

PARLIAMENT
OF KENYA
LIBRARY

EMCA (DEPOSIT BONDS) REGULATIONS, 2025

PAPERS LAID	
DATE	11/ MARCH / 2025
TABLED BY	DMW
COMMITTEE	
CLERK AT THE TABLE	NJATA

LEGAL NOTICE No. 20

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION ACT

(Cap. 387)

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION (DEPOSIT BONDS) REGULATIONS, 2025

ARRANGEMENT OF REGULATIONS

Regulation.

PART I—PRELIMINARY PROVISIONS

- 1—Citation.
- 2—Interpretation.
- 3—Application.
- 4—Purpose of the Regulations.

PART II—MANAGEMENT OF DEPOSIT BONDS

- 5—Management of deposit bonds.
- 6—Maintenance of Register.
- 7—Contents of Register.
- 8—Determination of a Deposit Bond for facilities in operation.
- 9—Review and approval by the
- 10— Authority.
- 11—Non-applicability of the deposit bond.
- 12—Reassessment of a deposit bond.
- 13—Review of the deposit bond payable.
- 14—Refund of a Deposit Bond.
- 15—Confiscation of a deposit bond.

PART III—MISCELLANEOUS PROVISIONS

- 16— Appeals.
- 17—Offences and penalties.
- 18—Liability on transfer.
- 19—Transitional Clause.

SCHEDULES

First Schedule – Activities, industrial plants or undertakings
eligible for deposit bonds

Second Schedule – Deposit Bond Discharge Certificate

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION ACT

(Cap. 387)

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

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION (DEPOSIT BONDS) REGULATIONS, 2025

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Environmental Management and Co-ordination (Deposit Bonds) Regulations, 2025.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“abandoned land” means a degraded environment where the perpetrator is not identifiable;

“affected media” means land, water, air, or any other natural resource that has been polluted, contaminated or degraded;

“applicant” means any person who submits a Deposit Bond Assessment Report to the Authority for consideration and approval;

“bond discharge certificate” means an authorisation issued by the Authority certifying that the remediation works have met all completion criteria, specifications and standards for the refund of a deposit bond;

“Committee” means the Technical Advisory Committee established under regulation 18;

“competent expert” means a multi-skilled team having knowledge in environmental valuation, law or actuary and led by an environmental assessment expert or firm licensed by the Authority;

“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;

“facility” means a place where any of the activities set out in the First Schedule is undertaken;

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

“industrial plant” means any plant undertaking manufacturing, engineering or trade activities as set out in the First Schedule;

“notice of confiscation” means a notice issued by the Authority for the purposes of confiscation of a deposit bond;

“operator” means a registered proprietor of the any of the activities set out in the First Schedule;

“proponent” means a person proposing or executing any project, programme or undertaking set out in the First Schedule;

“Register” means a Deposit Bond Register maintained under these Regulations; and

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

3. These Regulations shall apply to activities, industrial plants and undertakings set out in the First Schedule which have or are likely to have adverse effects on the environment. Application.

4. The purpose of these Regulations is to prescribe the procedure for managing a deposit bond. Purpose of the Regulations.

PART II—MANAGEMENT OF DEPOSIT BONDS

5. (1) The Director-General shall be responsible for the management of deposit bonds. Management of deposit bonds.

(2) The Director-General shall, with respect to the management of deposit bonds—

- (a) prepare and maintain a register of activities, industrial plants and undertakings that require deposit bonds;
- (b) review the terms of reference developed by the competent experts in carrying out a deposit bond assessment;
- (c) review the Deposit Bond Assessment Report to determine the adequacy and reliability of deposit bonds payable to the Restoration Fund;
- (d) issue approvals on Deposit Bonds Assessment Reports and notices of the deposit bonds payable to the persons liable to pay the deposit bond;
- (e) make recommendations to the Cabinet Secretary on the prescription of payments of deposit bonds by the Cabinet Secretary responsible for finance, pursuant to section 28(2) of the Act;
- (f) undertake a joint inspection and monitoring with the relevant county government or lead agency to determine compliance with good environmental practices in line with the approval on terms and conditions based on the Deposit Bond Assessment Report;
- (g) receive periodic status reports of any on-going remediation work from the operators;
- (h) prepare annual reports on deposit bonds received, refunded, confiscated, status of sites remediated and matters which

- have been determined or are pending before the Tribunal;
and
- (i) undertake any other activity, as may be conferred on it under the Act or any other law.
6. Pursuant to section 28(1) of the Act, the Authority shall keep and maintain a Deposit Bonds Register of activities, industrial plants or undertakings which are likely to have adverse effect on public health and the environment. Maintenance of Register.
7. The Register referred to under regulation 6 shall contain the following particulars— Contents of Register.
- (a) name of the facility;
 - (b) location of the facility;
 - (c) name and address of the contact person;
 - (d) the activity being undertaken at the facility;
 - (e) Integrated Environmental Assessment licence number and, where relevant, Environmental Audit reference number;
 - (f) initial deposit bond payable;
 - (g) adjusted deposit bond payable; and
 - (h) any other relevant information.
8. (1) Each project proponent shall ensure that a Deposit Bond Assessment Report is prepared on the any project set out in the First Schedule likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices Determination of a Deposit Bond for facilities in operation.
- (2) The Deposit Bond Assessment Report prepared under sub-regulation (1) shall be prepared by a competent expert in accordance with terms of reference approved by the Authority.
- (3) A Deposit Bond Assessment Report shall include—
- (a) the proposed location of the project;
 - (b) site characteristics for a facility in operation;
 - (c) a clear description of the activities being undertaken at the facility;
 - (d) evidence of integrated environmental assessment or environmental audit where applicable;
 - (e) the environmental management systems in place;
 - (f) the existing environmental levies or other insurance covers that the facility may have;
 - (g) a remediation, post-care and maintenance plan, including the required standards of remediation works, the activities involved, time frame, cost and the monitoring mechanism;

- (h) an analysis of the amount of deposit bond payable in respect of the projected cumulative risks of the project activities to the recipient environment and affected media and persons as shall be prescribed by the Cabinet Secretary responsible for matters relating to finance on the recommendation of the Cabinet Secretary; and
- (i) details of the operator or proponent who shall be responsible for the execution and completion of remediation works.

(4) A person who provides information or data which is false, incorrect or intended to mislead in relation to this regulation, commits an offence.

9. (1) The Authority shall, in consultation with the relevant lead agencies, review and make a decision on the Deposit Bond Assessment Report based operational standards set by the Authority.

Review and approval by the Authority.

(2) Upon review of the report under sub-regulation (1), the Authority shall, in writing, communicate its decision—

- (a) to the operator of the facilities in operation, within thirty days of the submission of the report; and
- (b) to the proponent of a proposed project, within thirty days after the issuance of the Integrated Environmental Assessment Licence.

(3) Where the Authority is satisfied with the contents of the Deposit Bonds Assessment Report, the Authority shall—

- (a) issue an approval of the Deposit Bond Assessment Report; and
- (b) issue a notice of the deposit bond payable.

(4) Where the Authority is not satisfied with the adequacy or reliability of information provided in the Deposit Bond Assessment Report, the Authority may—

- (a) make a decision on the basis of the Authority's estimate of the deposit bond amount; or
- (b) undertake a reassessment of the deposit bond payable.

(5) The project proponent shall pay the deposit bond notified under sub-regulation (3) to the Restoration Fund within a period of thirty days of the date of the notice or such other period depending on the complexity of the operation, regularity and quantum of payment required.

10. The payment of a deposit bond shall not operate as—

Non- applicability of the deposit bond.

- (a) an exemption for non-compliance to applicable provisions of the Act; and
- (b) a defence to any civil action or to prosecution that may be brought or preferred against a proponent or operator in

respect to the manner in which an activity, industrial plant or undertaking is executed, managed or operated.

11. The Authority may, at any time after the bond has been paid but before the completion of the affected project, reassess the amount payable as deposit bond, if—

Reassessment of a deposit bond.

- (a) there has been an error in the original assessment;
- (b) there is a substantial change or modification in an activity, industrial plant or undertaking or in the manner in which an activity, industrial plant or undertakings is being operated;
- (c) an activity, industrial plant or undertaking poses an environmental threat requiring greater remediation interventions which could not be reasonably foreseen at the time of the original assessment was approved;
- (d) it is established that the information or data given by the applicant was false, inaccurate or intended to mislead; or
- (e) the deposit bond amount has been partially or fully utilised before the completion of the affected project.

12. (1) The Authority may conduct a review of the deposit bond payable under these Regulations to ensure adequacy of the deposit bond with regard to the approved remediation plan.

Review of the deposit bond payable.

(2) The review under sub-regulation (1) may be—

- (a) conducted depending on the complexity of the operation, long-term care and progressive remediation works required; or
- (b) carried out every three years, or any other period as may be approved by the Authority.

13. (1) The Authority shall, pursuant to section 28(3) of the Act, issue a refund of a deposit bond amount after inspecting an operation and establishing that the operator has observed good environmental practices.

Refund of a Deposit Bond.

(2) An operator shall within sixty days of nearing completion of an operation, notify the Authority when an operation is approaching closure and end of remediation works by submitting a remediation report demonstrating the completion of the remediation works is done in accordance with the parameters set out under sub-regulation (4).

(3) The Authority shall inspect the facility within sixty days from the date of submission of the remediation report under sub-regulation (2), to ensure compliance with the conditions, specifications and standards set out in the approval document, annual environmental audit reports, remediation, post care and maintenance plans and initiate the processing of a bond discharge certificate as set out in the Second Schedule.

(4) The Authority shall take into account the following factors during an inspection—

- (a) the public safety of the site;
- (b) the stability of the site under a range of seasonal conditions representative of that climate;
- (c) the ecological system recovery at the site;
- (d) the sampling and analysis of applicable parameters;
- (e) the state of recovery in comparison to the surrounding area;
- (f) the aesthetic value of the site;
- (g) the time scales to meet the required remediation level;
- (h) the compliance history of the operator;
- (i) the compatible after-use plans of the site;
- (j) the involvement of stakeholders, project affected populations and surrounding community; and
- (k) any other factor as may be determined by the Authority.

(5) The deposit bond determined in accordance with these Regulations shall be refunded without interest to the operator within six months after issuance by the Authority of the bond discharge certificate.

14. (1) The Authority may, pursuant to section 28(4), confiscate a deposit bond where the operator breaches the provisions of the Act and these Regulations.

Confiscation of a deposit bond.

(2) Where the Authority intends to confiscate a deposit bond, the Authority shall issue a notice, in writing, of the intended confiscation to the operator.

(3) The operator shall be required to respond to the notice under sub-regulation (2) within fourteen days of receipt of the notice.

(4) Where the operator fails to respond to the notice as required under sub-regulation (3), the Authority may confiscate the deposit bond without any further reference to the operator.

(5) Where the Authority receives a response from the operator under sub-regulation (3), the Authority shall grant the operator an opportunity to be heard and in this regard, schedule a date for the hearing that shall be at least fourteen days after the response by the operator.

(6) The decision of the Authority shall be communicated to the operator within fourteen days from the date of the hearing.

(7) Upon hearing a matter under this regulation, the Authority may—

- (a) issue a notice requiring the operator to restore the affected media within the time specified by the Authority;
- (b) where the operator fails to remediate the affected media to the satisfaction of the Authority, the Authority shall

confiscate and within sixty days initiate the process to use the deposit towards restoration of the affected media and thereafter prepare and publish a financial report in the *Gazette* on how the funds in the deposit bond were utilised; or

- (c) cancel any license issued to the operator under the Act on the advice of the Committee, where the operator has become a habitual offender.

(8) Where the cost of remediation exceeds the deposit bond amount confiscated, the balance of such costs shall be recovered from the operator.

(9) Where the Authority confiscates a deposit bond and the operator is dissatisfied with the confiscation, the operator may, pursuant to section 28(5) of the Act, refer the matter to a competent court of law within sixty days of the decision of the Authority.

15. (1) A person may appeal to the Tribunal or competent court of law in accordance with the provisions of the Act if that person is aggrieved by— Appeals.

- (a) the determination of the amount of the deposit bond payable under these Regulations;
- (b) the confiscation of a deposit bond by the Authority;
- (c) the refundable amount of a deposit bond;
- (d) the imposition by the Authority of any condition, limitation or restriction in the approval condition pertaining to deposit bond; or
- (e) any other decision made by the Authority relating to the payment of a deposit bond by that person.

PART III—MISCELLANEOUS PROVISIONS

16. A person who commits an offence under these Regulations for which no specific penalty has been provided shall be liable, on conviction, to the penalty specified under section 144 of the Act. Offences and penalties.

17. The transferee as well as the transferor of an undertaking set out in the First Schedule shall be liable for all liabilities and the observance of all obligations imposed by the transfer in respect of the operation transferred, but the transferor shall not be responsible for any future liabilities or any obligations so imposed with regard to the operation from the date of the transfer. Liability on transfer.

18. (1) A person who is carrying out an activity, industrial plant or undertaking set out in the First Schedule shall, within twelve months of the commencement of these Regulations, comply with the provisions of these Regulations. Transitional Clause.

(2) A person who fails to comply with sub-regulation (1) commits an offence.

FIRST SCHEDULE

(rr. 2, 3, 8(1), 18(1))

Activities, industrial plants and undertakings eligible for deposit bonds

The activities, industrial plants or undertakings that have or are likely to have significant adverse effects on the environment when operated in a manner not in conformity with good environmental practices and would attract the payment of a deposit bond, include the following—

1. Extractive Activities
 - (a) exploration of oil and gas activities (onshore and offshore);
 - (b) exploitation or extracting of oil and gas activities (onshore and offshore);
 - (c) underground and open cast mining operations including gas and solid minerals; or
 - (d) quarrying.
2. Industrial Plants
 - (a) breweries;
 - (b) distillery;
 - (c) Sugar factories;
 - (d) Paper pulping and recycling;
 - (e) batteries manufacturing and recycling;
 - (f) Pharmaceutical industries;
 - (g) steel mills;
 - (h) tanneries;
 - (i) cement industries;
 - (j) chemical and petrochemical industries;
 - (k) storage facilities for petroleum products including depots and petroleum service stations; or
 - (l) refineries of petroleum products.
3. Agricultural
Large scale horticultural and flower farms exceeding 100 hectares
4. Transportation
 - (a) transportation of petroleum products;
 - (b) transportation of hazardous chemicals.
where transportation is part of the activities of the main facility operator, this will be covered by the deposit bond paid by the operator for the facility.
5. Infrastructure projects
 - (a) Power generation plants—

- (i) geothermal power plants;
 - (ii) coal plants;
 - (iii) nuclear power plant;
 - (iv) Storage and multipurpose dams of more than 500,000 cubic metres; or
 - (v) thermal power plants.
- (b) Pipelines —
- (i) operation of a main transmission pipeline for liquid (other than water) or gas; or
 - (ii) operation of sewerage reticulation systems.
- (c) Management and disposal of waste—
- (i) disposal of hazardous waste through incineration, treatment, re-processing, recycling and destruction;
 - (ii) sanitary landfills and waste disposal sites; or
 - (iii) publicity and advertisement materials including posters, photographs, banners, papers and any other materials incidental to campaigns.
6. Introduction of alien or invasive species of fauna and flora into ecosystems.
 7. Introduction and testing of genetically modified organisms.
 8. Refugee camps.



STATUTORY INSTRUMENTS ACT, CAP 2A

CERTIFICATE OF COMPLIANCE

UNDER THE ENVIRONMENTAL MANAGEMENT AND

COORDINATION ACT, CAP 387

**THE ENVIRONMENTAL MANAGEMENT AND COORDINATION
(DEPOSIT BONDS) REGULATIONS, 2025**

In accordance with the powers conferred to a regulation-making authority by section 7(4) of the Statutory Instruments Act, Cap. 2A and pursuant to section 28 and 147 of the Environmental Management and Coordination Act, Cap. 387, I, the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry DO HEREBY CERTIFY that a Regulatory Impact Assessment has been undertaken on the proposed Environmental Management and Coordination (Deposit Bonds) Regulations, 2025 and that:

- a) The aforesaid Environmental Management and Coordination (Deposit Bonds) Regulations, 2025 meet the requirements relating to Regulatory Impact Statement in the Statutory Instruments Act Cap. 2A and that the guidelines therein have been complied with; and
- b) In my opinion, the Regulatory Impact Statement adequately assesses the likely impact of the Environmental Management and Coordination (Deposit Bonds) Regulations, 2025.

Dated this 25th Day of February 2025.

HON. ADEN BARE DUALE, EGH
CABINET SECRETARY
MINISTRY OF ENVIRONMENT, CLIMATE CHANGE & FORESTRY

67

3

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (DEPOSIT BONDS) REGULATIONS, 2015

PART I

Name of the Statutory Instrument	:	The Environmental Management and Coordination (Deposit Bonds) Regulations, 2015
Name of the Parent Act	:	The Environmental Management and Coordination Act, 1999
		The Environmental Management and Coordination (Amendment) Act, 2015
Enacted Pursuant to	:	Sections 28 and 147 of the Environmental Management and Coordination Act, 1999
Name of the Ministry/ Department	:	Ministry of Environment, Natural Resources and Regional Development Authorities
Commenced on	:	<i>(Date to be inserted)</i>
Terminated on	:	<i>(Date to be inserted)</i>

PART II

1 Purpose of the Statutory instrument

1.1 The purpose of this Regulation is to ensure:

- (a) good environmental practice;
- (b) adequate remediation be achieved without adversely affecting economic viability;
- (c) compliance with remediation obligations;
- (d) availability of funds for remediation;
- (e) reduce or eliminate financial risk to the tax payer associated with the environmental restoration after the end of the life cycle of the project and
- (f) sustainable development.

2. Legislative Context

- 2.1 This Statutory Instrument is enacted pursuant to Sections 28 and 147 of the Environmental Management and Coordination Act, No.8 of 1999 and the EMC (Amendment) Act, 2015.

The Regulation seeks to operationalise Section 28 of the Act, 1999 by establishing a register of activities, industrial plants and undertakings which have, or are most likely to have significant impacts on the environment, when operated in a manner that is not in conformity with good environmental practice.

It is a form of Environmental Financial Assurance that enhances self-regulation by operators of activities, industrial plants and undertakings that might adversely affect the environment. It will therefore promote remedial responsibility of the operators in relation to the environment.

It is a guarantee that the refundable deposit bond is able to finance remediation of the adverse impacts of the activities, industrial plants and undertakings.

The Regulation aims to reduce financial risk to the taxpayer by ensuring that funds are available to undertake environmental restoration activities after the end of the economic life of a project or activity.

3. Policy Background

- 3.1 The policy objective of the Environmental Management and Coordination Act, 1999 is to provide for the establishment of an appropriate legal and institutional framework for the management of the environment.

The Environment Management and Coordination and Act of 1999 has provided for Environmental Deposit Bonds under Section 28. This section has however not been operationalised to date hence the need for this Regulation.

Kenya's major environmental incidents profile is dominated by abandoned quarries and mine sites, industrial pollution, invasion by alien species, impacts of large scale infrastructure projects and accidents in the transport sector associated with transportation of hazardous products. Despite the existence of the National Disaster Operational Centre, emergency services are yet to be fully integrated and with limited resources, many incidents in Kenya escalate to such an extent that they become major catastrophic events.

Consequently, this Regulation fulfils the policy objectives of the Act by establishing a framework for the management of all aspects of the deposit bonds.

