

LEGAL NOTICE NO.....

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

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2021**

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Role of Waste Service Providers and Vulnerable Groups

A chapter should be inserted in the regulations to protect Vulnerable Groups such as waste pickers from exploitation by consumer brands and PROs for the activities they undertake in management of the products waste. These groups undertake activities such as collection, sorting, cleaning, among others to enable recycling, but they are not adequately compensated for their work. This means that the producer responsibility is donated to another party without fair remuneration. The Act should explicitly declare this to be illegal with the tribunal being able to hear such cases. Betterman Simidi Musasia – Clean Up Kenya

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

IN EXERCISE of the powers conferred by section 86 of the Environmental Management and Co-ordination Act, the Cabinet Secretary for Environment and Forestry, on the recommendation of the National Environment Management Authority, makes the following Regulations—

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (EXTENDED PRODUCER RESPONSIBILITY) REGULATIONS, 2021

PART I — PRELIMINARY

Citation. **1.** These Regulations may be cited as the Environmental Management and Co-ordination (Extended Producer Responsibility) Regulations, 2021.

Interpretation. **2.** In these Regulations unless the context otherwise requires—

No. 8 of 1999 “Act” means the Environmental Management and Co-ordination Act;

 “actors” refers different players in the extended producer responsibility value chain;

 “Authority” means the National Environment Management Authority established under section 7 of the Act;

“Brand” refers to a registered trade mark under which a product is sold.

“Brand owner” refers to the registered owner of the trademark.

 “circular economy” refers to initiatives for designing and redesigning out waste from products, extraction of maximum value from natural resources, closing of material loops and creation of new value from materials that would otherwise have been wasted;

 “collective EPR Compliance Schemes” refers to producers executing their extended producer responsibility obligations in a producer responsibility organisation;

“converter” means an entity that transforms or combines secondary raw materials to produce a new product;

“consumer,” means the end user of a product;

“compliance schemes,” refers to both individual and collective extended producer responsibility schemes;

“deposit refund scheme” means a collection system that requires a monetary deposit on a product at the point of sale where consumers redeem the deposit when they return the product;

“extended producer responsibility” refers to an environmental management approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product life cycle;

“environmentally friendly or eco-design” means the practice of reducing environmental degradation and pollution by making products that comply with environmental sustainability that includes but not limited to minimal waste production, reusability, recyclability, compost ability, biodegradability and safe disposability;

“environment sustainability” means responsible interaction with the environment to avoid pollution, depletion or degradation of natural resources and allow for long-term environmental quality;

“free rider” means an individual or entity that does not contribute to a collective scheme but benefits from its existence and action; it includes producers who fail to manage own products at the post-consumer stage; producers who under declare their volumes, or fails to demonstrate fulfilment of individual extended producer responsibility obligations, producer in a pooled scheme who fails to pay their subscriptions, submit accurate information or fulfil their membership requirements;

“individual EPR Compliance Schemes” refers to direct execution of extended producer responsibility obligations by an entity that is a sole producer of a product;

“mandatory initiatives” means initiatives implemented through government regulation;

“Tribunal” means the National Environment Tribunal established under section 125 the Act;

“packaging,” means the material in which a product is

wrapped or covered with in order to protect it or prevent it from being contaminated, sold or transported. in this regulation, packaging shall also be considered as a product;

“post-consumer” means a period after usage by a consumer when a product or packaging is discarded or becomes waste;

~~“producer” means an entity that introduces goods, products and packaging into the country using authorised means by manufacturing, importing, distributing, converting, selling or re-selling or otherwise brings;~~

“producer” means an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings;

In case where a converter is selling packaging or manufacturing packaging on behalf of a brand owner, then the brand owner is to be considered as the “producer”.

In case where the brand owner is rebranding for special purposes, the brand owner remains the “producer”.

“product” means a good or packaging introduced in the Kenyan market by any entity or persons through production, importation, franchising, marketing, and distribution outlets and channels for consumption by the consumer;

“producer responsibility organisation” means a producers’ membership organization set up to assume legal obligation to implement extended producer responsibility on behalf of its members in a Collective EPR Compliance Schemes;

“product life cycle,” means the environmental sustainability of a product in all its stages from raw material extraction, design, production, transportation, distribution, consumption or use, repair and maintenance, recycling and end of life disposal;

“recovery” means retrieval of materials from waste and includes repair, refurbishment, recycling, remanufacturing, composting, power generation, or any other initiative aimed at extracting value from material that would otherwise have been discarded as waste;

“take back” means a mechanism through which producers collect their products from consumers:

“waste” means—

- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as municipal waste, domestic waste, waste from agriculture, horticulture waste, aqua culture waste, forestry waste, medical waste, chemical, hazardous and toxic industrial waste, pesticide and toxic substances, but does not include radioactive waste; or
- (b) any other substance, material or object that is not mentioned above but may be defined as a waste by the Cabinet Secretary by notice in the *Gazette*;
- (c) any waste or portion of waste, referred to in paragraphs (a) and (b) ceases to be a waste—
 - (i) once an application for its re-use, recycling or recovery has been approved by the Authority or, after such approval, once it is, or has been re-used, recycled or recovered;
 - (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered; or
 - (iii) where the Cabinet Secretary has excluded any waste stream or a portion of a waste stream from the definition of waste; and

“waste management” means to control and monitoring of production to minimise waste, handling of post-consumer products including segregation at source, collection and take back schemes, transportation, processing of material recovered from waste, treatment and safe disposal of unrecoverable materials.

