

(Legislative Supplement No. 48)

LEGAL NOTICE NO. 159

THE ENVIRONMENTAL MANAGEMENT AND
CO-ORDINATION ACT

(No. 8 of 1999)

IN EXECERCISE of the powers conferred by section 55 (6) and section 147 of the Environmental Management and Co-ordination Act, 1999, the Minister for Environment, Natural Resources and Wildlife, in consultation with relevant lead agencies makes the following Regulations:—

THE ENVIRONMENTAL (PREVENTION OF POLLUTION IN
COASTAL ZONE AND OTHER SEGMENTS OF THE
ENVIRONMENT) REGULATION, 2003

1. These Regulations may be cited as the Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations, 2003.

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

“chemical” means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or delivered from nature and for the purposes of the Act includes industrial chemicals, pesticides, fertilizers and drugs;

“certificate” means a certificate issued under these Regulations by a Certified Port Waste Reception Facility;

“coastal zone” means any area declared to be a protected coastal zone under section 55 of the Act;

“discharge” in relation to harmful substances or effluents containing such substances, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying but does not include-

- (a) release of harmful substances directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources; or
- (b) release of harmful substances for purposes of legitimate scientific research into pollution abatement or control;

“MARPOL” refers to the International Convention for the Prevention of Pollution from ships 1973 as modified by the Protocol of 1978 relating thereto and Protocols and Annexes thereto;

“oil” includes—

- (a) crude oil, refined oil, diesel oil, fuel oil, lubricating oil; and
- (b) any other description of oil which may be described;

“oil mixture” means a mixture with oil contents;

“Oil Record Book” refers to a book carried on board ships which contain entries on machinery space operations, cargo and ballast operations;

“pollutant” includes any substances whether liquid, solid or gaseous which—

- (a) may directly or indirectly alter the quality of any element of the receiving environment;
- (b) is hazardous or potentially hazardous to human health or the environment; and includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“Port Waste Reception Facility” means any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues and which is managed and operated by the Kenya Ports Authority or any other person designated as such by the Kenya Ports Authority and “Certified Port Waste Reception Facility” shall be construed accordingly;

“ship” includes every description of vessel or craft or floating structure; and

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“territorial waters” means territorial waters provided under section 3 of the Maritime Zones Act;

3 (1). No ship or any other person in Kenya shall be allowed to discharge any hazardous substance, chemical, oil or oily mixture into the territorial waters of Kenya or any segment of the environment contrary to the provisions of these Regulations.

(2). All ships in the territorial waters of Kenya shall off-load oil or oily mixture, sludge, bilge water, ballast water, waste and sewage to the certified Port Waste Reception Facility at the Port of Mombasa.

4. These Regulations shall not apply—

- (a) in circumstances where it is necessary to secure the safety of human life or of ships or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to ships, or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur;

- (b) in cases of emergencies posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution;
- (c) to ships belonging to the Government which are engaged in Government non-commercial service; and
- (d) to warships, naval auxiliary or other ships owned or operated by a MARPOL member State and used for the time being only on Government non-commercial service.

5. Every ship shall be required to carry an Oil Record Book, which shall detail entries on machinery space operations, cargo and ballast operations in accordance with the provisions of the Merchant Shipping Act.

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6. (1) All ships shall be required to obtain a certificate issued by a Certified Port Waste Reception Facility in accordance with MARPOL.

(2) A certificate, in the prescribed form set out in the Schedule, issued pursuant to sub-paragraph (1) shall be accepted and regarded for all purposes under these Regulations as having the same validity as a corresponding certificate issued under MARPOL.

(3) No ship calling at any port or offshore terminal in Kenya shall be allowed to leave the port without producing a valid certificate of discharge of waste issued by a certified Port Waste Reception Facility pursuant to this regulation.

7. A ship to which these Regulations apply may, in any port or offshore terminal in Kenya, be subject to inspection by officers appointed or authorised by the Director-General of the National Environment Management Authority for the purpose of verifying whether the ship has discharged any harmful substances in violation of these Regulations.

8. Whenever visible traces of oil are observed on or below the surface of the water in the immediate vicinity of a ship or its wake, the Director-General of the National Environment Management Authority shall promptly carry out an investigation of the facts bearing on the issue of whether there has been a violation of these Regulations.

9. Any person who contravenes the provisions of these Regulations, is guilty of an offence and is liable, upon conviction, to imprisonment for a term of not more than eighteen months or to a fine of not more than three hundred and fifty thousand shillings or to both such fine and imprisonment.

SCHEDULE

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PORT WASTE DISPOSAL CERTIFICATE

Issued by a certified Port Waste Reception Facility at the Port of Mombasa under the Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations, 2003

<i>Name of Ship</i>	<i>Distinctive number or letters</i>	<i>Port of Registry</i>	Gross tonnage

Type of ship:

<i>Type of Waste Discharge</i>	<i>Quantity of waste</i>

THIS IS TO CERTIFY:

That the ship has discharged all or its oil and oily mixture, waste, garbage and sewage in accordance with the Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations, 2003.

This certificate is issued by

Issued at
(Place of issue of certificate)

(Date of issue).....

.....
(Signature of duly authorized official issuing the certificate)

.....
(Seal or stamp of the authority, as appropriate)

Dated the 18th September, 2003.

NEWTON KULUNDU,
Minister for Environment,
Natural Resources and Wildlife.