

**SPECIAL ISSUE**

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LEGAL NOTICE NO. 1

THE KWALE COUNTY QUARRYING REGULATIONS, 2017

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THE KWALE COUNTY QUARRYING ACT, 2016

IN EXERCISE of the powers conferred by section 31 of the Kwale County Quarrying Act, 2016 the County Executive Committee Member for Environment and Natural Resources makes the following Regulations—

THE KWALE COUNTY QUARRYING REGULATIONS, 2017

PART I—PRELIMINARY

1. These regulations may be cited as the Kwale County Quarrying Regulations, 2017. Citation.

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

“authorized officer” includes the environmental officer or any person acting under the authority of the Licensing Officer;

“Committee” means the Technical Minerals Harvesting Committee established under regulation 4;

“common minerals” means clay, country rock, ravel, lime, sand, slade, shingle, murrum, brine, diatomite, kaoline, building demission stone, ornamental stone, sodium and potassium compounds, slate and surface stone;

“Contractor” means the person acquiring land from a land owner for purposes of common mineral harvesting

“county environmental officer” means the Environmental Officer within the jurisdiction of the County Government;

“dealer” means the person who buys and sells common minerals;

“executive committee member” means the County Executive Committee Member in charge of Environment ;

“heavy rains” has the meaning assigned to it by the Kenya Meteorological Department;

“Lessee” means a person who rents land from a land owner for purposes of common mineral harvesting

“license holder” means a person to whom a permit has been granted under these regulations;

“Licensing officer” means The Chief Officer in charge of environment

“NEMA” means National Environmental Management Authority

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“Purchaser” means a person who buys common minerals from a license holder

“quarry” means a place from which common minerals are excavated or harvested

“quarrying” means the business, occupation, or act of extracting and harvesting common minerals and includes the breaking or crushing of common minerals so removed; and

“WRA” means Water Resources Authority.

3. The purpose of these regulations is to provide guidelines on the Common Minerals industry including — Scope and Purpose of the regulations.

- (a) directions and forms;
- (b) application processing procedures and forms;
- (c) conditions for registration and licencing of common minerals harvesters and common mineral dealers;
- (d) recommendations for general industry agreements/Contracts between landowners, harvesters and dealers;
- (e) harvesting, processing and marketing of common minerals;
- (f) rehabilitation of used quarries;
- (g) statistical returns;
- (h) Such other matters as may be deemed necessary for effecting these Regulations.

#### PART II — TECHNICAL MINERALS HARVESTING COMMITTEE

4. (1) The quorum of the Committee for purposes of the meeting shall be two thirds of the members. Technical Minerals Harvesting Committee.

(2) The members of the Committee shall elect from within their composition the Secretary.

(3) The one third gender rule must be observed in the composition of the committee.

(4) The Committee shall convene at least four times in a year.

(5) The Committee shall Submit a report of its meeting to the CEC environment within 30 days after the meeting.

(6) The decision of the committee will by simple majority of members present.

5. The Technical Minerals Committee shall perform the following functions — Functions of Technical Minerals Harvesting Committee.

- (a) ensure compliance of operations of mineral harvesting activities are guided by national norms and standards;
- (b) ensure sustainable utilization of Common mineral resource and proper management of the environment thereof;
- (c) collaborate and partner with other environmental agencies in conservation of environment;
- (d) formulate environmental conservancy capacity building programs for its residents;

- (e) define extent of each Mineral Resource Management Association area of jurisdiction; and
- (f) recommend and set the charges for cess and licence fee.

6. (1) The Technical Minerals Committee as regards Common mineral harvesting shall be guided by the following considerations— Environmental and social considerations.

(2) Environmental considerations—

- (a) common mineral dam(s)/gabion(s) are constructed in designated Common mineral harvesting sites;
- (b) where more than one Common mineral dam/ gabion is to be constructed, they shall be at least 200 meters apart;
- (c) vehicles will use designated access roads only to Common mineral harvesting sites;
- (d) designated Common mineral harvesting sites are rehabilitated appropriately by the Common Mineral Resource Management Association as described in the Act, the county government and approved dealer under close monitoring and supervision by the Technical Minerals Committee in compliance with Environmental Management and Co-ordination Act, 2015;
- (e) common mineral harvesting or scooping is restricted to the riverbeds with no harvesting allowed on riverbanks to avoid widening of rivers;
- (f) no harvesting of Common mineral shall be done along the sea shore; and
- (g) It specifies the area of Common mineral harvesting and the depth to which the harvesting will be done;
- (h) Rehabilitation of common minerals harvesting areas.