Object and purpose.

~~3. The object and purpose of these Regulations is to provide for extended producer responsibility for all products and packaging in all phases of their life cycle to enhance environmental sustainability through—~~

~~4.~~

~~5. —reduction of pollution and environmental degradation;~~

~~6. —sustainable use of natural resources;~~

~~7. —promotion of circular economy;~~

~~8. —reduction of waste at source;~~

~~9. —promotion of environmentally friendly product designs; and~~

~~10.3. —promotion of a culture of environmental consciousness and responsibility.~~

The object and purpose of this regulation is to operationalize the Polluter Pays Principle give effect to part 2 section 3(1) “every Kenyan is entitled to a clean and healthy environment and has a duty to safeguard it” and 3(5)(f) “Polluter Pays Principle” of EMCA 1999.

More specifically, this regulation intends to fulfil the following objectives

- (a) Provide an overarching framework for establishment of mandatory EPR schemes
- (b) Optimize life cycle approach to management of products and associated wastes.
- (c) Enhance resource mobilization for management of products and sustainable waste management.
- (d) Operationalization of Polluter Pays Principle
- (e) Promote collaborative approach in management of products associated wastes

Application of the regulations.

11.4. These regulations shall apply to producers, individual EPR Compliance Schemes and PROs for products listed in the first schedule. –

PART II- EXTENDED PRODUCER RESPONSIBILITY OBLIGATION AND RESPONSIBILITIES

Extended producer responsibility obligations.

12.5. (1) Every producer shall bear extended producer responsibility obligation to reduce pollution and environmental impacts of the product that they introduce in the market and waste arising therefrom.

(2) For purposes of fulfilling the obligation under sub regulation (1), a producer shall—

(a) establish post-consumer collection and take back schemes system which may include a deposit refund system;

This clause is very vague. It could be improved by making mandatory deposit refunds the primary basis for producer responsibility. Use of the word ‘may’ suggests that producers can only adopt deposit refund systems only if they wish to.

The Authority or Cabinet Secretary needs to be given authority to from time to time publish a list of products which are subject to mandatory or non-mandatory refunds in a Gazette Notice with these publications being informed by among others, the inability to significantly reduce the waste stream from the environment by

other EPR mechanisms such as take backs and collections, or the design of the product which makes a deposit refund scheme impractical.

For example, hazardous products such as vehicle batteries, glass and certain aspects of plastics like PETs should be subject to mandatory deposit schemes.

Deposit return schemes are effective and well-evidenced pollution-prevention strategies. The introduction of DRS can also be a critical influencer for reuse and a key mechanism to help companies achieve recycled content targets and is also the key to circular economy.

For this reason, the First Schedule should be removed from the Act with the NEMA or the Cabinet Secretary given authority to publish this afterwards in a Gazette Notice and review and publish new notices as more evidence is presented. Betterman Simidi Musasia – Clean Up Kenya

- (b) setting up individual or collective EPR Compliance Schemes or join a collective EPR Compliance Schemes.:
- (c) register and provide reports of the status of the implementation of their extended producer responsibility obligations to the Authority through the reporting system established by the Authority;
- (d) design products and packaging materials that minimize waste, facilitate reuse, recycling, recovery, use of secondary raw material where possible and are environmentally friendly at their end of life;
- (e) take financial, organizational and physical responsibility for the management, treatment and disposal of their post-consumer products and end of life treatment for the waste generated by their products;

- (f) provide updated information on quantities of products they introduce into the national market, recyclability and reusability, interpretation of packaging labels, market traceability mechanism and any other prescribed information through reporting system established by the Authority;
- (g) provide consumer with information on their role on reuse, return, take back points, meaning of recycling and recovery labels and symbols on the products;
- (h) raise awareness on management of post-consumer products that they introduce in the market;
- (i) carry out product life cycle assessment in relation to their products for enhancing environmental sustainability;
- (j) support establishment of markets for secondary raw materials;
- (k) put in place circular economy initiatives and any other measures to reduce impact of their product on health and environment.; and
- (l) fund research and development programs on emerging technologies to improve material recovery.

Execution of extended producer responsibility obligations.

