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ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT

(SOUTH AFRICA)

OCTOBER 2022

Dear Clients,

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

NATIONAL LEGISLATION

1) Department of Health – Environmental Management Plan, 4th Edition

As required by the National Environmental Management Act, government entities are required to publish an environmental management plan at least every five years. This is the Department's fourth edition.

2) Request for Exporters to provide Information and to Register with the Dept of Forestry, Fisheries and the Environment for the Export of Waste Tyres

A notice was published calling on potential exporters to provide information on waste tyres that are currently in oversupply, in relation to the available processing facilities, and to register with the Department to ensure effective management of the current oversupply in waste tyres in the country.

3) Merchant Shipping Act

The following draft Regulations were published for public comment:

- Crew Accommodation Regulations – these would repeal the 1968 Regulations
- Dangerous Goods Regulations – draft amendments to 1977 Regulations

- Construction and Equipment of Fishing Vessels of less than 24 meters in length and equal to or more than 25 GT Regulations
- Construction and Equipment of Fishing Vessels of 24 meters in length and over Regulations
- Safety of Navigation Regulations, 1968 – draft amendment.

Some of these were published previously for public comment.

4) Air Quality Act

- **Methodological Guidelines for Quantification of Greenhouse Gas Emissions**

These new Guidelines must be read together with the National Greenhouse Gas Emission Reporting Regulations.

Their purpose is to provide additional guidance and commentary to assist data providers in estimating greenhouse gas emissions for reporting on the Greenhouse Gas reporting module of the National Atmospheric Emission Inventory System (NAEIS). Guidance is provided to reporting companies on methodologies to apply when quantifying greenhouse gas emissions from activities listed in Table 5:2 of the guideline.

5) Occupational Health and Safety Act

- **Draft Code of Practice for Lifts inside Wind Turbines**

On 16 September 2022 this was erroneously published in the Government Gazette as Code of Practice when it should have been a draft Code only released for public comment. The Minister therefore republished it accordingly with calls for comment.

- **Draft Physical Agents Regulations**

These draft Regulations were published for public comment. Here too, with all due respect, the Department provided a sloppy final result as there are various errors and omissions.

A physical agent is defined as “a source of energy which may result in injury or disease after exposure, and includes, but [sic] not limited to cold stress, heat stress, vibration, non-ionising radiation and illumination”.

The Regulations apply to employers and self-employed persons at workplaces which may expose any person to a physical agent, as well as a designer, manufacturer, importer or supplier of machinery or plant for use at a workplace.

Information, instruction and training must be provided by an employer.

A risk assessment and risk categorisation of potential exposure to a physical agent must immediately be conducted by a competent person once the Regulations enter into force. This must be repeated every two years.

Where the risk assessment, or review thereof, indicates that an employee may be exposed at or above the occupational exposure limit a monitoring programme must be implemented.

Medical surveillance must then also take place.

Table 1 of the Regulations sets out occupational exposure limits and action levels for physical agents: cold stress, heat stress, hand-arm vibration, whole body vibration, UV-C (wavelength 270 nm), infrared (wavelength 770 nm – 3000 nm).

Table 2 contains occupational exposure limits for electromagnetic fields (with various frequency ranges).

Reg 9 deals with cold stress (more details are in Table 3), and Reg 10 with heat stress.

Reg 11 governs lighting. This must be read together with various tables which set out lengthy and detailed minimum illuminance levels, namely:

- Table 5 (interior workplaces)
- Table 6 (minimum maintained illuminance values for interior workplaces not listed in Table 5)
- Table 7 (exterior workplaces)
- Table 8 (minimum maintained illuminance values for exterior workplaces not listed in Table 7).

Reg 12 deals with indoor air quality. This must be read together with Table 4 - guideline levels for indoor air quality parameters (air temperature, air velocity, relative humidity, carbon dioxide and carbon monoxide).

Reg 13 regulates vibration, and Table 1 applies to this.