4. Consultation outcome

- 4.1 The taskforce involved in the development of this Regulation was drawn from

SECOND SCHEDULE

DEPOSIT BOND DISCHARGE CERTIFICATE

(r16(3))

Deposit Bond Discharge Certificate No.....
Deposit Bond Assessment Report/Approval No.....

Issued to (Name of proponent or operator).....

Address.....

Nature of the operation

.....

Physical Location (Plot No. L.R. No., GPS coordinates) of the
operation.....

.....

The Authority is satisfied that the remediation works undertaken by the proponent or operator is compliant with the conditions, specifications and standards as set out in the remediation, post care and maintenance plan and has therefore observed good environmental practices.

The Authority shall issue a refund of a deposit bond amount (KShs)

.....

Date issued:

Signature
Director General
(Seal)

Made on the....., 20.....

Soipan Tuya,
Cabinet Secretary,
Ministry of Environment, Climate Change and Forestry.

- (iv) thermal power plants.
- (b) Pipelines —
 - (i) operation of a main transmission pipeline for liquid (other than water) or gas; or
 - (ii) operation of sewerage reticulation systems.
- (c) Management and disposal of waste—
 - (i) disposal of hazardous waste through incineration, treatment, re-processing, recycling and destruction;
 - (ii) sanitary landfills and waste disposal sites; or
 - (iii) publicity and advertisement materials including posters, photographs, banners, papers and any other materials incidental to campaigns.
- 6. Introduction of alien or invasive species of fauna and flora into ecosystems.
- 7. Introduction and testing of genetically modified organisms.
- 8. Refugee camps.

FIRST SCHEDULE

(r3, r 10, r23, r24)

List of activities, industrial plants or undertakings eligible for deposit bonds

The activities, industrial plants or undertakings that have or are likely to have significant adverse effects on the environment would attract deposit bonds and include but are not limited to the following—

1. Extractive Activities

- (a) exploration of oil and gas activities (onshore and offshore);
- (b) exploitation or extracting of oil and gas activities (onshore and offshore);
- (c) underground and open cast mining operations including gas and solid minerals; or
- (d) quarrying.

2. Industrial Plants

- (a) breweries;
- (b) distillery;
- (c) Sugar factories;
- (d) Paper pulping and recycling;
- (e) batteries manufacturing and recycling;
- (f) Pharmaceutical industries;
- (g) steel mills;
- (h) tanneries;
- (i) cement industries;
- (j) chemical and petrochemical industries;
- (k) storage facilities for petroleum products including depots and petroleum service stations; or
- (l) refineries of petroleum products.

3. Agricultural

Large scale horticultural and flower farms exceeding 100 hectares

4. Transportation

- (a) transportation of petroleum products;
 - (b) transportation of hazardous chemicals.
- where transportation is part of the activities of the main facility operator, this will be covered by the deposit bond paid by the operator for the facility.

5. Infrastructure projects

- (a) Power generation plants—
 - (i) geothermal power plants;
 - (ii) coal plants;nuclear power plant;
 - (iii) Storage and multipurpose dams of more than 500,000 cubic metres or

PART VI – APPEALS

Appeals to the
National
Environment
Tribunal.

- 21.(1) A person who is aggrieved by—
- (a) the determination of the amount of the deposit bond payable;
 - (b) the confiscation of a Deposit Bond;
 - (c) the refundable amount of deposit bond;
 - (d) the imposition of any condition, limitation or restriction in the approval condition pertaining to deposit bond; or
 - (e) any other decision made by the Authority pertaining to deposit bonds,
- may appeal to the Tribunal in accordance with the Act.

PART VII – MISCELLANEOUS PROVISIONS

Offences and
penalties.

22. A person convicted of an offence under these Regulations whose penalty is not provided for, shall be liable to a fine of not more than four million shillings or to imprisonment for a period not exceeding twenty four months or to both such fine and imprisonment.

Liability on
transfer.

23. The transferee as well as the transferor of an operation listed in the First Schedule shall be liable for all liabilities and the observance of all obligations imposed by the transfer in respect of the operation transferred, but the transferor shall not be responsible for any future liabilities or any obligations so imposed with regard to the operation from the date of the transfer.

Transitional
Clause.

24. (1) A person who is carrying out an activity, industrial plant or undertaking which is listed under the First Schedule shall, within twelve months of the commencement of these Regulations comply with the provisions of these Regulations.

(2) A person who fails to comply with regulation 24(1) commits an offence.

confiscated, the balance of such costs shall be recovered from the operator.

(9) Where the Authority confiscates a deposit bond and the operator is dissatisfied with the confiscation, the operator may appeal to the Tribunal within sixty days of the decision of the Authority.

(10) The Authority may, in case of an emergency and after notification to the operator, undertake such measures to mitigate the damage to the environment and thereafter recover the cost of remediation from the deposit bond and the balance of such costs shall be recovered from the operator.

PART V – TECHNICAL ADVISORY COMMITTEES

Establishment and composition of Technical Advisory Committees.

18. (1) The Authority may set up Technical Advisory Committees to advise it on matters related to Deposit Bonds.

(2) The Committees shall consist of not less than five multi-disciplinary specialists.

(3) The Committees may with the approval of the Director General co-opt any other person with relevant expertise as may be required.

(4) There shall be paid to the members of the Committee such remuneration as the Board of the Authority on the advise of the Salaries and Remuneration Commission shall determine.

Functions of the Technical Advisory Committees.

19. The functions of the Committees shall be to—

(a) advise the Authority on specific policy initiatives concerning deposit bonds;

(b) advise the Authority on determination as to the adequacy and reliability of deposit bonds payable to the Restoration Fund;

(c) advise the Authority on sector specific remediation standards and standard rates to be used to calculate, determine and reassess the amount of deposit bond payable; and

(d) undertake any other function as may be referred by the Authority.

Conduct of the Affairs of the Committees.

20. The Authority shall formulate the terms of reference and rules of procedure of the Committees.

(k) any other factor as may be determined by the Authority.

(5) The deposit bond determined in accordance with regulation 11 shall be refunded without interest to the operator within six months after issuance by the Authority of the bond discharge certificate.

Confiscation of a
deposit bond.

17. (1) The Authority may confiscate a deposit bond where the operator breaches the provisions of the Act.

(2) Where the Authority intends to confiscate a deposit bond, the Authority shall issue a notice of confiscation to the operator.

(3) The operator shall respond to the notice of confiscation referred to in paragraph (2) within fourteen days of receipt of the notice.

(4) Where the operator fails to respond to the notice as required under paragraph (3), the Authority shall confiscate the deposit bond without any further reference to the operator.

(5) Upon receiving a response from the operator under paragraph (3), the Authority shall grant the operator an opportunity to be heard.

(6) The decision of the Authority shall be communicated to the operator within fourteen days from the date of the hearing.

(7) Upon hearing a matter under this regulation, the Authority may—

(a) issue a notice requiring the operator to restore the affected media within the time specified by the Authority;

(b) where the operator fails to remediate the affected media to the satisfaction of the Authority, the Authority shall confiscate and within sixty days initiate the process to use the deposit towards restoration of the affected media and thereafter prepare and publish a financial report in the Kenya gazette on how the funds in the deposit bond were utilised;
or

(c) cancel any license issued to the operator under the Act on the advice of the Committee, where the operator has become a habitual offender.

(8) Where the cost of remediation exceeds the deposit bond amount

of the deposit
bond payable.

remediation plan.

(2) The periodic review under paragraph (1) may be—

- (a) conducted depending on the complexity of the operation, long-term care and progressive remediation works required;
- (b) carried out every three years, or any other period as may be informed by the Authority.

Refund of a
Deposit Bond.

16. (1) The Authority shall issue a refund of a deposit bond amount after establishing that the operator has observed good environmental practices.

(2) An operator shall within sixty days (60) notify the Authority when an operation is approaching closure and end of remediation works by submitting a remediation report demonstrating the completion of the remediation works is done in accordance with paragraph (4).

(3) The Authority shall inspect the facility within sixty days from the date of submission of the remediation report under paragraph (2) to ensure compliance with the conditions, specifications and standards set out in the approval document, annual environmental audit reports, remediation, post care and maintenance plans and initiate the processing of a bond discharge certificate as set out in the Second Schedule.

(4) The Authority shall take into account the following factors during inspection—

- (a) the public safety of the site;
- (b) the stability of the site under a range of seasonal conditions representative of that climate;
- (c) the ecological system recovery at the site;
- (d) the sampling and analysis of applicable parameters;
- (e) the state of recovery in comparison to the surrounding area;
- (f) the aesthetic value of the site;
- (g) the time scales to meet the required remediation level;
- (h) the compliance history of the operator;
- (i) the compatible after-use plans of the site;
- (j) the involvement of stakeholders, project affected populations and surrounding community; and

Non-
applicability of
the deposit bond.

12. The payment of a deposit bond to the Authority shall—

- (a) not be an exemption for non-compliance to applicable provisions of the Act, Regulations and Standards; and
- (b) not be a defence to any civil action or to prosecution that may be brought or preferred against a proponent or operator in respect to the manner in which an activity, industrial plant or undertaking is executed, managed or operated.

Reassessment of
a deposit bond.

13.(1) The Authority may at any time reassess the amount payable as deposit bond, if—

- (a) there has been an error in the original assessment;
- (b) there is a substantial change or modification in an activity, industrial plant or undertaking or in the manner in which an activity, industrial plant or undertakings is being operated;
- (c) an activity, industrial plant or undertaking poses an environmental threat requiring greater remediation interventions which could not be reasonably foreseen at the time of the original assessment was approved;
- (d) it is established that the information or data given by the applicant was false, inaccurate or intended to mislead; or
- (e) the deposit bond amount has been partially or fully utilised during an emergency situation to remediate the affected media.

(2).

Annual
Adjustment
Notice.

14. (1) The Authority shall liaise with the relevant government agency on the inflation rate to inform the annual adjustments of a deposit bond.

(2) The Authority shall prepare an adjustment notice and inform the affected operator to pay the additional bond.

(3) The adjustment notice prepared under paragraph (2) shall specify the following—

- (a) the date of the notice;
- (b) the current deposit bond amount; and
- (c) the additional deposit bond amount which shall be paid within a period of thirty days after the date of the notice or any other period as may be informed by the Deposit Bond Assessment Report.

Periodic review

15. (1) The Authority may conduct a periodic review of the deposit bond payable to ensure adequacy of the deposit bond pursuant to the approved

- (i) details of the operator or proponent who will be responsible for the execution and completion of successful remediation works.

(5) A person who provides information or data which is false, incorrect or intended to mislead commits an offence.

Review and approval by the Authority.

11. (1) The Authority shall, in consultation with the relevant lead agencies review the Deposit Bond Assessment Report based on set criteria and make a decision on the same.

(2) On review of the report under paragraph (1)—

(a) for the facilities in operation, the decision of the Authority together with the reasons thereof, shall be communicated to the operator within thirty days of the submission of the report.

(b) for proposed projects, the decision of the Authority together with the reasons thereof, shall be communicated to the proponent within thirty days after the issuance of the integrated environmental assessment licence.

(3) Where the Authority is satisfied with the content of the Deposit Bonds Assessment Report, the Authority shall—

(a) issue an approval on terms and conditions, as may be appropriate, of the Deposit Bond Assessment Report; and

(b) issue a notice of the deposit bond payable.

(4) If the Authority is not satisfied with the adequacy or reliability of information stated in the Deposit Bond Assessment Report, the Authority may—

(a) make a decision on the basis of the Authority's estimate of the deposit bond amount; or

(b) consider to undertake a reassessment of the deposit bond payable.

(5) The applicant shall pay the deposit bond approved under paragraph (3) to the Restoration Fund within a period of thirty days of the date of notice issued under paragraph (3).

(6) Notwithstanding paragraph (5), the Authority may authorize the applicant to pay within such other period depending on the complexity of the operation regularity and quantum of payment.

PART IV – DEPOSIT BONDS

Determination of a Deposit Bond for facilities in operation.

10.(1) Deposit Bond Assessment Reports shall be undertaken on the projects specified in the first schedule likely to have adverse environmental impacts

- a) Ongoing projects commenced prior to coming into force of these regulations; and
- b) new projects undertaken after commencement of this regulations

(2) The Deposit Bond Assessment Report shall be prepared by a competent expert.

(3) The Deposit Bond Assessment Report shall be made in accordance with the terms of reference developed by the competent expert and approved by the Authority.

(4) A Deposit Bond Assessment Report shall include—

- (a) the proposed location of the project;
- (b) site characteristics for a facility in operation;
- (c) a clear description of the activities being undertaken at the facility;
- (d) evidence of integrated environmental assessment or environmental audit where applicable;
- (e) the environmental management systems in place;
- (f) the existing environmental levies or other insurance covers that the facility may have;
- (g) a remediation, post care and maintenance plan including the required standards of remediation works, the activities involved, time frame, cost and the monitoring mechanism;
- (h) an analysis of the amount of deposit bond payable to be assessed at 5% of the projected cumulative risks of the project activities to the recipient environment and affected media and persons; and

- (j) develop and review sector specific guidelines and standard rates that will be used to calculate, determine and reassess the amount of the deposit bond payable.;
- (k) make decisions on refund or confiscation of deposit bonds;
- (l) receive annual status reports of any on-going remediation works from the operators or as may be prescribed by the Authority;
- (m) prepare annual reports on deposit bonds received, refunded, confiscated, status of sites remediated and matters which have been determined or are pending before the Tribunal;
- (n) Develop Deposit Bonds guidelines and competent experts licensing criteria;
- (o) maintain a register of all competent experts or firm of experts duly authorized by it to conduct or prepare Deposit Bonds Assessment Reports; and
- (p) undertake any other activity , as may be conferred on it under the Act or any other law.

PART III – DEPOSIT BONDS REGISTER

Maintenance of Register.

7. The Authority shall prepare and maintain a Deposit Bonds Register for the purpose of maintaining a record of specific activities, industrial plants or undertakings which are likely to have adverse effect on public health and the environment.

Contents of Register.

8. The Register referred to under regulation 7 shall contain the following particulars—

- (a) name of the facility;
- (b) location of the facility;
- (c) name and address of the contact person;
- (d) the activity being undertaken at the facility;
- (e) Integrated Environmental Assessment licence number and or Environmental Audit reference number;
- (f) initial deposit bond payable;
- (g) adjusted deposit bond payable; and
- (h) any other relevant information.

Periodic updating of the Register.

9. The Authority shall update the register from time to time.

- (a) good environmental practices;
- (b) availability of funds for remediation;
- (c) adequate remediation is achieved without adversely affecting economic viability;
- (d) compliance with remediation obligations; and
- (e) sustainable development.

PART II—DEPOSIT BONDS MANAGEMENT

Management of
the deposit bonds.

5. The Authority shall be responsible for management of deposit bonds

Functions of the
Authority

6. (1) The Authority shall undertake the following functions in respect to the management of deposit bonds—

- (a) Prepare and maintain a register of activities, industrial plants or undertakings that require deposit bonds;
- (b) review the terms of reference developed by the competent experts in carrying out a deposit bond assessment;
- (c) review the Deposit Bond Assessment Report to determine the adequacy and reliability of deposit bonds payable to the Restoration Fund;
- (d) to issue approval with terms and conditions on Deposit Bonds Assessment Reports, and notices of the deposit bonds payable to the persons liable to pay the deposit bond;
- (e) liaise with the relevant Government agency on the inflation rate to inform the annual adjustments of the deposit bond;
- (f) invoke an appropriate enforcement action in case of non-payment of a deposit bond in accordance with the Act;
- (g) undertake a joint inspection and monitoring with the relevant county government or lead agencies to determine compliance to good environmental practices in line with the approval on terms and conditions based on the Deposit Bond Assessment Report;
- (h) develop and review sector specific remediation standards in consultation with, relevant lead agencies and county governments;
- (i) develop sector specific guidelines and standards on decommissioning, remediation, post care and maintenance requirements.

“Environmental Deposit Bond Assessment Report” refers to the Report provided for under Regulation 10;

“Director-General” means the Director-General of the Authority appointed under section 10 of 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;

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

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

“industrial plants” means plants undertaking manufacturing, engineering and trade activities as listed in the First Schedule;

“notice of confiscation” means a notice issued by the Authority for the purposes of confiscation of a deposit bond;

“operator” means a registered proprietor of the activities listed in the First Schedule;

“proponent” means a person proposing or executing any project, programme or undertaking listed in the First Schedule;

“Register” means a Deposit Bond Register maintained pursuant to regulation 7;

“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 the activities, industrial plants and undertakings which have or are likely to have adverse effects on the environment as stipulated in the First Schedule.

Purpose of the Regulations.

4. The purpose of these Regulations is to ensure—

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

IN EXERCISE of the powers conferred by the Act, the Cabinet Secretary for Environment, Climate Change 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 (DEPOSIT BONDS) REGULATIONS, 2024

PART I – PRELIMINARY PROVISIONS

- Citation. 1. These Regulations may be cited as the Environmental Management and Co-ordination (Deposit Bonds) Regulations, 2024.
- 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 a Deposit Bond Assessment Report to the Authority for consideration and approval;
- “Authority” means the National Environment Management Authority established under of the Act;
- “bond discharge certificate” means an authorisation issued by the Authority certifying that the remediation works have met all completion criteria, specifications and standards for the refund of a deposit bond;
- “Cabinet Secretary” means the Cabinet Secretary responsible for environmental matters;
- “Committee” means the Technical Advisory Committee established under regulation 18;
- “competent expert” means a multi-skilled team having knowledge in environmental valuation, law or actuary and led by an environmental assessment expert or firm licensed by the Authority;
- “deposit bond” means an environmental financial assurance where refundable payments are made to the Authority before a potentially environmentally damaging activity is undertaken which constitutes appropriate security for good environmental practice

PART V– TECHNICAL ADVISORY COMMITTEES

18. Establishment and Composition of Technical Advisory Committees.
19. Functions of the Technical Advisory Committees.
20. Conduct of the affairs of Technical Advisory Committees.

PART VI – APPEALS

21. Appeals to the National Environment Tribunal.

PART VII– MISCELLANEOUS

22. Offences and Penalties.
23. Liability on transfer.
24. Transitional Clause.

SCHEDULES



LEGAL NOTICE NO.

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION
(DEPOSIT BONDS) REGULATIONS, 2024**

ARRANGEMENT OF REGULATIONS

Regulation

PART I – PRELIMINARY PROVISIONS

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

PART II- DEPOSIT BONDS MANAGEMENT

5. Management of Deposit Bonds
6. Functions of the Authority.

PART III—DEPOSIT BONDS REGISTER

7. Establishment of the Register.
8. Contents of the Register.
9. Periodic update of the Register.

PART IV – DEPOSIT BONDS

10. Determination of a deposit bond.
11. Review by the Authority and issuance of a notice of the deposit bond payable.
12. Self regulation by the operator.
13. Reassessment of the deposit bond.
14. Annual adjustment.
15. Periodic Audit of the deposit bond payable.
16. Refund of a deposit bond.
17. Confiscation of a deposit bond.

PART V– TECHNICAL ADVISORY COMMITTEES

- 18. Establishment and Composition of Technical Advisory Committees.
- 19. Functions of the Technical Advisory Committees.
- 20. Conduct of the affairs of Technical Advisory Committees.

PART VI – APPEALS

- 21. Appeals to the National Environment Tribunal.

PART VII– MISCELLANEOUS

- 22. Offences and Penalties.
- 23. Liability on transfer.
- 24. Transitional Clause.