- 13.6.** (1) Every producer shall fulfil the obligations in regulation 5 by setting up individual or joining an established collective EPR Compliance Schemes(s).
- (2) A producer may transfer part of or the entire extended producer obligations subject to a membership agreement to a collective EPR Compliance Schemes through a producer responsibility organisation, in which they take membership.
- (3) A producer's obligation in a collective scheme shall include, but not be limited to, payment of membership fees to a registered and licensed producer responsibility organization.
- (4) Notwithstanding the provisions in sub regulation (2) and (3) above, lack of an established EPR Compliance Schemes shall not exempt any producer from extended producer responsibility obligations.

Products covered under extended producer responsibility

- 14.7.** (1) The products covered under these Regulations shall primarily be those that negatively impact the environment and health due to—
- (a) the challenge they pose on—
 - (i) reuse;
 - (ii) recyclability; and
 - (iii) recoverability;
 - (b) the high management cost of the products at post-consumer stage because of the —
 - (i) quantities involved;
 - (ii) hazardous nature;
 - (iii) risks involved
- (2) The Authority shall, in addition to the products listed in the First Schedule, provide a list of products which from time to time may be subjected to extended producer responsibility compliance schemes.

- (3) The development or amendments to the first schedule is informed by
- (i) the ease of doing business
 - (ii) interrelatedness of functions and/or sectors (iii) economics of scale
 - (iv) PRO management viability
 - (v) prioritization of pollution by the product or packaging

PART III- REGISTRATION OF PRODUCER RESPONSIBILITY ORGANIZATIONS

Registration of EPR Compliance Schemes.

- 15.8.** (1) A producer shall not introduce a product listed in the First Schedule of this Regulations into the country, unless they have obtained producer responsibility registration from the Authority.
- (2) A producer shall apply to the Authority for producer responsibility registration in Form A set out in the Second Schedule and pay the fee set out in the Sixth Schedule.
- (3) A producer responsibility organisation shall apply to the Authority for registration in Form B set out in the Second Schedule and pay the fee set out in the Sixth Schedule.

- (4) Every producer shall obtain a producer responsibility number, and a producer responsibility organisation shall obtain a producer extended responsibility number from the Authority.
- (5) Every producer responsibility organisation shall register its members using the producer responsibility number obtained under sub regulation (4).
- (6) The Authority shall issue an annual operating licence to individual producers' EPR Compliance Schemes and producer responsibility organisations' that fulfil their performance standards as set out in the work plan, fulfil reporting obligations and assessed to be of good standing by the Authority.
- (7) The Authority may revoke, suspend or cancel an extended producer responsibility Registration Certificate if the individual producer EPR Compliance Schemes or the producer responsibility organisation does not comply with statutory requirement or fails to meet the national target set out in the extended producer responsibility agreement entered into by the actors in the collective scheme.

Requirements for registration of a Producer Responsibility Organization

- 16.9.** (1) The requirements for registration or renewal of a producer responsibility organization shall be as provided under Fourth Schedule.
- (2) The Authority shall issue an interim permit in set out in the Fifth Schedule for a period of ninety days for registration to enable the producer responsibility organization undertake stakeholder engagement.

Revocation, suspension or cancellation of Registration Certificate

- 17.10.** (1) The Authority may, after the issuance of an annual operating licence—
- (a) cancel or revoke such licence; or
 - (b) suspend such licence, for such time, not more than twenty-four months, where the licensee contravenes the provisions of the licence.
- (2) Whenever a licence is revoked, suspended or cancelled, the holder thereof shall not proceed with the EPR scheme and each individual member of the PRO shall be responsible for the management of post consumer management of their product.
- (3) In case the PRO license is revoked the members shall nominate an interim committee to manage the PRO for a period not exceeding 6 months within which the PRO shall reorganize itself.**
- (4) Where the Authority cancels, revokes or suspends a licence in accordance with this section, the reasons for such action shall be

given to the licensee in writing.

Approval of EPR Compliance Scheme by Authority	<p>18.11. (1) The individual producer responsibility EPR Compliance Schemes systems shall be approved by the Authority for a maximum period of four years (renewable) on condition that the producer demonstrates proof of operational, technical, managerial and financial capacity to meet their EPR obligations and the national targets.</p> <p>(2) The Producer Responsibility Organisation shall be approved by the Authority for a maximum period of 4 years (renewable) on condition that the PRO demonstrates technical, managerial, financial and staffing and operational capacity to fulfil the requirements set out in the articles of association and agreements set by the members and stakeholders' in the value chain.</p>
Role of the Ministry	<p>19.12. (1) The Ministry shall, upon recommendation from the Authority—</p> <p>(a) <i>Gazette</i> collective national objectives, frameworks and targets for extended producer responsibility compliance schemes;</p> <p>(b) issue appropriate guidelines to support implementation of this regulations; and</p> <p>(c) publicize the national targets and guidelines.</p>
EPR Plan	<p>20.13. Every individual and collective EPR Compliance Schemes shall submit a two-year work plan to the Authority as provided for in the Fourth Schedule.</p>
Producer Responsibility Organisations obligations.	<p>21.14. (1) The Producer Responsibility Organisation shall be responsible for executing extended producer responsibility obligations on behalf of its members.</p> <p>(2) The producer responsibility organization shall take the organisational and management responsibility for collection, sorting, material recovery, recycling, treatment and end of life management of its members' products.</p> <p>(3) The amount, ceiling and collection methods for the financial contribution under sub regulation (1) shall be as set out in the terms of reference of the contract.</p> <p>(4) The PRO shall be responsible establishing post-consumer collection and take back schemes system which may include a deposit refund system.</p>

