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OUR REF: MD/update_nov20

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ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT
(SOUTH AFRICA)
NOVEMBER 2020

Dear Clients,

Below please find a summary of selected relevant environmental, health and safety and foodstuffs legal developments that took place during November 2020.

NATIONAL LEGISLATION

1) *Agricultural Product Standards Act*

- ***Regulations relating to Coffee, Chicory and related Products intended for Sale in the RSA***

These new Regulations were published. They only enter into force on 30 October 2021.

- ***Regulations relating to Tea and related Products intended for Sale in the RSA***

These new Regulations were published. They only enter into force on 30 October 2021.

2) *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act*

- ***Notice detailing the Classes of Stock Remedies relating to the Proposed Draft Stock Remedy Regulations***

This notice was published for public comment for a period of sixty days.

3) Waste Act

The following four new Regulations were published (separate reports dealing with this were already sent out on 8 November 2020 to clients).

Please note: these affect only PRODUCERS OR CLASSES OF PRODUCERS.

A *producer* is defined as “any person or category of persons or a brand owner who is engaged in the commercial manufacture, conversion, refurbishment or import of new and /or used products as identified by the Minister”.

A *brand owner* is defined as “ a person, category of persons or company who makes and/or sells any product under a brand label”.

Users or waste generators of these products will also be indirectly affected, as they will have to comply with EPR schemes drawn up and implemented by the various producers, classes of producers or producer responsibility organisation.

In essence this means that most companies will NOT need to take any action at this stage, unless they are producers (or brand owners) of the identified products.

- **Regulations regarding Extended Producer Responsibility, GN 1184 of 5 November 2020, GG 43879**

The purpose of the Regulations is to:

- provide a framework for the development, implementation, monitoring and evaluation of extended producer responsibility (EPR) schemes by producers in terms of section 18 of the Waste Act
- ensure the effectiveness and efficient management of the identified end-of-life products, and
- encourage and enable the implementation of the circular economy initiatives.

The Regulations would be applicable to products identified by the Minister in terms of section 18 and its related waste streams. The products and waste streams must be published by the Minister.

The Regulations require all existing producers of products identified by the Minister to register with the Department within six months (ie. by 5 May 2021). New producers of products, who

commence producing after the Regulations come into effect (ie. 5 November 2020), must register within three months of being established.

Reg 5 in much detail (27 points) sets out numerous EPR measures which producers must implement. Since the list is over two pages long it is too long to repeat here.

Reg 6 states that EPR schemes must, as a minimum, include requirements for:

- cleaner production measures
- waste reduction
- reuse
- recycling
- recovery for beneficial use
- treatment
- disposal
- implementation and reporting on minimum recycled content standards, secondary materials utilisation rate, and recovery rates
- complying with the requirements for programmes planned to contribute to government priorities.

Other matters governed by the Regulations are: financial arrangements for an EPR scheme; monitoring, reporting and evaluation; performance reviews of schemes (by the Department).

Existing products responsibility organisations must register with the Department within six months of the Regulations coming into force (ie. 5 May 2021), while newly formed organisations must do so within three months of their establishment. Such organisations must be an autonomous body, be registered as non-profit company and have a board of directors.

- ***EPR Scheme for the Electrical and Electronic Equipment Sector, GN 1185 of 5 November 2020, GG 43880***

This scheme affects the following products or classes of products:

- Large equipment (any external dimension more than 100 cm)
- Medium equipment (any external dimension between 50 and 100 cm)
- Small equipment (no external dimension more than 50 cm), and
- Batteries (except portable batteries).

What exactly all constitutes batteries or portable batteries is, unfortunately, not defined.

A producer or class of producers of the above must set up procedures, processes and invest resources to implement the EPR measures (in conjunction with the above EPR Regulations), and to develop and implement same.

A producer, in operation at the time of publication of this notice (ie. 5 November 2020), must within six months -

- develop and submit an EPR scheme to the Department of Environment, Forestry and Fisheries, or
- establish a producer responsibility organisation who must develop and submit an EPR scheme according to the EPR Regulations to the Department.

A producer of the above four products or classes of products who commences operations after the Regulations came into effect (ie. 5 November 2020) must either –

- develop and submit an EPR scheme according to the EPR Regulations to the Department within six months of commencing operations , or
- subscribe to an existing EPR scheme within 3 months of commencing operations.