(3) Social considerations

- (a) common mineral loaders are over 18 years of age residing within the local community;
- (b) approved Common mineral dealers will pay a negotiated and agreed wage to Common mineral loaders;
- (c) the loaders will organize themselves into recognized groups with clear operational structures for their self regulation;
- (d) approved Common mineral dealers are encouraged to support local community projects in consultation with the Mineral Resource Management Association;
- (e) invest proceeds of Common mineral cess in environmental conservation activities and local community projects in the county.

PART III—COMMON MINERALS RESOURCE  
MANAGEMENT ASSOCIATIONS

7. (1) The Common Mineral Resource Management Associations will be registered by the Attorney general's office Common Minerals Resource Management Association.
- (2) The factors to be considered in the establishment of Common Mineral Resource Management Association shall include—
- (a) drainage network of the river designated sites along which Common mineral harvesting activities are carried out;
  - (b) inclusion of interest groups; and
  - (c) and sustainability of the Association(s).
- (4) The procedure for the selection of members of the association will be guided by the technical minerals committee through Public participation in their respective areas of jurisdiction.
- (5) Each Common Mineral Resource Management Association shall—
- (a) ensure that before Common mineral harvesting activities are commenced, Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Coordination Act, 2015;
  - (b) ensure that annual Environmental Audits are conducted for closed and active sites; and
  - (c) rehabilitation of the common minerals harvested sites and other environmental damage associated with harvesting and transportation of common minerals within its area of operation.

PART—COMMON MINERAL HARVESTING PROVISIONS

8. (1) Common mineral harvesting sites shall be gazetted at the county level. Common Mineral Harvesting Sites.
- (2) Scooping/ harvesting of common minerals should not exceed the prescribed depth by the Technical Mineral Committee.
- (3) Designated common minerals collection sites should be at least 50 meters from the riverbanks or dykes for on-farm sand harvesting.
- (4) Scooping /harvesting should be done concurrently with restoration of areas previously harvested. Such restoration will be undertaken with guidance from the Technical Mineral Committee.
- (5) The scooping/harvesting should be strictly open-cast harvesting.
- (6) Where underground tunneling or extraction of common minerals is to be undertaken, appropriate extraction technology and the Occupational Health and Safety Act, 2007 should be applied to safeguard human safety.

(7) No common mineral harvesting shall take place within 100 metres of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

(8) No common mineral harvesting shall take place in critical ecological sensitive areas.

9. (1) Common mineral harvesting in the river bed shall be approved by committee. Riverbed harvesting.

(2) The committee may delegate its power of approval to the Common Minerals Resource Management Association where appropriate

(3) Before Approval is issued, the committee shall take into consideration advice from WRA, NEMA or any other relevant agency.

(4) Controlled Access points will be set out by gazettelement at the county level.

(5) Harvesting of Common mineral shall not take place during heavy rains.

10. (1) The transport of Common mineral or other minerals within the county shall only be through designated roads for such transportation as gazetted in the county level. Permission to transport Common mineral.

(2) A document of origin in the prescribed form shall be issued and kept by the Purchaser and the transporter for inspection by the relevant authorities.

11. A person shall not —

(a) harvest, extract or scoop common mineral between the hours of 6 p.m. to 6 a.m.; and

(b) transport Common mineral between the hours of 8 p.m. to 6 a.m. within Kwale County.

Hours of Harvesting.

#### PART V—LICENSING PROVISIONS FOR QUARRYING OF COMMON MINERALS

12. (1) The Licensing Officer may require an applicant for a permit— Application for grant of permission.

(a) to submit a plan of the site showing that area of the land on which that applicant proposes to quarry and a plan for the surrounding land; and

(b) to furnish such other information as requested.

(2) Where the application for a license is made by the owner of the land on which the quarrying operations are to be carried out, the owner shall state in the application form whether the quarrying shall be conducted by himself or another person and provide the name and address of that person;

(3) Where the application for a license is made by a contractor or lessee, that contractor or lessee shall attach to their application the

written permission which has been certified, stating that the owner of the land where the quarrying is to take place has agreed to their quarrying on that land.

(4) The permit referred shall be considered to be issued for a year unless the Licensing Officer otherwise authorizes.

13. Applications for a Licence under section 16 of the Act shall be in the prescribed form Q1A. Forms.

14. (1) The Licensing officer shall issue the license to the applicant within 30 days from the date of the payment for the license. Issue or refusal of license.

