
GENERAL NOTICE

NOTICE 1832 OF 2007

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

PUBLICATION OF NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE MANAGEMENT BILL FOR GENERAL COMMENT

I, Marthinus van Schalkwyk, the Minister of Environmental **Affairs** and Tourism, hereby publish the National Environmental Management: Waste Management Bill for general comment.

Interested persons **and** organisations are invited to submit written comments within **ninety** (90) days **from** the date of the publication of this notice to the Director General, Department of Environmental **Affairs** and Tourism, Private **Bag** X447, Pretoria 0001, Attention: Ms Zanele Mvusi, **Fax:** (012) 322 2309 or e-mail to zmvusi@deat.gov.za. **Comments** received after this date may not be considered.

MARTHINUS VAN SCHALKWYK, MP
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE MANAGEMENT

BILL**BILL**

To reform the law regulating waste management in order to protect the health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development; to provide for national norms and standards for regulating the management of waste by all spheres of government; for specific waste management measures; and for matters incidental thereto.

PREAMBLE

Whereas everyone has the constitutional right to have an environment that is not harmful to his or her health and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that

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- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

And whereas waste management practises in many areas of the Republic are not conducive to a healthy environment and the impacts of improper waste management practises are often borne disproportionately by the poor;

And whereas poor waste management practices can have an adverse impact both locally and globally;

And whereas sustainable development requires that the generation of waste is avoided, or where it cannot be avoided, that it is minimised, re-used, recycled or recovered and only treated and safely disposed of as a last resort;

And whereas the minimisation of pollution and the use of natural resources through vigorous control, cleaner technologies, cleaner production and consumption practises and waste minimisation is the key to ensuring that the environment is protected from the impacts of waste;

And whereas waste is a resource **and** offers certain economic opportunities;
And whereas additional legislation is necessary to strengthen the Government's strategies for the protection of the environment and the health **and** well-being of people,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows: -

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CHAPTER 1: INTERPRETATION AND FUNDAMENTAL PRINCIPLES**1. Definitions**

- (1) In this Act, unless the context shows otherwise –
- (a) “*acceptable exposure*” means the maximum permissible concentration of a substance to ensure that it will have a minimal negative effect on health or the environment;
 - (b) “business waste” means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes;
 - (c) “*building waste*” means waste produced during the construction, alteration, repair or demolition of any structure and includes rubble, earth, rock and wood that is displaced during that construction, alteration, repair or demolition;
 - (d) “*Constitution*” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - (e) “*container*” means a disposable or reusable vessel in which waste is placed for the purposes of storing, accumulating, handling, transporting, treating or disposing of that waste and includes bins, bin-liners and skips;
 - (f) “*contaminated*” in relation to Chapter 3, Part 8 means the presence in or under any land, site, buildings or structures of a substance or micro-

organism above the concentration which is normally present in or under that land which substances directly or indirectly affect or may affect the quality of soil or the environment adversely;

- (g) **“Department”** means the Department of Environmental Affairs and Tourism;
- (h) **“disposal”** means the burial, deposit, discharge, abandoning, dumping, placing or release of any waste into, or onto, any air, land or water;
- (i) **“domestic waste”** means waste, excluding hazardous waste, that emanates from premises used wholly or mainly for residential, educational, healthcare, sport or recreation, purposes;
- (j) **“environment”** has the meaning assigned to it in section 1 of the National Environmental Management Act;
- (k) **“Environment Conservation Act”** means the Environment Conservation Act, 1989 (Act No.73 of 1989);
- (l) **“environmentally sound management”** means the taking of all practicable steps to ensure that waste is managed in a manner that will protect health and the environment;
- (m) **“Gazette”** when used in relation to –
 - (i) the Minister, means the *Government Gazette*; and
 - (ii) the MEC, means the *Provincial Gazette* of the province concerned;
- (n) **“general waste”** means waste that does not pose an immediate hazard or threat to people or the environment and includes –
 - (i) domestic waste;
 - (ii) business waste;
 - (iii) building waste; and