- (5) The members of the Producer Responsibility Organisation shall provide financial contributions which shall be used in their entirety to accomplish the extended producer responsibility obligations as set out in sub regulation (10).
- (6) The Producer Responsibility Organisation shall be responsible for modulation of EPR fees according to established environmental criteria on product design, useful life and end of life management as set out in the membership registration requirements and as reviewed during the annual members' general meeting.
- (7) Subject to conditions and limitations set out in the producer responsibility organization contract, a proportion of the waste recovered may be set aside for reuse or for recovery of usable parts.
- (8) The Producer Responsibility Organisation shall be responsible for raising awareness on waste prevention, post-consumer product management and payment of a contribution to finance cross-sectorial communication campaigns in their territory of operation.
- (9) Producer responsibility organisational shall undertake market development for the secondary raw materials market of the products under their scope.
- (10) Producer Responsibility Organization shall fund research and development programs on emerging technologies to improve material recovery;
- (11) A Producer Responsibility Organisation recommend to the Authority to restrict or ban harmful or dangerous substances that undermine environmental sustainability in the products of its membership.
- (12) A Producer Responsibility Organisation shall set minimum targets based on the national targets in clause 12(1) for reuse, recycling and recovery for its members and offer incentives for waste service providers and informal waste holders to encourage sorting of waste at source.
- (13) A Producer Responsibility Organisation shall undertake organised monitoring of its membership activities to ascertain that objectives are being achieved and to trigger inspections in view of applying sanctions to members who fail to fulfil their membership obligations.
- (14) i) A Producer Responsibility Organisation may establish any other applicable mechanisms and systems for enforcing extended producer responsibility of its members.

ii) A Producer Responsibility Organisation may verify data provided by producers with relevant agencies

- (15) The producer responsibility organization may be required to communicate to county governments the information they have on the quantities of waste collected and recovered through the extended producer responsibility mechanisms that have been declared in their territory of operation.
- (16) The producer responsibility organization shall comply with the sustainable waste management objectives set by the Authority.
- (17) All Producer Responsibility Organisation shall ensure effective management and harmonious relations between the different actors involved in the scheme.
- (18) Every Producer Responsibility Organisation shall hold an annual member meeting to deliberate on the progress and performance of the PRO, governance, management and administrative systems.

Charging and
Modulation of
EPR fees

22.15. (1) Members to a collective EPR compliance scheme shall pay registration fees to the relevant producer responsibility organization, which shall then assume responsibility for the post-consumer and end of life management in lieu of the producers' products.

- (2) Members to a collective EPR compliance scheme shall contribute an annual subscription fee towards a collective extended producer responsibility compliance scheme.
- (3) Members to a collective EPR compliance scheme shall pay extended producer responsibility fees, calculated using the same parameters for all the producers in a given scheme, and shall vary from one producer to another as provided for in Ninth Schedule
- (4) The Extended Producer Responsibility fees shall be modulated based on sustainability measures as provided in the Ninth Schedule.
- (5) The PRO shall submit to the Authority EPR fees structure agreed among members calculated using guidance provided in Ninth Schedule

PRO finance

23.16. (1) The extended producer responsibility fees paid into the PRO shall be used for—
(a) Putting in place post-consumer products collection, logistics, recycling, recovery and safe disposal.

- (b) Engagement of downstream partners in the chain who take back, recycle and treat and end-of life product disposal.
- (c) Consumer education and public awareness on sustainable waste management practises;
- (d) Training and capacity building of actors in the scheme including but not limited to waste service providers, transporters and recyclers;
- (e) Management and administrative overheads of the extended producer responsibility system;
- (f) To develop secondary markets and uses for the products under their scope;
- (g) Fund research and development programs and on emerging technologies to improve material recovery removal of pollutants and effective systems for handling post-consumer products;
- (h) Machinery and equipment to support collection and recovery; and
- (i) Guide members on eco-design standards of their products and recycler-friendly packaging.

(2) The fees recovered under sub regulation (1) shall not be used for profit making purposes. All proceeds shall be ploughed back to the scheme to enhance sustainable waste management initiatives.

Producer
Responsibility
Organization
Agreements

24.17. A producer responsibility organization shall enter into formal agreements with their members, waste service providers, recyclers' and other key actors as required by the compliance scheme.

