

No. 1111

1 August 2003

**ENVIRONMENT CONSERVATION ACT: AMENDMENT BILL**

Mohammed Valli Moosa, the Minister of Environmental Affairs and Tourism, hereby publishes the draft Environment Conservation Act: Amendment Bill for public information and written comments in terms of Rule 241(1)(b) of the National Assembly and Rule 186(1)(a) of the National Council of Provinces.

The attached bill seeks to amend the Environment Conservation Act, 1989, to enable the Minister of Environmental Affairs and Tourism to:

- impose compulsory charging, deposit systems and levies on specified waste streams, with the concurrence of the Minister of Finance;
- regulate certain activities and control products that may or are likely to have significant detrimental effects on the environment or human health when introduced into waste streams;
- transfer the responsibilities allocated to the Minister of Water Affairs and Forestry in terms of section 20 of the act with regard to the permitting and administration of landfill waste sites to the Minister of Environmental Affairs and Tourism.

The draft bill will be tabled in Parliament in August 2003 for consideration. Written comments and inputs are invited from interested and affected parties and the public. These must be submitted to:

1, Mr. S Mfenyana  
Secretary to Parliament  
Parliament of South Africa  
P O Box 15  
**CAPE TOWN**  
8000  
Fax: (021) 403 2604

And/or

2. Ms G Mahlangu-Nkabinde  
Chairperson of the Portfolio Committee on Environmental Affairs and Tourism  
Parliament of South Africa  
P O Box 15  
**CAPE TOWN**  
8000  
Fax: (021) 403 2522

Copies of the bill can be obtained from:

- Government Printers – Cape Town & Pretoria
- Ms K Maphanga  
Department of Environmental Affairs and Tourism  
Private Bag X 447  
**PRETORIA**  
0001  
Fax: (012) 320 0205  
E-mail: [Kmaphanga@ozone.pwv.gov.za](mailto:Kmaphanga@ozone.pwv.gov.za)

**THE CLOSING DATE FOR COMMENTS IS 30 AUGUST 2003**

## MEMORANDUM ON THE OBJECTS OF THE BILL

### ENVIRONMENT CONSERVATION: AMENDMENT BILL, 2003

#### 1. PURPOSE AND SUMMARY

The draft bill seeks to amend the Environment Conservation Act, 1989, and more specifically to provide for:

- The transfer of the management of waste sites from the Minister of Water Affairs and Forestry to the Minister of Environmental Affairs and Tourism. This will allow for a more integrated approach to the management of waste sites by locating responsibility for this function in the Minister of Environmental Affairs and Tourism;
- The addition of the power of the Minister of Environmental Affairs and Tourism to make regulations, with the concurrence of the Minister of Finance, for the imposition of compulsory charging for identified waste streams (for example plastic bags), deposit systems (for example second-hand non-reusable tyres) and associated matters;
- The addition of the power by the Minister of Environmental Affairs and Tourism to make regulations regarding products which by their nature may pose a hazard to the environment and/or human health if and when they reach the waste stream. A topical example is asbestos products.

#### 2. BACKGROUND AND DISCUSSION

Part IV of the Environmental Conservation Act 73 of 1989, titled Control of Environmental Pollution, comprises of three sections: Sections 19 and 19A deal with the prohibition and removal of litter, while section 20 deals with management of waste sites. The latter section is administered by the Minister of Water Affairs and Forestry. All three of these sections are complemented by two further sections, 24 and 24A which empower the Minister of Environmental Affairs and Tourism to make regulations regarding various aspects concerning waste management and littering respectively.

The above provisions are deficient in giving effect to the Government's policy of integrated waste management as set out in the White Paper on Integrated Pollution and Waste Management for South Africa (N227/2000 Government Gazette 20978 of 17 March 2000). The overall objective of the amendments is accordingly to further facilitate the Government's general policy on integrated pollution control and waste management.

In addition the Environment Conservation Act does not give the Minister and the Department of Environmental Affairs and Tourism regulatory power over products, materials or substances that or may cause harm to the environment or human health, should these enter the waste stream. The most recent example is asbestos, which is found in building material, friction material and other elements. Until the relevant material

become waste, the department does not have regulatory powers over such substances. Analogous legislation is the Hazardous Substances Act of 1973, (Act No.15 of 1973), which is administered by the Department of Health. However, this is mainly invoked in the area of medical products. Similarly the Department of Agriculture administers the Fertilizers, Farm Feeds, Agricultural Remedies Act of 1947 (Act No. 36 of 1947), but this is invoked only in the agricultural sector. It is proposed to amend the Environment Conservation Act to allow the Minister to make regulations in order to ban, control or regulate products that may have a detrimental effect on the environment or human health.

Section 20 of the act, headed "Waste Management", provides for the permitting and related control measures for the operation of waste landfill sites throughout South Africa. The section specifically stipulates that the Minister of Water Affairs and Forestry should administer it. In terms of the philosophy on integrated pollution control and waste management inherent in the White Paper on Integrated Waste Management and Pollution Control the aim of this amendment is to transfer the administration of this section from the Minister of Water Affairs and Forestry to the Minister of Environmental Affairs and Tourism. This transfer has been agreed between the respective Ministers.