SCHEDULES

DEPOSIT BONDS
DRAFT REGULATIONS
2024

28/a
Proj. Docs
SEALS 12/011



DISPOSAL OF NON-PRIME ROOFING SHEETS

ABOUT US
MABATI ROLLING MILLS LTD is Africa's largest steel roofing company and manufacturer of flat and long steel products. Part of the Safal Group of Companies, Mabati Rolling Mills Ltd is also the industry leader in serving the residential, commercial and industrial roofing market in Kenya and exports to over 50 countries across the world. We manufacture metal roofing that is more durable, efficient and sustainable. MRM is Africa's pioneer of Aluminium-Zinc steel coating technology. Our unique distribution system allows us to provide the fastest and most reliable deliveries in the industry.

OUR PRODUCTS
Our roofing products include the world re known DUMUZAS, Galshest Resincoat, Lifestile, Orientile, Zentile, Elegentile and Versatile. Industrial products include Safedec, Saflock 700 and Trimfute. Various accessories are available for roofing as well.

DISPOSAL OF NON PRIME UNPAINTED ROOFING SHEETS.

MABATI ROLLING MILLS LTD wishes to dispose off Non-Prime Unpainted Roofing Sheets starting Friday the 4th September 2015.

Prospective customers will be allowed to view the products at our Mombasa Road - Athi River manufacturing plant and pay for the same on Friday only while collection of the physical goods will be done on Saturdays and Sundays.

The non-prime unpainted roofing materials are suitable for fencing and erection of semi-permanent structures. The Company reserves the right to limit the quantities to be purchased by any customer without giving reason thereto.

For further details kindly call 0702 20 20 20 or 0733 36 05 48 or Toll free 0300 724 977



KnightsFrank.com

FOR SALE- 5 ACRES
PRIME RESIDENTIAL DEVELOPMENT OPPORTUNITY
Karen, Nairobi.

Summary

- A rare and unique plot in the upmarket Karen area.
- A 5 acre redevelopment plot, currently zoned for residential development.
- Presently developed with a 5 bedroom house.
- The property is accessible through Ndaga Road and it borders the Karen Country Club to the East.
- For sale by private treaty.

Price Guide: Offers Invited
For more information and to arrange for a viewing please contact the following:

Contacts
Sally Rugano
sally.rugano@ke.knightfrank.com
+254 [20] 423 9000 / +254 732 942 229

Kelvin Otieno
kelvin.otieno@ke.knightfrank.com
+254 [20] 423 9000 / +254 731 296 271

CAVEAT EMPITOR

ZAMINA LIMITED of P O Box 26328-00504 Nairobi wishes to notify all prospective purchasers, chargees and any other interested parties who may be approached to enter into any agreement that may affect the use of and/or purpose to transfer, alienate, charge, assign, lease, pledge or in any way deal with ALL THAT property known as LAND REFERENCE NUMBER 209/12261 also purportedly referenced L.R 20257 measuring approximately 1.600 Hectares situate on Mombasa Road and it is and continues to be the registered owner of the said property.

TAKE NOTICE, that the dispute is before the Environment and Land Court in Millmani in ELC SUIT NO.183 of 2011, ELC NO 69 of 2015 and ELC SUIT No.92 of 2015 where court orders were issued on 30th June, 2015 restricting all the parties, therein from disposing of the suit land and the matter fixed for Hearing on 21st and 22nd March, 2016.

TAKE FURTHER NOTICE that the property is not and has not been offered for sale to anyone and any person(s) purporting to purchase, charge or deal with the same does so at their own peril and in contempt of the court order issued on 30th June, 2015.

Dated at Nairobi this 1st Day of September, 2015.

V.A Nyamodi & Co. Advocates
Hse No.7 Duplex Apartments
Lowerhill Road, Upperhill
P O Box 51431-0000
NAIROBI
For the registered proprietor

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT
ENVIRONMENT AND LAND COURT
ELC SUIT NO. 92 OF 2015

SAMUEL NJERU MUTHI PLAINTIFF/APPLICANT
AND
DEEPAK KARANHI 1st DEFENDANT/RESPONDENT
GEORGE OMER OGALO 2nd DEFENDANT/RESPONDENT
ZARA PROPERTIES LIMITED 3rd DEFENDANT/RESPONDENT
ZAMINA LIMITED 4th DEFENDANT/RESPONDENT

CONSOLIDATED WITH
ELC NO. 92 OF 2015 PLAINTIFF
VERSUS
SAMUEL NJERU MUTHI 1st DEFENDANT
PETER KIMULUWO 2nd DEFENDANT
AND
ELC NO. 183 OF 2011
AMICON CONSTRUCTION LTD PLAINTIFF/APPLICANT
VERSUS
ZARA PROPERTIES LIMITED 1st DEFENDANT/RESPONDENT
CHIEF LAND REGISTRAR 2nd DEFENDANT/RESPONDENT
COMMISSIONER OF LANDS 3rd DEFENDANT/RESPONDENT
HON. ATTORNEY GENERAL 4th DEFENDANT/RESPONDENT

IN COURT ON 30th JUNE 2015
BEFORE THE HON. MR. JUSTICE MUTUNGI

ORDER

THIS MATTER coming up for Mention on 30th June, 2015 before the Hon. Mr. Justice Mutungi,
AND UPON HEARING Counsel for the Plaintiff in ELC. 92 of 2015 and Defendant in ELC. 69 of 2015, Counsel for the 2nd, 3rd and 4th Defendants in ELC 183 of 2011 and Counsel for the 1st Defendant in ELC. 183 of 2011;

IT IS HEREBY ORDERED:

1. THAT all parties do observe the obtaining status quo whereby no party shall put the disputed property to any use, dispose of either by way of leasing, sale transfer or charge until the suit is heard and determined.
2. THAT the suits be and are hereby fixed for hearing on 21st and 22nd March, 2015.
3. THAT parties are at liberty to file any documents at least 60 days before the date fixed for hearing.
4. THAT all parties be served with today's directions.

GIVEN under my Hand and Seal of this Honourable Court this 1st day of August, 2015
ISSUED at Nairobi this 18th day of August, 2015

DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

3/9/2015

Daily Nation

nema

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT NO. 8 OF 2002
INVITATION OF PUBLIC COMMENTS ON THE PROPOSED ENVIRONMENTAL MANAGEMENT AND COORDINATION (DEPOSIT BONDS) REGULATIONS 2014

This is to bring to the attention of all stakeholders and general members of the public that the National Environment Management Authority, pursuant to section 29 and 147 of the Environmental Management and Coordination Act, No. 8 of 1999 through a taskforce has prepared draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014. The draft regulations can be obtained from NEMA website www.nema.go.ke.

The overall objective of the Environmental Management and Coordination (Deposit Bonds) Regulations, 2014 is to promote good environmental practices that would result in sustainable development. This is by ensuring availability of funds in the form of Environmental Financial Assurance (EFA) which guarantees effective remediation of the affected environment during the life cycle of a project. These regulations establishes a register for those activities, industrial plants and undertakings which have or are most likely to have significant impacts on the environment when operated in a manner that is not in conformity with good environmental practices. The proponents/operators of such activities will be required to pay a refundable deposit bond to the Authority.

NEMA in collaboration with UNDP is therefore inviting all stakeholders and members of the public in the following regions who may wish to submit comments on the draft regulations to do so in writing on or before the respective Public Hearing dates indicated below:

1. Western and Nyanza Region - Public Hearing to be held in Kisumu on the 17th of September, 2015;
2. Central Region - Public Hearing to be held in Nyeri on the 24th of September, 2015;
3. Eastern and North-Eastern Region - Public Hearing to be held in Embu on the 1st of October, 2015.

Participation in the above Public Hearings will be BY INVITATION ONLY.

Comments may be hand delivered, posted or emailed to osakwa@nema.go.ke and mbari@nema.go.ke

Director General
National Environment Management Authority
Papo Road, Off Mombasa Road
P.O. Box 67839-00200
NAIROBI

Email: dg@nema@nema.go.ke
Telephone: +254 724 253 398; +254 723 363 010; +254 735 013 046; +254 0735 010 237



TAITA TAVETA UNIVERSITY COLLEGE
 (A CONSTITUENT COLLEGE OF JOMO KENYATTA UNIVERSITY OF
 AGRICULTURE AND TECHNOLOGY)
OFFICE OF THE REGISTRAR (Academic, Research and Outreach)
 P.O. BOX 635-80300 - Voi Tel: 020 - 2437267, 0774-222064
 E-mail: registrar-aro@ttuc.ac.ke Website: www.ttuc.ac.ke

OPENING DATES FOR 2015/2016 ACADEMIC YEAR

- Taita Taveta University College wishes to inform all the students that the opening dates have been scheduled as follows:-
- Thursday 3rd September, 2015**
 - Reporting date for 1st Semester for 1st Year Students for registration and orientation.
 - Monday 7th September, 2015**
 - Registration for 1st Semester for all 1st Years (2013 KCSE Cohort Sept 2014 Intake) and 3rd Years (2012 KCSE Cohort Sept 2013 Intake).
 - Bridging Certificate, Diploma and Post graduates.
 - Thursday 1st January 2016**
 - Reporting date for all 4th years (2010 KCSE Cohort Sept 2012 Intake), and 5th YEARS (2011 KCSE Cohort, Jan 2012 Intake).
 - Payment of Fees**
 - In order to be allowed to register, all students will be required:
 - To have paid all requisite fees
 - To have cleared all outstanding fees areas.
- Payment of fees should be made in cash or bankers cheque to the following bank accounts:
- Kenya Commercial Bank, (KCB) Voi Branch, and Account Number: 1136119140; Account Name: Taita Taveta University College, Or
 - Equity Bank, Voi Branch; Account No: 8790199712769. Account Name: Taita Taveta University College.
- Accommodation**
 - University accommodation will be on first come first served basis. Priority will be given to students with special needs.
 - Students who do not get university accommodation shall be required to make their own arrangements for private accommodations at their own cost.
 - Non-resident students are advised to fill in non-residential forms within the first two weeks of reopening otherwise they will be deemed to be resident and will be required to pay the requisite fees.
 - Semester schedules may be accessed on the University website website: <http://www.ttuc.ac.ke>.

INTAKE IN THE FOLLOWING SCHOOLS IS ONGOING
 For Certificates, Diploma, Degree, Masters and Postgraduate Courses

- SCHOOL OF MINES AND ENGINEERING (SME)
- SCHOOL OF BUSINESS, ECONOMICS AND SOCIAL SCIENCES (BESS)
- SCHOOL OF SCIENCE AND INFORMATION TECHNOLOGY (SSIT)
- SCHOOL OF AGRICULTURE, EARTH AND ENVIRONMENTAL SCIENCES (SAEES)

For more information Contact:
 Registrar (ARO)
 Taita Taveta University College
 P.O. Box 635-80300, Voi
 020-2437267, 0774-222064, 020-8150240
 Email: registrar-aro@ttuc.ac.ke Website: www.ttuc.ac.ke
 Home of Ideas!

Telephone
 020-2094140
 020-2363526
 020-2322109
 020-2320998
 Email: vihigaassembly@gmail.com

REPUBLIC OF KENYA



Clerks Chambers
 Assembly Headquarters
 P.O. BOX 90, 50300
 MARAGOLI
 KENYA

COUNTY GOVERNMENT OF VIHIGA
VIHIGA COUNTY ASSEMBLY
 Office of the clerk of the county assembly

NOTIFICATION OF VETTING OF PERSONS NOMINATED FOR APPOINTMENT AS COUNTY EXECUTIVE COMMITTEE MEMBERS

The Vihiga County Assembly wishes to notify the entire public that the Office of The Hon Speaker has received nominees from the office of H. E. The Governor of Vihiga County Government names of persons to be appointed to various positions as County Executive Committee Members.

Pursuant to provisions of article 195(1) (a) and (2) of the Constitution of Kenya 2010; and Standing Order 179 which allows the public to access committee sittings and in line with section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011 which provides for the committee to notify the public of the time and place for holding an approval hearing; the candidates and the general public are hereby notified that the Committee on Appointments shall conduct vetting of the above listed persons who have been nominated by His Excellency the Governor of Vihiga County to serve in their respective positions as Executive Committee Members at the specified date and times at the Vihiga County Assembly Hall within the Vihiga County Assembly precincts.

S/N	CANDIDATE/NOMINEE NAME	RESPONSIBILITY	DATE	TIME
1	Mr. Moses Ayumba Luvizi	Finance and Economic Planning	11 th September 2015	10.00am
2	Mr. Wairigitho Musalia Edeba	Education, Science and Technology	14 th September 2015	10.00am
3	Dr. Arthur Kibira Apungu	Industrialization, Trade and Tourism	15 th September, 2015	10.00am

The candidates MUST bring with them the following:

- Original National Identity Card/ID Passport
- Letter from the Local Chief of the area of residence
- Original Academic and professional Certificates, Curriculum Vitae and other testimonials including but not limited to thesis, Journals and Publications
- Cleanance Certificates from:
 - Kenya Revenue Authority
 - Higher Education Loans Board
 - Criminal Investigation Department (Certificate of Good Conduct)
 - Ethics and Anti-Corruption Commission
 - Respective Professional Bodies
 - Commission for Higher Education (applicable to those with foreign degrees only)

The Committee invites views regarding the nominees from members of the public, stakeholders and other interest groups in form of written memoranda accompanied by an affidavit to be forwarded to:

The Ag. Clerk of the County Assembly of Vihiga, P.O. Box 90 - 50300, MARAGOLI (or hand delivered to the office of the Clerk at the County Assembly Headquarters, along Majengo - Luanda road) to be received on or before Friday, 11th September at 9.00 am.

Linet Mugallal (Mrs)
 Ag. Clerk of the County Assembly



**THE STATUS OF AIRTEL NETWORKS
 KENYA LICENCE**

Airtel initiated its licence renewal process with the Communications Authority of Kenya (CA) on 23rd January, 2013 as per the licence conditions. On 11th August, 2014 the CA outlined the agreed conditions to synchronize Airtel licence renewal with the acquisition of Essar licences and customers. All regulatory approvals were formally sought and obtained with the Competition Authority of Kenya (CAK) giving its approval to the transaction on 2nd October 2014. Airtel met all the conditions including payment of the agreed fees to the CA and written confirmation was received on 27th January, 2015 in that regard. In February 2015 Airtel and the CA concluded the negotiations of the licence terms and conditions and network roll out obligations.

Airtel is waiting for the CA to issue the agreed licence terms and conditions.

Bharti Airtel Limited is a leading global telecommunications company with operations in 20 countries across Asia and Africa. The company ranks amongst the top 3 mobile service providers globally in terms of subscribers. Airtel abides by the regulations and laws of respective countries it operates.

Get personalised 24 hour online support on
www.africa.airtel.com | airtel kenya | @airtel_ke

Standard Newspaper 3/09/2015,

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)
THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT NO. 8 OF 1999
INVITATION OF PUBLIC COMMENTS ON THE PROPOSED ENVIRONMENTAL MANAGEMENT AND COORDINATION (DEPOSIT BONDS) REGULATIONS, 2014

This is to bring to the attention of all stakeholders and general members of the public that the National Environment Management Authority, pursuant to section 28 and 147 of the Environmental Management and Coordination Act, No. 8 of 1999 through a taskforce has prepared draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014. The draft regulations can be obtained from NEMA website www.nema.go.ke.

The overall objective of the Environmental Management and Coordination (Deposit Bonds) Regulations, 2014 is to promote good environmental practices that would result in sustainable development. This is by ensuring availability of funds in the form of Environmental Financial Assurance (EFA) which guarantees effective remediation of the affected environment during the life cycle of a project.

These regulations establishes a register for those activities, industrial plants and undertakings which have or are most likely to have significant impacts on the environment when operated in a manner that is not in conformity with good environmental practices. The proponents/operators of such activities will be required to pay a refundable deposit bond to the Authority.

NEMA in collaboration with UNDP is therefore inviting all stakeholders and members of the public in the following regions who may wish to submit comments on the draft regulations to do so in writing on or before the respective Public Hearing dates indicated below:

- Western and Nyanza Region - Public Hearing to be held in Kisumu on the 17th of September, 2015;
- Central Region - Public Hearing to be held in Nyeri on the 24th of September, 2015;
- Eastern and North-Eastern Region - Public Hearing to be held in Embu on the 1st of October, 2015.

Participation in the above Public Hearings will be BY INVITATION ONLY.

Comments may be hand delivered, posted or emailed to asakwa@nema.go.ke and munjeri@nema.go.ke

Director General
 National Environment Management Authority
 Popo Road, Off Mombasa Road
 P.O. Box 67839-00200
 NAIROBI
 Email: dg@nema.go.ke
 Telephone: +254 724 253 398; +254 723 363 010; +254 735 013 046; +254 0735 010 237

NOTICES

- Draft regulations to operationalize section 28 of EMCA, 1999 as a Legal Notice and accompanying Gazette Notice.
- Draft Explanatory Memorandum

In order to effectively execute the above mentioned TORs, the taskforce undertook the following activities:

1. Comprehensive literature review and bench making
2. Field visits and consultations with various facilities (extractive sector, industrial and manufacturing sector and large scale infrastructural projects).
3. Rigorous stakeholder consultation were done in line with the Statutory Instruments Act, 2013 covering the following regions:
 - a. Nairobi Region
 - b. Coast Region
 - c. Rift Valley Region
 - d. Nyanza/Western Region
 - e. Central Region
 - f. Eastern and North Eastern Region
4. Engagement with NEMA management
5. Drafting sessions

- Purpose of the Regulations
- Establishment of the Deposit Bond Management Unit
- Functions of the Unit
- Establishment of the Register
- Contents of the Register
- Periodic updating of the Register
- Determination of a Deposit Bond for facilities in operation
- Determination of a Deposit Bond for proposed facilities
- Review by the Authority and issuance of a notice of the Deposit Bond payable
- Self-regulation by the operator
- Reassessment of a deposit bond
- Annual Adjustment Notice
- Periodic audit of the deposit bond payable
- Refund of a Deposit Bond
- Confiscation of a deposit bond
- Establishment and composition of the Technical Advisory Committee
- Functions of the Technical Advisory Committee
- Conducting of the Affairs of the Technical Advisory Committee
- Appeals to the National Environment Tribunal
- Offences and penalties
- Liability on transfer
- Transitional Clause

g) Adequacy of the regulatory impact statement - Independent Advice

To undertake the regulatory impact statement and to guide on the formulation of the Deposit Bonds Regulations, the Authority constituted a taskforce with representation from the following MDAs:

- Ministry of Environment, Natural Resource and Regional Development Authorities.
- Energy Regulatory commission.
- Ministry of Mining
- Office of the Attorney-General and Department of Justice,
- The National Treasury
- Directorate of Occupational Safety and Health
- NEMA provided the secretariat and coordination

The Terms of Reference for the task force were:

- Undertake the Regulatory Impact Statement for the regulation
- Identify the activities that may attract the deposit bonds
- Propose how deposit bonds will be calculated
- Draft regulations to operationalize section 28 of EMCA, 1999 as a Legal Notice and accompanying Gazette Notice.

- ii. Promoting sound environmental practice, supports social acceptability (social licenses) that will mitigate against conflicts and social unrest thereby enhancing the investor climate and ease of doing business.
- iii. Providing confidence to both government and communities that satisfactory closure will be achieved that will ensure that the environment is restored to near its original state and agreed after- use plans.