PRO
Governance

25.18. (1) Members of a producer responsibility organisation are responsible for the management of the Producer Responsibility Organization.

(2) The producers shall be shareholders of the producer responsibility organization to which they belong.

For checks and balance, producers should not be shareholders of a PRO. This will create a scenario where the largest producers could have undue influence in the management of PROs. A suggestion could be for PROs to be service providers with some kind of autonomy. The regulation should also be clear on how a PRO is established. A suggestion could be for the Authority to competitively

requests for interests from entities interested in setting up PROs under set guidelines with at least two PROs per category selected.
Betterman Simidi Musasia – Clean Up Kenya

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- Nature
Number of
PROs per
product
- ~~(1)~~ (1) ~~There shall be only one producer responsibility organisation per product.~~
- ~~(2)~~ (2) There shall be established Producer Responsibility Organizations as per categories provided in schedule 1
- ~~(2)~~ (2) The PRO shall establish appropriate mechanisms and structures for management of each product under their scope.
- ~~(2)~~ (2) The Cabinet Secretary on advice of the Authority can review Schedule 1.
- ~~(3)~~ (3) A Producer Responsibility Organization can enter into formal agreements and cooperation frameworks for joint collection, take back schemes including deposit refund systems, treatment and appropriate disposal for the products under their scope.
- ~~(3)~~(4) ~~Notwithstanding sub regulation (1) above, the Authority may allow more than one Producer Responsibility Organisation to accommodate material variation of the product.~~

Having one PRO per product category will create an EPR monopoly in the country and is subject to abuse by key industry players and defeat the purpose of the regulations. Betterman Simidi Musasia – Clean Up Kenya

- Registration certificate and operating license
- ~~(1)~~(3) (1) The Authority shall issue registration certificate to registered licensed EPR Compliance Schemes for—
- (a) individual producer responsibility: and
- (b) producer responsibility organisation.
- (2) Application for registration and renewal for the individual producer responsibility EPR Compliance Schemes and Collective Producer Responsibility Organisation shall be done in standard forms and submitted to the Authority as prescribed under Schedule Two.
- Annual Operating Licence
- ~~(2)~~(4) The Authority shall issue Annual operating license to a registered and licensed EPR Compliance Schemes if the scheme meets the performance and reporting requirements provided under these Regulations and payment of the fee set out in the Sixth Schedule.
- Fees
- ~~(3)~~(5) (1) The fee payable under this Regulation shall be as prescribed in the Sixth Schedule of these Regulations.
- (2) Requirements for registration and renewal shall be as prescribed in the Eighth Schedule.

Renewal of
Registration

~~(4)~~(6) (1) The renewal of the registration issued under regulation 18 shall be done at the end of the four-year period subject to annual review reports by the Authority.

(2) Any deregistered producer responsibility organization may re-apply subject to fulfilling the conditions and set out requirements.

- (3) The Authority shall establish a reporting mechanism for all the individual and collective extended producer responsibility schemes.

Records
keeping and
reporting

~~(5)~~(7) (1) All producers shall maintain updated records of products managed, eco-design standards, contracts entered into by licensed waste service providers and Recyclers, and level of performance as per the work plan.

- (2) All EPR Compliance Schemes shall maintain updated records of products managed, eco-design standards, contracts entered into by licensed waste service providers and Recyclers, and level of performance as per the work plan.
- (3) All EPR Compliance Schemes shall publish their annual extended producer responsibility reports by 31st December of every year.
- (4) All extended producer responsibility schemes both individual and collective shall submit up-to date annual report of the preceding year to the Authority by January 31st of every year.

PART IV - EPR SCHEMES AND WASTE MANAGEMENT SERVICES

EPR and
Counties

~~(6)~~(8) The Producer Responsibility Organisations may enter into public private partnerships with county governments for purposes of—

- (a) establishment and operationalization of collection, take back and disposal; or
- (b) setting up material recovery and sustainable waste management facilities.

Role of
County
Governments

26. (a) Implementing devolved function of waste management

(b) Align their waste management laws with the national law

(c) Dispose waste within their county boundaries unless where there is an agreed framework for inter- county transport of waste.

(d) For reasons of benefits from economies of scale, Counties shall cluster into metropolises and pool resources for more effective waste management

(e) Counties shall facilitate or establish MRFs to promote sustainable waste management

(f) Facilitate movement of waste between counties at no costs

(g) Facilitate establishment of intercountry waste management infrastructure considering economies of scale

(h) Enhance public awareness on waste segregation and management

EPR Schemes and Waste management.

27. EPR Compliance Schemes shall operate under written agreement and contract, with designated waste actors with terms governing their engagement.

