

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT

(No. 47 of 2013)

IN EXERCISE of the powers conferred by section 45 (2) (f) of the Wildlife Conservation and Management Act, 2013, the Cabinet Secretary for Environment and Natural Resources, makes the following Regulations:-

WILDLIFE CONSERVATION AND MANAGEMENT (MINING OPERATIONS IN PROTECTED AREAS) REGULATIONS, 2016

PART 1- PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Wildlife Conservation and Management (Mining Operations in Protected Areas) Regulations, 2016.
(2) These Regulations shall come into force on the date of their publication in the Kenya Gazette.

Interpretation

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

“Act” means the Wildlife Conservation and Management Act, No. 47 of 2013;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to wildlife;

“Environment Impact Assessment” means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment;

“gas” means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions’;

“mine operator” means a person undertaking mining operations;

“mining operations” means all functions, work and activities in connection with mining or quarrying, including: prospecting, exploration, surveying, development and extraction; dumping mine wastes and stockpiling ore; transport or processing of mineral commodities; restoration of the surface disturbed by such activities; and all activities and

uses reasonably incident thereto, including construction or use of roads or other means of access on National Parks, national reserves, wildlife conservancies, wildlife sanctuaries and areas of critical conservation concern;

“oil” means any viscous combustible liquid hydrocarbon or solid hydrocarbon substance easily liquefiable on warming which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas without resort to manufacturing process;

“owner” means the person registered as the owner of a conservancy or sanctuary;

“person” means any individual, partnership, corporation, association, or other entity;

“protected area” means a clearly defined geographical space, recognized, dedicated and managed through legal or other effective means, to achieve long term conservation of nature with associated ecosystem services and cultural values;

“Service” means the Kenya Wildlife Service established under section 6 Act; and

“site” those lands or waters on which mining operations are to be carried out.

Application

3. The Regulations shall apply to mining in national park, national reserve, wildlife conservancy, wildlife sanctuary and areas of critical conservation concern within Kenya.

PART II-MINING OPERATIONS IN PROTECTED AREAS

Application for consent to explore for minerals, mine and quarry

4. (1) No person shall explore for minerals, mine or quarry in a protected area without the consent and approval of the Service or the owner of the land for which consent is sought. The owner shall only give such consent with prior consultation with the Service..

(2) The mine operator shall have a lease agreement of not less than fifteen years under stipulated conditions that must be met to enhance smooth mining operations and conservation

Provided that in the case of quarrying, the lease agreement shall not be more than ten years.

- (3) In addition to any approval that may be required by the existing mining authority

under the Mining Act and any other Act of Parliament, any person who seeks to explore, mine or quarry in a protected area must, at least sixty days before such activity, furnish the Service or the owner with an application for consent to mine in a protected area.

(4) An application for consent for exploration, mining or quarrying in protected area shall be in Form A or B, as appropriate, prescribed in the First Schedule to these Regulations and shall sufficiently set out details of the activity that is to be undertaken so as to enable the Service or owner to make a decision for the purpose of sub-regulation (3).

(5) In addition to submitting Form A or B under sub-regulation (4), the applicant shall submit-

(a) plans for exploration, mining or quarrying indicating-

- i. the names and addresses of the-
 - (a) the mine operator;
 - (b) the licensee, if they are not the mine operator; and
 - (c) any lessee, assignee, or designee thereof;
 - (d) manager of the mine or quarry.
- ii. the qualifications held by the manager of the mine or quarry
- iii. the estimated number of persons employed (or to be employed) at the mine;
- iv. the mineral or substance to be mined or worked;
- v. accurate maps, plans, or section of the mine or quarry, and its immediate environs;
- vi. existing roads or proposed routes to and from the area of operations;
- vii. areas of proposed mining;
- viii. location and description of surface facilities, including dumps;
- ix. a description of the mode of transport and major equipment to be used in the operations;
- x. a description of the proposed operations and an estimated timetable for each phase of operations and the completion of operations;
- xi. extraction programmes for the site;
- xii. the nature and extent of the known deposit to be mined;
- xiii. restoration and mining reclamation plans demonstrating compliance with the requirements of the Mining Act;