- (iv) garden waste.
- (o) “**hazardous waste**” means any waste that may, by circumstances of use, quantity, concentration or inherent physical, chemical or toxicological characteristics, have a significant adverse affect on health and the environment
- (p) “**high risk activity**” means an undertaking, including involving processes or substances which present a hazard to health or the environment;
- (q) “**holder of waste**” means any person who imports, generates, stores, accumulates, transports, processes, treats or disposes of waste;
- (r) “**import**” means any entry into the Republic other than entry for transit;
- (s) “**industry**” includes commercial activities, commercial agricultural activities, mining activities and the operation of power stations;
- (t) “**industry waste management plan**” means a plan referred in section 34;
- (u) “**integrated waste management plan**” means a plan referred to in Chapter 2, Part 3;
- (v) “**licensing authority**” means an authority referred to in section 50 responsible for implementing the licensing system in Chapter 4;
- (w) “**MEC**” means the Member of the Executive Council of a province who is responsible for waste management in the province;
- (x) “**Minister**” means the Minister of Environmental Affairs and Tourism;
- (y) “**municipality**” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (ActNo. 117 of 1998);
- (z) “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (ActNo. 32 of 2000);

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- (aa) **“National Environmental Management Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (bb) **“National Waste Management Strategy”** means the strategy established in terms of section 7;
- (cc) **“non-substantive”** in relation to the amendment or substitution of a regulation, notice, strategy, licence, approval, or provision thereof includes –
- (i) any clerical mistake, unintentional error or omission;
 - (ii) the correction of any miscalculated figure; and
 - (iii) the correction of any incorrect description of any person, thing, property or waste management activity;
- (dd) **“organ of state”** has the meaning assigned to it in section 239 of the Constitution;
- (ee) **“pollution”** has the meaning assigned to it in section 1 of the National Environmental Management Act;
- (ff) **“priority waste”** means a waste declared to be a priority waste in terms of section 19;
- (gg) **“producer responsibility measures”** mean actions that extend a person’s financial or physical responsibility for a product to the post-consumer stage of the product and include
- (i) waste minimisation programmes;
 - (ii) financial contributions to any fund that has been established to promote the minimisation, recovery, re-use or recycling of waste;
 - (iii) awareness programmes to inform the public of the impacts of waste emanating from the product on human health and the environment; and

- (iv) **any** other measures to reduce the potential impact **of** the product on **human** health and the environment;
- (hh) **“product”** includes a reference to **any** product or material that has the potential to become waste;
- (ii) **“recovery”** means the controlled extraction or retrieval of energy **from** waste;
- (ij) **“recycle”** means to separate and process material from waste for further use **as** new products or resources;
- (kk) **“re-use”** means to utilize articles from the waste stream again **for** a similar or different purpose without changing the form or properties of the articles;
- (ll) **“storage”** means the accumulation of waste in a manner ~~that~~ does not constitute treatment or disposal of that waste;
- (mm) **“soil”** means the solid constituents of the **earth**;
- (nn) **“sustainable development”** has the meaning assigned to it in section 1 of the National Environmental Management Act, **1998**;
- (oo) **“this Act”** includes –
 - (i) the national waste management strategy;
 - (ii) **any** regulations made **in** terms of this Act; and
 - (iii) **any** other subordinate legislation issued in terms **of this** Act;
- (pp) **“transit”** means the continuous passage from one border of the Republic to another without storage, other ~~than~~ temporary storage incidental to transport;
- (qq) **“treatment”** means any method, technique or process that is designed to change the physical, biological or chemical character or composition of a waste, or to remove, separate, concentrate or recover a hazardous

or toxic component of a waste or to destroy or reduce the toxicity of the waste in order to minimise the impact of the waste on the environment;

