for the purposes of achieving waste management standards or minimum requirements;
- (c) to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
- (d) at the written request of the holder of the waste management licence; or
- (e) if it is reviewed in terms of section 48.

(2) The variation of a waste management licence includes —

- (a) the attaching of an additional condition or requirement to the waste management licence;
- (b) the substitution of a condition or requirement;

- (c) the removal of a condition or requirement; or
- (d) the amendment of a condition or requirement.

(3) If a licensing authority receives a request from the holder of a waste management licence in terms of subsection (1)(e), the licensing authority must require the licence holder to take appropriate steps to bring the request to the attention of relevant organs of the county, interested persons and the public if the variation of the licence is to authorise an increase in the environmental impact regulated by the waste management licence.

(4) The publication of a notice may be in at least two newspapers circulating in the area in which the waste management activity authorised by the waste management licence is or is to be carried out.

(5) The notice provided in subsection (4) must—

- (a) describe the nature and purpose of the request;
- (b) give particulars of the waste management activity, including the place where it is, or is to be carried out;
- (c) state a reasonable period within which written representations on, or objections to, the request may be submitted, and the address or place where representations or objections must be submitted; and
- (d) contain such other particulars as the licensing authority may require.

Renewal of waste management licences

50. (1) A waste management licence may, on application by the holder of the licence, be renewed by a licensing authority.

(2) The holder of a waste management licence must, before the expiry date of the licence and within the period specified in the licence, apply for the renewal of the licence in the prescribed form.

(3) An application for the renewal of a waste management licence must be accompanied by the prescribed processing fee.

(4) If the environment or the rights or interests of other parties are likely to be adversely affected, the licensing authority must, before deciding the application, request the applicant to conduct a consultation process.

(5) Where the holder of a waste management licence does not apply for renewal the licence holder remains liable for taking all measures that are necessary to ensure that the cessation of the activity that was

authorised by the licence is done in a manner that does not result in harm to health or the environment.

Revocation and suspension of waste management licences

51. (1) The licensing authority may, by written notice to the holder of a waste management licence—

- (a) revoke or suspend that licence if the licensing authority is of the opinion
 - (i) that the licence holder has contravened a provision of this Act
 - (ii) a condition of the licence and such contravention may have, or is having, a significant effect on health or the environment.

(2) The licensing authority may not revoke or suspend a waste management licence before it has—

- (a) consulted relevant departments of the county;
- (b) afforded the holder of the waste management licence an opportunity to be heard; and
- (c) in the event that the holder has made a submission provided in subsection (b), the licensing authority has considered that submission.

(3) If urgent action is necessary for the protection of the environment, the licensing authority may immediately issue a notice of suspension and, as soon thereafter as is possible, consult with relevant organs of the county and give the holder of the waste management licence an opportunity to make a submission.

Appeals

52. (1) Any person aggrieved by a decision of the Director, in relation to the license, shall appeal in writing against such decision to the Executive Member, within seven (7) days of making of the decision.

(2) The Executive Member shall dispense with the matter within seven (7) days of receipt of the appeal.

(3) Any appeal thereafter shall be to a Court of law.

Surrender of waste management licences

53. (1) A holder of a waste management licence may surrender that licence with the permission of the licensing authority.

(2) In considering a request to surrender a waste management licence, the licensing authority may—

- (a) request such information as it requires to consider the request; and
- (b) require the licence holder to take such steps as it considers necessary for the protection of the environment before accepting that surrender of the licence.

(3) The surrender of a waste management licence does not relieve the holder of the licence of any liability that the licence holder may have incurred whilst he or she was the holder of that licence.

Waste management control officers

54. (1) A waste management officer may require the holder of a waste management licence to designate a waste management control officer, having regard to the size and nature of the waste management activity for which the licence was granted.

(2) This section does not affect the liability of the holder of a waste management licence or the liability of that licence holder to comply with the conditions and requirements of the licence.

PART V—WASTE INFORMATION

Establishment of County waste information systems

55. (1) The Executive Member shall establish a County waste information system for the recording, collection, management and analysis of data and information that shall include—

- (a) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, re-used, recycled, recovered and disposed of; and
- (b) a register of—
 - (i) waste management activities that have been licensed;
 - (ii) the holders of waste management licences authorised to commence the waste management activities recorded in terms of subparagraph (i); and
 - (iii) where the licensed waste management activities are or may be conducted.

(2) The waste information system may include information on—

- (a) the levels and extent of waste management services provided by the county;

- (b) information on compliance with this Act; and
- (c) any other information that is necessary for the purposes of effective administration of this Act.

(3) The County waste information system may be implemented progressively.

Objectives of County waste information system

56. The objectives of the County waste information system is to—

- (a) store, verify, analyse, evaluate and provide data and information for the protection of the environment and management of waste;
- (b) provide information for the development and implementation of any integrated waste management plan required in terms of this Act; and
- (c) provide information to the county and the public—
 - (i) to educate, awareness raising, research and development purposes;
 - (ii) to plan, including the prioritisation of regulatory, waste minimisation and other initiatives;
 - (iii) for obligations to report in terms of any legislation;
 - (iv) for public safety management;
 - (v) on the status of the generation, collection, reduction, re-use, recycling and recovery, transportation, treatment and disposal of waste; and
 - (vi) the impact of waste on health and the environment.