PART V-LICENSING, MONITORING AND COMPLIANCE

Role of the Authority

28. The Authority shall monitor the operation of extended producer responsibility chains and producer responsibility organization, by setting operational rules and targets including—

- (a) registration of producers under the Eighth Schedule bearing extended producer responsibility obligations;
- (b) issue certificate of registration of extended producer responsibility for individual and collective schemes;
- (c) renewal of registration and issuance of annual operating licenses;
- (d) shall determine and review the terms of reference for registration and certifications from time to time;
- (e) undertake periodic review of extended producer responsibly targets;
- (f) shall maintain registration of all licensed producer responsibility both individual and collective which shall be made available to the public;
- (g) updating the list of covered products within the extended producer responsibility;
- (h) maintain an updated register of all registered and licensed individual EPR Compliance Schemes and producer responsibility organisations.
- (i) maintain and update periodic data transmitted by producer responsibility organization;
- (j) publishing annual status reports of EPR Compliance Schemes;

- (k) evaluating the operations of extended producer responsibility chains;
- (l) ensuring proper implementation of extended producer responsibility schemes, including assessment of product and waste chains (quantities marketed, waste collected and treated, etc.)
- (m) verify that producer responsibility organizations comply with the terms of their authorisation, and take measures to sanction those that do not comply.;
- (n) designation of products to be included in the First Schedule; and
- (o) undertake capacity building and public awareness to support implementation of this regulation.

Oversight

- 29.** (1) All registered and licensed schemes shall be subject to oversight by the Authority.
- (2) All EPR Compliance Schemes shall be monitored and audited annually by the Authority to ascertain whether it has attained its objectives, as well as to determine Kenya's position in relation to the objectives set for waste management.
- (3) The data gathered will be used to improve the performance and regulatory process and to sanction actors who are not in compliance, if necessary.
- (4) The Authority shall maintain an updated register of all schemes which shall be made available to the public.
- (5) The Authority shall in consultation with Lead Agencies recommend to the Ministry collective national objectives, frameworks and targets for extended producer responsibility compliance schemes.

PART VI – GENERAL PROVISIONS

Appeals.

- 30.** (1) Any person aggrieved by the decision of the Authority can file an Appeal at the National Environment Tribunal.
- (2) Any person who is aggrieved by—
- (a) the grant of a licence or certificate or a refusal to grant a licence or certificate under these regulations;

- (b) the imposition of any condition, limitation or restriction on a licence or certificate issued under these regulations;
- (c) the revocation, suspension or variation of a licence or certificate of registration issued under these regulations;
- (d) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this regulations made thereunder,

may within sixty days after the decision make an appeal to the Tribunal.

Penalties and offences.

- 31.** (1) It shall be an offence for an individual EPR Compliance Schemes or a producer responsibility organization to wilfully fail to undertake their obligation.
- (2) Where a producer responsibility organization is found guilty of the offence under sub regulation (1) the cost of management of the said obligation be borne by the offender.
- (3) It shall be an offence for a producer or Producer Responsibility Organization to under-declare or give false information on quantities held or managed under the EPR scheme or declare volumes of non-post-consumer products.**
- (4) A producer who is not a member of a related producer responsibility organization, a free rider and does not fulfil their individual obligations commits an offence.
- (5) Any person who violates the provisions of these Regulations commits an offence and is liable on conviction to imprisonment for such a term not exceeding two years or to fine not less than Kshs two million or not exceeding Kshs four million or to both.

Role of Public Entities

32. Regulators for products and packaging subject to EPR schemes shall on request provide producer related data to the Authority and PROs.

Transitional Provision

32.33. Any producer who before the commencement of these Regulations was producing any of the products listed in the First Schedule shall apply to the Authority for a registration within six months after the commencement of these Regulations and ensure compliance with the provisions of these Regulations.

FIRST SCHEDULE

List of products and packaging subject to extended producer responsibility compliance scheme

- ~~1. Composites.~~
- ~~2. Agricultural film.~~
- ~~3. Batteries.~~
- ~~4. Oils and lubricants.~~
- ~~5. Plastics.~~
- ~~6. Aluminium products.~~
- ~~7. Glass.~~
- ~~8. Electrical and Electronic Equipment (EEE).~~
- ~~9. Furniture.~~
- ~~10. Paper and carton.~~
- ~~11. Mercury Auto Switches and thermostats.~~
- ~~12. Paints.~~
- ~~13. Pharmaceuticals products including packaging.~~
- ~~14. Textiles.~~
- ~~15. Tyres.~~
- ~~16. Automobiles.~~
- ~~17. Leather.~~
- ~~18. Rubber.~~

- ~~19. Agrochemicals and veterinary products including packaging.~~

1. Packaging for non-hazardous products (plastics, papers, aluminium, composite, glass and carton).
2. Hazardous products' packaging (Industrial chemicals, oil and lubricants, pharmaceuticals, agrochemicals, veterinary, cosmetics, paints and solvents) and agricultural films
3. Electrical and Electronic Equipment, Mercury Auto Switches, thermostats, Battery and Accumulators
4. End of life motor vehicles, automobiles, aircrafts, locomotives
5. Non packaging items (Plastics, glass, paper, cardboard), Furniture (except wooden, metallic), Rubber and Tyres, artificial hair, diapers, sanitary towels.

