REGULATORY IMPACT STATEMENT (RIS)

FOR

THE DRAFT ENERGY (COAL AND COALBED METHANE ENVIRONMENTAL HEALTH AND SAFETY) REGULATIONS, 2025

AUGUST 2025

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1. INTRODUCTION

The Energy Act (Cap.314) ("the Act") provides for regulation of Kenya's coal and coalbed methane (CBM) sectors, to ensure sustainable development, environmental protection and public safety. The proposed regulations align with Section 11(g) of the Act which mandates the Energy and Petroleum Regulatory Authority ("Authority") to formulate, set, enforce and review environmental, health, safety and quality standards in coordination with other statutory authorities.

Coal exploration in various parts of Kenya have ascertained the availability of coal and coalbed methane resources. Statistics indicate that major manufacturing industries in Kenya are currently utilizing coal as a source of energy. Consequently, Kenya has the opportunity to sustainably leverage coal as a critical energy resource while addressing environmental and health aspects.

The proposed Regulations aim to establish comprehensive environmental, health and safety requirements applicable to coal and coalbed methane operations in Kenya. This Regulatory Impact Statement (RIS) evaluates the objectives, impacts, alternatives, costs and benefits of the proposed Regulations.

2. REGULATORY IMPACT STATEMENT

Section 6 of the Statutory Instruments Act (Cap. 2A), (SIA) provides that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

This Regulatory Impact Statement was prepared in accordance with the provisions of Section 7 of the Statutory Instruments Act, Cap 2A.

3. STATEMENT OF OBJECTIVES

3.1. General Objective

The main objective of the proposed Regulation is to promote local exploitation and use of coal and coalbed methane by enforcing standards and ensuring environmental sustainability in the coal and coalbed methane value chain. Once enacted, the Energy (Coal and Coalbed Methane Environmental, Health & Safety) Regulations, 2025 shall provide a framework for enforcing environmental, health and safety standards associated with the exploration, extraction, handling, transportation, storage and use of coal and coalbed methane as provided for in Section 116 (e) of the Energy Act, 2019.

3.2. Specific Objectives

i. Align coal and coalbed methane operations with the relevant national and international laws, standards and best practice;
ii. Promote effective environmental, health, and safety standards while ensuring compliance and enforcement framework under the Authority's oversight;
iii. Enhance environmental health and safety (EHS) accountability and regulatory oversight in the design, construction, operation, maintenance, and decommissioning of coal and coalbed methane facilities;
iv. Ensure safe working conditions and protect the health of workers during coal and coalbed methane operations; and
v. Prioritize public health by preventing or minimizing air, water, and soil contamination caused by coal and coalbed methane activities.

4. STATEMENT ON THE EFFECTS OF THE PROPOSED REGULATIONS

Kenya lacks a sector-specific and integrated regulatory framework to address the unique Environmental, Health, and Safety ("EHS") risks in coal and coalbed methane operations. While general statutes such as the Occupational Safety and Health Act, (Cap. 514) and the Environmental Management and Coordination Act (Cap.387) ("EMCA") provide important baseline obligations, they are not sufficiently tailored to the complex and hazardous nature of coal and coalbed methane operations.

Occupational Safety and Health Act (Cap.514) ("OSHA"), though instrumental in setting out workplace safety standards, does not fully address emissions, dust exposure and ground water contamination unique to coal and coalbed methane operations.

Additionally, it does not provide for safety zones and distances, emergency shutdown systems in coal and coalbed methane infrastructure. Similarly, EMCA, (Cap.387) provides a broad framework for environmental protection but does not address coal and coalbed methane issues including coal waste management, flaring and venting, pipeline integrity, produced water management, decommissioning, and environmental liability.

The absence of a regulatory framework has resulted in:

i. Limited institutional coordination between regulatory agencies;

ii. Lack of enforcement and inspection in coal operations;

iii. Inadequate preparation for major accident hazards and emergency response;

iv. Uncertainty for investors regarding operational requirements, their safety and environmental obligations; and

v. Elevated risks to workers, communities, and the environment.

The proposed draft Energy (Coal and Coalbed Methane Environment, Health and Safety) Regulations, 2025, are designed to fill these critical gaps. They introduce a comprehensive, enforceable, and coal-specific EHS framework that aligns with the Act, best coal industry practices, and approved national standards. The Regulations:

i. Clearly define duties and responsibilities of coal operators in managing EHS risks;

ii. Establish mandatory safety cases, decommissioning obligations, and risk assessments;

iii. Set out detailed provisions on hazardous substances, waste management, flaring and venting, occupational safety, and emergency preparedness; and

iv. Provide the Energy and Petroleum Regulatory Authority (EPRA) with the tools to effectively monitor and enforce compliance.

By operationalizing these measures, the Regulations will strengthen sector governance, reduce operational risks, enhance investor confidence, and promote environmentally sustainable socially responsible coal development in Kenya.

5. ASSESSMENT OF PRACTICABLE MEANS OF ACHIEVING THE OBJECTIVES

5.1. Option 1: Maintaining the Status Quo

Status quo means no regulations and continued reliance on general EIA/OSHA/EMCA frameworks guiding coal operations in Kenya. Maintaining the status quo will result in a failure to operationalize the provisions of the Energy Act (Cap 314) requiring enforcement of the environmental, safety and health standards associated with the handling, storage and use of coal and coalbed methane. Accordingly, the status quo (no regulations) is **NOT A DESIRABLE OPTION**, as it is insufficient to address coal and coalbed methane specific risks leading to regulatory gaps.

