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OUR REF: MD/update_may23	YOUR REF:	4 June 2023
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**ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT  
(SOUTH AFRICA)  
MAY 2023**

Dear Clients,

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

**NATIONAL LEGISLATION**

**1) Compensation for Occupational Injuries and Diseases Act**

The following new Regulations were published:

- Regulations on Work-related Upper Respiratory Tract Disorders for the Compensation Fund
- Regulations on Pulmonary Tuberculosis in Health Workers for the Compensation Fund
- Regulations on Occupationally Acquired HIV/AIDS for the Compensation Fund
- Regulations on Mesothelioma due to Occupational Asbestos Exposure for the Compensation Fund
- Regulations on Work-related Upper Limb Disorders for the Compensation Fund
- Regulations on Lung Cancer for the Compensation Fund
- Regulations on Contact Dermatitis for the Compensation Fund for the Compensation Fund

- Regulations on Pulmonary Tuberculosis associated with Silica Dust Exposure for the Compensation Fund
- Regulations on Compensation for Work-related Chronic Obstructive Pulmonary Disease (COPD) for the Compensation Fund

## **2) Medicines and Related Substances Act**

- **Regulations, 2017 - Amendment**

Minor amendments were made to the 2017 general Regulations.

## **3) Employment Equity Act**

- **Draft Employment Equity Regulations**

Draft Regulations were published for public comment.

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

- **Major Hazard Installation Regulations**

These Regulations were promulgated on 31 January 2023. Reg 26 stated that they will only enter into force on a date determined by the Minister by notice in the Government Gazette. Such notice was only published on 19 May 2023 and in which the Minister made the date of commencement retrospective to 31 January 2023. This was in response to widespread uncertainty whether the Regulations were actually in force.

Since this is now the case they repealed the Major Hazard Installation Regulations, GN R 692 of 2011 as of 31 January 2023.

We previously posted a summary of the new Regulations in our January 2023 update report, but due to the importance of them we are reproducing it.

The new Regulations make it far clearer when a site will be regarded as MHI. They also introduce the concept of low, medium and high hazard establishments, all of which are defined in Reg 1. Essentially this is where specified volumes of certain identified substances are exceeded. These are set out in Chapters 1 and 2 of Annexure A of the Regulations.

Regulations 11, 12 and 13 do not apply to low hazard establishments.

Regulations 12 and 13 do not apply to medium hazard establishments.

They do not apply to nuclear installations registered in terms of the Nuclear Energy Act.

The duty holder (defined as an employer, a self-employed person, a user or a pipeline operator who is in control of an establishment) must designate a responsible person in writing and in a full-time capacity in respect of every premises where an establishment is operated.

**(Reg 3(1))**

The chief inspector, the relevant chief director: provincial operations and the local government must be notified within ninety days

- before the erection of an establishment; or
- when there is an anticipated change to an existing establishment.

The notification of an existing establishment must be updated and sent to the above authorities.

Both the above notifications must be accompanied by:

- (a) proof of permission or approval from the relevant local government on land use indicating the exact location of the site;
- (b) a letter of designation contemplated in regulation 3(2) and the responsible person's competency profile;
- (c) an inventory list and safety data sheets of all the dangerous substances that resulted in the installation being classified as an establishment;
- (d) a statement containing the envisaged maximum quantity of all the substances that may be present at the establishment at any one time;
- (e) the most recent risk assessment report contemplated in regulation 10;
- (f) a site map showing the establishment location and indicating developments around the vicinity of the establishment;
- (g) a substance location plan drawn to a scale of not less than 1 to 2 500 which identifies the area on the site where the dangerous substances will be stored, handled, used or processed, showing the location of the major items of plant used in such activities;
- (h) information regarding the neighbours or other establishments within the impact zone, including–
  - (i) sites that are likely to be affected by a major incident and their exact distances from the establishment;

- (ii) known future development that might increase the risk or consequences of a major incident; and
  - (iii) other establishments and their exact distances;
- (i) proof of the publication of the advertisement contemplated in subregulation (4); and
- (j) where applicable, the latest version of the major incident prevention policy. **(Reg 4).**

An advert must be placed in English and the predominant language in the area, in at least one newspaper, and notices must also be posted, providing details of the establishment, nature of dangerous substances, contact details, where and when the risk assessment may be viewed. Interested and affected parties may make written representations to the relevant local government and the chief inspector within sixty days after the publication. **(Reg 4)**