- (rr) **“waste”** includes any substance, whether solid, liquid or **gaseous**, which is –
- (i) discharged, emitted or deposited in the environment in such volume, constituency or manner **as to cause** an alteration to the environment,
 - (ii) a surplus substance or which is discarded, rejected, unwanted or abandoned,
 - (iii) reused, recycled, reprocessed, recovered or purified by **a** separate operation from that which produced the substance or which may be or is intended to be re-used, recycled, reprocessed, recovered or purified, or
 - (iv) identified **as** waste by prescribed by regulation;
- (ss) **“waste disposal facility”** means any site or premises **used** for the accumulation of waste with the purpose of disposing of ~~that~~ waste ~~at~~ that site or on those premises;
- (tt) **“waste management”** includes the measures, including the avoidance of the generation of waste, that are necessary to prevent or, where prevention is not possible, to minimise the amount of waste ~~that~~ is produced and the **risk** posed by waste to **health and** the environment;
- (uu) **“waste management activity”** means any activity or ~~undertaking~~ for which **a** licence is required in terms of Schedule 2 of this **Act** or **a** notice in terms of section **23** and may include –
- (i) importation and exportation of waste;
 - (ii) generation of waste, including the undertaking of any activity or process which will result in the generation of waste;
 - (iii) accumulation and storage of waste;

- (iv) handling of waste;
 - (v) treatment of waste;
 - (vi) recovery, re use or recycling of waste;
 - (vii) trading in waste;
 - (viii) transportation of waste;
 - (ix) transfer of waste;
 - (x) disposal of waste; and
 - (xi) remediation.
- (vv) “**waste management control officer**” means an officer appointed as a result of a request by a waste management officer in terms of section 63;
- (ww) “**waste management officer**” means an officer appointed in terms of section 18 as a waste management officer;
- (xx) “**waste minimisation programme**” means a system that is intended to promote the reduced disposal of waste.
- (2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

2. Object of the Act

The purpose of this Act is –

- (a) to protect **health**, well-being and the environment by providing reasonable measures for –
- (i) the minimisation of the consumption of natural resources;
 - (ii) the avoidance and minimisation of the generation of waste;
 - (iii) the recovery, re-use and recycling of waste;
 - (iv) the treatment and safe disposal of waste as a last resort;
 - (v) the prevention of pollution and ecological degradation;
 - (vi) securing ecologically sustainable development while promoting justifiable economic and social development;
 - (vii) promoting and ensuring the effective delivery of waste services;

- (viii) remediating land where contamination presents, or may present, a significant risk of harm; and
- (ix) achieving integrated waste management reporting and planning;
- (b) to ensure ~~that~~ people are aware of the **impacts** of waste on health and the environment;
- (c) to provide for compliance with the **measures** set out in paragraph (a); and
- (d) generally to give effect to section **24** of the Constitution in order to secure an environment that is not harmful to the health and well-being of people.

3. General duty of the State

In fulfilling the rights contained in section **24** of the Constitution, the State, through the organs of state applying **this** Act, must **seek** to reduce the amount of waste that is generated and, where waste is generated, to ensure that waste is recycled, re-used or recovered in **an** environmentally sound manner before being safely treated and disposed of

4. Application of Act

- (1) **This** Act also applies to the exclusive economic zone and continental shelf of the Republic referred to in sections **7 and 8**, respectively, of the Maritime Zones Act, 1994 (Act No. 15 of 1994).
- (2) This Act binds all organs of state –
 - (a) in the national and local spheres of government; and
 - (b) in the provincial sphere of government, subject to section **146** of the Constitution.

5. Application of the National Environmental Management Act

- (1) **This** Act must be read ~~with~~ **any** applicable provisions of the National Environmental Management Act.
- (2) The interpretation and application of **this** Act must be **guided** by the national environmental management principles set out in section **2** of the National Environmental Management Act.

6. Conflicts with other legislation

- (1) In the event of any conflict between a section of this Act and –
 - (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;
 - (b) a municipal by-law, the section of this Act prevails.
- (2) In the event of any conflict between subordinate legislation issued in terms of **this Act and** –
 - (a) **An** Act of Parliament, the Act of parliament prevails;
 - (b) Provincial legislation, the conflict **must** be resolved in terms of section **146** of the Constitution; and
 - (c) a municipal by-law, the subordinate legislation issued in **terms of this Act** prevails.
- (3) In the event of any conflict between a section of this Act and a provision of the Marine Pollution (Control and Civil Liability) **Act, 1981** (Act No. 6 of **1981**), the provision **of** the latter prevails.

