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ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT
(SOUTH AFRICA)
DECEMBER 2023

Dear Clients,

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

NATIONAL LEGISLATION

1) *National Environmental Management Act*

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

The draft Regulations were published yet again for public comment. Previous versions came out in March 2023 and 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.

- ***Financial Provisioning Regulations – Draft Amendment***

Another draft amendment to the Regulations was published for public comment following that of May 2023. The Regulations deal with financial provisioning for prospecting, exploration, mining or production operations. A proposal to amend Reg 17A (extension of transitional period for holders of offshore exploration and production rights) and Reg 17B (extension of transitional period) was made. This entails that a holder, or holder of a right or permit, who applied for this prior to 20 November 2015, should comply with the Regulations by no later than on a date to be published in the Government Gazette. Until then the person is deemed to have complied with the Regulations. The May 2023 draft amendment had proposed a date of 19 February 2024.

- ***Consultation on the intention to adopt the Solar Exclusion Norm and exclude the development and expansion of solar photovoltaic facilities from the requirement to obtain an environmental authorisation***

This proposal intends to remove the need for an EIA and authorisation for the development and expansion of solar photovoltaic facilities.

- ***Consultation on the intention to adopt the Battery Storage Exclusion Norm and Exclude Identified Activities Associated with the Development and Expansion of Battery Storage Facilities from the requirement to obtain an environmental authorisation***

This proposal intends to remove the need for an EIA and authorisation for the development and expansion of battery storage facilities.

2) National Water Act

- ***General Authorisation – For Water Use in terms of sections 21(c) or (i)***

General Authorisations under the National Water Act allow certain forms of water use without having to obtain a water use licence. The General Authorisations do, however, set out conditions governing such use.

There are already some earlier General Authorisations for section 21(c) and (i) uses, not just these new ones.

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

Section 21(i) is altering the bed, banks, course or characteristics of a water course.

3) Carbon Tax Act

The Act was amended by the Taxation Laws Amendment Act, 17 of 2023, and the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 19 of 2023.

The rate of tax payable per ton carbon dioxide equivalent of the greenhouse gas emissions was increased from R 144 to R 159 (section 5(1)).

The formula used to calculate the amount of tax payable by a petroleum refinery was also amended.

The carbon budget allowance period in section 12(1) was extended to 31 December 2024. This applies for an activity listed in Schedule 2 in the column "Activity/Sector", and where the tax payer participates in the carbon budget system. The additional allowance is 5% of the total greenhouse gas emissions in respect of a tax period.

Lastly, Table 2 of Schedule 1 was replaced. This deals with fugitive emission factors.

4) Merchant Shipping Act

- **Safety of Navigation Regulations – Draft Amendment**

A draft amendment to the Regulations was published for public comment.

5) Marine Pollution (Prevention of Pollution from Ships) Act, 1986

Draft amendments to Annex I to VI were published for public comment.

PROVINCIAL LEGISLATION

No relevant provincial legislation was published this month.

MUNICIPAL LEGISLATION

6) Buffalo City Metropolitan Municipality

A new Electricity Supply By-law was promulgated. This repeals the 2009 by-law.

7) *Prince Albert Local Municipality*

The Integrated Waste Management By-law was published.

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

Kind regards

MARK DITKE