After considering the application the chief inspector may, on payment of the registration fee (set out in Annexure B, with the highest amount being R 450.00) register the premises as MHI. The chief inspector is, however, also entitled to refuse the registration. A copy of the certificate must be conspicuously displayed by the duty holder. **(Reg 5)**

The registration is valid for five years and can be renewed against a fee (currently also only R 450.00 maximum). **(Reg 6)**

Where there is an alteration the duty holder must inform the chief inspector, relevant chief director: provincial operations and the local government within fourteen days. **(Reg 7)**

A duty holder must, after consultation with the relevant health and safety representatives or health and safety committee, ensure that an approved inspection authority carries out a risk assessment in accordance with SANS 1461 at intervals not exceeding five years or when there is a change in the establishment. The results of the assessment must be made available to the representatives or committee who may comment thereon. Where the assessment was reviewed or revised, without a change to the establishment, the duty holder must submit an updated copy to the chief inspector, relevant chief director: provincial operations and the local government within sixty days. **(Reg 10)**

The duty holder must prepare and retain a written major incident prevention policy (to be in place with 36 months after the entry into force of the Regulations), as contemplated in Annexure C, on the

- (a) construction and building of the establishment;
- (b) change in the establishment; or
- (c) safe operation of the establishment.

The policy must include at least

- (a) the aims and objectives of the policy;
- (b) the roles and responsibilities of the establishment's management;
- (c) process safety performance indicators;
- (d) commitments towards the maintenance and continual improvement of the policy;
- (e) the aims and objectives of the–
  - (i) emergency plan;
  - (ii) evacuation plan regarding the–
    - (aa) speedy evacuation of persons;
    - (bb) roll-call after evacuation; and
    - (cc) plant shut down;
- (f) reasons for revision;
- (g) mandatory agreements; and
- (h) the process safety management system with principles specified in Annexure D.

The policy must be reviewed every five years or when there is a change in the establishment which renders the existing policy inadequate. **(Reg 11)**

The duty holder of a high hazard establishment must prepare a comprehensive, site-specific, safety report, which must be

- (a) developed during the design phase and be continually updated until the start date of operations; and
- (b) maintained for the duration of the life of the establishment.

Further requirements for the report are spelt out in Reg 12 as well as Annexure D. **(Reg 12)**

A licence is required to operate a high hazard establishment. **(Reg 13)**

A local government must not permit the erection of a new establishment or the expansion of an establishment at a separation distance that poses an unacceptable risk in terms of the risk assessment. A new development may only be permitted where there is a separation distance which will not pose an unacceptable risk in terms of the assessment. Any new property development adjacent to an establishment that will result in that new development being declared an establishment is not allowed. **(Reg 14)**

The relevant local government must give consent for the on-site emergency plan and participate in the annual emergency test drill as contemplated in Reg 15(4)(e). It is responsible

for the off-site emergency plan to be followed outside the premises of the establishment. The local government must further prepare an off-site emergency plan in accordance with SANS 1514 and in consultation with the duty holder and interested or affected persons, within 24 months after the entry into force of these Regulations, and thereafter immediately for new establishments,. The off-site emergency plan must be reviewed when there are significant changes to the hazard profile of the area. **(Reg 14)**

The duty holder must, immediately after submission of the initial notification to the authorities (see Reg 4), and in consultation with the relevant health and safety representatives or committee, appoint in writing an emergency coordinating team consisting of at least the responsible person contemplated in Reg 3, and a representative from the committee. An on-site emergency plan must be developed (before the establishment commences operations) in consultation with the emergency coordinating team and in accordance with SANS 1514. The plan for an existing establishment must be aligned and updated to SANS 1514 within twelve months after the entry into force of the Regulations. The plan must be approved by the local government. It must be tested or exercised in practice at least annually and necessary steps must be taken to arrange for the local government to participate. The plan must be reviewed at least once every three years. **(Reg 15)**

Notice must be given to the chief inspector within 48 hours of a major incident or an incident which activated the emergency plan. An investigation must be done, and a preliminary incident report must be submitted within seven days after an emergency occurrence and a major incident. The final report must be submitted as soon as reasonably practicable but not later than six months after the incident. All near misses must be investigated and recorded in a register. In the event of an emerging major incident or an emergency occurrence that was or may have been caused by a dangerous substance, the supplier of that dangerous substance must be informed. **(Reg 16)**