The following targets were set for all identified electrical and electronic waste streams for a five year period:

Year	Collected and recycled (tons)
	Increase of 30% collection and recycling rate per annum
1	36 000.00
2	47 000.00
3	61 000.00
4	79 000.00
5	103 000.00

- ***EPR Scheme for Paper, Packaging and some Single Use Products, GN 1187 of 5 November 2020, GG 43882***

This Notice affects the following producers of products or classes of products:

- Paper and packaging material (various types)
- Plastic packaging (various types, printed and unprinted)

- Biodegradable and compostable packaging (approved compostable raw materials complying to relevant SABS and/or ISO standard 17088)
- Single use plastic products (various types)
- Single use compostable plastic products (various types)
- Single use biodegradable plastic products (various types)
- Glass packaging
- Metal packaging (various types).

These producers will have to set up procedures, processes and invest resources to implement the EPR measures and an EPR scheme linked to -

- collection of products in the post-consumer stage
- reuse
- recycling
- recovery, and
- disposal of products in the post-consumer stage.

A producer, in operation at the time of publication of this notice (ie. 5 November 2020), must within six months -

- develop and submit an EPR scheme to the Department of Environment, Forestry and Fisheries, or
- establish a producer responsibility organisation who must develop and submit an EPR scheme according to the EPR Regulations to the Department.

A producer of the above products or classes of products who commences operations after the Regulations came into effect (ie. 5 November 2020) must either –

- develop and submit an EPR scheme according to the EPR Regulations to the Department within six months of commencing operations , or
- subscribe to an existing EPR scheme within 3 months of commencing operations.

A lengthy table spanning four pages in the Government Gazette was included in the Notice. This covers the abovementioned products or classes of products and sets out targets for year 1 to 5 for:

- product design (recyclate content %)
- reuse target %
- collection target %

- recycling target %.

- ***EPR Scheme for the Lighting Sector, GN 1186 of 5 November 2020, GG 43881***

This Notice affects the following producers of products or classes of products of lighting products, but not limited to:

- Gas discharge lighting (various)
- All light emitting diode (LED) lighting sources and types
- Signal/signage lighting as well as associated equipment
- Luminaires and lighting equipment fixtures or modules or associated electrical components
- Laser, pixel and UV irradiation (UVI) or UV germicidal irradiation (UVGI) lighting
- Automotive lighting and luminaires
- Incandescent (filament) light bulbs and halogen, and
- Off grid solar powered lighting.

Producers of the above items in conjunction with the current existing downstream waste economy role players, including the current collectors and recyclers, are responsible for developing and implementing an EPR scheme.

A producer, in operation at the time of publication of this notice (ie. 5 November 2020), must within six months -

- develop and submit an EPR scheme to the Department of Environment, Forestry and Fisheries, or
- establish a producer responsibility organisation who must develop and submit an EPR scheme according to the EPR Regulations to the Department.

A producer of the above products or classes of products who commences operations after the Regulations came into effect (ie. 5 November 2020) must either –

- develop and submit an EPR scheme according to the EPR Regulations to the Department within six months of commencing operations , or
- subscribe to an existing EPR scheme within 3 months of commencing operations.

A lengthy table was included in the Notice. This covers various types of lighting products and sets out individual collection, recovery and recycling targets over a five year period.

4) National Environmental Management Act

- **EIA Regulations – DRAFT amendments**

Draft amendments to the EIA Regulations, as well as Listing Notices 1, 2 and 3 were published for public comment. The focus appears to be quite heavily on mining related matters.

5) Occupational Health and Safety Act

- **Asbestos Abatement Regulations**

These new Regulations replace the Asbestos Regulations, GN R 155 of 2002.

As they are quite lengthy this update report will only provide a brief overview. For more information please refer to the Regulations.

In terms of Reg 3 each employer or self-employed person must, as far as is reasonably practicable, ensure that all asbestos-containing materials (ACM) at the workplace are identified by a competent person. If there is doubt whether the suspected material contains asbestos, or if part of the workplace is inaccessible, it must be assumed that asbestos is present. If no asbestos is identified the competent person must substantiate this in writing. Please note that Reg 3 only takes effect on 10 May 2022.

The competent person further has to compile an asbestos inventory. This must be reviewed at least every two years.

The duty to identify asbestos and draw up an inventory is not new, only that this must be done by a competent person.

All ACM must be clearly labelled or provided with signage. This too is not new as the old Regulations also required this. However, for the new Regulations this only takes effect on 10 May 2022. The implementation of Reg 20 (which deals with labelling and signage) was presumably postponed because Reg 3 also only comes into force on 10 May 2020. Most likely this is because of the competent person requirement (who needs to have the required training/qualification and possible registration).

If asbestos is identified a risk assessment must, as far as is reasonably practicable, be carried out immediately and thereafter at least every two years. The assessment must contain a risk categorisation stating topics like eg. the health impact, number of persons potentially

exposed, potential for damage or disturbance of ACM (also by maintenance activities), the condition of ACM, including state of deterioration.

