



REGULATORY IMPACT STATEMENT

(Section 6 of the Statutory Instruments Act No. 23 of 2013)

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (WASTE TYRE MANAGEMENT) REGULATIONS, 2014

1. The Problem

According to a concept and feasibility study for collection, pre-processing and marketing of waste tyres in Kenya, about 1.9 million scrap tyres were generated in Kenya in 2011, translating to 50,000 tons of waste tyres. Although illegal, the largest proportion of waste tyres is disposed of through open burning to recover the steel from the tyres while a very small percentage well below 10% is used for material recycling. The steel wires recovered from the burning of tyres are then sold to scrap metal traders which practice is widespread all over Kenya. The burning of tyres leads to severe environmental degradation and poses a danger to human, animal and plant life due to the release of hazardous chemicals such as dioxins, mercury, hydrogen chloride, sulphuric acid, flourides and harmful particulates. These gases not only affect those in close proximity to the burning activity, but spread far and wide to cover a significant range and linger for a while thereafter.

Furthermore, a significant proportion of waste tyres are dumped indiscriminately presenting a health hazard due to their non-biodegradability, as stagnant water will accumulate in them and become breeding grounds for mosquitoes and other vermin.

Should the current trend in the generation of waste tyres be maintained, a conservative approach puts the estimates in the increase of the amount of waste tyres from 52,600 tons in 2012 to 81,600 tons in 2021 and 132,900 tons in 2031.

2. Objective of the proposed Regulations

The objective of the Environmental Management and Coordination (Waste Tyre Management) Regulations, 2014 is to develop and implement a sustainable and environmentally sound system of waste tyre management in Kenya.



3. Effect of the proposed Regulations

The proposed Regulations will introduce a dedicated system for waste tyre management into the general regulatory framework of the Environmental Management and Coordination Act, 1999. Specifically, the Regulations will establish a Unit within the National Environmental Management Authority known as the Waste Tyre Management Unit whose functions will be limited to the administration of the contemplated system. The Regulations will also establish an advisory body to the Authority named the Waste Tyre Management Committee which will draw its membership from representatives of the Authority, tyre manufacturers, importers, consumers, waste tyre disposal facilities, persons involved in waste tyre re-treading.

A contracting regime is proposed to be introduced for the provision of waste tyre management services, which services will be provided pursuant to public procurement processes. The provision of the services by contracted entities will be funded from a waste tyre management levy which is paid into a separately designated account in the National Environmental Restoration Fund. The levy shall be charged as a fixed fee on every tyre either locally manufactured or imported, including tyres affixed on imported vehicles, which shall not be more than two (2) per cent of the average market value of the tyre.

Finally, the proposed Regulations create offences and penalties for failing to dispose discarded tyres in the manner provided as well as failing to pay the levies due.

4. Alternative option that may achieve the objectives

Self-regulation by companies in the tyre sector

In this option, the Kenyan tyre sector would establish an association or company for collection, storage and marketing of waste tyres. The tyre sector would also be entirely responsible for financing of the waste tyre management system, with the Authority's role being limited to issuing waste tyre regulations and licensing companies based on defined criteria.

5. Costs and benefits analysis

a) Option as proposed in the Regulations

Costs

The costs for the waste tyre management system will arise from acquisition, collection and transportation of the tyres which will be borne by the entities contracted to provide the waste tyre management services. It is expected that administration and contingent expenses will also arise in the establishment and running of the institutional arrangements contemplated in the Regulations, as well as in the collection of the levies. As such, ultimately the tyre consumer will be expected to meet this costs which will marginally affect the prices of tyres in the country.

Benefits

This option will ensure that there is a financially sustainable system of managing waste tyres in Kenya by allowing for competition in the market, with the support and oversight of the National Environment Management Authority, while eliminating the negative environmental impact of harmful waste tyres disposal.

b) Self-regulation by companies in the tyre sector

Costs

In this option, the costs for the waste tyre collection system most likely cannot be fully financed from revenues from marketing waste tyre products for which reason the tyre sector would have to contribute to the funding of the system. However, most of the tyres being used in Kenya are not produced in the country but are imported whether as tyres on their own, or on vehicles. Once the tyres are in the country, it would be difficult if not impossible to address these companies with regard to financial contributions for the system as there are a large number of different companies and individuals who import.

Benefits

Although the control and enforcement of such a system in the Kenyan context would be difficult, it ensures that all tyre importers and tyre producers participate in the approved waste tyre mechanism.

