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**ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT
(SOUTH AFRICA)
MARCH 2021**

Dear Clients,

Below please find a summary of selected relevant environmental, health and safety and foodstuffs legal developments that took place during March 2021.

NATIONAL LEGISLATION

1) Biodiversity Act

- ***Draft Revised National Biodiversity Framework***

This was published for comment.

2) Marine Pollution

The Dept of Transport published a notice of intention to consolidate some of the current SA legislation dealing with marine pollution. This is quite an ambitious task given the complexity and magnitude of the laws, but in our opinion this is an excellent proposal as the present legal regime is quite confusing and fragmented.

Should you wish to contribute in terms of suggested contents please feel free to do so, the closing date is 30 April 2021.

3) Antarctic Treaties Act

The draft Antarctic and Southern Ocean Strategy was published.

4) Skills Development Act

- **National Register of Artisans Regulations**

These new Regulations were published.

As prescribed by section 26(C) of the Skills Development Act, all artisans who have successfully completed a trade test in a listed trade, and all foreign artisans, must register with the Department of Higher Education and Training through the NADSC (National Artisan Development Support Centre) or contact the National Artisan Development call centre to register in one of the following categories:

- Practicing artisan
- Non-practicing artisan
- Foreign national practicing artisan
- Foreign national non-practicing artisan.

These Regulations deal with the registration process.

5) Waste Act

- **Extended Producer Responsibility Regulations and Notices – DRAFT amendments**

DRAFT amendments were published for public comment to the following:

- 1) Regulations regarding Extended Producer Responsibility (GN R 1184 of 2020), and Notices in respect of the:
- 2) Extended Producer Responsibility Scheme for the Electrical and Electronic Equipment Sector (GN R 1185 of 2020)
- 3) Lighting Sector (GN R 1186 of 2020)
- 4) Paper, Packaging and Some Single Use Products (GN R 1187 of 2020).

The proposed changes can be summarised as follows:

- The definition of "Producer" now provides for customised definitions for the specific Notices to provide clarity;
- The requirements for the Life Cycle Assessment (LCA) have been prescribed in the Regulations to provide clarity;
- The transformation requirements have been clarified and clearly indicate the roles of the relevant stakeholders;

- The obligations of a product responsibility organisation and the producer have been separated to avoid the conflation of roles and responsibilities;
- The costs associated with the calculation of the extended producer responsibility fee have been prescribed to prevent any uncertainty or ambiguity;
- The requirement to include the extended producer responsibility fee as a separate line item on each invoice or cash sale receipt was removed and the provision was amended to provide for the extended responsibility fee to be displayed on the website of the producer responsibility organisation or producer;
- The items that must be included in the determination of the administration cost for the producer responsibility organisation have been prescribed, as well as the percentage administration cost;
- The Lighting Notice and Electrical and Electronic Equipment Notice have been amended by listing the identified products that must have a mandatory take back scheme;
- The Paper, Packaging and Some Single Use Products Notice has been amended as follows:
 - o The definition of Producer has been amended for the Paper, Packaging and Some Single Use Products Notice to provide for the
 - inclusion of a threshold of 10 tonnes per annum to focus on larger manufacturers;
 - provision for licensed agents for branded products; and
 - provision for the retailer to be the "producer" in circumstances for the identified products where the importer or licensed agent is unknown;
 - o The definitions of some categories have been amended such as biodegradable plastics, compostable plastics and single use plastics to biodegradable products, compostable products and some single use products respectively; and
 - o The targets for some identified products have been amended in agreement with the affected industry.

- ***DRAFT National Norms and Standards for the Treatment of Organic Waste***

These DRAFT standards were published for public comment. They are quite detailed and cover various treatment methods. The discussion of this draft standard will therefore be brief. Should a copy be requested please contact us.

The following activities are covered:

- Recycling of organic waste at a facility that has an operational area in excess of 500m²

- Recovery of organic waste including the refining, utilisation or co- processing of organic waste in excess of 10 tons but less than 100 tons per day
- Construction and operation of any organic waste treatment facility that has the capacity to process in excess of 10 tonnes but less than 100 tonnes of organic waste material per day
- Construction of any organic waste facility where the capacity of the facility is able to process in excess of 10 tonnes but less than 100 tonnes of organic material per day
- Construction and operation of any organic waste facility processing animal matter not intended for human consumption for installations handling in excess of 1 ton of raw material per day
- Construction and operation of any organic waste facility using applied heat (thermal treatment) in the treatment general waste exceeding 10kg per day.

Organic waste treatment will have to comply with various treatment options (mechanical, chemical, anaerobic, aerobic and thermal) depending on the type of feedstock in question.

Minimum requirements are set out for the design, planning and construction phases, as well as security and access control. These are, in essence, similar to those in other Norms and Standards under the Waste Act.

A facility will have to be compliant with the provisions of the following legislation in terms of the Air Quality Act:

- National Dust Control Regulations
- National Greenhouse Gas Emission Reporting Regulations
- National Ambient Air Quality Standards.

Incidents must be managed in terms of section 30 of the National Environmental Management Act which deals with emergencies.

Bi-annual internal audits and biennial audits must be conducted.

Various organic waste treatment technologies are discussed in Annexure 1. Annexure 2 covers items to be included in a standard operating procedure. Annexure 3 deals with general requirements for such facilities.

6) *Integrated Coastal Management Act*

The coastal management line for the sea area of the City of Cape Town was published on 19 March 2021.