5.2. Option 2: Developing Draft Regulations

The Draft Regulations will establish a clear legal framework for the exploration, extraction, production, processing, transportation, storage, exportation, importation, sale and use of coal and coal bed methane (CBM) in Kenya by enforcing environmental, health and safety standards.

This is the **PREFERED OPTION** as it is legally enforceable and binds environmental, health and safety standards under Section 116 of the Energy Act (Cap. 314) enabling coordinated compliance monitoring.

5.3. Option 3: Use of Voluntary EHS Manuals and Guidelines

Section 2 of the SIA defines Statutory Instruments to include guidelines, directions and regulations as statutory instruments therefore requiring comprehensive scrutiny and publication as required by Sec.4 of the SIA.

A working manual or any form of document established in the execution of the Energy Act (Cap 314) falls under the threshold of a Statutory Instrument and therefore must go through the progression process as required by the SIA.

In addition, working documents have the risk of legal challenges as they cannot be used to create offences and penalties, which are necessary for their effective application as well as challenge in court on the applicability and validity. The use of manuals and guidelines is not enforceable and therefore **NOT A DESIRABLE OPTION.**

5.4. **Option 4: Incentive-Based Approach**

This option would involve the government offering financial incentives including tax rebates, subsidies or grants to encourage voluntary adoption of clean coal technologies and compliance with EHS standards, with phased compliance deadlines. The incentives would offer the potential of a balance between environmental goals and economic feasibility for coal and CBM in energy production.

This option is not feasible therefore **NOT A DESIRABLE OPTION** as it would require government funding, which is not guaranteed and may lead to financial constraints. Additionally, small scale operators may not have the funds to invest in such capital-intensive technologies regardless of the existence of the subsidies. In addition, the proposed incentives may not be attractive to investors as they may not offset the investment costs.

6. ASSESSMENT OF THE COST AND BENEFITS OF THE PROPOSED REGULATIONS.

The proposed Regulations are expected to have economic, social and environmental impacts as illustrated below;

a) Economic Impacts

The proposed regulation will lead to job creation, local economic development from sustainable coal and CBM operations, increase investment confidence, operational efficiency, protection of public assets, cost savings from incident and accident prevention and enhanced revenue assurance.

b) Environmental Impacts

The environmental impacts include emission controls such as the use of continuous emission monitoring systems, water quality protection such as coal washout and process water treatment upgrades and coal combustion residuals, groundwater monitoring and remediation, solid waste management such as the reuse and proper disposal of ash and other solid waste from coal operations.

c) Social impacts

The social impacts include community health such as reduced exposure to particulate matter, mercury, and SO2 through emission controls, community engagement such as

mandatory environmental impact assessments (EIA) and public participation forums, worker safety such as employing appropriate PPEs, gas monitoring, ventilation systems, and safety audits in mines and facilities.

Economic Impact Assessment	
Impact/Benefit	Remarks
Economic Growth	Local economic development from sustainable coal and CBM operations
Job Creation	Demand for professionals would create employment opportunities
Cost Savings from Incident and Accident Prevention	Avoidance of major accidents translates into reduced legal liabilities, compensation costs, and insurance premiums.
Increased investor confidence	Enforceable EHS regulations would attract investors
Compliance Costs	Coal operators' investments in continuous emission monitoring systems, clean coal technologies, wastewater treatment upgrades to meet EHS standards.
Environmental Impact Assessment	
Impact/Benefit	Remarks
Emission Controls	Use of continuous emission monitoring systems for particulate matter, methane capture systems for CBM and coal mines.
Water Quality Protection	Coal washout and process water treatment upgrades and coal combustion residuals, groundwater monitoring and remediation.

Solid waste management	Reuse and proper disposal of ash and other solid waste from coal operations
Social Impact Assessment	
Impact/Benefit	Remarks
Community Health	Reduced exposure to particulate matter, mercury, and SO2 through emission controls
Community Engagement	Mandatory environmental impact assessments (EIAs) and public participation forums.
Worker Safety	Employing appropriate PPEs, gas monitoring, ventilation systems, and safety audits in mines and facilities
Infrastructural Safeguards and Development	Compliance with safety and operational standards may lead to improved infrastructure, including roads, communication, and emergency facilities.
Reduced Health related hazards	Reduced exposure to pollutants, noise, and hazardous waste improves the health outcomes of both workers and nearby communities.

7. ADMINISTRATION AND COMPLIANCE COSTS

The regulations propose a fee to meet administrative costs associated with the licensing inspections for companies. The funds will facilitate closer scrutiny of the applicants to ensure that only qualified personnel are licensed. Extra costs shall be borne through funds available to the Authority from other sources provided for in Section 20 of the Energy Act, 2019. The enactment of these regulations will not result in any additional resource allocation from the government with proposed fees designed not to limit any practitioner from accessing the services. Information Technology Systems shall be deployed to ensure efficiency and transparency in the licensing process, monitoring of production, transportation, storage and use of coal and coalbed methane, and reporting as required in the regulations.

8. ANY OTHER MATTERS SPECIFIED BY THE REGULATION

According to the proposed Regulations, all matters prescribed relate to the environmental, health and safety requirements of the upstream, midstream and downstream coal and coalbed methane use for energy production, and facilities' design, construction, installation, operation, maintenance, modification and decommissioning. The Regulation shall not apply to any upstream coal operations outside the ongoing projects.

9. COPY OF THE DRAFT REGULATIONS

The Draft Energy (Coal and Coal Bed Methane Environmental, Health and Safety) Regulations, 2025 are annexed herein.