6. Drawbacks of alternative option

The major handicap of the proposed option is the enforcement aspect. Whereas the private sector can form an association to deal with the disposal of waste tyres, the same shall be a voluntary association and it may not be possible to bring together all persons involved in the waste tyre sector. In addition, the issue of collecting funds from among its members may prove a challenge since there would be no obligation under the law that will be imposed on the members to fund the cost of disposing off the waste tyres.

7. Copy of the Regulations

A copy of the proposed Waste Tyre Management Regulations 2014 is attached herewith.

**EXPLANATORY MEMORANDUM TO THE ENVIRONMENTAL MANAGEMENT
AND COORDINATION (WASTE TYRE MANAGEMENT) REGULATIONS 2014**

[Sections 2 and 11, Statutory Instruments Act]

PART I

Name of the Statutory Instrument: The Environmental Management and Coordination (Waste Tyre Management) Regulations, 2014

Name of the Parent Act: The Environmental Management and Coordination Act, 1999

Enacted pursuant to: Section 147 of Environmental Management and Coordination Act, 1999

Name of the Ministry/Department: Ministry of Environment, Water and Natural Resources/
National Environment Management Authority

Gazetted on:

Tabled on:

PART II

1. Purpose of the Statutory Instrument

The purpose of the Environmental Management and Coordination (Waste Tyre Management) Regulations, 2014 (“the Regulations”) is to ensure the environmentally sound management of waste tyres in the country.

2. Legislative Context

The Regulations are being promulgated to develop a sustainable and environmentally sound system of waste tyre management in Kenya. It fits into the more general regulatory framework under the Environmental Management and Coordination Act, 1999 and deals with the sub-category of waste tyres.



3. Policy Background

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 burning and indiscriminate dumping of tyres, which form the larger proportion of how waste tyres are disposed of in Kenya, lead to severe environmental degradation and pose a danger to human, animal and plant life. According to a concept and feasibility study for collection, pre-processing and marketing of waste tyres in Kenya, about 1.9 million scrap tyres were generated in Kenya in 2011, translating to 50,000 tons of waste tyres. Should the current trend in the generation of waste tyres continue, a conservative approach puts the estimates in the increase of the amount of waste tyres from 52,600 tons in 2012 to 81,600 tons in 2021 and 132,900 tons in 2031.

Consequently, the Regulations fulfil the policy objectives of the Act by establishing a framework for the management of waste tyres in order to avert the hazardous and inefficient methods of their disposal that are currently employed.

4. Consultation Outcome

A Waste Tyre Management Association was formed in the year 2007, and subsequently in 2011, the Strategic Alliance for Waste Tyre Management, Kenya was established comprising of officials from the National Environment Management Authority and private companies in the tyre sector, with the support of GIZ Kenya. There have been numerous consultative meetings within the Alliance, as well as with the Ministries of Environment and Finance through NEMA to seek their support, culminating in the drafting and approval of the Regulations.

Upon the drafting of the Regulations herein the same were published on the NEMA website and further there was an announcement in the Daily Nation of 28th October 2013 inviting interested persons to submit comments on the draft Regulations. Subsequently,

NEMA organized a stakeholder consultation meeting on 7th November 2013 at KICC, Nairobi.

The main issues that arose during the stakeholder consultative forum were (i) the requirement on licencing of any person involved in the transportation and storage of waste tyres, (ii) the formula for calculating the levy, (iii) the representation of the tyre importers and retreaders on the Waste Tyre Management Committee.

NEMA clarified that the Regulations do not deal with licencing as that is already provided for under the Waste Management Regulations 2006. Further, a clause was introduced in the Regulations that it is only those persons who are commercially involved in the commercial transportation and storage of waste tyres who will require licence. As regards the formula, NEMA revised the same from initial percentage rate to a fixed rate of new tyres based on Harmonized System (HS) applied by Kenya Revenue Authority. NEMA further revised the regulations to provide two persons to represent tyre importers since the bulk of the tyres used in the county are imported.

5. Guidance

The Regulations will be availed on the NEMA website where it can easily be accessible by members of the public. Further, NEMA shall prepare brief pamphlets for the ordinary *mwananchi* which will be distributed during public forums/road shows that would be used to explain the regulations.

6. Impact

6.1 The impact on fundamental rights and freedoms

The Regulations will enhance the enjoyment of fundamental rights and freedoms including principally the right to a clean and healthy environment, as well as the rights to the highest attainable standard of health and to clean and safe water.

6.2 The impact on the public sector

The public will be made responsible for the disposal of waste tyres by being required to ensure safe and proper disposal of the waste tyres by contributing to the disposal mechanism proposed under the Regulations through the levies.