(b) background information indicating-

- i. a description of the natural, cultural, social and economic environment to be affected by operations;
- ii. the anticipated direct and indirect effects of the operations on the site's natural, cultural, social, and economic environment;
- iii. steps to be taken to ensure minimum surface disturbance and to mitigate any adverse environmental effects, and a discussion of the impacts which cannot be mitigated;
- iv. measures to protect surface and subsurface waters by means of casing and cement;
- v. all reasonable technologically feasible alternative methods of operations, their costs, and their environmental effects; and
- vi. the effects of the steps to be taken to achieve restoration;

(c) An environmental impact assessment report analyzing-

- i. the environment to be affected by the operations;
- ii. the impacts of the operations on the unit's environment;
- iii. steps to be taken to ensure minimum surface disturbance;
- iv. methods for disposal of all rubbish and other solid and liquid wastes;
- v. alternative methods of extraction and the environmental effects of each; and
- vi. the impacts of the steps to be taken to comply with the restoration plan.

(d) a bond executed in anticipation of the restoration plans.

Application for consent for exploration or extraction of oil and gas

5. (1) No person shall engage in the exploration or extraction of oil and gas in a protected area without the consent of the Cabinet Secretary and prior approval of the National Assembly.

(2) In addition to the requirements under Regulation 5, any person seeking to engage in exploration or extraction of oil and gas shall in application for consent supply the Service or owner with information detailing-

- (a) the geologic name of the surface formation in which the operation shall be undertaken;
- (b) the proposed drilling depth, and the estimated tops of important geologic markers;
- (c) the estimated depths at which anticipated water, brines, oil, gas, or other mineral bearing formations are expected to be encountered;
- (d) the nature and extent of the known deposit or reservoir to be produced and a

description of the proposed operations, including-

- i. the proposed casing programme, including the size, grade, and weight of each string, and whether it is new or used;
 - ii. the proposed setting depth of each casing string, and the amount of type of cement, including additives, to be used;
 - iii. the operator's minimum specifications for pressure control equipment which is to be used, a schematic diagram thereof showing sizes, pressure ratings, and the testing procedures and testing frequency;
 - iv. the type and characteristics of the proposed circulating medium or mediums to be employed for rotary drilling and the quantities and types of mud and weighting material to be maintained;
 - v. the testing, logging, and coring programmes to be followed; and
 - vi. anticipated abnormal pressures or temperatures expected to be encountered; or hazards to persons and the environment such as hydrogen sulfide gas or oil spills, along with plans for mitigation of such hazards.
- (e) a description of the steps to be taken to comply with the applicable operating standards;
- (f) provisions for land restoration which will result in compliance with the requirements of these Regulations.

(3) An application for consent to explore or extract oil and gas in a protected area shall be in Form A or B, as appropriate, prescribed in the First Schedule.

(4) An applicant who has been granted consent by the Service or owner to explore and or extract oil and gas shall in addition seek the consent of the Cabinet Secretary and the approval of the National Assembly.

Grant of consent

6. (1) Subject to Regulation 4 and 5 above, and following stakeholder consultation through an Environment Impact Assessment, the Service may grant an applicant authority to undertake mining, quarrying or oil and gas extraction in a protected area.

(2) The Service or owner shall only approve and give consent for mining, quarrying, exploration or extraction of oil and gas where-

- (a) the area is not a habitat for endangered or threatened species;
- (b) the area is not an endangered or critical habitat and ecosystem for wildlife;
- (c) the area is not an important water catchment area or source of water springs;

- (d) an environmental impact assessment has been carried out and license granted in accordance with the provisions of the Environmental Management and Coordination Act, No. 8 of 1999;
- (e) approval has been obtained in accordance with the applicable law regulating mining;
- (f) the miner has undertaken through execution of a bond the value of which will be determined by the Service or owner, to rehabilitate the site upon completion of his operation to a level prescribed by the Service or owner and the Mining Act; and
- (g) the mining site is compatible with the area park management plan

(3) Mining, quarrying, exploration or extraction of oil and gas activities may only be conducted between the hours of 6 am and 6 pm or as the Service or owner may direct, but not in the hours of darkness.