Training must be provided to all employees dealing with

- (a) the scope of the Regulations;
- (b) the nature of the establishment;
- (c) potential major hazards and associated major incidents;
- (d) potential risks to health and safety caused by the identified major hazards;
- (e) the practices and control procedures for a major incident;
- (f) the content of the emergency plan and that visitors also are conversant with such content; and
- (g) the safety protocols and measures to be followed on-site. **(Reg 17)**

Suppliers of dangerous substances must supply a safety data sheet and provide basic information for training on the use and handling of the substance. Where a supplier was informed of an emergency incident it must inform all clients supplied with that substance of the emerging potential dangers surrounding the dangerous substance. **(Reg 18)**

A contravention of the Regulations may result in a maximum fine of R 5 million or imprisonment of up to two years.

## **5) National Environmental Management Act**

- **Financial Provisioning Regulations – Draft Amendment**

These Regulations deal with financial provisioning for prospecting, exploration, mining or production operations. A proposal to amend Reg 17B (extension of transitional period) was published for public comment. This entails that a holder, or holder of a right or permit, who applied for this prior to 20 November 2015, should comply by no later than 19 February 2024 with the Regulations. In addition, such person would, until 18 February 2024, be regarded as having complied with the Regulations if there was indeed compliance.

## **6) National Water Act**

- **Draft Water Use Licence Applications, Amendment, and Appeals Regulations**

These draft Regulations were published for public comment. Should they enter into force they would repeal the 2017 Regulations.

In what is certain to lead to major objections and legal challenges are the following proposed provisions.

When considering applications for water use licences the Responsible Authority must give preference to black people, followed by women (race unspecified).

For all applications for consumptive water use under section 21 (a), (b) and (d) of the National Water Act, namely

- taking of water
- storing of water, and
- engaging in a stream flow reduction activity

shares must be allocated to black people as specified by Table 1 of the draft Regulations.

Table 1

Section 21 (a) and (b)	Section 21 (d)	% Shares allocated to blacks
Up to 250 000 m3	Up to 100 ha	Exempted
250 000 to 500 000 m3	100 to 500 ha	25%
500 000 to 1 000 000 m3	500 to 1000 ha	50%
More than 1 000 000 m3	More than 1000 ha	75%

Applications from mining and related industries (regulated by means of the Minerals and Petroleum Resources Development Act), state- and state-owned entities, 100 % black owned [entities] are exempted to comply with the above.

According to press reports this will have a major impact on the farming sector, if implemented. Most commercial farms exceed 250 000 m3 water consumption. In addition, many farms are family owned, thus making it difficult for them to become BEE compliant.

It would not be surprising if several legal challenges are brought against the draft Regulations.

## **7) Critical Infrastructure Protection Act**

- **Interim Critical Infrastructure Protection Regulations**

These new Regulations were published.

## **8) Waste Act**

- **Extended Producer Responsibility Regulations & Associates Notices – DRAFT amendments**

Draft amendments were published for public comment for the:

- EPR Regulations
- EPR Scheme for the Electrical and Electronic Equipment Products
- EPR Scheme for the Lighting Sector
- EPR Scheme for the Paper, Packaging and Some Single Use Products.

While the proposed amendments are not of a major nature, their aim is to provide technical clarifications to the EPR Regulations and the various EPR Schemes in order to remove ambiguity or uncertainty to the regulated industry sectors and affected stakeholders.



## **9) Agricultural Product Standards Act**

- **Regulations regarding Control of the Export of Animal Products, 2023**

These new Regulations repeal and replace those from 2015 (GN R 422 of 22 May 2015). Animal products, in terms of the Regulations, are dairy products, eggs and poultry meat.

## **10) Marine Traffic Act**

- **Marine Traffic Regulations, 1985 - Amendment**

Draft amendments to the 1985 Regulations were published for public comment.

## **PROVINCIAL LEGISLATION**

No relevant provincial legislation was published this month.

## **MUNICIPAL LEGISLATION**

### **11) George Local Municipality**

A new Land Use Planning By-law was promulgated. This repeals the 2015 Land Use Planning By-law.

### **12) Dr J S Moroka Local Municipality**

A new Public Health By-law was promulgated.

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

Kind regards

**MARK DITKE**