6.3 *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

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

7. Monitoring and review

The Waste Tyre Management Committee shall from time to time advise the Director-General on the Regulations in particular on the fixed rate of levy to be imposed on various categories of tyres.

8. Contact

The Director-General
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**THE ENVIRONMENTAL MANAGEMENT AND COORDINATION
(WASTE TYRE MANAGEMENT) REGULATIONS, 2014**

ARRANGEMENT OF REGULATIONS

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**THE ENVIRONMENTAL MANAGEMENT AND
COORDINATION (WASTE TYRE MANAGEMENT)
REGULATIONS, 2014**

PART I – PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Environmental Management and Coordination (Waste Tyre Management) Regulations, 2014.
- Interpretation 2. (1) In these Regulations, unless the context otherwise requires:
- “**Act**” means the Environment Management and Coordination Act;
 - “**Authority**” means the National Environment Management Authority;
 - “**Cabinet Secretary**” means the cabinet secretary for the time being responsible for environmental matters;
 - “**Committee**” means the Waste Tyre Management Levy Committee;
 - “**contracted person**” means a company or business entity contracted under Part III of these Regulations to engage in the collection, storage, transportation, disposal or recycling of waste tyres;
 - “**discarded tyre**” means a worn or damaged tyre which has been removed from a vehicle;
 - “**environmentally sound management of waste tyres**” means the collection, storage, treatment and recovery or disposal of waste tyres in a manner which would not endanger human health or harm the environment;
 - “**recycling**” means the process of changing the waste tyres for purposes of utilizing its contents for energy or new products;
 - “**re-use**” means the use of a waste tyre, either for the same purpose or a different purpose without the need for reprocessing;
 - “**retreaded tyre**” means a tyre that has been vulcanized with a new tread to extend its usable life;
 - “**tyre**” means a continuous pneumatic covering made of natural rubber or synthetic rubber or a combination of both encircling a wheel, whether new or used, and includes retreaded tyres;
 - “**tyre consumer**” means a user of a tyre, re-used tyre, or retreaded tyre;

“tyre dealer” means any person or entity that distributes, or otherwise deals commercially in tyres;

“tyre importer” means a person or institution engaged in the importation of tyres including tyres affixed to imported cars;

“tyre manufacturer” means a person or institution engaged in the commercial manufacture of tyres for distribution;

“tyre producer” for the purpose of these regulations means a person or institution manufacturing, importing or dealing with tyres;

“tyre retreader” means any person or institution that vulcanizes a new tread to extend the usable life of a tyre;

“waste tyre” means a tyre that is no longer suitable for its original purpose.

Purpose of the Regulations

3. The purpose of these Regulations is to ensure environmentally sound management of waste tyres.

Obligations of tyre consumers

4. (1) Every tyre consumer shall upon removal of a discarded tyre from the wheel of his vehicle deliver it to a tyre dealer for collection by contracted persons or tyre retreader, or directly delivers it to a contracted person or tyre retreader.

(2) Any tyre consumer found to have disposed of his discarded tyre in any manner other than as provided above shall be guilty of an offence.

PART II – WASTE TYRE MANAGEMENT UNIT

Establishment of the Waste Tyre Management Unit

5. There is hereby established a Unit within the National Environment Management Authority to be known as the Waste Tyre Management Unit (hereinafter the “Unit”).

Functions of the Unit

6. (1) The functions of the Unit shall be to:
- (a) administer the levy monies deposited in the Fund in consultation with the Committee;
 - (b) enter into contracts for the collection, transportation, storage, and disposal of waste tyres in accordance with Part III of these Regulations;
 - (c) make payments to contracted persons in accordance with the tender documents and agreed contractual terms;
 - (d) present an annual report of the operations of the Unit to

- the Committee as established under these Regulations;
- (e) investigate and determine complaints with respect to the contracted persons;
 - (f) investigate and determine complaints with respect to unpaid or underpaid levy or any other levy irregularity;
 - (g) assess and monitor the impact of these Regulations on the environment;
 - (h) supervise the contracted persons involved in the collection, transportation, storage and disposal of waste tyres;
 - (i) carry out any other activity, in consultation with the Committee, as may be conferred on it under the Act or other law.
- (2) All the functions stipulated in paragraph 1 shall be exercised by the Unit on behalf of the Authority.

PART III – CONTRACTING FOR WASTE TYRE MANAGEMENT SERVICES

Licences required

7. (1) No person shall commercially engage in the collection, transportation, or storage of waste tyres for the purpose of re-use, recycling or disposal without a valid licence from the Authority.

