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ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT

(SOUTH AFRICA)

JUNE 2022

Dear Clients,

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

NATIONAL LEGISLATION

1) *Nursing Act*

- ***Regulations regarding the Scope of Practice for Nurses and Midwives***

These new Regulations set out the various duties and functions of nurses and midwives.

2) *National Railway Safety Regulator Act*

- ***Regulations on Notifiable Railway Occurrences***

These Regulations outline the mandatory notifiable railway occurrences to be managed by the operators as well as the railway occurrences that must be reported to the Chief Executive Officer. They must be read in conjunction with the SANS 3000 series of standards as well as the Railway Safety Regulator standards.

The following types of railway operators must put into place systems and procedures for the reporting of notifiable railway occurrences:

- network operators;

- train operators;
- station operators; or
- a combination of network, train and station operators.

Notifiable railway occurrences include the following:

- operational railway occurrences;
- security-related railway incidents;
- railway occurrences related to the transportation of dangerous goods;
- crowd related railway occurrences; and
- industrial action related railway occurrences.

Operators must ensure that procedures for reporting of railway occurrences are established, developed or adopted, implemented and maintained in compliance with these Regulations. Operator must further track railway occurrences in order to assist them in assessing their own safety performances. These include incidents that could serve as leading indicators that could be used to identify shortcomings in procedures or products, or that could be used to identify specific problem areas.

Railway occurrences (as per categories A to O and 1 to 11 in Tables 1 and 2) that result in injuries or fatalities to people, or significant damage to property and the environment must be reported telephonically by the operator to the Chief Executive Officer within 15 minutes from the time the operator becomes aware of the occurrence. They must be confirmed in writing to the Chief Executive Officer within twelve hours from the time of an occurrence.

Daily reports of all the railway occurrences (Tables 1, 2 and 4) that occurred in the prevailing period 00h00 to 23h59 must be submitted to the Chief Executive Officer by 11h00 on the following day, except for weekends or holidays in which case the reports must be provided by 11h00 on the next working day.

Quarterly reports must be submitted to the Railway Safety Regulator not later than the end of the month following the quarter under review and which deal with operational railway occurrences and security-related incidents. The details are set out in Regulation 14.

3) National Health Act

- **Regulations relating to the Surveillance and the Control of Notifiable Medical Conditions**

Regulations 16A, 16B and 16C were repealed by the Minister of Health on 22 June 2022.

These dealt with the following:

16A. Wearing of face masks to contain the spread of COVID-19

16B. Regulation of gatherings to contain the spread of COVID-19

16C. Regulation of persons entering the country to contain the spread of COVID-19.

This means that masks are no longer required in public places, the ban on gathering size was lifted, and travel restrictions were removed.

However, this does not mean that other legislation dealing specifically with Covid-19 has fallen away.

The Regulations for Hazardous Biological Agents (in terms of the Occupational Health and Safety Act) include the SARS-CoV-2 virus in the list of HBA's. In terms of the Regulations an employer must have a risk assessment done by competent person. If there is a risk of exposure, preventative or mitigatory measures must be implemented. These could include, where necessary, PPE, sanitisers, physical barriers etc.

In addition, the Department of Employment and Labour's current Code of Good Practice: Managing Exposure to SARS-CoV-2 in the Workplace (GN R 2191 of 24 June 2022) remains in force. The Code also requires an employer to conduct (or update) a Covid-19 risk assessment, and to draw up a plan to limit infection, transmission and to mitigate the risks of serious illness or death on the basis of that risk assessment.

4) Mine Health and Safety Act – Draft Amendment Bill

A draft amendment Bill was published for public comment.

According to its preamble the aim is to "streamline administrative processes; to strengthen enforcement provisions; to reinforce offences and penalties; to amend certain definitions; and to provide for matter connected therein."

It intends to make amendments to the following sections of the Mine Health and Safety Act:

- Amendments to sections 2, 2A, 3, 6, 7, 9, 10, 11, 12, 13, 20, 42, 43, 47, 49, 50, 54, 57, 59, 72, 75, 76, 80, 85, 86, 92, 93, 96, 98, 102 and Schedules 4, 6, 8
- Repeal of sections 49A and 49B
- Insertion of:
 - section 2B: Appointment of Chief Executive Officer
 - section 11A: Investigation by employer
 - section 13A: Findings of unfitness to work
 - section 20(2C): Employer's duty to report dismissal based on unfitness to perform work
 - section 55C: Payment of fines.