Environmental Benefits

- i. Inculcating self-regulation among the regulated entities which will result in the continuity of best environmental practices and compliance with environmental standards and regulations.
 - ii. Conserving the environment and sustainable utilization of the natural resources.
 - iii. Effecting timely response to environmental exigencies.
 - iv. Enhancing synergy building and inter-agency coordination among Ministries, Departments, Counties and Agencies (MDCA) in environmental management.
- e) Reasons why other measures are not appropriate –

The regulation will act as an impetus for the operators to optimize the observance of best environmental practices as discussed below:

- 1. The regulatory and non-regulatory options discussed above maybe effective in controlling facility's environmental performance during operation. However they are essentially ineffective in site remediation after operations cease. Furthermore, site abandonment creates issues for government, communities and industries due to:
 - a. The company may fail outright
 - b. The company may suffer premature closure and
 - c. The company may have no financial reserve at the time of closure
- 2. Additionally, inadequate funding experienced by the regulators limits the capacity to undertake sustained inspections and monitoring of the regulated entities. Self regulation, negotiated compliance arrangements, compliance assistance programmes and compliance promotion efforts in the process are rendered unachievable. This then results in reactive interventions after disasters and /or incidences have occurred. By introducing the Deposit Bonds Regulations the entities' environmental management systems (EMS), accreditation and compliance track record will improve and therefore augment the regulatory and non-regulatory options discussed above.

f) Any other matters specified by the Regulations

Any other matters would include matters such as:

- (c) Statement of other practicable means of achieving the objectives of the proposed instrument (Deposit Bonds) Regulations, 2015

Regulatory Options

- (i) Enforcement by the relevant Ministries, Departments, Counties and Agencies (MDCAs) on sectoral issues under their jurisdiction.

Non Regulatory options

- (i) The Authority to continue to enhance awareness of best environmental practices
(ii) Negotiated compliance arrangements
(iii) Compliance assistance programmes
(iv) Compliance promotion
(v) Self-regulation by operators
(d) Assessment of the Costs and Benefits of the Deposit Bonds Regulations

Cost of the Regulations

The Authority will set up a Deposit Bonds Management Unit in accordance with Part II of the Regulations. The unit will be established within the structure of the Authority. The operationalization of the unit will be co-financed by the Inclusive Economic Growth Programme under the Extractive Industries for Sustainable Development project funded by the UNDP.

It is important to note that the interest accruing from the refundable deposit bonds paid by the regulated entities shall be for the benefit of the Authority therefore no additional funds will be required from the National Treasury to fund the operations of the unit.

Benefits of the regulations

Economic Benefits

In the past, failure by some operators to make adequate financial provision for environmental closure costs has resulted in the abandonment of sites in unsafe and unacceptable environmental conditions. In such cases the environmental responsibility and financial liability for closure often defaults to publicly-funded government agencies. This has prompted government in most jurisdictions to require remediation plans and environmental financial assurance as part of project approval. From the foregoing the economic benefit of the regulation can be summarised as follows;

- i. Positively affecting the Gross Domestic Product (GDP) because funds for remediation are guaranteed;
- ii. Being an investor friendly refund mechanism.

Social Benefits

- i. Promoting sound environmental practice enhances sustainable development, the potential risks associated with the regulated entities are addressed; this thereby guarantees public health and safety, occupational safety and health and a clean and healthy environment for all.

- To promote self-regulation and environmental best practices among the regulated entities and
- To reduce or eliminate financial risk to the tax payer associated with the environmental restoration after the end of the life cycle of the project.

(b) Effects of the proposed regulations

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

Economic Effects

- (i) The deposit bonds positively affect the Gross Domestic Product (GDP) because funds for remediation are guaranteed;
- (ii) It reduces financial risk to the tax payer by ensuring that funds are available for environmental remediation at the end of the life cycle of the project.
- (iii) It promotes corporate responsibility to the environment in all activities, undertakings and industrial plants that have a potential to adversely affect the environment.
- (iv) It enhances environmental friendliness, since the investor is assured of timely refund of deposit bond amount subject to compliance to set environmental standards.

Social Effects

- (i) Promoting sound environmental practice enhances sustainable development, the potential risks associated with the regulated entities are addressed; this thereby guarantees public health and safety, occupational safety and health and a clean and healthy environment for all.
- (ii) Promoting sound environmental practice, supports social acceptability (social licenses) that will mitigate against conflicts and social unrest thereby enhancing the investor climate and ease of doing business.

Environmental Effects

- (i) Inculcation of self-regulation among the regulated entities which will result in best environmental practices and compliance with environmental standards and regulations.
- (ii) Conservation of the environment and sustainable utilization of the natural resources.
- (iii) Effective and timely response to environmental exigencies.
- (iv) It enhances synergy building and inter-agency coordination among Ministries, Departments, Counties and Agencies (MDCA) in environmental management.

65

4

REGULATORY IMPACT STATEMENT

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (DEPOSIT BONDS) REGULATIONS, 2015

Introduction

The state of environment is constantly under threat from anthropogenic and naturally induced phenomena resulting in public health and environmental concerns. The National Environment Management Authority (NEMA) has instituted various measures including "command and control" instruments such as Regulations on emission standards to address these concerns. However these have not been entirely successful in addressing the public health and environmental concerns arising from large scale activities such as mining and quarrying etc which often leave the environment degraded after their economic life is over and the concerned operators have departed from the scene. The burden is always left to the government institutions and by extension the tax payers to restore the environment to a state as near the original status as possible.

As a result of these dynamics, the National Environment Management Authority (NEMA) found it appropriate to operationalize section 28 of Environmental Management and Coordination Act (EMCA) No. 8 of 1999, read together with the Environmental Management Coordination (Amendment) Act No. 5 of 2015; on Environmental Deposit Bonds. The section states that the Authority shall create a register of those activities and industrial plants and undertakings which have or are mostly likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practice. The persons engaged in the above mentioned activities are therefore to pay refundable deposit bonds, which constitute appropriate security for good environmental practice. This is a form of Environmental Financial Assurance (EFA) to guarantee the cost of effective remediation.

It is against this background that the Authority has developed the Environmental Management and Coordination (Deposit Bonds) Regulations, 2015.

(a) Objectives of the proposed regulations

The objective of the *Environmental Management and Coordination (Deposit Bonds) Regulations (2015)* is to promote good environmental practice that would result in sustainable development.

The specific objectives are:

- To establish a register for those activities, industrial plants and undertakings which have or are most likely to have significant impacts on the environment when operated in a manner that is not in conformity with good environmental practices;
- To ensure availability of funds in the form of a refundable deposit bond that shall be paid to the Authority and deposited into the Environmental Restoration Fund which guarantees effective remediation of the affected environment during the life cycle of a project;

8. **Monitoring and review**

- 8.1 The Deposit Bonds Management Unit established under this Regulation which shall be based in NEMA shall from time to time advise the Director-General on all aspects of monitoring and review of the Regulation.

9. **Contact**

The Director-General
National Environment Management Authority
Popo Road, South C
P. O. Box 67839-00200,
NAIROBI

TELEPHONE: +254 724 253 398, +254 735 013 046, +254 0735 010 237
E-Mail: dgnema@nema.go.ke

- Ministry of Mining
- Directorate of Occupational, Health and Safety Services
- Ministry of Environment, Natural Resources and Regional Development Authorities
- Office of the Attorney-General and Department of Justice
- The National Treasury
- The National Environment Management Authority

6.2 The taskforce developed this Regulation through the following processes:

- Desktop benchmarking
- Field visits to selected industries of concern
- Stakeholder consultation
- One on one consultation
- Stakeholder consultation of relevant industry operators
- Invitation for the Public to submit comments through newspaper advert.

7. Impact

7.1 The impact on fundamental rights and freedoms

This Regulation will enhance the enjoyment of fundamental rights and freedoms including principally the right to a clean and healthy environment, as enshrined in Article 42 of the Constitution of Kenya 2010.

7.2 The impact on the public sector

The Regulation provides a form of Environmental Financial Assurance thereby reducing the financial risk to the tax payer. The Regulation will enhance sustainable resource utilization and environmental management.

7.3 The impact on the private sector

It will help the private sector to contribute to the management and conservation of the environment and further enhance the public-private partnerships.

7.3 A Regulatory Impact Assessment has been prepared for this statutory instrument

3. **Agricultural including:**
 - Flower farms
4. **Transportation:**
 - a) Transport of petroleum products
 - b) Transport of hazardous chemicals
 - c) Where transportation is part of the activities of the main facility operator, this will be covered by the deposit bond paid by the operator for the facility
5. **Infrastructure projects:**
 - (i) Power generation plants
 - (a) Geothermal power plants
 - (b) Coal plants
 - (c) Nuclear power plant
 - (d) Thermal power plants
 - (ii) Pipelines
 - (a) Operation of a main transmission pipe line for liquid (other than water) or gas
 - (b) Operation of sewerage reticulation systems
 - (iii) Management and disposal of waste
 - (a) Disposal of hazardous waste through:- incineration, treatment, re-processing, recycling and destruction
 - (b) Existing open dumpsites
 - (iv) Introduction of alien/invasive species of fauna and flora into ecosystems
 - (v) Introduction and testing of genetically modified organisms.
 - (vi) Refugee camps

The Consultation outcomes are outlined in Appendix A of this document.

6. **Guidance**

- 6.1 The taskforce involved in the development of this Regulation was drawn from various Ministries, Departments and Agencies which included:
 - The Energy Regulatory Commission

various Ministries, Departments and Agencies which included:

- The Energy Regulatory Commission
- Ministry of Mining
- Directorate of Occupational, Health and Safety Services
- Ministry of Environment, Natural Resources and Regional Development Authorities
- Office of the Attorney-General and Department of Justice
- The National Treasury
- The National Environment Management Authority

Stakeholder consultation workshops were held in six (6) regions namely: Nairobi, Rift valley (Eldoret), Western and Nyanza (Kisumu), Coastal (Mombasa), Central (Nyeri) and Eastern (Embu).

Operators of the following activities, industrial plants and undertakings were consulted in the six (6) regions:

1. Extractive Activities:
 - (a) Exploration of oil and gas activities (onshore and offshore)
 - (b) Exploitation/extracting of oil and gas activities (onshore and offshore)
 - (c) Underground and open cast mining operations including gas and solid minerals
 - (d) Quarrying
2. Industrial Plants:
 - a) Breweries
 - b) Distillery
 - c) Steel mills
 - d) Plastic carrier bag manufacturers
 - e) Tanneries
 - f) Cement industries
 - g) Chemical and petrochemical industries
 - h) Storage facilities for petroleum products including depots and petroleum service stations
 - i) Refining of petroleum products

various Ministries, Departments and Agencies which included:

- The Energy Regulatory Commission
- Ministry of Mining
- Directorate of Occupational, Health and Safety Services
- Ministry of Environment, Natural Resources and Regional Development Authorities
- Office of the Attorney-General and Department of Justice
- The National Treasury
- The National Environment Management Authority

Stakeholder consultation workshops were held in six (6) regions namely: Nairobi, Rift valley (Eldoret), Western and Nyanza (Kisumu), Coastal (Mombasa), Central (Nyeri) and Eastern (Embu).

Operators of the following activities, industrial plants and undertakings were consulted in the six (6) regions:

1. **Extractive Activities:**
 - (a) Exploration of oil and gas activities (onshore and offshore)
 - (b) Exploitation/extracting of oil and gas activities (onshore and offshore)
 - (c) Underground and open cast mining operations including gas and solid minerals
 - (d) Quarrying
2. **Industrial Plants:**
 - a) Breweries
 - b) Distillery
 - c) Steel mills
 - d) Plastic carrier bag manufacturers
 - e) Tanneries
 - f) Cement industries
 - g) Chemical and petrochemical industries
 - h) Storage facilities for petroleum products including depots and petroleum service stations
 - i) Refining of petroleum products

Regulation Section	Comments	Proposed Way forward
New section to be introduced as 17(8)	Actions to be undertaken during Emergency situations had not been included in the regulations	It was agreed that in the event of an emergency, NEMA would use the bond to remediate and charge the Operator
Establishment and composition of the Technical Advisory Committee	Background to TAC to be included to capture details such as tenure, appointment basis i.e. who appoints the members of TAC and their remuneration	NEMA to action
Functions of the Technical Advisory Committee (19)(b)	Periodic audit of deposit bond was omitted	To include periodic audit
Transitional clause(24)(1)	The stipulated duration for compliance (six months) is too short a time	NEMA to re- look at duration and revise

Regulation Section	Comments	Proposed Way forward
		the authority is sent at the same time as the approval of EIA
Reassessment of a deposit bond (13)	Rewards for good track record, implementing other systems in addition to adherence to the EMP such as ISO 14000 accreditation, compliance history should be factored in the bond assessment report	These supplements will be considered in re-assessment of the bond payable
	Positive changes that an operator makes during the course of undertaking activities will be recognized e.g. achieving accreditation.	NEMA will recognize such changes and institute re-assessment of the deposit bond
Annual Adjustment Notice (14)	NEMA was tasked to explain why the increase due to inflation and yet the bond is being invested and earning the authority interest.	NEMA through the task force to re-look at this matter.
Periodic audit of the deposit bond fund (15)(3)	Every three to five years was ambiguous	NEMA to specify the duration when the audit is done
Refund of a deposit bond (16)(2)	Permanent infrastructure/long term activities lie outside the requirement of notifying NEMA when approaching closure	NEMA through the TAC to consider modalities through which partial bond refund can be made to operators of long term infrastructural plants. Proposed method was through cyclic audits of such activities
Refund of a deposit bond (16)(5)	Refund period of 24 months is too long a time to wait	The parent act states 24 months. NEMA to pursue revision of this duration
Confiscation of a deposit bond (17)(b)	Accountability of bonds confiscated following failure of an operator to remediate	NEMA to prepare a report on remedial action it undertakes and the report to include financial as well as technical aspects. NEMA will make this report available for public review NEMA to specify timelines within which remedial action will be undertaken

NAIROBI STAKHOLDER CONSULTATION FORUM

10th OF JUNE, 2014

Regulation Section	Comments	Proposed Way forward
Functions of the Unit 6(1)(g)	Conditions for approval are clarified to be based on deposit assessment report not EIA	The EIA unit and the Deposit Bond Management Unit will be linked within NEMA
Contents of the Register (8)	Clarification was needed as to which schedule is referenced	Draft Regulations will be amended to be specific on the schedule referenced i.e. the schedule on the regulations and not parent act
Determination of a Deposit bond 10(3)	Availability of competent expert with speciality in environmental financial assurance who are licensed by NEMA was questioned	NEMA is to develop and make available a criteria to be used to license the said experts
		As part of implementation, NEMA will undertake training of the experts
Determination of a Deposit bond 10(5)(f)	Does NEMA have expected remediation standards?	NEMA is to develop guidelines on remediation standards
Determination of a Deposit bond 10(5)(g)	Is the said deposit bond site specific or organization specific	Deposit bond will be tied to deposit bond assessment reports prepared which will be site specific. However for ease of administration, the bond payable can be the combined total financial obligation of the operator
	What is the basis of determining the bond?	NEMA is to benchmark with other countries and develop the standards/define the parameters to be used in determining the bond as well as the formula to be used in deposit bond calculation
Determination of a Deposit bond 10(5)(g)	When is the deposit bond payable?	NEMA clarified that the bond is payable at the commencement of the operations
Review by the Authority and issuance of a notice of the deposit bond payable 11(2.b)	Communication to operators 30 days after approval of EIA	This will be reviewed and revised by NEMA. Proposal was the response from

9	Kenya Maritime Authority	When will the Regulation commence?	During gazettelement, the Cabinet Secretary can indicate when the regulation will come in to place. If not 14 days after gazettelement, the regulation can come into force, transition period has been provided for twelve (12) months in the Regulations
		Constitution of Technical Advisory Committee – will these experts be from NEMA or from different government agencies	The TAC will be an independent multi-disciplinary team of experts from various institutions. In case of any person is aggrieved, the NET is an institution provided in law to handle all grievances
		How will Refugee camps attract a deposit bonds?	The destructive nature of the refugee camps requires a deposit bonds – the degradation can be enormous
10	Bamburi Cement	Guidelines on competent experts – do they exist?	The evolving nature of the environmental assessment to bring in other tools of assessment such as EIA, ESIA, SEA and this is yet another tool that has evolved from EIA that needs to be taken into consideration thus, a multi-disciplinary team of experts are competent enough to undertake a deposit bond assessment for a proposed or existing facility/site.
		Refund of the bond for life long operations – how will the refund be executed?	Reassessment of the bond will be made - With gradual improvement of a facility/site and consideration of other supplements, the bond will be refunded progressively during the life cycle of the facility

8	KENGEN	<p>Why cash –</p> <p>In reference to NEMA instigating clean ups where the proponent/operator does not take action yet NEMA is still a government body subject to the same procurement procedures which can cause delay in addressing an emergency – how will the Authority execute clean-ups in such cases?</p> <p>Benchmark on regional examples such as Uganda, Tanzania, Rwanda not just world-wide case studies</p> <p>Listing of thermal power plants in the register based on power production – in MW</p> <p>Capping of EIA fees</p>	<p>There is an implementation Strategy that NEMA is working on – have a TA to develop guidelines on remediation standards, training of NEMA staff who will work at the Deposit Bonds Unit, the EIA/EA experts, the lead agencies. NEMA will therefore be well trained prior to enforcement of this regulation.</p> <p>This Regulation is aimed at attracting a lean register of facilities – which are high risk in nature</p> <p>Where an environmental emergency has occurred, quicker procedures can be put in place to handle emergencies/incidence - There will be a plan which NEMA will develop to handle any emergencies that might arise prior to enactment of the Regulations</p> <p>The National Restoration Fund is in EMCA with clear procedures on how it should be operated to execute clean-ups</p> <p>In terms of power production – Kengen to assist in determining the thresholds in reference to power production plants which are likely to attract a deposit bond also keeping in mind the risk nature of a facility – this threshold will be considered</p> <p>Benchmarking more will be considered</p>
---	--------	---	--

6	Base Titanium	<p>Clarification on whether the Refund of the bond will be issued on closure and/or after decommissioning of the facility/project/site or is it issued after 24 months of payment?</p> <p>Monoculture agriculture can also be detrimental to the environment – pose long term negative effects</p> <p>Activities taking place in the Protected areas – marine, wildlife – should also be in the register that will attract deposit bonds – taskforce to look into this</p>	<p>The refund of the bond will be executed within 24 Months after the closure or after completion of successful remediation works of site.</p> <p>Taskforce to look into monoculture agriculture and activities in the protection areas - Monoculture – more benchmarking to be done on this. Enforcement actions to our regulations can apply to activities in the protected areas</p> <p>In addition to this, Regulation 16-4 (i) – refers to compatible after use plans of the site on closure or decommissioning is proposed</p>
7	VTI	<p>Bond can be issued in form of a bank guarantee – why cash deposits?</p>	<p>Various countries offer various forms of environmental financial assurances such as securities, guarantees, etc. The parent Act however, does not offer these other provisions of EFA's other than a bond issued in form of cash to the National Restoration Fund</p>
		<p>Will the current registered EIA/EA experts be allowed to undertake a deposit bond assessment report?</p> <p>How will the selection of TAC members be done? Will it be through competitive vetting process</p> <p>The timelines on an appeal at the NET, this being 60 days, is too short a period</p>	<p>The deposit bond assessment report will be an integral part of the EIA – therefore a multi-disciplinary team will be undertaking this assessment</p> <p>Independent TAC appointed by the DG – the taskforce can open it up for appointment to be competitive in nature – the taskforce resolved that this appointments will be done by the DG as there are fears of not obtaining the right expertise based on terms and conditions provided at the time</p>

		specific site/facility?	legislations is still key. This will also be a factor to consider in the reassessment and refund of the bond
5	Taita-Taveta Small-Scale Miners Group	Can the document be translated to a local language – Kiswahili	An abridged version of it can be prepared once the Regulation comes into force.
		<i>Solid minerals is quite diverse – these needs to be broken down and the bond should be executed in a specific case to case basis in relation to the minerals being mined</i>	
		Have provisions where a small scale miner can progress to medium and to a large progressively – the taskforce should therefore develop a threshold such that if you are operating at a small budget that should be put into consideration when it comes to the bond payable	The taskforce will look into putting a threshold of all mining activities/operations and update the register
		Have a collective deposit bond to be paid as a group for small scale miners operating in a particular locality	Collective bond will be considered for operators under a registered, legal body

