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OUR REF: MD/update\_april22

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## **ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT**

### **(SOUTH AFRICA)**

**APRIL 2022**

Dear Clients,

Below please find a summary of selected relevant environmental, health and safety and foodstuffs legal developments that took place during April 2022.

### **NATIONAL LEGISLATION**

#### **1) *Hazardous Substances Act***

- **Group I, Category B, Hazardous Substances: Declaration**

A DRAFT amendment was published for public comment (this is open until 24 June 2022). The substances include amongst other the following, subject to certain exclusions:

- All industrial substances listed in Annexure 3 of the Rotterdam Convention with allowed uses in the country
- Mercury and mercury compounds for allowed uses as prescribed in the Minamata Convention;
- Any industrial substance or mixture of substances, products or materials which in the course of customary or reasonable handling or use, including ingestion, by reason of its:
  - Acute toxicity oral, skin or inhalation, category 1 or 2; or
  - Carcinogenicity, category 1, 1A or 1B; or
  - Reproductive toxicity, category 1, 1A or 1B; or
  - Germ cell mutagenicity, category 1A or 1B; or

- Specific target organ toxicity-single exposure, category 1; or
- Specific target organ toxicity-repeated exposure, category 1

listed as harmonised in the Classification and Labelling inventory obtainable from the ECHA website, <https://echa.europa.eu> and classified according to the hazard classification prescribed in the latest version of the United Nations Globally Harmonised System of Classification and Labelling of Chemicals.

- **Group I, Category A, Hazardous Substances: Declaration**

A DRAFT amendment was published for public comment (this is open until 24 June 2022). The substances include amongst other the following, subject to certain exclusions:

- All pesticides substances listed in Annexure 3 of the Rotterdam Convention; with an importation consent granted by the Designated National Authority of the Convention and/or with approved registration in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 ("FFASA");
- All pesticides substances listed in Part I, Annexure B of the Stockholm Convention; subject to specific exemptions prescribed in the Convention;
- All pesticides or agricultural remedies classified and registered under the red hazard colour code and/or as restricted in terms of the FFASA.

- **Group II Hazardous Substances Declaration**

A DRAFT amendment was published for public comment (this is open until 29 July 2022). Should it enter into force it will repeal the current Group II Declaration (GN 1382 of 1994).

## **2) Radioactive Waste Management Fund Bill**

This Bill was published for public comment. Its objective is to:

- establish a trust to provide for the collection of funds to be disbursed to the National Radioactive Waste Disposal Institute for long-term management of high-level radioactive waste
- to provide for its governance and administration; and
- to provide for matters connected therewith.

### **3) Waste Act**

A proposal was made by the Minister of Forestry, Fisheries and the Environment that the producers of the following must establish extended producer responsibility schemes:

- Pesticide sector (ie. pesticides, pesticide co-formulant, and related containers)
  - Portable battery sector (ie. a battery which is sealed, can be hand-carried without difficulty, and is neither an automotive nor industrial battery)
  - Lubricant oil sector (ie. all virgin and re-refined mineral and synthetically based lubricants, with or without additives that is used for lubrication within heat transfer, load transfer, insulation or any other application).
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- ***National Norms and Standards for the Treatment of Organic Waste***

These new Norms and Standards are quite detailed and cover various treatment methods. Should a copy be requested please contact us.

They apply to any organic waste treatment facility that has the capacity to process in excess of 10 tonnes of organic waste per day.

There are three categories of organic waste as described in 1.1 of the Norms and Standards.

They do not apply to the composting of organic waste.

They are also not applicable to any facility treating:

- any infectious animal waste
- raw sewage
- sewage sludge that does not meet the minimum quality standards for sludge as determined by the Dept of Water and Sanitation in their National Norms and Standards for Domestic Water and Sanitation Services (GN 982 in Govt Gazette 41100 of 8 September 2017).

### **4) National Environmental Management Act**

- ***Draft National Biodiversity Offset Guideline***

These DRAFT guidelines were published for comment.