CHAPTER 2: INSTITUTIONAL AND PLANNING MATTERS

Part 1: National Waste Management Strategy

7. Establishment of national waste management strategy

- (1) The Minister must, within two years of the date on which this section takes effect, by notice in the *Gazette*, establish a national waste management strategy for achieving the objects of this Act, which must include –
 - (a) strategies, objectives, plans, guidelines, systems and procedures relating to the protection of the environment and the generation – including the avoidance and minimisation of such generation – use, control and management of waste in order to achieve the objectives of this Act;
 - (b) mechanisms, systems and procedures for giving effect to the Republic's obligations in terms of international agreements;
 - (c) national norms and standards for waste management, including planning;
 - (d) national norms for service delivery;
 - (e) provide **practical** measures for achieving co-operative governance in waste management matters;
 - (f) providing guidance on raising awareness regarding the impacts of waste on health and the environment;
 - (g) securing compliance with the requirements of the **Act**; and
 - (h) any other matter that the Minister considers necessary for achieving the objects of this Act.
- (2) The national strategy may include targets for waste reduction.

- (3) The national strategy –
- (a) binds all organs of state in all spheres of government and, a natural or juristic person if, and to the extent that it is applicable; and
 - (b) may assign and delineate responsibilities for the implementation of this Act amongst –
 - (i) the different spheres **of** government; and
 - (ii) different organs of state.
- (4) **An** organ of state must give effect to the national strategy when exercising a power or performing a duty in terms of this Act or any other legislation regulating waste management.
- (5) The national strategy –
- (a) may differentiate between different geographical areas;
 - (b) may differentiate between different types of waste;
 - (c) may provide for the phasing in of its provisions;
 - (d) **may** be **amended**; and
 - (e) must be reviewed by the Minister at intervals of not more ~~than~~ five years.
- (6) Before publishing the national strategy, or any amendment to the strategy, the Minister must follow a consultative process in accordance with **sections 77 and 78**.
- (7) Subsection (6) need not be complied with if the strategy is amended in a non-substantive way.

Part 2: National, provincial and local standards**8. National standards**

- (1) The Minister must, by notice in the *Gazette*, establish national standards for—
 - (a) the classification of waste;
 - (b) the provision of waste management services;
 - (c) waste avoidance, waste minimisation, recovery, re-use and recycling;
 - (d) the remediation of contaminated land; and
 - (e) waste treatment and disposal.
- (2) The Minister may, by notice in the *Gazette*, establish national standards for—
 - (a) the categorisation of waste;
 - (b) the regionalisation of waste management services;
 - (c) producer responsibility; and
 - (d) the collection and verification of waste management data.
- (3) The Minister may with the concurrence of the Minister of Finance and by notice in the *Gazette*, establish national standards in respect of tariffs for waste services provided by municipalities.
- (4) The standards contemplated in subsection (3) may—
 - (a) place limitations on surplus or profit;
 - (b) place limitations on the use of income generated by the recovery of charges; and
 - (c) provide for tariffs to be used to provide for waste management infrastructure or facilities.

9. Provincial standards

- (1) The MEC, by notice in the *Gazette* may establish provincial standards for—
 - (a) the provision of waste management services;
 - (b) the regionalisation of waste management services within the province;
 - (c) waste avoidance, waste minimisation, recovery, re-use and recycling, with the exception of standards that may have national implications; and

- (d) waste disposal.
- (2) If national standards have been passed in terms of section 8, the MEC may not alter the national standard, except to make the requirements more stringent.

10. Local standards

- (1) A municipality in terms of a by-law –
 - (a) must establish service standards and levels of service for the collection of waste;
 - (b) may identify requirements in respect of the separation, compacting and storage of waste;
 - (c) may identify requirements for the management of waste, including requirements in respect of the avoidance of the generation of waste and the recovery, reuse and recycling of waste;
 - (d) the requirements in respect of the directing of waste to specific treatment and disposal facilities.
- (2) If national or provincial standards have been passed in terms of section 8 or 9, the municipality may not alter the national standard or provincial, except to make the requirements more stringent.

Part 3: Integrated waste management plans

11. Organs of state responsible for preparing integrated waste management plans

- (1) Each national department and province responsible for preparing an environmental implementation plan or environmental management plan in terms of Chapter 3 of the National Environmental Management Act must include in that plan **an** integrated waste management plan.
- (2) **Each** municipality must include in its integrated development plan contemplated in Chapter 5 of the Municipal Systems Act, **an** integrated waste management plan that is consistent with the relevant provincial integrated waste management plan.