SECOND SCHEDULE: FORMS

FORM A

APPLICATION TO OPERATE INDIVIDUAL /COLLECTIVE PRODUCERS

EXTENDED PRODUCER RESPONSIBILITY SCHEME

1. I hereby apply for a license to undertake Extended Producer Responsibility objectives for (product name) of which particulars are as given below;

Full Name of Applicant or contact person.....

Name of company on behalf of which the application is being made (if applicable)

.....

Producer responsibility registration number/Producer Responsibility Organization registration number.....

Registered address of Applicant/Company

(Address and postcode)

Physical Locality :(location, building)

County

Phone/Mobile number

E-mail Address

PIN Number

Company Registration Number

(If applicable)

2. Production and product lifecycle management

2.1 Indicate the category(s) of producer you belong (tick appropriately)

- i. Manufacture r
- ii. Importer,
- iii. Distributor,
- iv. Converter,
- v. Others..... (please specify)

2.2 List product(s) as per 2.1

.....

2.3 State the nature of product(s) and its packaging (e.g. water packaged in a PET bottle with seals and labels).

.....

2.4 Describe circular economy initiative for your product(s) [reuse, recyclability, recoverability, energy efficiency]

.....

2.5 What is the annual volume/quantity of product(s) introduced into the market?

.....

2.6 State the estimated annual amount of your product/product components at post-consumer stage.

.....

2.7 State mechanisms put in place for identification and tracking of your product(s)?

.....

3 Attach the following documents together with the application form

- i. A copy of the Certificate of Registration issued by the Registrar of Companies
- ii. Kenya Revenue Authority (KRA) Certificate
- iii. A copy of lease agreement of the facility of operation
- iv. Two-year work plan and budget/financial plan in relation to the proposed scheme
Product/Packaging (Individual EPR)
- v. One (1) hard copy of &one (1) soft copy of the work plan according to signed minutes of the engagement with proposed actors of the scheme
- vi. The Extended Producer Responsibility Plan

SECOND SCHEDULE

FORM D

APPLICATION/RENEWAL FOR ANNUAL LICENSE

I hereby apply for a license to undertake extended producer responsibility obligations for..... (product(s) name) of which particulars are given below.

Name and address of the applicant

.....

Physical Address

Postal Address.....

Telephone Number.....

Email Address.....

PIN Number:

Registration number of the Extended Producer Responsibility Scheme

.....

Number of members:

.....

Type of Product(s):.....

.....

Category of Extended Producer Responsibility Scheme

.....

Annual estimated volume or quantity of product:.....

NB. Please attach requirements as outlined in Schedule Eight (8)

Date:.....Signature

Designation /Title

FOR OFFICIAL USE ONLY

Application received by on
.....20.....

Fees paid Kshs(in words)

**Director General
National Environment Management Authority**

THIRD SCHEDULE

Certificate No.....



**EXTENDED PRODUCER RESPONSIBILITY
CERTIFICATE OF REGISTRATION**

This certificate has been issued to (~~Extended~~ Producer Responsibility Organization name) in fulfilment of the Extended Producer Responsibility Registration requirements in compliance with the Environmental Management and Coordination (Extended Producer Responsibility) Regulations 2021.

Date of issue:

Expiry Date;.....

Signature

Director General

National Environment Management Authority

FORM C

ANNUAL LICENCE TO OPERATE AN EXTENDED PRODUCER RESPONSIBILITY SCHEME

License number:.....

Application Reference:.....

Name:.....

Postal Address:

You are hereby licensed to undertake Extended Producer Responsibility Obligations for (product(s))

This License is valid from..... (date of issue) to..... (date of expiry)

This license is subject to the following conditions (see over leaf).

Date issued:

FOURTH SCHEDULE

EXTENDED PRODUCER RESPONSIBILITY (EPR) PLAN

Components of an EPR plan

- (a) Baseline for the products and packaging handled;
- (b) Minimum targets for reuse, recycling or recovery operations;
- (c) Collection, logistics, recycling and composting system and end of life disposal;
- (d) Modulation of EPR membership fees and parameters based on environmental sustainability criteria as stipulated under regulation
- (e) Public awareness and consumer education and information program on waste segregation and proper handling of postconsumer products;
- (f) Verifiable paid up membership;
- (g) List of service providers and actors in the scheme;
- (h) Eco-design guidelines for the products handled by the scheme;
- (i) A mechanism of controlling banned or dangerous substances' in products;
- (j) An annual reporting mechanism;
- (k) Training and capacity building of members and actors in the scheme;
- (l) Organized monitoring of members, product traceability system, inspections with a view of applying sanctions on producers who fail to meet expected requirements;
- (m) Model of financing the scheme and itemized budget based on actual cost;
- (n) Any other actions necessary for execution of responsibility or items prescribed by the Authority.