		<p>– NEMA should re-look into this issue</p> <p>Deposit bond - capping of the fees</p>	<p>10 (1) and 10 (2) amended with sub-headings for both existing and proposed operations, for clarity purposes</p> <p>EMCA is currently being amended – Section 28 can be re-looked, because the current provisions state that the monies should be deposited in the National Restoration Fund.</p> <p>Deposit bond capping - Reference was drawn to Regulation 11 (6) on the DB payable - Taxation arrangements and NET fiscal incentives are still to be considered – existing environmental levies included as part of the content of a deposit bond assessment report as part of the consideration of the bond amount payable</p>
3	County Government of Mombasa	<p>Liquid waste - Kipevu site. EDL's are obtained from NEMA and WRMA annually. Will the Deposit Bonds still be applicable?</p>	<p>The issue of NEMA and WRMA is currently being handled at the ministerial level and will be effected soon as the Acts come into force. The Act that comes into force first will supersede the other.</p>
		<p>Licencing at the county level – avoidance of duplicating roles between the county and National governments</p>	<p>Presence of the Constitution with clear provisions on the devolved functions to the County</p>
4	Vivo Energy	<p>Petroleum facilities are members of Oil Spill Mutual Aid Group (OSMAG) (fees are paid annually). Is NEMA aware of this and will members of OSMAG still be required to pay this bond?</p> <p>Will the bond be refunded in an event of improved compliance or when the risks are low in a</p>	<p>OSMAG still highlights the same requirements in terms of responses and management of incidences that might arise. Oil marketers are part of this initiative and thus, these can still be a consideration among the supplements that can be considered in the refund of a deposit bond –however the taskforce agreed that compliance with National</p>

	required to deposit the amount between the two?	
Vivian Nyamwaya, UNDP	<p>How will the Authority monitor the adverse effect the activity will have on the environment?</p> <p>How stringent will the regulations be?</p> <p>Is the amount to be paid fixed depending on the type of activity being undertaken?</p> <p>Does the Country have the machinery for disaster preparedness. A case in point is Chile and how they dealt with the disaster that affected them.</p>	

MOMBASA STAKEHOLDER CONSULTATION FORUM

9TH DECEMBER, 2014

No.	Institutions	Comments	Remarks
1	Oil Libya	For existing facilities, does it mean the bond will be in place until the closure of the facility or when will the refund be executed?	<p>Reassessment of the bond will be made. With gradual improvement of a facility/site and consideration of other supplements, the bond will be refunded progressively during the life cycle of the facility. Regulation 15 (4) amended to include refunds for life long facilities to be done progressively</p> <p>Regulation 13 (f) brings out the spirit of reassessment of the deposit bond and execution of the refund. The taskforce will however open it up for clarity on how refunds will be executed</p> <p>For clarity sake the taskforce will organise the provisions of the regulation relating to projects in operation and the ones proposed – Regulation</p>
2	KPRL	How will the deposit bond cover existing facilities which have life-long operations?	
		<p>Will the deposit bond be renewed from time to time or at what point will the refund be executed?</p> <p>These Regulations are geared towards proposed projects and existing/operating companies – though clarity needs to be provided on how the deposit bonds will be managed especially as far as refunds are concerned for these two specific categories</p> <p>Cash deposits cannot be done. Payment has to be done through the bank and the bank guarantees</p>	

		Deposit Bond Management unit.
	On the confiscation of the bond, is there a clear criteria on determining the same and will there be a written contract stipulating on how the bond would be confiscated?	Criteria for confiscation is given under Regulation 16(4) NEMA has classified activities into high, medium and low risk.
	1 st Schedule – how were the activities arrived at? Was a risk assessment done? A case in point is the issues of nuclear power plants are safe while plastic manufacturing facilities are missing and yet their activities have adverse impacts on the environment.	This is part of the risk assessment the team undertook as they identified the activities to be in the 1 st schedule.
	On the appeals section, if a party is aggrieved and they do not want to go to NET, are there other avenues of the same?	There are other avenues like the high court and the land and environment court where an aggrieved part can take the matter.
	On appointment of TAC, can there be an independent body that should do the appointment instead of the DG NEMA?	The taskforce will look and deliberate on this issue.
Thomas Sagwe, CEC Nyamira County	The regulations are in line with the constitution, however he wanted to know the role of county governments in the implementation of the regulations	The County governments would be consulted as spelled out under Regulation 6 (1) (g) where they will be involved in the inspections
	1 st Schedule – why under agricultural, only flower farms are included and not large scale farms?	The taskforce is still debating on whether other large scale farms should also be targeted.
Water Service Provider	1 st schedule – Sewerage reticulation systems? On the case of the Water sector, WRMA is in charge of the infrastructure while the water service providers provide the service, so which entity would be	

	Is there an opportunity to submit a memorandum to the Authority for inclusion in the regulations?	Memoranda are still welcome and can be sent to dgnema@ncma.go.ke or zouma@ncma.go.ke
	Has the Ministry of Energy and Petroleum been involved in the formulation of these regulations as they are involved in the exploration/extraction activities by the companies?	ERC is an institution within the Ministry of Energy and Petroleum. Initially all relevant MDA's had been invited and there are plans to continue further consultations.
	Did the taskforce consider other regulations when formulating these regulations, case in point being that the Production Sharing Contract (PSC) also has a fund known as the decommissioning fund and International best practices	There is also a special engagement planned with the Ministry of Mining and Ministry of Energy and Petroleum in order to harmonize the provisions of the Mining Bill 2014 and the Petroleum (Exploration, Development and Production) Bill 2015 with the provisions of EMC (Deposit Bonds) Regulation 2015.
	The draft Petroleum bill – decommissioning fund and plan – were this taken into account? Can activities that are already paying other funds under other regulations be exempted from paying the deposit bond?	The taskforce member from ERC had highlighted some of the clauses in the petroleum bill to the members.
	For projects in perpetuity, how do you intend to refund the deposit bonds?	Regulation 15 (4) has provision where the Bond will be refunded progressively during the life cycle of the facility operations.
	Refunding the amount of Bond less the interest, goes against the principles of polluter pays. It is like the Regulation wants to punish the operators that have set down the deposit bond. Is there a way that the interest can be shared?	EMCA has indicated that the interest be retained by the Authority and the money deposited in the restoration fund
	Does NEMA have the capacity to inspect the facilities within 60 days as envisioned in the regulations before the refund of the deposit bond?	NEMA has gained a lot of experience over the years and would be able to do as required. NEMA also works with the lead agencies and will get Technical Assistance on the setting up of the

	On the Assessment, the regulation does not specify whether the Environmental Audit would be combined with the deposit bond	Deposit bonds assessment report would form an integral part of the Environmental Audit or the EIA report whichever is applicable (Reg 10(1) and (2))
Tom Arika – FP(2000) Ltd	Wanted to find out what the rationale for refunding the deposit bond when the activity is scheduled for a whole lifespan (in perpetuity)?	Regulation 15(4) has provision where the Bond will be refunded progressively during the life cycle of the facility operations.
	In case a deposit bond is confiscated, is the operator required to pay another bond?	Regulation 17 gives the procedure for confiscation of the deposit bond.
	In case the Authority is going to use the bond for remediation purposes, will the operator be involved on how the bond amount would be used?	This is provided for under Regulation 17 (6) (b) which gives the procedure to be followed in the involvement of the operator in the event of confiscation.
Arnold Mahero/Kenneth Kamau – Tullow Plc	Applauded the efforts of the taskforce in the formulation of the draft deposit bonds regulation. He had a few observations and comments:	
	What is the road map after this meeting?	Stakeholder consultations would still go on, one is scheduled for Nyeri next week and the other one for Embu. Finalize drafting in the next one and half months. Preparation of the Cabinet memorandum and the Regulatory Impact Statement. The regulation would then be forwarded to the Ministry and parliament for further action.
	Will there be another stakeholders meeting to be held in Nairobi?	Considering to have a national validation workshop in Nairobi for all the stakeholders.

	Wanted to know if a facility has various activities that are listed under the first schedule in one place, what is going to happen. will each activity attract a deposit bond or will they be considered as a single entity?	The facility with various supporting amenities/activities is considered as one facility.
	The formula to determine the deposit bond is not clear. The stakeholder felt that the criteria and formula need to be clear so that the affected parties would be in a better position to understand.	The calculation of the bond amount payable to be guided by the provisions under Reg 6 (h) and (i)
	Apart from coming up with the deposit bonds regulations, NEMA should also promote economic instruments such as tax waivers for investment in cleaner technologies.	The Authority has been in the fore front of developing economic instruments. A lot has been done on tax waivers especially in the area of waste management where investors are given incentives to bring in equipment for use in waste management.
	The stakeholder also felt that TAC should take a lead role in creation of awareness of the regulations since they would be more knowledgeable on the kind of interventions that are workable.	On awareness creation, the Authority has a full-fledged department that deals with public participation and awareness creation and they would take a lead role in the same.
	On the composition of the Technical Advisory Committee, the stakeholder felt that it should be opened up and other institutions such as KAM, Commerce and Industry should be part of the composition.	TAC can incorporate other relevant disciplines in the course of their work. The TAC should be independent, non-partisan due to the technical nature of the assignment
Jenevive Wanyama – Mumias Sugar	On the transitional clause, it needs to be clear whether its 6 months as was presented or 12 months as indicated in the regulations	This is clear, it's supposed to be within 12 months upon commencement of the regulations
Godfrey Otieno – Shajanand Holdings Ltd (Quarry)	Wanted to know whether the 6 months refund would be at the end of the activity period and how will it be conducted?	It was clarified that the refund would be done within 6 months after issuance of the Deposit Bonds Discharge Certificate

	<p>What informed the retaining of the interest arising from the deposit bonds by the Authority? Why can't everything be refunded back to the operator</p>	<p>This was informed by the parent Act, EMCA of 1999. It should be noted that amended EMCA of 2015 should be read together with EMCA, 1999.</p>
	<p>On the establishment and composition of the Technical Advisory Committee, the stakeholder felt that there should be a cap on the maximum number of specialists to be part of the TAC</p>	<p>The taskforce to discuss the issue of capping.</p>
<p>Peter Macharia – Agrochemical Industries Ltd</p>	<p>Groups that are involved in environmental conservation to be consulted when regulation 6(1) h and i are being developed by the deposit bonds management unit.</p> <p>The unit should also look at the prevailing economic situation when calculating the amount to be paid for the deposit bond so that the investors are not adversely affected by this new Regulation.</p>	<p>The taskforce is working towards an investment friendly regulation and do emphasis the following; that the bond is refundable, the refund period reduced from 24 months to six months, and the bond being an integral part of the EIA and EA, for facilities in perpetuity, there is provision for progressive refund of the deposit bond based on good environmental practices. In addition, Regulation 11 (6) provides for a negotiated period of payment.</p>
	<p>A ceiling cap on the minimum and maximum amount of the deposit bond to be paid should be given so that stakeholders can be aware.</p>	<p>A ceiling on the maximum and minimum amount of the deposit bond cannot be set as this would be guided by the calculated cost of remediation.</p> <p>The provision has considered supplements such as environmental management systems put in place by the facility and the level of compliance – this means that the activities would not attract the same amount of bond even if they belong to the same owner.</p>

Christine Shikuku – Tambuzi Ltd	Is it NEMA to calculate the amount to be paid or is it the proponent based on the assessment report??	Regulation 10 (5) and Regulation 6 (h) and (i) have provisions on the calculation of the Bond payable.
	What are some of the factors to be considered? Will this be on an annual basis?	The Bond is a one off payment and subject to reassessment and adjustment due to inflation.
Mr. Njenga	What is the criteria that will be used to calculate the amount?	Regulation 10 (5) and Regulation 6 (h) and (i) have provisions on the calculation of the Bond payable.
Alice Ringera - NYEWSCO	Is the payment done once of periodically?	The Bond is a one off payment and subject to reassessment and adjustment due to inflation.

KISUMU STAKEHOLDER CONSULTATION FORUM - 17TH SEPTEMBER, 2015

Organization/Institution	Comments	Responses
Bernard Okebe – Suba Development Forum	The stakeholder wanted to find out how NEMA and the Ministry of Environment and Natural Resources have been working in light of the fact that the draft deposit bonds regulations provides for the establishment of a deposit bond management unit that would have so many functions. How has the environment been taken care of in the absence of the unit.	EMCA is a complicated framework law that requires a lot of regulations to be formulated. NEMA as an Authority has not even operationalized half of the Act. The unit would be set up to deal with deposit bonds, but structures are available within NEMA such as – EIA and EA have been dealing with decommissioning of the facilities. Restoration orders have also been issued to facilities.
	The period of 24 months that the presenter mentioned and the 6 months to wait for the refund of the bond, what is the correct position	A six (6) months period has been provided for in the EMCA (amended) Act of 2015

Mark Simpkin-Uhuru flowers	Agricultural sector is a major wide sector, why is it that only one sector – flower farms – targeted for payment of the Bond.	Further consultations with HCDA, IRA, Water Service Providers among others will be undertaken
	The responsible companies – the compliant ones – are being targeted by paying the bond instead of the irresponsible companies. Why so?	Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
Eng. Esther Mbugua	Inquiry about the payment done by Titanium, the bond will be evaluated in relation to inflation, what happens to the interest accrued, is it payed to the bond payer?	EMCA provides that the interest accrued is retained by the Authority in the National Environment Restoration Fund as provided for under Section 25 of EMCA, 1999. The inflated amount is refundable to the operator. Once the regulation is gazetted the interim arrangements will cease and the Regulations will take effect. The Deposit Bonds is a refundable EFA and not a levy.
Frederick Kanau – Kel Chemicals Ltd	How will the confiscated bond be used in remediation? And how is the bond regulated for accountability?	Regulation 17 (6) (b) and Regulation 6 (1) (I), takes care of the usage and accountability of the confiscated bond.
Laura Bloom	Will the Deposit Bond be paid in cash or some form of insurance?	The Bond is in cash as provided for in Section 28 of EMCA.
Irene Ndigirigi - Nyeri County Referral Hospital	The issue of balancing their priority areas in relation to paying the Deposit Bond. Issue of exemption because of the competing interests	Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
Sister Stella	Non profit making institutions, how are they going to be considered?	The Bond applies to activities listed in the Deposit Bond register.

	Is the Bond punitive for potential polluters/perceived polluters or where is it coming from?	The regulation is not punitive but to operationalize Section 28 of EMCA, 1999.
	How will the new threats be identified by the unit and by who as indicated in Reg. 13 (1) (c) and (d)	This will be done by the unit in liaison with TAC and the relevant Lead Agencies See Reg. 6(1)(i)
	Regulation 14.1, the bond is affected by inflation and the proponent is required to pay the bond despite the inflation.	EMCA provides that the interest accrued is retained by the Authority in the National Environment Restoration Fund as provided for under Section 25 of EMCA, 1999. The inflated amount is refundable to the operator.
	Regulation 15 (2) which criteria will be used to carry out the periodic reviews? Who is raising the alerts and how will it happen?	The Authority is responsible for the periodic review of the Deposit Bond amount payable and the criteria is provided in Regulation 15 (2).
	Regulation 15 (4) - if a farm has been in existence and in compliance, where is the justification of paying the Deposit Bonds?	Regulation 10 (1) addresses these concerns. Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
	While the Regulation 16 (1) provides for the proponent to pay the Deposit Bonds within 30 days, why should the unit take up to 24 months to refund the deposit bond amount?	Regulation 11 (6) provides for any other period of payment as may be informed by the Deposit Bonds Assessment Report.
	Regulations 15 (4) & 16 (3) and the 2 nd schedule must be harmonized to provide a clear criteria for refund of the Bond.	The refund period has already been reviewed from within 24 months to within 6 months, Regulation 16(5). The Deposit Bond is refunded within 6 months after issuance of Bond Discharge Certificate. The factors to consider during the inspection justifies the 60 days period for the inspection to be undertaken.

	Is the list going to be expanded? Every activity undertaken by human beings have an impact on the environment, so are you going to include all the facilities including institutions and schools?	Facilities categorized as low risk and some in the medium risk category did not meet the threshold for attracting the Deposit Bonds. Regulation 19(c) allows for periodic review and updating of the Deposit Bonds register as need may arise.
John Njenga - Kenya Flower Council	The Regulation has not given exemptions in relations to companies that have been in existence and are in compliance with the NEMA regulations, are they to pay the bond whether compliant or not?	There is no express exemption from the regulation since the Act itself has no room for exemptions The regulation is not punitive but to operationalize Section 28 of EMCA, 1999.
	How was the list arrived at on the 1st schedule?	The list was considered using 4 critical issues: <ul style="list-style-type: none"> • Hazard nature of the activities • Risk assessment of the facilities • Past incidences • Consequence of any malfunction of a facility
	Where do they consider the companies with the good technologies for exemption from the list of the bond?	Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
	Clause 11 (5), the 30 days period for the payment of the Deposit Bonds too short?	Regulation 11 (6) provides for any other period of payment as may be informed by the Deposit Bonds Assessment Report.
	Is there a provision for companies that pay some levies to get the NEMA licenses such as the effluent discharge license, waste composting license, can these payments be used as the Deposit Bond?	Regulation 10 (5) (f) – consideration will be made on existing environmental levies or any other insurance cover that the facility may have & (h) – implies the consideration of (f) above during the analysis of the Deposit Bonds payable.

8.	Mary Machandi - CDE, Kirinyaga	EIAs and EAs being received at the County level - how will this deposit bonds assessment reports be dealt with at the County level when the TACs are organised at the National level.	The facilities listed in the first schedule are high risk whose EIAs and EAs are received at the headquarters. Deposit bonds will be handled at the headquarters.
9.	Victor Nyaga - County Government of Embu	Public Health Acts and the CIDPs will this Regulation be in tandem with the Regulations with this Acts and Plans that are currently being developed?	The CIDPs are developed by Counties for purposes of outlining their development plans for a limited period of time while the Regulations are set to be applied nationally and will also be required to guide the counties.
10.	Peter Munyi – Kagaari North FCS	How will the bond operate after assessment	This is provided for in Part IV of the Regulation
11.	Obed Kariuki - KENGEN	The regulations in the website are not similar to what we have presented	A series of workshops have been held since the regulation was uploaded on the website and a current draft will be uploaded accordingly.