5) *National Environmental Management Laws Amendment Act, 2022*

After a process beginning in 2017 the above Act was finally approved and signed off. It is, however, NOT YET in force, and will only do so once the President declares the effective date in a future Government Gazette.

The Gazette notice from 24 June 2022 which published the Act is 100 pages long and as such it is impossible to provide a full analysis of what legal changes will be introduced once the Act becomes law. For this reason it was decided to only reproduce the Act's preamble and long introduction in this update report.

Changes will be made to the following laws:

- National Environmental Management Act
- Protected Areas Act
- Biodiversity Act
- Air Quality Act
- Integrated Coastal Management Act
- Waste Act
- National Environmental Management Amendment Act, 2008

- **National Environmental Management Act**

- to add new definitions of “audit”, “black”, “environmental management instrument”, “indigenous knowledge practitioner”, “latent environmental impacts”, “mining activity” and “mitigate”, “municipal council”, “municipality”, “municipal manager”, “rehabilitate”; to correct the definition of “environmental mineral resources inspector”
- to provide clarity to the definition of “financial provision”
- to add a new environmental management principle promoting diversity in the sector
- to provide clarity on what an environmental management instrument is
- to use the term environmental management instrument consistently in the Act, to remove a duplicated provision for making regulations for laying down the procedures for the adoption of environmental management instruments
- to provide for a register and making available the register of all environmental management instruments adopted in terms of the Act
- to provide clarity that the Minister responsible for mineral resources is responsible for mining activities as defined
- to clarify that the MEC can be regarded as the competent authority for processing environmental authorisation applications for national priorities in the event that Cabinet has identified that the Minister should be the competent authority, when there is agreement between the Minister and the relevant MEC
- to provide for agreement between the Minister, Minister responsible for mineral resources or MEC regarding processing of environmental authorisation applications
- to provide for simultaneous submission of the National Environmental Management Act and specific environmental management Act applications for purposes of the one environmental system
- to provide for simultaneous submission of National Environmental Management Act and specific environmental management Act applications in order to enable integrated environmental authorisations
- to provide for a trigger for the simultaneous submission of National Environmental Management Act or specific environmental management Act applications after

acceptance of an application in terms of the Mineral and Petroleum Resources Development Act, 2002

- to provide clarity that a successor in title or person who controls the land upon which an unlawful activity has been commenced, undertaken or conducted may also lodge a section 24G application relating to an environmental authorisation or a waste management licence
- to increase the maximum amount payable for a section 24G administrative fine
- to empower the Minister to prescribe the information that must be contained in an environmental management programme
- to provide clarity on consultation to be undertaken and to enable an environmental assessment practitioner to undertake the consultation with an organ of state on applications for environmental authorisation
- to provide clarity on what is to be audited in relation to financial provisioning
- to provide the Minister with the power to prescribe instances for which financial provisioning is required
- to provide clarity that an applicant or holder of an environmental authorisation, holder and holder of an old order right relating to mining activities must provide financial provision for progressive rehabilitation, mitigation, decommissioning, mine closure and the management of post-closure environmental impacts
- to identify the vehicles which must be used when providing the financial provision
- to allow the Minister responsible for mineral resources or Minister responsible for water affairs access to the financial provision to undertake rehabilitation if the holder of an environmental authorisation for a mining activity, holder or holder of an old order right fails to do so
- to make it clear that the financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure and post-closure activities as prescribed
- to allow for periods for review of the financial provision and the publication of the review decision to be prescribed
- to make it a compulsory requirement for the rehabilitation which can be undertaken annually to be undertaken