Reg 14 sets out requirements for non-ionising radiation. Occupational exposure limits are contained in Tables 1 and 2.

Control measures must be implemented and maintained, and where necessary PPE is to be provided.

Records must be kept, some of which up to forty years.

Even though the Regulations' index makes reference to Reg 20 (withdrawal of Regulations), the body of the Regulations does not contain this. As such it is unsure which laws would be repealed should the Regulations enter into force. Currently the Environmental Regulations for Workplaces, 1987, contain minimum illuminance levels, so presumably at least those provisions would fall away.

- ***Draft Noise-induced Hearing Loss Regulations***

Unfortunately, here too an incomplete version was released by the Department for public comment. For instance, Reg 18 (withdrawal of regulations) merely has "XXXX" as text – although presumably the current Regulations from 2003 would be repealed.

In essence, the draft Regulations are very similar to the current ones.

Information, instruction and training must be provided by an employer.

A noise risk assessment must be conducted within sixty days of the Regulations entering into force, and this must be repeated every two years (unless there is a need to do this earlier). A noise exposure monitoring programme is to be implemented. Employees in noise zones must undergo medical surveillance.

Records must be maintained and kept, in some cases for forty years.

The draft Regulations also contain an extensive Code of Practice for Medical Surveillance for Noise-induced Hearing Loss.

- ***Lift, Escalator and Passenger Conveyor Regulations – Amendment of Incorporated Standards***

Various SANS standards were originally incorporated on 17 September 2010 (GN R 829) into the Lift, Escalator and Passenger Conveyor Regulations meaning that the standards became laws.

The notice was now repealed and replaced by GN R 2683 of 28 October 2022 and sets out the current list of incorporated standards.

- **Commercial Diving Regulations - Amendment**

Amendments were made to the Regulations.

- **Regulations for Hazardous Biological Agents - Amendment**

Amendments were made to the Regulations. The main change is the replacement of Table 4 of Annexure A (prescribed risk groups for viruses). The Table 4 list pertains primarily to human pathogens, but also includes other viruses that may be frequently used in experimentation (for example baculovirus for protein expression) or veterinary pathogens that will be likely processed in medical laboratories.

6) National Health Act

- **Normative Standards Framework for Interoperability in Digital Health**

This Framework was published by the Department.

Its stated purpose is to enable the efficient and safe flow of healthcare-related person centred information across institutional and provincial boundaries. It intends to include the sharing of information and knowledge between organisations, through the business processes that they support, using the exchange of data between their respective information and communications technology systems.

7) Biodiversity

A notice calling for public comments on the Revised Draft White Paper on Conservation and Sustainable Use of South Africa's Biodiversity was published.

8) National Environmental Management Act

- **Regulations laying down the Procedure to be followed for the Adoption of Spatial Tools or Environmental Management Instruments**

These Regulations were promulgated in April 2019 and set out the procedure the Minister or MEC of Environmental Affairs must follow when adopting a spatial tool or environmental management instrument for which no environmental authorisation (in terms of an EIA) is required. They were now amended due to pending changes the National Environmental

Management Laws Amendment Act, 2022, will bring about once that Act enters into force (at this stage it is, however, uncertain when that will be).

PROVINCIAL LEGISLATION

No relevant provincial legislation was published this month.

MUNICIPAL LEGISLATION

9) eThekweni Metropolitan Municipality

The following two new by-laws were promulgated:

- **Fire Safety By-law**

This repeals the Durban Municipality Interim Code Relating to Fire Prevention and Flammable Liquids and Substances, 2000.

- **Accommodation Establishments By-law**

This repeals all earlier by-laws dealing with accommodation establishments.

10) Musina Local Municipality

The Work in the Public Road Reserve By-Law was promulgated.

11) Capricorn District Municipality

The amended Air Quality Management By-law was published.

12) Bushbuckridge Local Municipality

The new Water Services By-law was promulgated which repeals that from 2005.

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

Kind regards

MARK DITKE