NYERI STAKEHOLDER CONSULTATION FORUM - 24TH SEPTEMBER, 2015

Organization/Institution	Comments	Responses
Laura V. - Mweiga Blooms	List of activities- what criteria was used to arrive at the list in the first schedule?	The list was considered using 4 critical issues; <ul style="list-style-type: none"> • Hazard nature of the activities • Risk assessment of the facilities • Past incidences • Consequence of any malfunction of a facility

			that will undertake these assessments. There is also the evolving nature of EIA which should be considered
7.	Geo-scan Consultants	Incase of an incident, NEMA will come in and remediate Time frame for NEMA to come in and remediate.	Timelines will not be provided. NEMA or its appointed agents will undertake remediation works and provide annual reports for each specific remediation works as provided in Regulation 6 (L).
		Will the inspections be planned or will notices be issued prior to inspections being undertaken.	Depends on the nature of the inspection. This can be a routine inspection, impromptu, surveillance to capture the wrong doers. Depends on the performance of the facility
8.	ELDOWAS	In the case of sewerage reticulation systems, does this include effluent discharged to the treatment plants or is it just from the main sewer pipes	The main sewer in Eldoret is 300mm and we were to capture all the main sewers in all the major towns There are those that 600, 800mm etc.
9.		How do we determine the deposit bond payable	The competent expert should be able to provide the deposit bond payable to be part of the deposit bond assessment report and NEMA to make an evaluation based on this figure. Regulation 10 (5) provides for this
10.	County Government of Baringo	Since EMCA is under review, what is the role of the County Governments especially with all the activities that are currently happening in the Counties	Revision has been done to include county governments – Regulation 6 (1) g Mary: This is a National document and county governments can be co-opted at anytime in fulfilment of the functions of these regulations

		Regulation 17 (8) – how will this be effected	Provided for in EMCA, 1999 Section 12.
3.	Silverwood Co.	Lower limit and upper limit of a bond payable	This figures need to be as realistic and actual as it should be.
4.	CBO on Wetlands	If an organisation initially complies with the provisions of this regulation – are there going to be periodic inspections to check on future non-compliance	Monitoring and inspection will continue at all times. Self Regulation should be practiced at all times by the operator.
		Cotton, clothing and dye industries to be included in the register	Consider the textiles – these are high impact projects/facilities. Consider heavy metals recycling and smelting facilities – in the regulation as part of disposal of hazardous wastes category
		Invasive species are not introduced by NGOs. It is the Government. So how will the government be regulated in this case?	There are many government projects which are in existent today and they do comply with our regulations and more so pay EIA fees – there are no exemptions in this case.
5.	KPC	When the oil marketer spills the oil product will the responsibility be shared between the pipeline operators and the oil marketer?	The oil marketer should also be held liable in this case. <u>Silas:</u> If an oil spillage occurs within the pipeline of KPC then the responsibility lies purely on KPC but if the oil spills occur either in the course of transportation then the responsibility lies on the oil marketer in possession of the product at the time
6.	County Government of Elgeyo Marakwet	Will there be different experts undertaking the environmental deposit bonds assessment reports?	Deposit Bond assessment report undertaken by competent experts and that has been captured in the Regulation. This should be a multi-disciplinary team

		Regulation 17 (8) – how will this be effected	Provided for in EMCA, 1999 Section 12.
3.	Silverwood Co.	Lower limit and upper limit of a bond payable	This figures need to be as realistic and actual as it should be.
4.	CBO on Wetlands	If an organisation initially complies with the provisions of this regulation – are there going to be periodic inspections to check on future non-compliance	Monitoring and inspection will continue at all times. Self Regulation should be practiced at all times by the operator.
		Cotton, clothing and dye industries to be included in the register	Consider the textiles – these are high impact projects/facilities. Consider heavy metals recycling and smelting facilities – in the regulation as part of disposal of hazardous wastes category
		Invasive species are not introduced by NGOs. It is the Government. So how will the government be regulated in this case?	There are many government projects which are in existent today and they do comply with our regulations and more so pay EIA fees – there are no exemptions in this case.
5.	KPC	When the oil marketer spills the oil product will the responsibility be shared between the pipeline operators and the oil marketer?	The oil marketer should also be held liable in this case. <u>Silas:</u> If an oil spillage occurs within the pipeline of KPC then the responsibility lies purely on KPC but if the oil spills occur either in the course of transportation then the responsibility lies on the oil marketer in possession of the product at the time
6.	County Government of Elgeyo Marakwet	Will there be different experts undertaking the environmental deposit bonds assessment reports?	Deposit Bond assessment report undertaken by competent experts and that has been captured in the Regulation. This should be a multi-disciplinary team

		How will the competent experts to undertake the deposit bond assessment reports be selected	The competent expert has been defined in the regulation
		Concern: Officers should visit the site prior to setting the bond to be paid. Even with the social injustices, fencing the land and vacating the communities to secure the land is nearly impossible but NEMA should advise on the way forward prior to payment of the bond.	<p>Include flower farms in the First Schedule – criteria on incorporating facilities in the first schedule</p> <p>Include the incidences of the fish deaths in Naivasha. Cattle dying due to pesticides consumption in Naivasha</p>
		KFM undertakes Corporate Social responsibility activities for the communities and now required to pay 5% royalties as per the new mining bill. Is there a structured institution that is going to assist us in managing these Royalties?	There is a new agency coming up that will govern how the royalties will be executed
2.	Dittman Company (quarrying)	Regulation 16 (6) – less interest – why should the deposit bond amount be refunded less the interest?	Regulations are being developed pursuant to Section 28 of EMCA which states that no interest would be refunded as part of the refund
		Timeframe – NEMA should give the time frame on when remediation works should begin once the deposit bond is confiscated	Regulation 17 (6) Other external factors are in play and thus NEMA might NOT be in a position to tie itself to timelines though the commitment to give a report once all remediation works are complete will be undertaken pursuant to the provisions of this regulation.
		Appealing – operator to be given a time frame within which to appeal	The operator is required to appeal within 60 days as provided for in the Regulation

APPENDIX A

COMMENTS FROM THE STAKEHOLDER CONSULTATION FORA HELD IN THE SIX
(6) REGIONS BELOW

ELDORET STAKEHOLDER CONSULTATION FORUM 6TH MAY, 2015

No.	Organisation/Institution	Comments	Responses
1.	Kenya Fluorspar Mining	Cases of social injustices – co-existing with the communities, e.g., if there is an open pit and an incident occurs, who should be held responsible and can a bond in this case assist?	<p>Social complexities are key and as an institution we understand that. What the facilities need to put into consideration is:</p> <p>Are there measures in place to deter the community from assessing the site? E.g., ensure the pits are secured – fenced, signages.</p> <p>Self regulation should be exercised by the operator After use plans - they will assist especially if they are in place, and the company will stop being liable.</p> <p>Buffer zones in any quarrying and mining activities need to be defined early enough prior to commencement of mining activities.</p>
		Harmonisation of the laws: quite a number of regulations in force currently – all invoke fees which will have a negative influence and put a burden on the investor	This is not a fee it is just a guarantee to ensure the right thing is done and when compliance is achieved a refund of the bond can be issued progressively
		Hidden costs in the environmental deposit bonds e.g. is there going to be an additional fee for the deposit bond assessment report	The deposit bond assessment report will be an integral of the EIA for new facilities and if operational it can be part of an environmental audit. – this to be incorporated in the Regulation – this was done under Regulation 10 (1)

28/A
-> Proj. Docs
SEA/12/011



DISPOSAL OF NON-PRIME ROOFING SHEETS

ABOUT US

MABATI ROLLING MILLS LTD is Africa's largest steel roofing company and manufacturer of flat and long steel products. Part of the Safal Group of Companies, Mabat Rolling Mills Ltd is also the industry leader in serving the residential, commercial and industrial roofing market in Kenya and exports to over 50 countries across the world. We manufacture metal roofing that is more durable, efficient and sustainable. MRM is Africa's pioneer of Aluminium-Zinc steel coating technology. Our unique distribution system allows us to provide the fastest and most reliable deliveries in the industry.

OUR PRODUCTS

Our roofing products include the world re known **DUMUZAS, Galsheet Resincoat, Lifestyle, Orientile, Zentile, Elegentile** and **Versatila**. Industrial products include **Safdeck, Safflock 700** and **Trimtute**. Various accessories are available for roofing as well.

DISPOSAL OF NON PRIME UNPAINTED ROOFING SHEETS.

MABATI ROLLING MILLS LTD wishes to dispose off **Non-Prime Unpainted Roofing Sheets** starting Friday the 4th September 2015.

Prospective customers will be allowed to view the products at our Mombasa Road -Athi River manufacturing plant and pay for the same on Friday only while collection of the physical goods will be done on Saturdays and Sundays.

The non- prime unpainted roofing materials are suitable for fencing and erection of semi-permanent structures. The Company reserves the right to limit the quantities to be purchased by any customer without giving reason thereto.

For further details kindly call **0702 20 20 20** or **0733 36 05 40** or Toll free **0300 724 977**



Knight Frank
knightfrank.com

FOR SALE- 5 ACRES
PRIME RESIDENTIAL DEVELOPMENT OPPORTUNITY
Karen, Nairobi.

Summary

- A rare and unique plot in the upmarket Karen area.
- A 5 acre redevelopment plot, currently zoned for residential development.
- Presently developed with a 5 bedroom house.
- The property is accessible through Ndage Road and it borders the Karen Country Club to the East.
- For sale by private treaty.

Price Guide: Offers Invited
For more information and to arrange for a viewing please contact the following:

Contacts

Sally Rugano sally.rugano@ke.knightfrank.com +254 [20] 423 9000 / +254 732 942 229	Kelvin Otieno kelvin.otieno@ke.knightfrank.com +254 [20] 423 9000 / +254 731 296 271
---	---

CAVEAT EMPTOR

ZAMINA LIMITED of P O Box 26328-00504 Nairobi wishes to notify all prospective purchasers, chargees and any other interested parties who may be approached to enter into any agreement that may affect the user of and/or purport to transfer, alienate, charge, assign, lease, pledge or in any way deal with **ALL THAT** property known as **LAND REFERENCE NUMBER 209/12261** also purportedly referenced **L.R 20257** measuring approximately 1.600 Hectares situate on Mombasa Road and it is and continues to be the registered owner of the said property.

TAKE NOTICE, that the dispute is before the Environment and Land Court in Millimani in **ELC SUIT NO.183 of 2011, ELC NO 69 of 2015 and ELC SUIT No.92 of 2015** where court orders were issued on 30th June, 2015 restricting all the parties, therein from disposing of the suit land and the matter fixed for Hearing on 21st and 22nd March, 2016.

TAKE FURTHER NOTICE that the property is not and has not been offered for sale to anyone and any person(s) purporting to purchase, charge or deal with the same does so at their own peril and in contempt of the court order issued on 30th June, 2015.

Dated at Nairobi this 1st Day of September, 2015.

VA Nyamodi & Co. Advocates
Hse No.7 Duplex Apartments
Lowerhill Road, Upperhill
P O Box 51431-0000
NAIROBI
For the registered proprietor

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT
ENVIRONMENT AND LAND COURT
ELC SUIT NO 69 OF 2015

SAMUEL NJERU MUTHI PLAINTIFF/APPLICANT
AND
DEEPAK KAMAH 1st DEFENDANT/RESPONDENT
GEORGE OMER OGALO 2nd DEFENDANT/RESPONDENT
ZARA PROPERTIES LIMITED 3rd DEFENDANT/RESPONDENT
ZAMINA LIMITED 4th DEFENDANT/RESPONDENT
CONSOLIDATED WITH
ELC. NO. 92 OF 2015

ZAMINA LIMITED PLAINTIFF
VERSUS
SAMUEL NJERU MUTHI 1st DEFENDANT
PETER KIMULYO 2nd DEFENDANT
AND
ELC. NO. 183 OF 2011
AMCON CONSTRUCTION LTD PLAINTIFF/APPLICANT
VERSUS
ZARA PROPERTIES LIMITED 1st DEFENDANT/RESPONDENT
CHIEF LAND REGISTRAR 2nd DEFENDANT/RESPONDENT
COMMISSIONER OF LANDS 3rd DEFENDANT/RESPONDENT
HON. ATTORNEY GENERAL 4th DEFENDANT/RESPONDENT

IN COURT ON 30th JUNE 2015
BEFORE THE HON. MR. JUSTICE MUTUNGI

ORDER

THIS MATTER coming up for Mention on 30th June, 2015 before the Hon. Mr. Justice Mutungi,
AND UPON HEARING Counsel for the Plaintiff in ELC. 92 of 2015 and Defendant in ELC. 69 of 2015, Counsel for the 2nd, 3rd and 4th Defendants in ELC 183 of 2011 and Counsel for the 1st Defendant in ELC. 183 of 2011;

IT IS HEREBY ORDERED:

- THAT all parties do observe the obtaining status quo whereby no party shall put the disputed property to any use, dispose of either by way of leasing, sale transfer or charge until the suit is heard and determined.
- THAT the suits be and are hereby fixed for hearing on 21st and 22nd March, 2016.
- THAT parties are at liberty to file any documents at least 60 days before the date fixed for hearing.
- THAT all parties be served with today's directions.

GIVEN under my Hand and Seal of this Honourable Court this 14th day of August, 2015
ISSUED at Nairobi this 18th day of August, 2015

DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

3/9/2015
Daily Nation
NEMA

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT NO. 8 OF 1999
INVITATION OF PUBLIC COMMENTS ON THE PROPOSED ENVIRONMENTAL MANAGEMENT AND COORDINATION (DEPOSIT BONDS) REGULATIONS 2014

This is to bring to the attention of all stakeholders and general members of the public that the National Environment Management Authority, pursuant to section 28 and 147 of the Environmental Management and Coordination Act, No. 8 of 1999 through a taskforce has prepared draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014. The draft regulations can be obtained from NEMA website www.nema.go.ke.

The overall objective of the Environmental Management and Coordination (Deposit Bonds) Regulations, 2014 is to promote good environmental practices that would result in sustainable development. This is by ensuring availability of funds in the form of Environmental Financial Assurance (EFA) which guarantees effective remediation of the affected environment during the life cycle of a project. These regulations establishes a register for those activities, industrial plants and undertakings which have or are most likely to have significant impacts on the environment when operated in a manner that is not in conformity with good environmental practices. The proponents/operators of such activities will be required to pay a refundable deposit bond to the Authority.

NEMA in collaboration with UNDP is therefore inviting all stakeholders and members of the public in the following regions who may wish to submit comments on the draft regulations to do so in writing on or before the respective Public Hearing dates indicated below:

- Western and Nyanza Region - Public Hearing to be held in Kisumu on the 17th of September, 2015;
- Central Region - Public Hearing to be held in Nyeri on the 24th of September, 2015;
- Eastern and North-Eastern Region - Public Hearing to be held in Embu on the 1st of October, 2015.

Participation in the above Public Hearings will be **BY INVITATION ONLY**.

Comments may be hand delivered, posted or emailed to gsakwa@nema.go.ke and mnjeri@nema.go.ke

Director General
National Environment Management Authority
Popo Road, Off Mombasa Road
P.O. Box 67839-00200
NAIROBI

Email: gsakwa@nema.go.ke
Telephone: +254 724 253 398; +254 723 363 010; +254 735 013 046; +254 0735 010 237



TAITA TAVETA UNIVERSITY COLLEGE
(A CONSTITUENT COLLEGE OF JOMO KENYATTA UNIVERSITY OF
AGRICULTURE AND TECHNOLOGY)

OFFICE OF THE REGISTRAR (Academic, Research and Outreach)
P.O. BOX 635-80300 – Voi Tel: 020 – 2437267,0774-222064
E-mail: registrar-aro@ttuc.ac.ke Website: www.ttuc.ac.ke

OPENING DATES FOR 2015/2016 ACADEMIC YEAR

Taita Taveta University College wishes to inform all the students that the opening dates have been scheduled as follows:-

- Thursday 3rd September, 2015**
 - Reporting date for 1st Semester for 1st Year Students for registration and orientation.
 - Monday 7th September, 2015**
 - Registration for 1st Semester for all 2nd Years (2013 KCSE Cohort Sept 2014 Intake) and 3rd Years (2012 KCSE Cohort Sept 2013 Intake).
 - Bridging Certificate, Diploma and Post graduates.
 - Thursday 7th January 2016**
 - Reporting date for all 4th years (2010 KCSE Cohort Sept 2012 Intake), and 5th YEARS (2011 KCSE Cohort, Jan 2012 Intake)
 - Payment of fees**
 - In order to be allowed to register, all students will be required;
 - To have paid all requisite fees
 - To have cleared all outstanding fees arrears.
- Payment of fees should be made in cash or bankers cheque to the following bank accounts:
- Kenya Commercial Bank, (KCB) VOI Branch, and Account Number: 1136119140;**
Account Name: Taita Taveta University College. Or
 - Equity Bank, Voi Branch; Account No: 0790299712769.**
Account Name: Taita Taveta University College.
- Accommodation**
 - University accommodation will be on first come first served basis. Priority will be given to students with special needs.
 - Students who do not get university accommodation shall be required to make their own arrangements for private accommodation at their own cost.
 - Non-resident students are advised to fill in non-residential forms within the first two weeks of reopening otherwise they will be deemed to be resident and will be required to pay the requisite fees.
 - Semester schedules may be accessed on the University website website: <http://www.ttuc.ac.ke>.

INTAKE IN THE FOLLOWING SCHOOLS IS ONGOING

- For Certificates, Diploma, Degree, Masters and Postgraduate Courses
- SCHOOL OF MINES AND ENGINEERING (SME)
 - SCHOOL OF BUSINESS, ECONOMICS AND SOCIAL SCIENCES (BESS)
 - SCHOOL OF SCIENCE AND INFORMATICS (SSI)
 - SCHOOL OF AGRICULTURE, EARTH AND ENVIRONMENTAL SCIENCES (SAES)

For more information Contact:
Registrar (ARO)
Taita Taveta University College
P.O. Box 635-80300, Voi
020-2437267, 0774-222064, 020-8150240
Email: registrar-aro@ttuc.ac.ke Website: www.ttuc.ac.ke

Home of Ideas!

Telephone
020 - 2094140
020 - 2363526
020 - 2322109
020 - 2329098
Email: vihigaassembly@gmail.com

REPUBLIC OF KENYA



Clerks Chambers
Assembly Headquarters
P.O. BOX 90, 50300
MARAGOLI
KENYA

COUNTY GOVERNMENT OF VIHIGA
VIHIGA COUNTY ASSEMBLY

Office of the clerk of the county assembly

NOTIFICATION OF VETTING OF PERSONS NOMINATED FOR APPOINTMENT AS COUNTY EXECUTIVE COMMITTEE MEMBERS

The Vihiga County Assembly wishes to notify the entire public that the Office of The Hon Speaker has received nominees from the office of H. E. The Governor of Vihiga County Government names of persons to be appointed to various positions as County Executive Committee Members.

Pursuant to provisions of article 196(1) (a) and (2) of the Constitution of Kenya 2010; and Standing Order 179 which allows the public to access committee sittings and in line with section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011 which provides for the committee to notify the public of the time and place for holding an approval hearing; the candidates and the general public are hereby notified that the Committee on Appointments shall conduct vetting of the above listed persons who have been nominated by His Excellency the Governor of Vihiga County to serve in their respective positions as Executive Committee Members at the specified date and times at the Vihiga County Assembly Hall within the Vihiga County Assembly precincts.