7) *Occupational Injuries and Diseases Act*

The following forms were amended:

- Return of earnings (CF-2A)
- Application for the revision of the assessment (CF-2B).

8) *National Health Act*

- ***Draft Regulations relating to Assisted Conception of Persons***

These draft Regulations were published for public comment.

9) *National Nuclear Regulator Act*

- ***Regulations on the Long Term Operation of Nuclear Installations***

These new Regulations were published by the Minister of Mineral Resources and Energy.

10) *National Environmental Management Act*

- ***Adoption of Generic Environmental Management Programmes (EMPr's) – LandCare Programme***

The Generic EMPr for the government's LandCare Programme was adopted by the Department of Environment, Forestry and Fisheries. By its adoption the need to obtain an environmental authorisation prior to commencement of activities has fallen away. The EMPr's instead will regulate the activities and therefore act as environmental management instrument.

Similar Generic EMPr's were adopted in February 2021 for the:

- Working for Water Programme
- Working for Wetlands Programme
- Working for Ecosystems Programme.

11) Occupational Health and Safety Act

- **Regulations for Hazardous Chemical Agents**

These new Regulations repeal and replace the Hazardous Chemical Substances Regulations, GN R 1179 of 1995. Many of the provisions are fairly much repetitions of the old Regulations although there are new, or more detailed, requirements.

The new Regulations are not applicable where the Lead Regulations or Asbestos Abatement Regulations already apply.

An exposure assessment must immediately be performed by the employer and repeated at least every two years. Where inhalation of a hazardous chemical agent (HCA) occurs air monitoring must be conducted by an approved inspection authority. Medical surveillance is required where an employee is exposed to a HCA in Table 4 of Annexure 2 of the Regulations, an identifiable disease or adverse effect to his or her health may be related to the exposure (or there is a reasonable likelihood that such a disease or effect may occur), or the occupational health practitioner recommends this. Entry medicals are required either prior to commencing work, or within fourteen days, and thereafter medicals must be done every two years.

All records of assessments and air monitoring must be kept for a minimum period of thirty years.

The exposure to HCA's must be controlled, and where this is not reasonably practicable PPE must be issued.

The manufacturer or importer of a chemical agent must, before it is supplied to a workplace-

- determine whether the chemical agent is an HCA by carrying out a hazard assessment referencing the cut-off values provided in Tables 4 and 5 of Annexure 1;
- if the substance, mixture or article is an HCA, ensure that a GHS classification is carried out for the HCA; and
- review the GHS classification should a change in the composition of the HCA be made.

GHS is the Globally Harmonized System of classification and labelling of chemicals. This is already incorporated into SANS 10234 as well as the Waste Classification and Management Regulations, 2013, under the Waste Act.

Reg 14A sets out the requirements of safety data sheets which must be furnished by an importer or manufacturer. Reg 14B deals with the labelling of HCA's and Reg 14C with their packaging (including the UN Transport of Dangerous Goods and/or the IMO Dangerous Goods Code). Reg 14D governs ingredient identity disclosure.

As far as reasonably practicable an employer must recycle all HCA waste. In addition, such waste must be identified in terms of the Waste Classification and Management Regulations, 2013, and the National Norms and Standards for the Assessment of Waste for Landfill Disposal, 2013.

If the services of a waste disposal contractor are used, a provision must be incorporated into the contract stating that the contractor must also comply with the provisions of these Regulations.

Very detailed Annexures were included in the Regulations which deal with topics like:

- hazards (physical, health and environmental)
- identity of ingredients to be disclosed
- generic names used to disclose these
- prohibited HCA's
- occupational exposure limits (maximum and restricted limits)
- HCA guidelines.

The Dept of Employment and Labour has also sent out a webinar invite for a discussion of the new Regulations. Should this be of interest to anybody please register here: https://us02web.zoom.us/webinar/register/WN_7rTjxD5wQn-nhHZHzEA6nQ

PROVINCIAL LEGISLATION

12) *Eastern Cape*

The provincial Environmental Implementation Plan was published. Its purpose is to:

- Provide cooperative governance in Integrated Environmental Management (IEM)
- Detail the provincial policies, plans and programmes that may significantly impact on the environment
- Indicate how the Provincial Government will ensure that its actions will comply with the NEMA sustainable development principles and other environmental legislation

- Provide information on applicable environmental treaties, conventions, legislation and policies that should guide decision-making
- Secure the protection of the environment across the country as a whole
- Prevent unreasonable actions in respect of the environment that are prejudicial to the economic or health interests of other provinces or the country as a whole
- Enable the Minister to monitor the achievement, promotion and protection of sustainable environment; and
- Ensure the alignment of policy and procedures related to the environment at national, provincial and local authority levels of government.

13) North West

The provincial Environmental Implementation Plan was published for the period 2020 - 2025. It has a similar objective as the Eastern Cape plan.

No other relevant provincial legislation was published during this month.

MUNICIPAL LEGISLATION

14) Chief Albert Luthuli Local Municipality

The following new by-laws were promulgated:

- Businesses By-law
- Public Road, Electronic Communications Networks and Miscellaneous By-laws.

15) Maruleng Local Municipality

The Business Registration By-law was promulgated.

16) Buffalo City Metropolitan Municipality

The Disaster Management By-law was promulgated.

17) Emalahleni Local Municipality

The By-laws for the Prevention of Public Nuisances were promulgated.

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

Kind regards

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