(2) If a Licensing Officer refuses to issue a license, they shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons of the refusal and refer to the relevant provision in the Act on which the refusal is based.

15. A license shall be issued — Licence Conditions.

- (a) for the category or categories of quarrying or business activity specified in the license;
- (b) subject to the regulations and any conditions provided in the license.

16. A Licensing Officer may cancel a licence if—

Cancellation of license.

- (a) the application form contains any material misrepresentation or false statement;
- (b) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;
- (c) the licensee carries on a prohibited activity;
- (d) a condition imposed is breached; or
- (e) the licensee is convicted of an offence under the Act.

17. (1) Any holder of a cancelled license is entitled to appeal the decision to the Technical Minerals Committee. Appeals.

(2) All appeals must be filed within twenty one days of the decision.

(3) A person who is not satisfied with the decision of the Committee has a right to further appeal to the County Executive Committee Member.

18. (1) A business license is not transferable. Transferability.

(2) Subject to the Act, a license may be altered on written application to the Licensing Officer

(3) The licensee shall inform the Licensing Officer in writing of any changes within thirty days.

(4) If a licensee fails to inform the Licensing Officer under subsection (3), the Licensing Officer may impose a penalty.

19. The Licensing Officer, or an authorized officer who has reason to believe that a common mineral dealer is required to hold a license may demand from the common mineral dealer the production of a license. Production of license.

#### PART VI— GENERAL PROVISIONS

20. (1) The barriers shall be manned by authorized officers and Cess collectors. Barriers.

(2) A trader transporting common mineral shall stop at such barrier and pay the prescribed fees and charges to the collector or Authorized Officer.

(3) A person who fails to stop at the barrier when required to do so commits an offence and the vehicle used to commit the offence shall be impounded and detained at a police station.

21. A person who—

- (a) carries out quarrying activities or transport common minerals without a license;
- (b) carries out quarrying activities of common minerals outside designated sites;
- (c) overloads common minerals to a vehicle for transportation contrary to prescribed requirements;
- (d) collects fees or charges and is not authorized to do so by the Licensing Officer;
- (e) transport common minerals outside the designated roads for such transportation;
- (f) does not stop on a barrier erected by the county government, authorized officer or police officer;
- (g) obstructs any authorized officers from conducting their functions under the Act; or
- (h) fails to comply with the requirements for rehabilitation of a used quarry
- (i) establishes a separate entity or purports to manage quarrying activities in a designated site without lawful authority under these Regulations—

Offences and Penalties.

commits an offence and on conviction is liable to a fine not exceeding Kenya Shillings five hundred thousand or to an imprisonment for a term not exceeding five years or to both.

FORM Q1A

SITE DESIGNATION CERTIFICATE FOR COMMON MINERALS

(TO BE ISSUED TO INDIVIDUAL (S), GROUP(S) OF INDIVIDUAL(S)  
(REGISTERED GROUP(S), GOVERNMENT AGENCY ETC)

CERTIFICATE NO. CGK/ .....

THIS IS TO CERTIFY THAT

..... of P.O. Box Tel. No. ....

ID/ REG No. ....

has on this ..... day of ..... (Month), 20 ..... (Year)  
been granted a certificate to harvest common minerals in the designated area as described  
below

Name .....

Sub- County..... Ward .....

Village Unit .....

Locality .....

Name of landowner (s).....

Type of ownership.....

Title Deed/ Allotment No.....

Land size.....

For a period of ..... (Not exceeding one (1) year)

Subject to the following conditions:-

1. ....
2. ....
3. ....
4. ....

CERTIFIED BY

SIGNED AND STAMPED

.....

NAME ..... DATE .....

CHIEF OFFICER-ENVIRONMENT

FORM Q1B

APPLICATION FOR LICENSE TO HARVEST COMMON MINERALS

(TO BE FILLED BY INDIVIDUAL (S), REGISTERED GROUP (S), COMPANIES,  
GOVERNMENT AGENCIES, ETC)

LICENSE APPLICATION NO. CGK/.....

PART 1

PERSONAL INFORMATION

Name: (Individual/ Group).....

ID /Registration No.: .....

PIN No.: .....

No. of members: .....

Postal Address: .....

Physical Address: .....

Contact Tel. No.:.....

E-mail: .....

DETAILS OF THE PROPOSED HARVESTING SITE

Sub-County .....

Ward .....

Village Unit .....

Locality .....

Name of designated site .....

Type of the Common Mineral .....

Environmental Conditions of the site (riverbed, seashore, inland, farmland,  
.....