- to provide for the Minister responsible for mineral resources in consultation with the Minister and the Minister responsible for water affairs to approve an annual drawdown of funds as prescribed for rehabilitation purposes within a certain timeframe before decommissioning and closure
- to require the transfer of financial provision to the Minister responsible for mineral resources on the issuing of a closure certificate
- to require the Minister responsible for mineral resources to access funds, on the issuing of a closure certificate, provided for the rehabilitation of latent environmental impacts in the case where the vehicle is insurance
- to include the holder of an environmental authorisation for a mining activity, holder and holder of an old order right and owner of works, under the provisions related to environmental liability and the requirement to plan, manage and implement mine closure procedures
- to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act
- to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question
- to empower a municipal manager to issue section 28(4) directives
- to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from an organ of state that executes regulatory functions
- to empower an MEC to designate environmental management inspectors to undertake compliance and enforcement actions in respect of provincial environmental legislation
- to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors
- to provide alignment between the powers and duties of environmental mineral and petroleum inspectors and environmental management inspectors and the training they are required to attend prior to designation
- to provide clarity that the conducting of a "search" is not the primary purpose of an environmental management inspector undertaking a routine inspection

- to empower an environmental management inspector to detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements
- to provide clarity that the Minister's power to develop regulations on admission of guilt fines contextualises the related provisions of the Criminal Procedure Act, 1977
- to empower the Minister responsible for mineral resources, the Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act
- to provide clarity on circumstances in which an appeal against a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment does not automatically suspend it
- to provide clarity that an appeal or objection against a directive or compliance notice must be lodged at the appropriate appeal or objection authority
- to correct references and cross-references to offences and penalties
- to make failure to comply with certain financial provisioning requirements an offence and to update the list of offences and penalties
- to clarify that prospecting, exploration and production operations form part of the one environmental system agreement.

- ***Air Quality Act***

- to provide the Minister with discretion to establish the National Air Quality Advisory Committee
- to provide clarity on the consequences of unlawful commencement of a listed activity
- to provide clarity that a provincial organ of state is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality or both a metropolitan and district municipality
- to provide for textual amendment to section 36(5)(d)
- to provide for revocation or suspension of an atmospheric emission licence.

- **Waste Act**

- to move all definitions from Schedule 3 to section 1
- to provide for textual amendment to the definitions of “residue deposits”, “residue stockpiles” and “waste”
- to add definitions for “commercial value” and “trade in” as it relates to the definition of “waste”
- to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act
- to provide for the Waste Management Bureau to be established as a public entity
- to provide for the simultaneous submission of the site assessment report and remediation plan relating to contaminated land
- to provide clarity that the Minister must keep a national register of all contaminated land areas
- to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is a mining activity as defined
- to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances
- to provide for the payment of processing fee for the variation of a waste management licence
- to increase the fines that could be imposed in terms of regulations made under the Act
- to provide clarity that there will be no exemptions provided from obtaining a waste management licence
- to repeal Schedule 3.

- **Protected Areas Act**

- to provide for the Chief Financial Officer of the South African National Parks to be a member of the Board
- to provide for the criteria under which a section 48 permission may be issued or rejected
- to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences.

- ***Biodiversity Act***

- to provide clarity on the definition of “control” and to insert definitions of “eradicate” and “well-being”
- to ensure that indigenous biological resources are used sustainably
- to ensure that certain species remain in State custody despite escape from a protected area
- to empower the Minister to prohibit certain activities that may negatively impact on the well-being of an animal
- to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the Board
- to provide clarity on measures to be undertaken to eradicate listed invasive species
- to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species
- to ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act.

- ***Integrated Coastal Management Act***

- to allow for the removal of structures erected prior to commencement of the Act and to repeal Chapter 9 in order to align appeals with section 43 of the National Environmental Management Act, 1998.

- ***National Environmental Management Amendment Act, 2008***

- to clarify the instances prior to 8 December 2014 when the requirements of the Act are regarded as having been fulfilled
- to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act.

The National Environmental Management Laws Amendment Act, 2022, further provides for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the Waste Act. In addition, there are transitional provisions regarding the continuation of the Waste Management Bureau.

PROVINCIAL LEGISLATION

No relevant provincial legislation was published during this month.

MUNICIPAL LEGISLATION

6) *Hessequa Local Municipality*

A new Electricity Supply By-law was promulgated and which repeals that from 2009.

7) *City of Johannesburg*

- ***Dolomite Risk Management By-law***

The Dolomite Risk Management By-law was promulgated. It applies to all areas within the City's jurisdiction that are underlain by dolomite land and prevails over any other by-law which regulates or otherwise deals with spatial development, township establishment and dolomite risk management.