In order to promote recycling and waste minimization in respect of certain waste streams such as plastic bags, glass and tyres, amongst others, certain additional regulatory powers need to be allocated to the Minister of Environmental Affairs and Tourism in terms of the Environment Conservation Act in order to effectively deal with the impact of waste on the environment. The traditional approach to controlling pollution is the 'command and control' approach. This relies either on administrative sanctions (e.g. permitting requirements on scheduled emissions) or criminal measures (e.g. fines or imprisonment if such permit conditions are breached) to regulate pollution emissions. The proposed amendment to enable the Minister to require compulsory charging, deposit systems and/or levies on certain waste streams or waste products will complement the existing legal mechanisms by providing for greater efficiency in government's obligation to combat pollution, as contained in section 24 of the Constitution. The Minister intends to use these mechanisms to impose obligatory charging schemes on plastic carrier bags, and a deposit scheme on second-hand and unusable tyres and glass. This may be extended to certain additional waste streams in the future to be identified by the Minister.

### **3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

None with regard to the proposed first and second amendments of the Act. Standard procedures with regard to the transfer of functions will take place between the two mentioned departments with regard to the permitting process of landfill sites

### **4. FINANCIAL IMPLICATIONS FOR THE STATE**

The administration of the amended Environment Conservation Act will not place an undue onerous additional financial burden on the Department of Environment Affairs and Tourism. Two of the three amendments are simply empowering regulatory provisions while the third, the transfer of the management of waste sites from the Minister of Water Affairs

and Forestry to the Minister of Environmental Affairs and Tourism, is not creating new administrative infrastructures, merely re-arranging existing ones.

**5. OTHER DEPARTMENTS/BODIES CONSULTED**

The respective MINMECs have been formally notified and the Environmental Law Sub-Committee of the Committee for Environmental Coordination has been consulted.

**6. CONSTITUTIONAL IMPLICATIONS**

None.

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REPUBLIC OF SOUTH AFRICA

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**ENVIRONMENT CONSERVATION ACT AMENDMENT  
BILL**

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*(As introduced in the National Assembly as a section 76 Bill; Bill published in  
Government Gazette No. of 2003) (The English text is the official text  
of the Bill.)*

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(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

**GENERAL EXPLANATORY NOTE:**

- [            ]        Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_        Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

To amend the Environment Conservation Act, 1989 (Act No. 73 of 1989) to enable the Minister of Environmental Affairs and Tourism to make regulations regarding financial aspects for identified waste streams; to make regulations regarding product control for waste management; to provide for the transfer of the administration of waste disposal sites from the Minister of Water Affairs and Forestry to the Minister of Environmental Affairs and Tourism; and to provide for matters connected therewith.

Be it enacted by the Parliament of the Republic of South Africa, as follows:-

**Amendment of section 20 of Act 73 of 1989**

1. Section 20 of the Environment Conservation Act, 1989 (hereinafter referred to as the principal Act), is hereby amended by the substitution of the following section for section 20 of the principal Act:-

**20. Waste Management.** – (1) No person shall establish, provide or operate any disposal site without a permit issued by the Minister, who [of Water Affairs and that Minister] may –

- (a) issue a permit subject to such conditions as he may deem fit;
  - (b) alter or cancel any permit or condition in a permit;
  - (c) refuse to issue a permit;
- provided that the [such] Minister may exempt any person or category of persons from obtaining a permit, subject to such conditions as he may deem fit.

(2) Any application for a permit referred to in subsection (1) shall be in the form and be accompanied by such information as the Minister may prescribe.

(3) If the Minister [of Water Affairs] should require any further information to enable him to make a decision on an application for a permit referred to in subsection (1), he may demand such information from the applicant.

(4) The Minister [of Water Affairs] shall maintain a register in which details of every disposal site for which a permit has been issued shall be recorded.

(5) The Minister [of Water Affairs] may from time to time by notice in the *Gazette* issue directions with regard to –

- (a) the control and management of disposal sites in general;
- (b) the control and management of certain disposal sites or disposal sites handling particular types of waste; and
- (c) the procedure to be followed before any disposal site may be withdrawn from use or utilised for another purpose.

(6) Subject to the provisions of any other law no person shall discard waste or dispose of it in any other manner, except –

- (a) at a disposal site for which a permit has been issued in terms of subsection (1); or
- (b) in a manner or by means of a facility or method and subject to such conditions as the Minister may prescribe.

(7) Anything done in terms of this section by the Minister of Water Affairs and Forestry prior to the coming into effect of this amendment shall be deemed to have been done by the Minister.

#### **Amendment of section 24 of Act 73 of 1989**

2. Section 24 of the principal Act is hereby amended by the insertion, after subsection 24(k), of -

24(l) the imposition of compulsory charging, deposits or related financial measures on waste streams or specified items in waste streams with the concurrence of the Minister of Finance.

#### **Insertion of section 24B in Act 73 of 1989**

3. The following section is hereby inserted in the principal Act after section 24A:

**24B. Regulations regarding products.** – The Minister may make regulations with regard to the prohibition, control, sale, distribution, import, export or regulation of products that may have a detrimental effect on the environment or on human health.

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