SN	CANDIDATE/NOMINEE NAME	RESPONSIBILITY	DATE	TIME
1	Mr Moses Ayumba Luvisi	Finance and Economic Planning	11 th September 2015	10.00am
2	Mr Wellington Musalia Edebe	Education, Science and Technology	14 th September 2015	10.00am
3	Dr Arthur Kibira Apungu	Industrialization, Trade and Tourism	15 th September, 2015	10.00am

The candidates MUST bring with them the following:

- Original National Identity Card/Passport
- Letter from the Local Chief of the area of residence
- Original Academic and professional Certificates, Curriculum Vitae and other testimonials including but not limited to thesis, Journals and Publications
- Clearance Certificates from:
 - Kenya Revenue Authority
 - Higher Education Loans Board
 - Criminal Investigation Department (Certificate of Good Conduct)
 - Ethics and Anti-Corruption Commission
 - Respective Professional Bodies
 - Commission for Higher education (applicable to those with foreign degrees only)

The Committee invites views regarding the nominees from members of the public, stakeholders and other interest groups in form of written memoranda accompanied by an affidavit to be forwarded to:

The Ag. Clerk of the County Assembly of Vihiga, P.O. Box 90 – 50300, MARAGOLI (or hand delivered to the office of the Clerk of the County Assembly Headquarters, along Majengo - Luanda road) to be received on or before Friday, 11th September at 9.00 am.

Linet Mugallal (Mrs)
Ag. Clerk of the County Assembly



**THE STATUS OF AIRTEL NETWORKS
KENYA LICENCE**

Airtel initiated its licence renewal process with the Communications Authority of Kenya (CA) on 23rd January, 2013 as per the licence conditions. On 11th August, 2014 the CA outlined the agreed conditions to synchronize Airtel licence renewal with the acquisition of Essar licences and customers. All regulatory approvals were formally sought and obtained with the Competition Authority of Kenya (CAK) giving its approval to the transaction on 2nd October 2014. Airtel met all the conditions including payment of the agreed fees to the CA and written confirmation was received on 27th January, 2015 in that regard. In February 2015 Airtel and the CA concluded the negotiations of the licence terms and conditions and network roll out obligations.

Airtel is waiting for the CA to issue the agreed licence terms and conditions.

Bharti Airtel Limited is a leading global telecommunications company with operations in 20 countries across Asia and Africa. The company ranks amongst the top 3 mobile service providers globally in terms of subscribers. Airtel abides by the regulations and laws of respective countries it operates.

Get personalised 24 hour online support on
www.africa.airtel.com | airtel kenya | @airtel_ke

Standard Newspaper 3/09/2015



NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT NO. 8 OF 1999
INVITATION OF PUBLIC COMMENTS ON THE PROPOSED ENVIRONMENTAL MANAGEMENT AND COORDINATION (DEPOSIT BONDS) REGULATIONS, 2014

This is to bring to the attention of all stakeholders and general members of the public that the National Environment Management Authority, pursuant to section 28 and 147 of the Environmental Management and Coordination Act, No. 8 of 1999 through a taskforce has prepared draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014. The draft regulations can be obtained from NEMA website www.nema.go.ke.

The overall objective of the Environmental Management and Coordination (Deposit Bonds) Regulations, 2014 is to promote good environmental practices that would result in sustainable development. This is by ensuring availability of funds in the form of Environmental Financial Assurance (EFA) which guarantees effective remediation of the affected environment during the life cycle of a project.

These regulations establishes a register for those activities, industrial plants and undertakings which have or are most likely to have significant impacts on the environment when operated in a manner that is not in conformity with good environmental practices. The proponents/operators of such activities will be required to pay a refundable deposit bond to the Authority.

NEMA in collaboration with UNDP is therefore inviting all stakeholders and members of the public in the following regions who may wish to submit comments on the draft regulations to do so in writing on or before the respective Public Hearing dates indicated below:

- Western and Nyanza Region – Public Hearing to be held in Kisumu on the 17th of September, 2015;
- Central Region – Public Hearing to be held in Nyeri on the 24th of September, 2015;
- Eastern and North-Eastern Region – Public Hearing to be held in Embu on the 1st of October, 2015.

Participation in the above Public Hearings will be BY INVITATION ONLY.

Comments may be hand delivered, posted or emailed to osakwa@nema.go.ke and mjjeri@nema.go.ke

Director General
National Environment Management Authority
Popo Road, Off Mombasa Road
P.O. Box 67839-00200

NAIROBI

Email: dgnema@nema.go.ke

Telephone: +254 724 253 398; +254 723 363 010; +254 735 013 046; +254 0735 010 237

2007 13

APPENDIX A

COMMENTS FROM THE STAKEHOLDER CONSULTATION FORA HELD IN THE SIX
(6) REGIONS BELOW

ELDORET STAKEHOLDER CONSULTATION FORUM 6TH MAY, 2015

No.	Organisation/Institution	Comments	Responses
1.	Kenya Fluorspar Mining	Cases of social injustices – co-existing with the communities, e.g., if there is an open pit and an incident occurs, who should be held responsible and can a bond in this case assist?	<p>Social complexities are key and as an institution we understand that. What the facilities need to put into consideration is:</p> <p>Are there measures in place to deter the community from assessing the site? E.g., ensure the pits are secured – fenced, signages.</p> <p>Self regulation should be exercised by the operator After use plans - they will assist especially if they are in place, and the company will stop being liable.</p> <p>Buffer zones in any quarrying and mining activities need to be defined early enough prior to commencement of mining activities.</p>
		Harmonisation of the laws: quite a number of regulations in force currently – all invoke fees which will have a negative influence and put a burden on the investor	This is not a fee it is just a guarantee to ensure the right thing is done and when compliance is achieved a refund of the bond can be issued progressively
		Hidden costs in the environmental deposit bonds e.g is there going to be an additional fee for the deposit bond assessment report	The deposit bond assessment report will be an integral of the EIA for new facilities and if operational it can be part of an environmental audit. – this to be incorporated in the Regulation – this was done under Regulation 10 (1)

		How will the competent experts to undertake the deposit bond assessment reports be selected	The competent expert has been defined in the regulation
		Concern: Officers should visit the site prior to setting the bond to be paid. Even with the social injustices, fencing the land and vacating the communities to secure the land is nearly impossible but NEMA should advise on the way forward prior to payment of the bond.	Include flower farms in the First Schedule – criteria on incorporating facilities in the first schedule Include the incidences of the fish deaths in Naivasha. Cattle dying due to pesticides consumption in Naivasha
		KFM undertakes Corporate Social responsibility activities for the communities and now required to pay 5% royalties as per the new mining bill. Is there a structured institution that is going to assist us in managing these Royalties?	There is a new agency coming up that will govern how the royalties will be executed
2.	Dittman Company (quarrying)	Regulation 16 (6) – less interest – why should the deposit bond amount be refunded less the interest?	Regulations are being developed pursuant to Section 28 of EMCA which states that no interest would be refunded as part of the refund
		Timeframe – NEMA should give the time frame on when remediation works should begin once the deposit bond is confiscated	Regulation 17 (6) Other external factors are in play and thus NEMA might NOT be in a position to tie itself to timelines though the commitment to give a report once all remediation works are complete will be undertaken pursuant to the provisions of this regulation.
		Appealing – operator to be given a time frame within which to appeal	The operator is required to appeal within 60 days as provided for in the Regulation

		Regulation 17 (8) – how will this be effected	Provided for in EMCA, 1999 Section 12.
3.	Silverwood Co.	Lower limit and upper limit of a bond payable	This figures need to be as realistic and actual as it should be.
4.	CBO on Wetlands	If an organisation initially complies with the provisions of this regulation – are there going to be periodic inspections to check on future non-compliance	Monitoring and inspection will continue at all times. Self Regulation should be practiced at all times by the operator.
		Cotton, clothing and dye industries to be included in the register	Consider the textiles – these are high impact projects/facilities. Consider heavy metals recycling and smelting facilities – in the regulation as part of disposal of hazardous wastes category
		Invasive species are not introduced by NGOs. It is the Government. So how will the government be regulated in this case?	There are many government projects which are in existent today and they do comply with our regulations and more so pay EIA fees – there are no exemptions in this case.
5.	KPC	When the oil marketer spills the oil product will the responsibility be shared between the pipeline operators and the oil marketer?	The oil marketer should also be held liable in this case. <u>Silas:</u> If an oil spillage occurs within the pipeline of KPC then the responsibility lies purely on KPC but if the oil spills occur either in the course of transportation then the responsibility lies on the oil marketer in possession of the product at the time
6.	County Government of Elgeyo Marakwet	Will there be different experts undertaking the environmental deposit bonds assessment reports?	Deposit Bond assessment report undertaken by competent experts and that has been captured in the Regulation. This should be a multi-disciplinary team

		Regulation 17 (8) -- how will this be effected	Provided for in EMCA, 1999 Section 12.
3.	Silverwood Co.	Lower limit and upper limit of a bond payable	This figures need to be as realistic and actual as it should be.
4.	CBO on Wetlands	If an organisation initially complies with the provisions of this regulation -- are there going to be periodic inspections to check on future non-compliance	Monitoring and inspection will continue at all times. Self Regulation should be practiced at all times by the operator.
		Cotton, clothing and dye industries to be included in the register	Consider the textiles -- these are high impact projects/facilities. Consider heavy metals recycling and smelting facilities -- in the regulation as part of disposal of hazardous wastes category
		Invasive species are not introduced by NGOs. It is the Government. So how will the government be regulated in this case?	There are many government projects which are in existent today and they do comply with our regulations and more so pay EIA fees -- there are no exemptions in this case.
5.	KPC	When the oil marketer spills the oil product will the responsibility be shared between the pipeline operators and the oil marketer?	The oil marketer should also be held liable in this case. <u>Silas:</u> If an oil spillage occurs within the pipeline of KPC then the responsibility lies purely on KPC but if the oil spills occur either in the course of transportation then the responsibility lies on the oil marketer in possession of the product at the time
6.	County Government of Elgeyo Marakwet	Will there be different experts undertaking the environmental deposit bonds assessment reports?	Deposit Bond assessment report undertaken by competent experts and that has been captured in the Regulation. This should be a multi-disciplinary team

			that will undertake these assessments. There is also the evolving nature of EIA which should be considered
7.	Geo-scan Consultants	Incase of an incident, NEMA will come in and remediate Time frame for NEMA to come in and remediate.	Timelines will not be provided. NEMA or its appointed agents will undertake remediation works and provide annual reports for each specific remediation works as provided in Regulation 6 (L).
		Will the inspections be planned or will notices be issued prior to inspections being undertaken.	Depends on the nature of the inspection. This can be a routine inspection, impromptu, surveillance to capture the wrong doers. Depends on the performance of the facility
8.	ELDOWAS	In the case of sewerage reticulation systems, does this include effluent discharged to the treatment plants or is it just from the main sewer pipes	The main sewer in Eldoret is 300mm and we were to capture all the main sewers in all the major towns There are those that 600, 800mm etc.
9.		How do we determine the deposit bond payable	The competent expert should be able to provide the deposit bond payable to be part of the deposit bond assessment report and NEMA to make an evaluation based on this figure. Regulation 10 (5) provides for this
10.	County Government of Baringo	Since EMCA is under review, what is the role of the County Governments especially with all the activities that are currently happening in the Counties	Revision has been done to include county governments – Regulation 6 (1) g Mary: This is a National document and county governments can be co-opted at anytime in fulfilment of the functions of these regulations

8.	Mary Machandi - CDE, Kirinyaga	EIAs and EAs being received at the County level - how will this deposit bonds assessment reports be dealt with at the County level when the TACs are organised at the National level.	The facilities listed in the first schedule are high risk whose EIAs and EAs are received at the headquarters. Deposit bonds will be handled at the headquarters.
9.	Victor Nyaga - County Government of Embu	Public Health Acts and the CIDPs will this Regulation be in tandem with the Regulations with this Acts and Plans that are currently being developed?	The CIDPs are developed by Counties for purposes of outlining their development plans for a limited period of time while the Regulations are set to be applied nationally and will also be required to guide the counties.
10.	Peter Munyi – Kagaari North FCS	How will the bond operate after assessment	This is provided for in Part IV of the Regulation
11.	Obed Kariuki - KENGEN	The regulations in the website are not similar to what we have presented	A series of workshops have been held since the regulation was uploaded on the website and a current draft will be uploaded accordingly.

NYERI STAKEHOLDER CONSULTATION FORUM - 24TH SEPTEMBER, 2015

Organization/Institution	Comments	Responses
Laura V. - Mweiga Blooms	List of activities- what criteria was used to arrive at the list in the first schedule?	The list was considered using 4 critical issues; <ul style="list-style-type: none"> • Hazard nature of the activities • Risk assessment of the facilities • Past incidences • Consequence of any malfunction of a facility

	Is the list going to be expanded? Every activity undertaken by human beings have an impact on the environment, so are you going to include all the facilities including institutions and schools?	Facilities categorized as low risk and some in the medium risk category did not meet the threshold for attracting the Deposit Bonds. Regulation 19(c) allows for periodic review and updating of the Deposit Bonds register as need may arise.
John Njenga - Kenya Flower Council	The Regulation has not given exemptions in relations to companies that have been in existence and are in compliance with the NEMA regulations, are they to pay the bond whether compliant or not?	There is no express exemption from the regulation since the Act itself has no room for exemptions The regulation is not punitive but to operationalize Section 28 of EMCA, 1999.
	How was the list arrived at on the 1st schedule?	The list was considered using 4 critical issues: <ul style="list-style-type: none"> • Hazard nature of the activities • Risk assessment of the facilities • Past incidences • Consequence of any malfunction of a facility
	Where do they consider the companies with the good technologies for exemption from the list of the bond?	Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
	Clause 11 (5), the 30 days period for the payment of the Deposit Bonds too short?	Regulation 11 (6) provides for any other period of payment as may be informed by the Deposit Bonds Assessment Report.
	Is there a provision for companies that pay some levies to get the NEMA licenses such as the effluent discharge license, waste composting license, can these payments be used as the Deposit Bond?	Regulation 10 (5) (f) - consideration will be made on existing environmental levies or any other insurance cover that the facility may have & (h) - implies the consideration of (f) above during the analysis of the Deposit Bonds payable.

	Is the Bond punitive for potential polluters/perceived polluters or where is it coming from?	The regulation is not punitive but to operationalize Section 28 of EMCA, 1999.
	How will the new threats be identified by the unit and by who as indicated in Reg. 13 (1) (c) and (d)	This will be done by the unit in liaison with TAC and the relevant Lead Agencies See Reg. 6(1)(i)
	Regulation 14.1, the bond is affected by inflation and the proponent is required to pay the bond despite the inflation.	EMCA provides that the interest accrued is retained by the Authority in the National Environment Restoration Fund as provided for under Section 25 of EMCA, 1999. The inflated amount is refundable to the operator.
	Regulation 15 (2) which criteria will be used to carry out the periodic reviews? Who is raising the alerts and how will it happen?	The Authority is responsible for the periodic review of the Deposit Bond amount payable and the criteria is provided in Regulation 15 (2).
	Regulation 15 (4) - if a farm has been in existence and in compliance, where is the justification of paying the Deposit Bonds?	Regulation 10 (1) addresses these concerns. Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
	While the Regulation 16 (1) provides for the proponent to pay the Deposit Bonds within 30 days, why should the unit take up to 24 months to refund the deposit bond amount?	Regulation 11 (6) provides for any other period of payment as may be informed by the Deposit Bonds Assessment Report.
	Regulations 15 (4) & 16 (3) and the 2 nd schedule must be harmonized to provide a clear criteria for refund of the Bond.	The refund period has already been reviewed from within 24 months to within 6 months, Regulation 16(5). The Deposit Bond is refunded within 6 months after issuance of Bond Discharge Certificate. The factors to consider during the inspection justifies the 60 days period for the inspection to be undertaken.

Mark Simpkin-Uhuru flowers	Agricultural sector is a major wide sector, why is it that only one sector – flower farms – targeted for payment of the Bond.	Further consultations with HCDA, IRA, Water Service Providers among others will be undertaken
	The responsible companies – the compliant ones – are being targeted by paying the bond instead of the irresponsible companies. Why so?	Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
Eng. Esther Mbugua	Inquiry about the payment done by Titanium, the bond will be evaluated in relation to inflation, what happens to the interest accrued, is it payed to the bond payer?	EMCA provides that the interest accrued is retained by the Authority in the National Environment Restoration Fund as provided for under Section 25 of EMCA, 1999. The inflated amount is refundable to the operator. Once the regulation is gazetted the interim arrangements will cease and the Regulations will take effect. The Deposit Bonds is a refundable EFA and not a levy.
Frederick Kanau – Kel Chemicals Ltd	How will the confiscated bond be used in remediation? And how is the bond regulated for accountability?	Regulation 17 (6) (b) and Regulation 6 (1) (l), takes care of the usage and accountability of the confiscated bond.
Laura Bloom	Will the Deposit Bond be paid in cash or some form of insurance?	The Bond is in cash as provided for in Section 28 of EMCA.
Irene Ndigirigi - Nyeri County Referral Hospital	The issue of balancing their priority areas in relation to paying the Deposit Bond. Issue of exemption because of the competing interests	Regulation 10 (5) (e) gives provision for consideration for good environmental management systems in place. Other issues to consider are the compliance history of the facility and any other accreditation.
Sister Stella	Non profit making institutions, how are they going to be considered?	The Bond applies to activities listed in the Deposit Bond register.

Christine Shikuku -- Tambuzi Ltd	Is it NEMA to calculate the amount to be paid or is it the proponent based on the assessment report??	Regulation 10 (5) and Regulation 6 (h) and (i) have provisions on the calculation of the Bond payable.
	What are some of the factors to be considered? Will this be on an annual basis?	The Bond is a one off payment and subject to reassessment and adjustment due to inflation.
Mr. Njenga	What is the criteria that will be used to calculate the amount?	Regulation 10 (5) and Regulation 6 (h) and (i) have provisions on the calculation of the Bond payable.
Alice Ringera - NYEWSCO	Is the payment done once of periodically?	The Bond is a one off payment and subject to reassessment and adjustment due to inflation.