Provision of information

57. (1) The Executive Member may, by notice in writing, require any person or entity to provide, within a reasonable time or on a regular basis, any data, information, documents, samples or materials to the Executive Member that are reasonably required for the purposes of the County waste information system established in this Act or the management of waste.

(2) A notice under subsection (1) may also indicate the manner in which the information shall be provided and, if required, how the information must be verified.

Access to information

58. Information contained in the County waste information system shall be made available to the public by the Executive Member.

PART VI—COMPLIANCE AND ENFORCEMENT

Waste impact reports

59. (1) The Director may, in writing, require any person to submit a waste impact report in a specified form and within a specified period if on reasonable grounds suspects—

- (a) that such person has on one or more occasions contravened or failed to comply with this Act;
- (b) any conditions of a waste management licence or exemption are being contravened;

and that the contravention or failure is likely to have a detrimental effect on health or the environment.

(2) A waste management officer may, in writing, require any person to submit a waste impact report in a specified form and within a specified period if a review of a waste management licence is undertaken in terms of this Act.

(3) Before making a request in terms of subsection (1), the Director shall afford the person to whom the request is to be made an opportunity to show cause why a waste impact report should not be required.

(5) A waste management officer may indicate that a waste impact report to be submitted in terms of subsection (1) or (2) must be compiled by an independent person.

(6) The costs incurred in compiling a waste impact report, including any costs of an independent person, are the liability of the person required to submit the report.

(7) If the person who is required to submit a waste impact report in terms of subsection (1) or (2) fails to submit the report within the specified period, the waste management officer may—

- (a) appoint an independent person to compile the report; and
- (b) recover the cost of compiling the report from the person required to submit the report.

Offences

60. (1) A person who violates the requirement under section 9(1) and 11 is guilty of an offence and liable upon conviction to imprisonment for a term not exceeding one year or by a fine not exceeding three hundred thousand shillings, or both.

(2) A person who violates an order or directive under section 12, 17, 20(2), 20(3), 20(4), 21 and 31(4) is guilty of an offence and liable upon conviction to imprisonment for a term not exceeding two years or by a fine not exceeding one million shillings, or both.

(3) A person who fails to meet the standards set out in section 16 is guilty of an offence and liable upon conviction to imprisonment for a term not exceeding one year or by a fine not exceeding three hundred thousand shillings, or both.

(4) A person who violates the restriction under section 19 is guilty of an offence and liable upon conviction to imprisonment for a term not exceeding one year or by a fine not exceeding three hundred thousand shillings, or both

General penalties

61. Any person who commits an offence against any provision of this Act for which no other penalty is specifically provided is liable, upon conviction to imprisonment for a term not exceeding one year or by a fine not exceeding two hundred and fifty thousand shillings, or both

Regulations

62. (1) The Executive Member may make regulations for the better carrying out of the provisions of this Act.

MEMORANDUM OF OBJECTS AND REASONS

1. PURPOSE

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa Waste Management Bill, 2017 and its direction that the Bill be introduced in the County Assembly.

2. BACKGROUND

The constitution of Kenya, 2010 distributed functions between the national government and county government and paragraph 2 of the Fourth Schedule includes solid waste disposal as among the county functions.

This Bill therefore seeks to put in place a legal framework for waste management in the County.

3. OUTLINE OF THE BILL

Part I

This part provides for the preliminary matters including the definition of terms used in the Bill, citation of the Bill and objects of the proposed legislation.

Part II

This part contains provisions on the administrative aspect of how waste disposal will be managed in the county. It establishes a Waste management unit, an integrated waste management plan and the mechanism for reporting and implementing of the integrated waste management plan

Part III

This part expounds on the measures to be taken in the management of waste. It contains, among others, provision for the declaration of priority waste and how such waste will be dealt with and the general requirement for storage of waste. This part also prescribes the duties of persons transporting waste and prohibits littering and unauthorised disposal of waste.

Part IV

Part V addresses the issue of waste management licenses. It prescribes the licensing authority, the process of application for waste management license, the criteria to be followed by applicants. It also inter alia provides for the factors to be considered by the licensing authority, content of waste management license, how the waste management license should be transferred and how it can be reviewed, varied, renewed or revoked.

Part VI

This part is all about the establishment of a waste management information system and fortifies the right of access to information.

Part VII

Part VIII is exclusively about waste reporting mechanisms.

Part VIII

This is the final part of the Bill and contains general provisions such as offences, the penalties stipulated for the offences and the power of the executive committee member to make regulations for the better carrying out of the objectives of this Bill.

4. RECOMMENDATIONS

The Assembly is requested to—

- (a) note the contents of this memorandum;
- (b) publish the Bill and table it for First Reading;
- (c) that in line with the legislative and constitutional platforms, the relevant house committee commences consultations with the relevant stakeholders and subject the Bill to thorough public participation.
- (d) approve the Mombasa County Waste Management Bill, 2017 annexed to this memorandum;

The enactment of this Bill may occasion additional expenditure of public funds which shall be provided in the estimates.

ZAINAB MUMBA,

Chairperson, Committee on Water, Environment and Natural Resources