It requires the City to establish and maintain a Dolomite Risk Management Section to mitigate the risks associated with development on dolomite land. A permanent dolomite risk manager must be appointed. The Section must develop and administer the Dolomite Risk Management Strategy.

Registered land owners, recognised mandated land management bodies or their nominees shall be responsible for implementing and undertaking dolomite risk management in their area of ownership or responsibility. They must, in the event of severe cracking, sinkhole or subsidence formation, report such an occurrence and remedial measures to be taken to the Dolomite Risk Management Section within twenty-four hours of the event occurring. A Competent Person (Dolomite) will then be appointed to investigate the occurrence of any sinkhole or subsidence. The investigation and rehabilitation shall take place within thirty days of the event occurring unless the Competent Person permits an extension of time. The

Competent Person shall recommend the method, by which the sinkhole or subsidence shall be rehabilitated, and must ensure that the rehabilitation intent is satisfied. The rehabilitated sinkhole or subsidence must also be monitored for a period of time (the length of which is not specified).

The Competent Person must submit a completion report to the City within twenty-one days of completion of the rehabilitation of a sinkhole or subsidence. This report shall document the nature of the event, its cause and remedial measures and rehabilitation undertaken. The rehabilitation of sinkholes and subsidences shall be in accordance with standards selected by the Dolomite Risk Management Section.

Where a proposed development is to take place on dolomite land, a Competent Person shall compile a provisional dolomite risk management plan which must be submitted to the Dolomite Risk Management Section. The various requirements of the plan are set out in section 10(1) of the by-law.

All sites proposed for development on dolomite land shall be hazard zoned according to current practice and in accordance with standards, guidelines and specifications acceptable to the Dolomite Risk Management Section. Planning of all sites located on dolomite land shall be appropriate in relation to the hazard zonation and in accordance with the standards and specifications in terms of the approved Dolomite Risk Management Policy and the requirements of any relevant Act, Regulation or regulatory authority. Dolomite stability reports for developments in the City shall be submitted to the Dolomite Risk Management Section for record purposes. Existing developments on dolomite land shall be hazard zoned as and when practically feasible for inclusion in the Dolomite Risk Management System.

The following certification is required for new developments situated on dolomite land within the City:

- The Competent Person (Dolomite) appointed by the developer of a site located on dolomite land shall confirm in writing, on the site development plan (where applicable) and the building plan, that the hazard zonation and the layout of the development is in accordance with the findings contained in the dolomite stability report.
- The Competent Person (Civils) appointed by the developer shall provide and sign the Development Services Certificate for a particular development confirming compliance with the standards selected by the local authority from time to time.

Where deviations from these standards are necessary, these are to be motivated to the satisfaction of the City.

The Dolomite Risk Management Section must establish and maintain a groundwater level monitoring and control system in the dolomite aquifers within its area of jurisdiction. Where necessary, and if required for pre-proclamation approval, the developer of a site shall be required to drill and install a groundwater level monitoring borehole, or boreholes, in accordance with the specifications of the Dolomite Risk Management Section, within a servitude in favour of the City.

No boreholes for the abstraction of groundwater are permitted on dolomite land in the City without the written consent of the Dolomite Risk Management Section. Existing boreholes for the abstraction of groundwater on dolomite land shall be registered with the Dolomite Risk Management Section within twelve months of promulgation of these By-laws (ie. 3 June 2023). Where required such abstraction license can be revoked in the interest of safety concerns.

No building plan on dolomite land shall be approved without a Dolomite Clearance Certificate. No developer may attempt to submit or to obtain approval of a site development plan (where applicable) or building plan on dolomite land without such Certificate.

8) Molemole Local Municipality

The Spatial Planning and Land Use Management By-law was published.

9) Overstrand Local Municipality

A new Water Supply and Sanitation Services By-law was published which replaces that promulgated in 2009.

10) Stellenbosch Local Municipality

The Problem Property By-law was published.

11) Sarah Baartman District Municipality

The Municipal Health Bylaw was published. This repeals and replaces the 2006 Municipal Health By-law.

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

Kind regards

MARK DITKE