Where asbestos repair or removal work is done a risk assessment is also required.

The asbestos inventory and risk assessment must be reviewed and endorsed at least every six years by an approved inspection authority unless the work was carried out by such authority.

If ACM is identified a written asbestos management plan must be drawn up by a competent person. Various requirements must be included in the plan (these are set out in Reg 6(2)), and include, among others, drawing up a procedure. In addition, a phase out plan must be implemented. The plan must be reviewed at least every eight years.

Information, instruction and training must be provided by the employer on various asbestos related topics.

Reg 8 deals with the duties of persons who may be exposed; this includes following orders, attending training and reporting damages to ACM. More detailed provisions apply to person doing type 1, 2 or 3 asbestos work.

Measures must be put in place to prevent or control asbestos exposure.

Notification of asbestos work must be given to the Chief Inspector (Reg 10). Reg 11 sets out duties of asbestos clients, employers or self-employed persons for asbestos work.

Reg 12 deals with the duties of registered asbestos contractors and documentation that needs to be in place.

Reg 13 covers the duties of approved inspection authorities for asbestos work.

Reg 15 deals with the various requirements for a plan of work. Regs 16 to 19 cover asbestos work and are more relevant for asbestos contractors.

Reg 21 regulates the disposal of asbestos.

Reg 22 introduces the requirement to have an asbestos clearance certificate following the completion of type 2 or 3 asbestos work.

Reg 23 sets out the various records an employer has to keep. The retention period is fifty years (see Reg 23(e)). This is much longer than several other Regulations under the Occupational Health and Safety Act which only require either thirty or forty years.

Reg 24 introduces various prohibitions. This includes not being allowed to sell or give asbestos or ACM to others, using certain power tools, smoking/eating/drinking in regulated asbestos areas etc.

Contraventions of the Regulations may lead to criminal prosecution and may result in a fine (unspecified) or imprisonment for a period not exceeding twelve months and, in the case of a continuous offence, to an additional fine of R500.00 for each day on which the offence continues or to additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment may not exceed ninety days.

6) *Agricultural Produce Agents Act*

- ***Biosecurity Rules for Livestock Agents***

These Rules regulate the livestock agents industry with specific reference to required precautions to take during the gathering of live animals at auctions to reduce the risk of spreading controlled, notifiable and other animal diseases.

PROVINCIAL LEGISLATION

7) *Eastern Cape Province*

- ***Provincial Integrated Waste Management Plan for 2018 – 2023 (April 2019 final draft)***

This was published in the provincial Gazette of 23 November 2020. Its aim is to present a unified approach to waste management in the province. It will cover a regional approach to waste management and identify projects on a regional level in order to improve waste management.

8) *Western Cape*

- ***Environmental Implementation Plan 2020 - 2025***

This was published by the province's Department of Environmental Affairs and Development Planning.

9) *Gauteng*

- ***Gauteng DRAFT Industry Waste Management Plan for the Informal Waste Industry***

This draft IWMP was published for public comment in terms of the Waste Act. It aims to regulate and organise the informal waste industry and also proposes the establishment of a not for profit organisation, the Indev Foundation ("Indev"), for achieving the IWMP's objectives.

No other relevant provincial legislation was published during this month.

MUNICIPAL LEGISLATION

10) *Umdoni Local Municipality*

The following by-laws were published:

- Business Licence By-law
- Advertising Signs By-law.

11) *Witzenberg Local Municipality*

The Zoning Scheme By-law was promulgated.

12) *Swellendam Municipality*

The Municipal Land Use Planning By-law was promulgated.

13) *City of Johannesburg*

The following DRAFTS were published for public comment:

- Draft Water Services By-law
- Draft amendment – Electricity By-laws
- Draft Air Pollution Control By-laws and Air Quality Management Plan
- Draft Waste Management By-laws
- Draft amendment and consolidation of the Public Roads and Miscellaneous By-law and the Parking Ground By-law
- Draft Public Transport By-laws.

14) City of Mbombela

The By-law relating to Streets, Public Places, the Prevention of Noise Disturbance and Noise Nuisance was published. It repeals the Noise Abatement By-laws.

15) City of Cape Town

The Problem Property By-law was promulgated. Its aim is to hold property owners liable for ensuring that the property is in a good state of repair and safe condition, and to require them to notify the City if the condition of the property is dangerous to life or property in terms of section 12(2) of the National Building Regulations Act. In addition, property owners must ensure that the premises are not used for criminal activities, or that dumping takes place.

If you have any questions please feel free to contact us.

Kind regards

MARK DITKE