(4) Areas under mining, quarrying or oil and gas extraction shall be fenced, enclosed and restricted to any other activity.

(5) Consent to mine quarry or extract oil and gas by the Service or owner shall be in Form A-1, A-2 and B-1, B-2 prescribed in the First Schedule.

Performance bond

7. (1) Upon approval of a plan of operations but before the grant of consent the operator shall file a suitable restoration completion performance bond with satisfactory surety, payable to the Service or owner.

(2) The bond shall be conditioned upon compliance with applicable Regulations, the terms and conditions of the permit, lease, or contract, and the plan of operations as approved, revised or supplemented.

(3) In the event that an approved plan of operations is revised or amended the Service or owner may adjust the amount of the bond required to conform to the plan of operations as modified.

(4) The mine operator's and his surety's responsibility and liability under the bond shall continue until such time as the Service or owner determines that successful restoration of the area of operations has been effected.

(5) The Director General of the Service shall constitute a technical team to audit and guide on how the mining site shall be restored to its natural status and advise the appropriate time when the bond of the mining operation shall be released after

completion of restoration of the mining site

Provided that in the case of a conservancy or sanctuary the owner shall constitute the technical team to perform this function

(6) When restoration requirements are completed, the Service or owner shall notify the operator that performance under the bond has been completed and that it is released.

PART III- AMENITY OF MINE AND CONTIGUOUS ENVIRONMENT

General duties

8. A person who carries out a mining operation or associated, incidental or ancillary activity shall-
 - (1) ensure that the operation or activity is carried out so as to minimize interference with the amenity of the area;
 - (2) ensure that the vegetation within and around the site of the operation or activity is not unnecessarily interfered with, damaged or cut down;
 - (3) not create a nuisance through the production of undue or excessive noise or dust; and
 - (4) not allow the operation or activity to cause the sea, ground water, or a river tributary, stream, dam, watercourse or other body of water to become degraded.

Corporate social responsibility obligations

9. (1) Every person who undertakes a mine or a quarry or an oil or gas operation within a protected area will at the commencement of the works make a commitment to assist in development activities in the community within which the operation is located so as to contribute to the welfare of society and the protection of the global environment.
 - (2) Any corporate social responsibility projects undertaken under sub-regulation (1) shall be selected in consultation with the community.

Compensation for potential negative effects

10. The operator of a mine or quarry or an oil and gas extraction plant shall be responsible for any environmental threats or risks arising out of the works and shall

pay compensation to any persons who may acquire or contract an injury therefrom.

Access to protected areas for mining operations

11. Subject to Regulation 12, and Activities in Protected Areas Regulations, 2015, access to mining site within the protected areas shall only be through the Service or owner designated gates and approved means to the site.

Permissible activities

12. (1) No person may-

- (a) prepare or develop a new ground for the extraction of a mineral ;
- (b) open up or commence to rework an old mine or a previously worked mine;
- (c) commence work for the construction of a building or plant for the treatment of a mineral at the site of the mine; or
- (d) carry out or allow any of the above activities to occur, without the written approval of the Service or owner.

(2) The operator of a mine who is required to prepare or up-date any map, plan or section under the these Regulations must not carry out, or allow to be carried out, work that adversely affects, the amenity of the site unless or until-

- (a) the Service or owner has approved the development programme, in its original form or as up-dated, as the case may require; or
- (b) the Service or owner has given a specific approval for the work.

(3) The operator of a mine must not carry out, or allow to be carried out work that is contrary to, or inconsistent with, the provisions of an approved development programme.

(4) The Service or owner or any authorized person may, at any reasonable time, inspect and examine any map, plan, section or programme kept at a mine and any ongoing activities.

(5) A person who has the possession, custody or control of a map, plan, section or programme kept at a mine must, at the request of an inspector or authorized person, produce the document for inspection or examination.

Roads

13. (1) Persons undertaking operations in protected areas shall not open or construct roads or vehicle trails without obtaining permission from the Service or owner.

Construction

14. (1) No construction of offices or residential accommodation shall be done within the protected area until plans for construction have been submitted as indicated under Form C to the Service or owner and approved in accordance with these Regulations.