(2) Notwithstanding the provisions of paragraph 1 above, any person may, upon application in writing to the Authority, be exempted from the requirement of a licence on the ground that he is not commercially engaged in the collection, transportation, and storage of waste tyres.

Application for
and, grant of,
licences

8. Any person seeking to obtain a licence shall make application to the Authority in such form, accompanied by such information, as may be prescribed under the Waste Management Regulations, 2006.

Contracting of
companies

9. The Authority shall from time to time invite applications through a public tender for the provision of waste tyre management services.

Method of
contracting

10. (1) The Authority shall determine qualified applicants through evaluation of bids presented by applicants in accordance with the provisions of the Public Procurement and Disposal Act.

(2) After considering an application and all matters appearing relevant thereto, the Authority may, subject to the succeeding provisions of this section, enter into a contract with the successful applicant to provide waste tyre management services in accordance with the tender documents and on such terms and conditions as the Committee may recommend.

(3) The Authority shall not award a contract unless it is satisfied that:

- (a) the applicant is a limited liability company or a registered business entity in the Republic of Kenya;
- (b) the applicant is duly licenced in accordance with the provisions of Regulation 7;
- (c) the applicant has the necessary and adequate facilities for collection, storage, transportation, and disposal of waste tyres as required under the Waste Management Regulations, 2006;
- (d) the applicant has furnished evidence of a proper disposal system of the waste either by himself or in partnership with third parties; and
- (e) the applicant's bid includes required environmental permits.

(4) For the purpose of paragraph 3(c) and 3(d) above, the Authority may conduct an inspection of the storage and disposal facilities that may be proposed to be utilized by the applicant in order to verify the suitability of such premises or facilities.

(5) Any person who makes or causes to be made, either orally or in writing, any declaration or representation which he knows or has reason to believe to be false for the purpose of obtaining an award of the contract shall be guilty of an offence and liable to imprisonment of a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings or to both.

PART IV -WASTE TYRE MANAGEMENT COMMITTEE

Establishment and
composition of
Committee

11. (1) There is hereby established a Committee within the Authority, to be known as the Waste Tyre Management Committee, which shall consist of:

- (a) a Chairperson to be elected by the members from the persons under paragraph (b)(i-vi);
- (b) nine persons appointed by the Director-General, of whom –
 - (i) one person to be nominated by the Authority;
 - (ii) one person to be nominated by Tyre manufacturers;
 - (iii) two persons to be nominated by Tyre importers;
 - (iv) one person to represent the interests of the consumers;
 - (v) one person nominated to represent interests of waste tyre disposal facilities;

- (vi) one person to represent persons involved in tyre retreading;
- (vii) two other co-opted members appointed by the Director General on the recommendation of the members in paragraphs (b)(i-iv) to represent any other interest or provide technical support to the Committee.

(2) The Unit shall provide all the secretarial services to the Committee required for the carrying out of its functions.

Functions of the Committee

12. The functions of the Committee shall be to advise the Authority on –

- (a) the guidelines concerning the licencing and contracting of persons involved in the collection, transportation, storage, and disposal of waste tyres;
- (b) operations and functions of the Unit;
- (c) the annual reports presented by the Unit;
- (d) the proposed rate of the waste tyre management levy to be imposed by the Authority from time to time under Regulation 14;
- (e) tender specifications and contract requirements and conditions under Regulation 10;
- (f) any other purpose or function as may be prescribed under these Regulations or the Act.

Regulation of affairs of the Committee

13. (1) The Committee may meet together at least once every six months to conduct its business and otherwise regulate the procedure at its meetings as it may think fit.

(2) The quorum necessary for the transaction of the business of the Committee shall be five Members.

(3) If the Chairman of the Committee is absent from any meeting, the members present at the meeting shall elect one of their number to preside over the meeting, and the Chairman or person so presiding shall have a casting in addition to his deliberative vote.

(4) There shall be paid to the Committee Members such allowance as may be approved by the Director-General to facilitate the attendance of the Committee meetings.

PART V – WASTE TYRE MANAGEMENT LEVY

Waste tyre
management levy

14. (1) There is hereby established a waste tyre management levy (in this Regulations referred to as “the levy”) which shall be charged in accordance with the schedule hereto.

(2) The Cabinet Secretary shall, on the recommendations of the Authority, by Order published in the Gazette, publish a revised schedule from time to time in such manner as may be specified in the Order.

(3) All monies, received in respect of the levy shall be paid into a separately designated account in the National Environmental Restoration Fund by virtue of the provisions of Section 25 (2)(b) of the Act.