KISUMU STAKEHOLDER CONSULTATION FORUM - 17TH SEPTEMBER, 2015

Organization/Institution	Comments	Responses
Bernard Okebe – Suba Development Forum	The stakeholder wanted to find out how NEMA and the Ministry of Environment and Natural Resources have been working in light of the fact that the draft deposit bonds regulations provides for the establishment of a deposit bond management unit that would have so many functions. How has the environment been taken care of in the absence of the unit.	EMCA is a complicated framework law that requires a lot of regulations to be formulated. NEMA as an Authority has not even operationalized half of the Act. The unit would be set up to deal with deposit bonds, but structures are available within NEMA such as – EIA and EA have been dealing with decommissioning of the facilities. Restoration orders have also been issued to facilities.
	The period of 24 months that the presenter mentioned and the 6 months to wait for the refund of the bond, what is the correct position	A six (6) months period has been provided for in the EMCA (amended) Act of 2015

	<p>What informed the retaining of the interest arising from the deposit bonds by the Authority? Why can't everything be refunded back to the operator</p>	<p>This was informed by the parent Act, EMCA of 1999. It should be noted that amended EMCA of 2015 should be read together with EMCA, 1999.</p>
	<p>On the establishment and composition of the Technical Advisory Committee, the stakeholder felt that there should be a cap on the maximum number of specialists to be part of the TAC</p>	<p>The taskforce to discuss the issue of capping.</p>
<p>Peter Macharia – Agrochemical Industries Ltd</p>	<p>Groups that are involved in environmental conservation to be consulted when regulation 6(1) h and i are being developed by the deposit bonds management unit.</p> <p>The unit should also look at the prevailing economic situation when calculating the amount to be paid for the deposit bond so that the investors are not adversely affected by this new Regulation.</p>	<p>The taskforce is working towards an investment friendly regulation and do emphasize the following; that the bond is refundable, the refund period reduced from 24 months to six months, and the bond being an integral part of the EIA and EA, for facilities in perpetuity, there is provision for progressive refund of the deposit bond based on good environmental practices. In addition, Regulation 11 (6) provides for a negotiated period of payment.</p>
	<p>A ceiling cap on the minimum and maximum amount of the deposit bond to be paid should be given so that stakeholders can be aware.</p>	<p>A ceiling on the maximum and minimum amount of the deposit bond cannot be set as this would be guided by the calculated cost of remediation.</p> <p>The provision has considered supplements such as environmental management systems put in place by the facility and the level of compliance – this means that the activities would not attract the same amount of bond even if they belong to the same owner.</p>

	<p>Wanted to know if a facility has various activities that are listed under the first schedule in one place, what is going to happen. will each activity attract a deposit bond or will they be considered as a single entity?</p>	<p>The facility with various supporting amenities/activities is considered as one facility.</p>
	<p>The formula to determine the deposit bond is not clear. The stakeholder felt that the criteria and formula need to be clear so that the affected parties would be in a better position to understand.</p>	<p>The calculation of the bond amount payable to be guided by the provisions under Reg 6 (h) and (i)</p>
	<p>Apart from coming up with the deposit bonds regulations, NEMA should also promote economic instruments such as tax waivers for investment in cleaner technologies.</p>	<p>The Authority has been in the fore front of developing economic instruments. A lot has been done on tax waivers especially in the area of waste management where investors are given incentives to bring in equipment for use in waste management.</p>
	<p>The stakeholder also felt that TAC should take a lead role in creation of awareness of the regulations since they would be more knowledgeable on the kind of interventions that are workable.</p>	<p>On awareness creation, the Authority has a full-fledged department that deals with public participation and awareness creation and they would take a lead role in the same.</p>
	<p>On the composition of the Technical Advisory Committee, the stakeholder felt that it should be opened up and other institutions such as KAM, Commerce and Industry should be part of the composition.</p>	<p>TAC can incorporate other relevant disciplines in the course of their work. The TAC should be independent, non-partisan due to the technical nature of the assignment</p>
Jenevive Wanyama – Mumias Sugar	<p>On the transitional clause, it needs to be clear whether its 6 months as was presented or 12 months as indicated in the regulations</p>	<p>This is clear, it's supposed to be within 12 months upon commencement of the regulations</p>
Godfrey Otieno – Shajanand Holdings Ltd (Quarry)	<p>Wanted to know whether the 6 months refund would be at the end of the activity period and how will it be conducted?</p>	<p>It was clarified that the refund would be done within 6 months after issuance of the Deposit Bonds Discharge Certificate</p>

	On the Assessment, the regulation does not specify whether the Environmental Audit would be combined with the deposit bond	Deposit bonds assessment report would form an integral part of the Environmental Audit or the EIA report whichever is applicable (Reg 10(1) and (2))
Tom Arika – FP(2000) Ltd	Wanted to find out what the rationale for refunding the deposit bond when the activity is scheduled for a whole lifespan (in perpetuity)?	Regulation 15(4) has provision where the Bond will be refunded progressively during the life cycle of the facility operations.
	In case a deposit bond is confiscated, is the operator required to pay another bond?	Regulation 17 gives the procedure for confiscation of the deposit bond.
	In case the Authority is going to use the bond for remediation purposes, will the operator be involved on how the bond amount would be used?	This is provided for under Regulation 17 (6) (b) which gives the procedure to be followed in the involvement of the operator in the event of confiscation.
Arnold Mahero/Kenneth Kamau – Tullow Plc	Applauded the efforts of the taskforce in the formulation of the draft deposit bonds regulation. He had a few observations and comments:	
	What is the road map after this meeting?	Stakeholder consultations would still go on, one is scheduled for Nyeri next week and the other one for Embu. Finalize drafting in the next one and half months. Preparation of the Cabinet memorandum and the Regulatory Impact Statement. The regulation would then be forwarded to the Ministry and parliament for further action.
	Will there be another stakeholders meeting to be held in Nairobi?	Considering to have a national validation workshop in Nairobi for all the stakeholders.

	Is there an opportunity to submit a memorandum to the Authority for inclusion in the regulations?	Memoranda are still welcome and can be sent to dgnema@nema.go.ke or zouma@nema.go.ke
	Has the Ministry of Energy and Petroleum been involved in the formulation of these regulations as they are involved in the exploration/extraction activities by the companies?	ERC is an institution within the Ministry of Energy and Petroleum. Initially all relevant MDA's had been invited and there are plans to continue further consultations.
	Did the taskforce consider other regulations when formulating these regulations, case in point being that the Production Sharing Contract (PSC) also has a fund known as the decommissioning fund and International best practices	There is also a special engagement planned with the Ministry of Mining and Ministry of Energy and Petroleum in order to harmonize the provisions of the Mining Bill 2014 and the Petroleum (Exploration, Development and Production) Bill 2015 with the provisions of EMC (Deposit Bonds) Regulation 2015.
	The draft Petroleum bill – decommissioning fund and plan – were this taken into account? Can activities that are already paying other funds under other regulations be exempted from paying the deposit bond?	The taskforce member from ERC had highlighted some of the clauses in the petroleum bill to the members.
	For projects in perpetuity, how do you intend to refund the deposit bonds?	Regulation 15 (4) has provision where the Bond will be refunded progressively during the life cycle of the facility operations.
	Refunding the amount of Bond less the interest, goes against the principles of polluter pays. It is like the Regulation wants to punish the operators that have set down the deposit bond. Is there a way that the interest can be shared?	EMCA has indicated that the interest be retained by the Authority and the money deposited in the restoration fund
	Does NEMA have the capacity to inspect the facilities within 60 days as envisioned in the regulations before the refund of the deposit bond?	NEMA has gained a lot of experience over the years and would be able to do as required. NEMA also works with the lead agencies and will get Technical Assistance on the setting up of the

		Deposit Bond Management unit.
	On the confiscation of the bond, is there a clear criteria on determining the same and will there be a written contract stipulating on how the bond would be confiscated?	Criteria for confiscation is given under Regulation 16(4) NEMA has classified activities into high, medium and low risk.
	1 st Schedule – how were the activities arrived at? Was a risk assessment done? A case in point is the issues of nuclear power plants are safe while plastic manufacturing facilities are missing and yet their activities have adverse impacts on the environment.	This is part of the risk assessment the team undertook as they identified the activities to be in the 1 st schedule.
	On the appeals section, if a party is aggrieved and they do not want to go to NET, are there other avenues of the same?	There are other avenues like the high court and the land and environment court where an aggrieved part can take the matter.
	On appointment of TAC, can there be an independent body that should do the appointment instead of the DG NEMA?	The taskforce will look and deliberate on this issue.
Thomas Sagwe, CEC Nyamira County	The regulations are in line with the constitution, however he wanted to know the role of county governments in the implementation of the regulations	The County governments would be consulted as spelt out under Regulation 6 (1) (g) where they will be involved in the inspections
	1 st Schedule – why under agricultural, only flower farms are included and not large scale farms?	The taskforce is still debating on whether other large scale farms should also be targeted.
Water Service Provider	1 st schedule – Sewerage reticulation systems? On the case of the Water sector, WRMA is in charge of the infrastructure while the water service providers provide the service, so which entity would be	

	required to deposit the amount between the two?	
Vivian Nyamwaya, UNDP	<p>How will the Authority monitor the adverse effect the activity will have on the environment?</p> <p>How stringent will the regulations be?</p> <p>Is the amount to be paid fixed depending, on the type of activity being undertaken?</p> <p>Does the Country have the machinery for disaster preparedness. A case in point is Chile and how they dealt with the disaster that affected them.</p>	

MOMBASA STAKEHOLDER CONSULTATION FORUM

9TH DECEMBER, 2014

No.	Institutions	Comments	Remarks
1	Oil Libya	For existing facilities, does it mean the bond will be in place until the closure of the facility or when will the refund be executed?	Reassessment of the bond will be made. With gradual improvement of a facility/site and consideration of other supplements, the bond will be refunded progressively during the life cycle of the facility.
2	KPRL	How will the deposit bond cover existing facilities which have life-long operations?	Regulation 15 (4) amended to include refunds for life long facilities to be done progressively
		<p>Will the deposit bond be renewed from time to time or at what point will the refund be executed?</p> <p>These Regulations are geared towards proposed projects and existing/operating companies – though clarity needs to be provided on how the deposit bonds will be managed especially as far as refunds are concerned for these two specific categories</p> <p>Cash deposits cannot be done. Payment has to be done through the bank and the bank guarantees</p>	<p>Regulation 13 (f) brings out the spirit of reassessment of the deposit bond and execution of the refund. The taskforce will however open it up for clarity on how refunds will be executed</p> <p>For clarity sake the taskforce will organise the provisions of the regulation relating to projects in operation and the ones proposed – Regulation</p>

		<p>– NEMA should re-look into this issue</p> <p>Deposit bond - capping of the fees</p>	<p>10 (1) and 10 (2) amended with sub-headings for both existing and proposed operations, for clarity purposes</p> <p>EMCA is currently being amended – Section 28 can be re-looked, because the current provisions state that the monies should be deposited in the National Restoration Fund.</p> <p>Deposit bond capping - Reference was drawn to Regulation 11 (6) on the DB payable - Taxation arrangements and NET fiscal incentives are still to be considered – existing environmental levies included as part of the content of a deposit bond assessment report as part of the consideration of the bond amount payable</p>
3	County Government of Mombasa	<p>Liquid waste - Kipevu site, EDL's are obtained from NEMA and WRMA annually. Will the Deposit Bonds still be applicable?</p>	<p>The issue of NEMA and WRMA is currently being handled at the ministerial level and will be effected soon as the Acts come into force. The Act that comes into force first will supersede the other.</p>
		<p>Licencing at the county level – avoidance of duplicating roles between the county and National governments</p>	<p>Presence of the Constitution with clear provisions on the devolved functions to the County</p>
4	Vivo Energy	<p>Petroleum facilities are members of Oil Spill Mutual Aid Group (OSMAG) (fees are paid annually). Is NEMA aware of this and will members of OSMAG still be required to pay this bond?</p> <p>Will the bond be refunded in an event of improved compliance or when the risks are low in a</p>	<p>OSMAG still highlights the same requirements in terms of responses and management of incidences that might arise. Oil marketers are part of this initiative and thus, these can still be a consideration among the supplements that can be considered in the refund of a deposit bond –however the taskforce agreed that compliance with National</p>

		specific site/facility?	legislations is still key. This will also be a factor to consider in the reassessment and refund of the bond
5	Taita-Taveta Small-Scale Miners Group	Can the document be translated to a local language – Kiswahili	An abridged version of it can be prepared once the Regulation comes into force.
		Solid minerals is quite diverse – these needs to be broken down and the bond should be executed in a specific case to case basis in relation to the minerals being mined	
		Have provisions where a small scale miner can progress to medium and to a large progressively – the taskforce should therefore develop a threshold such that if you are operating at a small budget that should be put into consideration when it comes to the bond payable	The taskforce will look into putting a threshold of all mining activities/operations and update the register
		Have a collective deposit bond to be paid as a group for small scale miners operating in a particular locality	Collective bond will be considered for operators under a registered, legal body

6	Base Titanium	<p>Clarification on whether the Refund of the bond will be issued on closure and/or after decommissioning of the facility/project/site or is it issued after 24 months of payment?</p> <p>Monoculture agriculture can also be detrimental to the environment – pose long term negative effects</p> <p>Activities taking place in the Protected areas – marine, wildlife – should also be in the register that will attract deposit bonds – taskforce to look into this</p>	<p>The refund of the bond will be executed within 24 Months after the closure or after completion of successful remediation works of site.</p> <p>Taskforce to look into monoculture agriculture and activities in the protection areas - Monoculture – more benchmarking to be done on this. Enforcement actions to our regulations can apply to activities in the protected areas</p> <p>In addition to this. Regulation 16-4 (i) – refers to compatible after use plans of the site on closure or decommissioning is proposed</p>
7	VTI	<p>Bond can be issued in form of a bank guarantee – why cash deposits?</p> <p>Will the current registered EIA/EA experts be allowed to undertake a deposit bond assessment report?</p> <p>How will the selection of TAC members be done? Will it be through competitive vetting process</p> <p>The timelines on an appeal at the NET, this being 60 days, is too short a period</p>	<p>Various countries offer various forms of environmental financial assurances such as securities, guarantees, etc. The parent Act however, does not offer these other provisions of EFA's other than a bond issued in form of cash to the National Restoration Fund</p> <p>The deposit bond assessment report will be an integral part of the EIA – therefore a multi-disciplinary team will be undertaking this assessment</p> <p>Independent TAC appointed by the DG – the taskforce can open it up for appointment to be competitive in nature – the taskforce resolved that this appointments will be done by the DG as there are fears of not obtaining the right expertise based on terms and conditions provided at the time</p>

8	KENGEN	<p>Why cash –</p> <p>In reference to NEMA instigating clean ups where the proponent/operator does not take action yet NEMA is still a government body subject to the same procurement procedures which can cause delay in addressing an emergency – how will the Authority execute clean-ups in such cases?</p> <p>Benchmark on regional examples such as Uganda, Tanzania, Rwanda not just world-wide case studies</p> <p>Listing of thermal power plants in the register based on power production – in MW</p> <p>Capping of EIA fees</p>	<p>There is an implementation Strategy that NEMA is working on – have a TA to develop guidelines on remediation standards, training of NEMA staff who will work at the Deposit Bonds Unit, the EIA/EA experts, the lead agencies. NEMA will therefore be well trained prior to enforcement of this regulation.</p> <p>This Regulation is aimed at attracting a lean register of facilities – which are high risk in nature</p> <p>Where an environmental emergency has occurred, quicker procedures can be put in place to handle emergencies/incidence - There will be a plan which NEMA will develop to handle any emergencies that might arise prior to enactment of the Regulations</p> <p>The National Restoration Fund is in EMCA with clear procedures on how it should be operated to execute clean-ups</p> <p>In terms of power production – Kengen to assist in determining the thresholds in reference to power production plants which are likely to attract a deposit bond also keeping in mind the risk nature of a facility – this threshold will be considered</p> <p>Benchmarking more will be considered</p>
---	--------	---	--

9	Kenya Maritime Authority	<p>When will the Regulation commence?</p> <p>Constitution of Technical Advisory Committee – will these experts be from NEMA or from different government agencies</p> <p>How will Refugee camps attract a deposit bonds?</p>	<p>During gazettelement, the Cabinet Secretary can indicate when the regulation will come in to place. If not 14 days after gazettelement, the regulation can come into force, transition period has been provided for twelve (12) months in the Regulations</p> <p>The TAC will be an independent multi-disciplinary team of experts from various institutions. In case of any person is aggrieved, the NET is an institution provided in law to handle all grievances</p> <p>The destructive nature of the refugee camps requires a deposit bonds – the degradation can be enormous</p>
10	Bamburi Cement	<p>Guidelines on competent experts – do they exist?</p> <p>Refund of the bond for life long operations – how will the refund be executed?</p>	<p>The evolving nature of the environmental assessment to bring in other tools of assessment such as EIA, ESIA, SEA and this is yet another tool that has evolved from EIA that needs to be taken into consideration thus, a multi-disciplinary team of experts are competent enough to undertake a deposit bond assessment for a proposed or existing facility/site.</p> <p>Reassessment of the bond will be made - With gradual improvement of a facility/site and consideration of other supplements, the bond will be refunded progressively during the life cycle of the facility</p>

NAIROBI STAKHOLDER CONSULTATION FORUM

10TH OF JUNE, 2014

Regulation Section	Comments	Proposed Way forward
Functions of the Unit 6(1)(g)	Conditions for approval are clarified to be based on deposit assessment report not EIA	The EIA unit and the Deposit Bond Management Unit will be linked within NEMA
Contents of the Register (8)	Clarification was needed as to which schedule is referenced	Draft Regulations will be amended to be specific on the schedule referenced i.e. the schedule on the regulations and not parent act
Determination of a Deposit bond 10(3)	Availability of competent expert with speciality in environmental financial assurance who are licensed by NEMA was questioned	NEMA is to develop and make available a criteria to be used to license the said experts
		As part of implementation, NEMA will undertake training of the experts
Determination of a Deposit bond 10(5)(f)	Does NEMA have expected remediation standards?	NEMA is to develop guidelines on remediation standards
Determination of a Deposit bond 10(5)(g)	Is the said deposit bond site specific or organization specific	Deposit bond will be tied to deposit bond assessment reports prepared which will be site specific. However for ease of administration, the bond payable can be the combined total financial obligation of the operator
	What is the basis of determining the bond?	NEMA is to benchmark with other countries and develop the standards/define the parameters to be used in determining the bond as well as the formula to be used in deposit bond calculation
Determination of a Deposit bond 10(5)(g)	When is the deposit bond payable?	NEMA clarified that the bond is payable at the commencement of the operations
Review by the Authority and issuance of a notice of the deposit bond payable 11(2.b)	Communication to operators 30 days after approval of EIA	This will be reviewed and revised by NEMA. Proposal was the response from

Regulation Section	Comments	Proposed Way forward
		the authority is sent at the same time as the approval of EIA
Reassessment of a deposit bond (13)	Rewards for good track record, implementing other systems in addition to adherence to the EMP such as ISO 14000 accreditation, compliance history should be factored in the bond assessment report	These supplements will be considered in re-assessment of the bond payable
	Positive changes that an operator makes during the course of undertaking activities will be recognized e.g. achieving accreditation.	NEMA will recognize such changes and institute re-assessment of the deposit bond
Annual Adjustment Notice (14)	NEMA was tasked to explain why the increase due to inflation and yet the bond is being invested and earning the authority interest.	NEMA through the task force to re-look at this matter.
Periodic audit of the deposit bond fund (15)(3)	Every three to five years was ambiguous	NEMA to specify the duration when the audit is done
Refund of a deposit bond (16)(2)	Permanent infrastructure/long term activities lie outside the requirement of notifying NEMA when approaching closure	NEMA through the TAC to consider modalities through which partial bond refund can be made to operators of long term infrastructural plants. Proposed method was through cyclic audits of such activities
Refund of a deposit bond (16)(5)	Refund period of 24 months is too long a time to wait	The parent act states 24 months. NEMA to pursue revision of this duration
Confiscation of a deposit bond (17)(b)	Accountability of bonds confiscated following failure of an operator to remediate	NEMA to prepare a report on remedial action it undertakes and the report to include financial as well as technical aspects. NEMA will make this report available for public review NEMA to specify timelines within which remedial action will be undertaken

Regulation Section	Comments	Proposed Way forward
New section to be introduced as 17(8)	Actions to be undertaken during Emergency situations had not been included in the regulations	It was agreed that in the event of an emergency, NEMA would use the bond to remediate and charge the Operator
Establishment and composition of the Technical Advisory Committee	Background to TAC to be included to capture details such as tenure, appointment basis i.e. who appoints the members of TAC and their remuneration	NEMA to action
Functions of the Technical Advisory Committee (19)(b)	Periodic audit of deposit bond was omitted	To include periodic audit
Transitional clause(24)(1)	The stipulated duration for compliance (six months) is too short a time	NEMA to re- look at duration and revise