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OUR REF: MD/update_march23

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ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT

(SOUTH AFRICA)

MARCH 2023

Dear Clients,

Below please find a summary of selected relevant environmental, health and safety and foodstuffs legal developments that took place during March 2023.

NATIONAL LEGISLATION

1) National Water Act

- ***Draft Regulations to Access and Use of Government Waterworks and Surrounding State-owned Land for Recreational Purposes***

These draft Regulations were published for public comment.

- ***Draft – Revision of General Authorisations for section 21(c) and (i) Water Uses***

A General Authorisation under the Act replaces the need to obtain a water use licence. Various General Authorisations were already published by the Department which apply for certain water uses (and sometimes only in certain areas).

Section 21(c) identifies impeding or diverting the flow of water in a watercourse as a water use.

Section 21(i) identifies altering the bed, banks, course or characteristics of a watercourse as a water use.

An extensive new draft for these two General Authorisation was now published for public comment.

2) National Railway Safety Regulator Act

- **Regulator Standard Part 2-5-1: Railway Operations - Verbal Safety-Critical Communication**

This standard was published by the Railway Safety Regulator.

3) National Environmental Management Act

- **Draft National Regulations for the Management of Mercury in South**

The draft Regulations were published again for public comment. A previous version appeared in July 2022.

They are aimed at:

- Sellers, distributors, importers and exporters of mercury
- Manufacturers of mercury-added products
- Users of mercury-added products
- Manufacturing processes in which mercury is used.

They are not applicable to:

- Mercury emissions
- Mercury waste
- Artisanal small-scale gold mining
- Prior Informed Consent Procedure process.

A phase-out plan is required, and import/export restrictions are imposed.

- **Draft amendment - Regulations to Phase-out the Use, Production, Distribution, Sale, Import and Export of Persistent Organic Pollutants**

Proposed amendments to the 2019 Regulations were published for comment.

- ***Draft amendment – Regulations to Prohibit the Production, Distribution, Import, Export, Sale and Use of Persistent Organic Pollutants that are listed by the Stockholm Convention on Persistent Organic Pollutants***

A proposed amendment to the 2021 Regulations was published for comment. This merely involves a new definition of “listed substance”.

4) Waste Act

Various DRAFT amendments were published for public comment.

- ***Draft amendment – National Norms and Standards for Disposal of Waste to Landfill (GN R 636 of 23 August 2013)***

New barrier (geomembrane lining) requirements for the different landfill classes are proposed.

In addition, it is proposed to change or impose the following compliance timeframes by when landfilling is prohibited for these waste types:

Substitution of para 5(1)(a)

Waste prohibited or restricted in terms of disposal	Compliance timeframe
(a) Waste which, in the conditions of a landfill, is explosive, corrosive, oxidizing (according to GHS)	Immediate

Substitution of para 5(1)(r)

Waste prohibited or restricted in terms of disposal	Compliance timeframe
(r) Waste with a calorific value of:	
(i) >25 MJ/kg	Four (4) years
(ii) >20 MJ/kg	Six (6) years
(iii) >10 MJ/kg	Twelve (12) years
(iv) > 6% TOC	Twenty-five (25) years

Insertion of para 5(1)(v)

Waste prohibited or restricted in terms of disposal	Compliance timeframe
(v) Mercury and mercury containing waste: (i) must undergo conversion prior to being permanently disposed of (ii) where intended to be disposed of in above-ground facilities, must undergo conversion and solidification prior to being permanently disposed of	Immediate

Insertion of para 5(1)(w)

Waste prohibited or restricted in terms of disposal	Compliance timeframe
(w) Co-disposal of flue gas desulphurisation waste and dry walling/gypsum waste	Immediate

- **Draft amendment - Waste Classification and Management Regulations (2013)**

The proposed amendments are more of a minor, alternatively, technical nature.

The insertion of several new definitions is proposed.

The current reference to SANS 10234 in the context of waste classification is replaced by reference solely to the GHS (Globally Harmonised System of Classification and Labelling of Chemicals published by the UN and commonly referred to as the UN Purple Book).

Changes are also proposed to Reg 13 which deals with fines and sentences. Decreases as well as increases are suggested for certain offences.

Annexure 1 of the Regulations sets out various wastes not requiring formal classification. The following changes are proposed:

- General waste: changing the scope of “waste packaging” to “waste packaging not requiring hazardous waste or hazardous chemicals”.