Biodiversity offset is defined as the “measurable outcome of compliance with a formal requirement contained in an environmental authorisation to implement an intervention that has the purpose of counterbalancing the residual negative impacts of an activity, or activities, on biodiversity, through increased protection and appropriate management, after every effort has been made to avoid and minimise impacts, and rehabilitate affected areas”.

The purpose of this guideline is to indicate when biodiversity offsets are likely to be required as mitigation by any competent authority (CA), to lay down basic principles for biodiversity offsetting and to guide offset practice in the environmental authorisation (EA) application context.

However, it can also be used to inform other administrative processes that may involve biodiversity offsetting, including applications for EA in terms of section 24G of NEMA, emergency directives contemplated in section 30A of NEMA, applications for licences under the National Water Act, the National Forests Act and the Waste Act, applications for development rights in terms of the Spatial Planning and Land Use Management Act, and requests for the de-proclamation, or the withdrawal of declarations, of protected areas in terms of provincial legislation or the Protected Areas Act.

It only applies in the freshwater and terrestrial realm and not the offshore marine realm and estuarine ecosystems.

#### **5) National Forests Act**

The list of protected trees in terms of the Act was amended by adding four other tree species. This revision is done on an annual basis.

#### **6) Mineral and Petroleum Resources Development Act**

- **Artisanal and Small-scale Mining Policy**

This policy was published by the Minister.

#### **7) Mining Exploration Implementation Plan**

This plan was published by the Department of Mineral Resources and Energy.

## **8) Occupational Health and Safety Act**

- **Regulations for Hazardous Chemical Agents, 2021**

The Regulations were originally promulgated on 29 March 2021, when they also entered into force, with the exception of:

Regulations 13(d), 14, 14A, 14B, 14C, 14D; Annexure 1, Tables 1, 2, 3, 4 and 5; and Annexure 2, Tables 1, 2, 3 and 4 which were scheduled to only come into effect 18 months later (ie. 29 September 2022).

This period was further extended by GN 2056 of 29 April 2022 (Notice regarding implementation of Regulations 14, 14A, 14B, 14C and 14D), which states that:

“From 29 September 2022, manufacturers and/or suppliers of chemicals may continue to supply existing stock-in-trade that are non-GHS (Globally Harmonised System for the classification and labelling) compliant, provided that the chemical was manufactured or imported (landed and not in transit) prior to the 29 September 2022. The exemption will be for a period of 12 months, ending 30 September 2023, when all labelling and SDS (Safety Data Sheet) shall be GHS compliant”.

## **9) Critical Infrastructure Protection Act, 2019**

The intention of this Act is to repeal the National Key Points Act in due course. So far the only sections in force are: 1 - 6, 7(1)(b), 7(3), 7(4), 7(5), 8, 9(1), 9(2), 12, 14(5), 14(6), 14(7), 15, 27(1), 27(5), 27(7), 27(8). These took effect on 30 April 2022. They deal largely with the establishment and functions of the new Critical Infrastructure Council.

As such the National Key Points Act is still applicable.

- **Draft Interim Critical Infrastructure Protection Regulations**

Draft Regulations were published for public comment. These too deal with the new Critical Infrastructure Council.

## **10) Climate Change Bill**

This Bill was published (please note it is not an Act, and thus not (yet) law). It is aimed largely at government and imposes various requirements etc which government tiers or bodies must comply with in due course. A large part of the Bill deals with policies, programs or strategies

and therefore will only really become relevant for industries or individuals in due course. Changes may also be made to the Bill before it eventually becomes an Act.

## **PROVINCIAL LEGISLATION**

No relevant provincial legislation was published during this month.

## **MUNICIPAL LEGISLATION**

### **11) *Bergriver Local Municipality***

The Integrated Waste Management By-law was published.

### **12) *Cape Agulhas Local Municipality***

The Integrated Waste Management By-law was promulgated. At the same time the 2005 Refuse Removal By-law was repealed.

### **13) *Jozini Local Municipality***

The Emergency Services By-laws were published with effect from a date to be proclaimed in the Provincial Gazette.

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

Kind regards

**MARK DITKE**