Decommissioning of a mine

15. (1) The operator or former operator of a mine, as the case may be, must furnish the Service or owner with-
- (a) a notice, when the mining operations at the mine are complete;
 - (b) a further notice, when plant, machinery and materials are removed from mine and the site; and
 - (c) a further notice when the land has, in the opinion of the operator been rehabilitated.
- (2) The operator of a mine must leave the site in a clean, orderly, stable and safe condition.

Headway reports

16. (1) Every person engaged in mining or quarrying in a protected area shall, every two years, and at the time of abandonment of a mine or quarry, prepare and present to the Service or owner-
- (a) an updated map, plan and section showing the current workings and operations of the mine, or the state of the mine, and
 - (b) at the time of abandonment, an updated plan for restoration of the mine or quarry
- (2) The operator of a mine to whom sub-regulation (1) applies must ensure that all maps, plans and sections presented to the Service or owner are drawn to scale and are sufficient to show clearly all the relevant detail.

Conservation of the environment

17. A person who carries out mining or quarrying operation must ensure that any top soil that must be removed for the purposes of the mining operation, that can be collected

separately from the overburden, and that is suitable for subsequent use in connection with re-vegetation measures as part of the rehabilitation of the site, is stored (on its removal) in a manner that maximizes its usefulness for rehabilitation purposes; and

Use of water

18. (1) Except with the prior written consent of the Service or owner any person engaged in mining or quarrying in any protected area may not use water from a point of diversion which is within the boundaries of the protected area.

(2) The Service or owner may grant consent for the use of water found within the protected area only if authority has been given under the applicable law.

(3) Notwithstanding sub-regulation (1) and (2) herein, the Service or owner may decline to grant consent to use water found within the protected area.

Restoration requirements

19. (1) The operator or former operator of a mine or a quarry, as the case may be, shall, within one year after the cessation of work at the mine, carry out or ensure the proper restoration of the site, and any other affected area, in accordance with the early or updated restoration plans lodged with the Service or owner.

(2) In compliance with and in addition to the restoration plans submitted to the Service or owner, operator or former operator of a mine or a quarry, as the case may be, shall at the end of the operation undertake the following-

- (a) remove all above ground structures, equipment, and other manmade debris used for operations;
- (b) rehabilitate the area of operations to a condition which are satisfactory to the Service or owner and which would not adversely affect, injure or damage the environment;
- (c) take steps to restore the natural conditions and processes, which steps shall include, but are not limited to:
 - i. providing for the prevention of surface subsidence;
 - ii. replacing the soil, wherever economically and technologically practicable;
 - iii. grading, to reasonably conform the contour of the area of operations to a contour similar to that which existed prior to the initiation of operations, where such grading will not jeopardize reclamation;
 - iv. replacing the natural topsoil necessary for vegetative restoration; and
 - v. re-establishing native vegetative communities.

Revocation of consent

20. (1) The Service or owner may revoke consent for exploration or extraction where the mine operator or their agent is in breach of the Act, these Regulations or any other Mining legislation.

(2) Upon revocation of the license the mine operator shall have 30 days to vacate the site and shall restore the site to the satisfaction of the Service or owner before the bond executed can be discharged.

Surrendering of mining site

21. (1) Any mine operator, upon approval and consent to operate a mining site in a protected area shall operationalize mining activities within a period of one year for that specific site.

(2) Failure to operationalize within one year under sub-Regulation (1), the approval and consent issued to the miner shall be automatically rendered invalid, and the site shall be deemed to be vacant for occupation by new application.

(3) The Service or owner may require any mine operator who before the commencement of these Regulations has underutilized sites shall surrender all or some of them to be applied for by other investors.

PART II-FINAL PROVISIONS

Transition

22. (1) Every mine operator licensed immediately before the commencement of these Regulations, shall have a transition period of one year to wind up the their ongoing operations.

(2) The persons under sub-regulation (1) shall make a fresh application under the provision of these Regulations for the same site or any other new applicable site.

Overlapping Regulations

These Regulations apply within protected areas and are in addition to any other Regulations made under the Mining Act and related laws .