- Adding “expired, spoilt, unusable or unwanted products” to the general waste list.
- Substituting subpara 2(b)(i) (hazardous waste) of Annexure 1 with the following:
Waste Products:
 - o Waste oil
 - o Mercury containing waste
 - o Asbestos waste
 - o PCB waste or PCB containing waste (50 mg/kg or 50 ppm)
 - o Expired, spoilt, unusable or unwanted hazardous products.

- **Draft amendment – National Norms and Standards for the Assessment of Waste for Landfill Disposal (GN R 635 of 23 August 2013)**

An additional requirement for sampling, namely Para 3(1)(c):

Sampling and analysis must be done in accordance with the Guideline for Sampling and Analysis of Wastewaters, Soils and Wastes, as amended from time to time and which can be accessed on the SA Waste Information Centre's homepage.

- ***Extended Producer Responsibility Scheme for the Pesticide Sector***

This new scheme was published by the Minister. It applies to producers of identified products or classes of products of pesticides, pesticide co-formulants and related containers.

- ***Extended Producer Responsibility Scheme for the Lubricant Oil Sector***

This new scheme was published by the Minister. It applies to producers of identified products or classes of lubricant oils.

It is not applicable to the following categories of products:

- (a) technical and medicinal white oils;
- (b) vegetable oils;
- (c) greases;
- (d) waxes;
- (e) petrolatums;
- (f) two stroke oils;
- (g) chainsaw cutter bar lubricants;
- (h) rockdrill lubricants;
- (i) water-based fluids with less than 80% oil content;
- (j) phosphate esters;
- (k) pesticidal and fungicidal agricultural spray base oils;

- (l) process oils where the lubricant is compounded into a solid;
- (m) marine engine oils;
- (n) rolling oils;
- (o) drawing oils;
- (p) rust preventatives;
- (q) mould release oils;
- (r) wire rope and open gear dressings; and
- (s) shock absorber oils.

- ***Extended Producer Responsibility Scheme for the Portable Battery Sector***

This new scheme was published by the Minister. A portable battery is defined as “a battery which is sealed, can be hand-carried without difficulty, and is neither an automotive nor industrial battery”.

The scheme applies to producers of identified products or classes of:

- (a) Alkaline/Zinc carbon batteries;
- (b) Primary (single use) lithium batteries;
- (c) Nickel metal hydride batteries;
- (d) Silver oxide batteries; and
- (e) Zinc air batteries/Air depolarised batteries.

5) Air Quality Act

- ***Proposed Regulations for Implementing and Enforcing Priority Area Air Quality Management Plans***

Draft Regulations were already published in February 2022 for comment. Their purpose is to implement and enforce any approved priority area air quality management plans. They would be aimed at geographical areas identified by the Minister where specific air pollution control measures may be imposed.

PROVINCIAL LEGISLATION

6) Eastern Cape

- ***Integrated Waste Management Plan, 2022 – 2026 (Final draft)***

This plan was already published in February 2023 and now appeared again in the Provincial Gazette on 6 March 2023.

- **Eastern Cape Provincial Recycling Strategy**

The province's Recycling Strategy was published.

No other relevant provincial legislation was published this month.

MUNICIPAL LEGISLATION

7) Emalahleni Local Municipality

The Heritage Resources By-law was promulgated.

STANDARDS

Should you require copies please contact the SABS as standards are copyright protected meaning that we cannot upload or provide them to clients or third parties.

8) SANS 10108:2023 Ed 7 – The classification of hazardous locations and the selection of equipment for use in such locations

A new edition of this standard was published on 24 February 2023. It covers the classification of surface and underground locations (i.e. explosive atmospheres/areas) in which fires or explosions can occur owing to the presence of flammable gases, vapours or mists, dusts, fibres or flyings in the air, in order to permit the proper selection of electrical equipment and mechanical equipment, such as compression ignition engines (diesel engines), to be used in such locations.

The classification of hazardous locations and ensuring that electrical machinery and equipment in same is safe is further regulated by Reg 9 of the Electrical Machinery Regulations which require an employer to conduct an inspection.

9) SANS 14063:2023 Ed 2 - Environmental management – Environmental communication – Guidelines and examples

Edition 2 of the standard was published on 24 February 2023. It gives guidelines to organizations for general principles, policy, strategy and activities relating to both internal and external environmental communication.

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

Kind regards

MARK DITKE