Social and Environmental compliance

1.EIA/EA conducted .....

2.NEMA Approved EIA/EA License No... (copy of license attached)  
.....

Common Mineral Association approval Minutes Reference .....

PART 3: FOR OFFICIAL USE BY LICENSING OFFICER (CO- Environment)

APPROVED/NOT APPROVED .....

(DATE).....

REMARKS: .....

.....

NAME ..... SIGNED: ..... DATE .....

**ATTACHMENTS**

- (a) Photocopy of Common Mineral Association registration certificate;
- (b) Copy of Designation Certificate of the site;
- (c) Official Receipt for common mineral harvesting application charges;
- (d) Copy of the NEMA EIA/EA approval license;
- (e) Minutes of the Common Mineral Association granting consent;
- (f) Copy of company/group registration certificate/ID;
- (g) Copy of PIN.

**FORM Q2A**

**APPLICATION FOR PERMIT TO TRANSPORT COMMON MINERALS  
(TO BE FILLED BY INDIVIDUAL, REGISTERED GROUP, COMPANY)**

APPLICATION NO. CGK/ .....

**PART 1**

**PERSONAL DETAILS**

Name: .....

ID No. ....

PIN No.....

Transporters Group/Company Name: .....

Transporters Group/Company Registration No. ....

Postal Address. ....

Physical address. ....

Tel. No. ....

E-mail .....

**DETAIL OF THE VEHICLE:**

(a) Registration No.....

(b) Make and model .....

(c) Tonnage .....

**PART 2: FOR OFFICIAL USE BY LICENSING OFFICER (CO-Environment)**

**APPROVED/NOT APPROVED**

.....

**VALIDITY (PERIOD):** ..... (Not Exceeding One (1) Year)

**REMARKS:**

.....

.....

**SIGNED**.....

**NAME** ..... **DESIGNATION** ..... **DATE** .....

**Attachments:**

- (a) Copy of valid logbook
- (b) Copy of company/group registration certificate/ID
- (c) Copy of PIN

FORM Q 2B

APPLICATION TO TRANSPORT COMMON MINERALS  
(TO BE FILLED BY INDIVIDUAL, REGISTERED GROUP, COMPANY)

APPLICATION NO. CGK/ .....

PART 1

PERSONAL DETAILS

Name: .....

ID No. ....

PIN No.: .....

Transporters Group/Company Name: .....

Transporters Group/Company Registration No. ....

Postal Address: .....

Physical address: .....

Tel. No: .....

E-mail: .....

DETAILS ON TRANSPORTATION OF COMMON MINERALS

Origin of the Common Mineral:

Sub-County .....

Ward .....

Village Unit .....

Locality .....

Environmental Conditions of the site (riverbed, seashore, inland, farmland,  
.....  
.....

Name of designated site .....

Destination of the Common Mineral:

Sub-County .....

Ward .....

Village Unit .....

Locality .....

Detail of the vehicle:

- (a) Registration No.....
- (b) Make and model .....
- (c) Tonnage .....

**PART 2: FOR OFFICIAL USE BY LICENSING OFFICER (Chairman, CMRMA/Designate)**

APPROVED/NOT APPROVED: .....

VALIDITY (PERIOD): ..... (Not Exceeding One (1) week)

REMARKS:

.....  
.....  
.....

SIGNED.....

NAME .....DESIGNATION ..... DATE .....

Attachments:

- (a) Copy of valid logbook
- (b) Copy of company/group registration certificate/ID
- (c) Copy of PIN
- (d) Copy of Approved FORM 3

FORM Q 2C

SUSPENSION/CANCELLATION OF PERMIT TO TRANSPORT COMMON MINERALS

(TO BE ISSUED TO SAND TRANSPORTERS)

NOTICE IS HEREBY GIVEN TO

M/S.....I.D./PIN/REG.NO.....

of P.O. Box ..... Tel .....

whose Permit No. .... issued on..... (Day) .....

(Month) ..... (Year).....

to transport Common Mineral .....

from ..... (designated sites) in ..... (Sub-

County and Ward)

Is hereby suspended for (Period).....

OR

Cancelled with IMMEDIATE EFFECT for the following reasons:

1. ....

2. ....

3. ....

4. ....

SIGNED AND STAMPED.....

NAME ..... DATE .....

CHIEF OFFICER-ENVIRONMENT OFFICIAL STAMP

.....

S. B. MAHAJA,  
County Executive Committee Member,  
Environment and Natural Resources.