FIRST SCHEDULE

FORM A (To be completed in Triplicate)

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

Wildlife Conservation and Management (Mining Operations) Regulations, 2015

(Regulation 4(3) & 5(3))

APPLICATION FOR CONSENT TO EXPLORE FOR MINERALS, MINE/QUARRY/
EXPLORE OR EXTRACT OIL AND GAS IN PROTECTED AREA

PART I- DETAILS OF APPLICANT

INDIVIDUAL APPLICANTS

NAME OF APPLICANT _____
(First) (Middle) (Surname)

ID NUMBER _____

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

SEX M F

CORPORATE APPLICANTS

NAME OF APPLICANT _____

REGISTRATION NUMBER _____

(Attach copy of certificate of registration)

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

Name of the contact person in regard to this application and the position held in the organization _____

FOR ALL APPLICANTS

Have you complied with all the requirements of under the Mining Act?

Yes No

If no, explain _____

Have you acquired an Environment Impact License?

Yes No

If yes state number _____ Date of issue _____

If no, explain _____

PART II- DETAILS OF PERMIT

TYPE OF USE *(Tick as appropriate)*

MINING

QUARRYING

OIL AND GAS

If oil and gas, do you have approval from the National Assembly?

TYPE OF APPLICATION:

NEW APPLICATION

RENEWAL- LICENSE NUMBER _____ GRANTED ON _____

DURATION _____

(Where applicable, state period during the year in months for which permit is required)

PART IV-FINANCIAL DETAILS

TOTAL CAPITAL BUDGET OF THE PROJECT _____

DETAILS OF ANY CORPORATE OR INDIVIDUAL SPONSORS OF THE PROJECT _____

DETAILS OF INSTITUTION

LAND TO WHICH APPLICATION RELATES _____

(Specify and identify each piece of land to which this application relates by reference to lot, location, plot number, county.)

PART V-FINAL

OTHER DOCUMENTS (Check if attached)

- Payment of prescribed fee
- Environment Impact Assessment
- Approval of the National Assembly (for oil and gas)
- Location(s) of operations;
- Compliance with ethical issues

I hereby apply for a permit and swear by signature that the information submitted in this application and supporting documents is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to criminal penalties. I further state that I will abide by all applicable laws, those governing wildlife and the terms and conditions of this permit.

SIGNATURE OF APPLICANT _____ DATE _____

OFFICIAL USE ONLY

NAME OF RECEIVING OFFICER _____

DATE _____

STATION _____

PERMIT APPROVED DECLINED

If declined, reason _____

D
R
A
F
T

FORM B

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

Wildlife Conservation and Management (Mining Operation) Regulations, 2015

(Regulation 6 (5))

CONSENT TO EXPLORE/MINE/ QUARRY/ OR EXTRACT OIL AND GAS

ET

ET

Original

Not Transferable

Permit No. _____

This permit is granted to _____

EA

of ID/ REG NO. _____ and address _____

ER

in accordance with Regulation 5(3) of the Wildlife Conservation and Management (Mining in Protected Areas) Regulations, 2015 for _____

(insert reason for permit)

at _____

(insert protected area)

The holder of this permit is allowed to engage in _____

(insert use) under the following conditions _____

and without contravention of the Act and the Regulations formulated therewith.

This permit is issued subject to the Act and the Regulations and may be suspended, cancelled or revoked should the holder breach any of the conditions of issue and those contained in the Regulations.

_____ being the holder of this permit undertakes to abide by the conditions of this permit and to promptly report to the Kenya Wildlife Service any matter within knowledge that may prejudice the interests, security and welfare of wildlife in Kenya.

Issued on _____

Valid until _____

GIVEN UNDER MY HAND THIS _____ OF _____ 20 _____

CABINET SECRETARY _____

SIGNED _____

DATE _____

FORM C (To be completed in Triplicate)

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

Wildlife Conservation and Management (Mining Operations) Regulations, 2015

Regulation 13 (1)

APPLICATION FOR CONSENT TO CONSTRUCT ROAD IN PROTECTED AREA

**D
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A
F
T**