SCHEDULE V

INTERIM PERMIT FOR PRODUCER RESPONSIBILITY ORGANIZATION

(Extended Producer Responsibility Regulations, 2021)

Permit Number:

This is to authorize..... (Name of Producer Responsibility Organization) to undertake extended producer responsibility obligations for..... (name of product(s)).

This permit is valid for a period of three (3) months from..... (Date of issue) to..... (date of expiry).

NOTE: This permit is not a guarantee for registration certificate.

Signature.....

Director General

National Environment Management Authority

SIXTH SCHEDULE: FEES



Director General

National Environment Management Authority

Application fees

Registration

1. Collective Extended Producer Responsibility Schemes – Ksh. 10,000
2. Individual Extended Producer Responsibility Schemes - Ksh. 5,000

Renewal of Registration

1. Collective Extended Producer Responsibility Schemes – Ksh. 10,000
2. Individual Extended Producer Responsibility Schemes - Ksh. 10,000

Annual Licence

1. Collective Extended Producer Responsibility Scheme – Ksh. 10,000
2. Individual Extended Producer Responsibility Scheme – Ksh. 10,000

Individual producer registration (one off) – Ksh. 5000

SEVENTH SCHEDULE

REQUIREMENTS FOR ISSUANCE OF ANNUAL OPERATIONAL LICENSE:

- a) Progress report for the past year
- b) Certified copy of annual returns filled with the registrar of companies including audited financial accounts;
- c) Certified copy of current register of PRO members
- d) Certified copy of agreements with service providers
- e) Work plan for the coming year
- f) Copy of the registration certificate
- g) Updated register of PRO members
- h) Progress report of the previous year (for renewal)
- i) Work plan and budget for the coming year
- j) Audited financial accounts (for renewal)
- k) Proof of payment of prescribed fees

EIGHTH SCHEDULE

a) INDIVIDUAL EPR COMPLIANCE SCHEMES REGISTRATION REQUIREMENTS

Requirements for registration:

- i. A declaration that the company is the sole producer of the product in the country
- ii. Proof of registration as a company.
- iii. Provide an EPR plan (see Schedule Four)
- iv. Provide actual copies of contracts entered into with relevant actors of the EPR scheme.
- v. Payment of the prescribed fees to the Authority
- vi. Provide a dispute resolution mechanism for the actors in the scheme
- vii. Ensure that the Articles and Memorandum of Association of the company declares that the sole business of the company is to undertake EPR obligations on the specific products.

b) PRODUCER RESPONSIBILITY ORGANISATION REGISTRATION REQUIREMENTS

Requirements for interim registration:

- i. The Authority shall advertise a call for applications for establishment of PROs in the newspapers.
- ~~i~~ii. Applicants shall provide the following documents for registration: Minutes of the meeting of PRO category sector members attended by at least 30 companies representing each product;- the interim officials;- the resolution and a reserved business name after the meeting; and
List of membership
- iii. If the Authority receives more than one PRO applications, the interim officials will be given one month to meet and reach consensus for one PRO to be registered and submit minutes of meeting and the joint resolution.
- ~~ii~~iv. If the multiple PRO applicants fail to agree, the authority shall choose one applicant to be registered as the PRO.

This is simply going to create an EPR monopoly in the country. Betterman Simidi Musasia – Clean Up Kenya

Requirements for registration / renewal

- i. Proof of registration as a company limited by guarantee as provided by the Companies Act Kenya
- ii. Updated list of membership and fee structure of the membership.
- iii. Provide an EPR plan (see Schedule Four)
- iv. Signed minutes of meetings with relevant actors
- v. Provide copy of lease agreement of the facility of operation
- vi. Payment of the prescribed fees to the Authority
- vii. Provide a dispute resolution mechanism for the actors in the scheme
- viii. Ensure that the Articles and Memorandum of Association of the company declares that sole business of the company is to undertake EPR obligations on the specific products.

ix. The directorship and membership of the company comprises of members of the PRO

- x. Memorandum of Association to declare change of Directorship every two years
- xi. EPR fees structure agreed among members calculated using guidance provided in Schedule Nine
- xii. (For renewal), submit a progress report on achievement of set targets.

NINTH SCHEDULE

Parameters for modulation of EPR fees within a PRO.

- a) Quantity of products introduced to the market.
- b) Existence of mechanism for segregation of products at source.
- c) Recyclability and Recoverability of products.
- d) Existence of markets for use of producer's secondary raw material.
- e) Absence/presence of hazardous or none hazardous but disruptive additives.
- f) Products with or without defined environmental foot prints.

Made on the.....2021.

KERIAKO TOBIKO,
Cabinet Secretary,
Ministry of Environment and Forestry.