(4) There may be paid into the account any money, from any other source, provided for or donated for purposes of Waste Tyre Management.

(5) If any person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the Order, such person shall be liable to a penalty of one hundred thousand shillings and thereafter to an additional penalty of three (3) per cent of the amount of the levy due, for each month or part thereof during which the amount due remains unpaid.

(6) A penalty imposed under paragraph 5 shall be recoverable as if it were a levy.

Determination of
the levy and
penalty

15. (1) The levy shall be charged as a fixed fee on every tyre, either locally manufactured or imported, based on the Harmonised System (HS) code classification as applied by the government agency for the time being responsible for collection of customs and domestic duties and taxes in the Republic of Kenya.

(2) The provisions of paragraph 1 shall also apply to tyres affixed on imported vehicles.

(3) For the purposes of the provisions of paragraph 1 and 2, the fixed fee charged shall not be more than two (2) per cent of the average market value of the tyre as determined by the Committee.

(4) Any levy or penalty imposed under this Act shall be summarily recovered as a civil debt due by the Authority in accordance with the provisions of the applicable domestic tax laws and the Customs and Excise Act (Cap. 472) as if it were duty due and payable under those laws.

(5) The Authority shall engage the services of the governmental agency for time being responsible for collection of national duties and taxes in the collection and/or recovery of the levy.

Purpose and use of the levy funds

16. (1) The levy monies held in the Fund in accordance with Regulation 14 shall be utilized for the purpose of administering the management of waste tyres and in particular to make payments to contracted persons in order to support the costs of collection, storage, transportation and disposal of waste tyres.

(2) Any levy money in the Fund not utilized in the preceding year may be considered by the Committee in the review of the levy as the circumstances may render it necessary.

(3) The Unit shall apply ninety five (95) per cent of the levy monies held in the account of the Fund to make payments to persons contracted by the Authority to collect, store, transport and dispose of waste tyres.

(4) The remainder of five (5) per cent of the levy monies may be applied to meet the costs of administration and other miscellaneous expenses.

Criteria for making payments to licenced companies

17. (1) The Unit shall make payments to the contracted persons based on the criteria stipulated in the tender documents recommended by the Committee and the agreed contractual terms.

(2) For the purposes of determining the criteria for making payments under paragraph 1, the Committee shall have regard to the weight of the waste tyres disposed of or recycled in an environmentally friendly manner by the contracted person.

(3) The amount of payments to be made to contracted persons shall be a fixed unit price based on the weight of the waste tyres disposed or recycled by the contracted person.

(4) Before the Unit makes payment, the contracted person shall be required to provide proof of the disposal or recycling of the waste tyres either from a disposal or recycling facility.

Accounts

18. (1) The Unit shall cause to be kept all proper books of account and other books, and records in relation to the proceeds of the levies and to all their undertakings, activities and property and shall, within a period of four months after the end of the financial year, cause to be prepared –

- (a) a balance sheet showing in detail the assets and liabilities of the Fund as at the end of that financial year;
- (b) such other statements of account as may be necessary to indicate the financial status of the waste tyre management levy as at the end of the year.

(2) The accounts of the levy monies deposited in the Fund shall be examined, audited and reported annually to the Auditor-

General.

PART VI – MISCELLANEOUS

Offences and penalties

19. Any person found guilty of any offence under these Regulations whose penalty is not otherwise stipulated shall be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a period not exceeding twelve months or to both.

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Cabinet Secretary for Environment

Dated.....2014

SCHEDULE

R. 14(1)

Waste Tyre Management Levy

HS Code	Description	Levy	
		Amount (Kshs)	Unit
Levy on Tyres			
4011(all sub-headings)	New pneumatic tyres, of rubber	5	Per Kg-Net Weight
Levy for Import of Tyres on Vehicles			
8701	Tractors(other than tractors of heading 8709)	1,500	Kshs Per Vehicle
8702	Motor Vehicles for transport of ten or more persons, including the driver	1,000	Kshs Per Vehicle
8703	For transport of persons principally designed for the transport of persons(other than those of heading No. 8702)	200	Kshs Per Vehicle
8704	Motor vehicles for transport of goods	1,500	Kshs Per Vehicle
8705	Special purpose vehicles, other than those principally designed for transport of persons or goods	1,500	Kshs Per Vehicle
8709	Works trucks, self propelled, not fitted with lifting or handling equipment, for short distance transport of goods	750	Kshs Per Vehicle
8711	Motorcycles(including mopeds) and cycles fitted with an auxiliary motor, with or without side cars;	75	Kshs Per Vehicle