12. Contents of integrated waste management plans

An integrated waste management plan must –

- (a) contain a situation analysis which includes –
 - (i) a description of the population and development profiles of the area to which the plan relates;
 - (ii) **an** assessment of the quantities and types of waste ~~that~~ are generated in the **area**;
 - (iii) a description of the services that are provided, or ~~that~~ are available, for the collection, recovery, reuse, recycling, treatment and disposal of waste; and
 - (iv) the number of persons in the area who are not receiving waste collection services;
- (b) within the domain of the relevant national department, province or municipality, set out how that relevant national department, province or municipality intends –
 - (i) to give effect, in respect of waste management, to Chapter 3 of the National Environmental Management Act to the extent that ~~that~~ Chapter is applicable to it;
 - (ii) to give effect to the objects of this Act;
 - (iii) to identify and address the negative impact of poor ~~waste~~ management practises on health and the environment;
 - (iv) to provide for the implementation of waste avoidance, minimisation, recycling and reuse programmes;
 - (v) in the case of a municipal integrated waste management plan, to address the delivery of waste management **services** to residential premises;
 - (vi) to identify measures that are required and ~~that~~ will be implemented to support municipalities to give **effect** to the objects of this Act;
 - (vii) to implement the Republic's obligations in respect of **any** international agreements; and
 - (viii) to give effect to best environmental practise in respect of waste management;
- (c) set out the relevant national department, province or municipality's priorities and objectives in respect of waste management;

- (d) describe how the relevant national department, province or municipality will give effect to its integrated waste management plan; and
- (e) comply with such requirements **as** may be prescribed by the **Minister**.

13. Reporting on implementation of integrated waste management plans

- (1) The annual report which a national department **or** province must submit in terms of section 16(1)(b) **of** the National Environmental Management Act must contain information on the implementation of its integrated waste management plan, including information on –
 - (a) the extent to which the plan has been implemented during the period;
 - (b) waste management initiatives ~~that~~ have been undertaken during the reporting period;
 - (c) the delivery of waste management services and measures taken to secure the efficient delivery of waste management services, if applicable;
 - (d) the level of compliance with the plan and any applicable waste management standards;
 - (e) measures taken to secure compliance with waste management standards;
 - (f) waste management monitoring activities;
 - (g) measures that have been taken to make any necessary amendments to the plan;
 - (h) in the case of a province, the extent to which municipalities are complying with the plan and the reasons for any non-compliance ~~with~~ the plan; and
 - (i) any other requirements **as** may be prescribed by the Minister.
- (2) The annual performance report which must be prepared in terms **of** section 46 **of the** Municipal Systems Act must contain information on the implementation of the municipal integrated waste management plan, including the information set out in subsection (1).
- (3) **A** copy of the annual performance report **referred** to in subsection (2) must be submitted to the relevant MEC at the same time that the report **is** submitted to the Mayor.

- (4) Notwithstanding the provisions of subsection (1) and (2), the Minister may specify a different mechanism for the reporting on integrated waste management plans if it is necessary to improve the co-ordination of waste management.

Part 4: Institutional arrangements

14. General powers and duties of the Minister and Department

- (1) The Minister must –
- (a) establish a **national** waste management strategy;
 - (b) establish a waste information system;
 - (c) identify waste management activities;
 - (d) provide for the implementation of international legal obligations;
 - (e) ensure that waste management takes place in accordance with the national waste management strategy **and** any national or provincial norms and standards;
 - (f) provide for the co-ordination of waste management throughout the Republic;
 - (g) designate a waste management officer in terms of section 18;
 - (h) establish the waste management standards contemplated for in section 8(1); and
 - (i) ensure that **any** other matter that is necessary for the implementation of this Act are given effect to.
- (2) The Minister may –
- (a) establish waste management standards contemplated in section 8(2);
 - (b) identify priority wastes and waste management activities which require management;
 - (c) establish a system for the tracking of the transportation of waste;
 - (d) require the preparation of industry waste management plans that have not been prepared for the Minister ~~within~~ the previous five years;
 - (e) take measures to manage contaminated land;
 - (f) provide for the implementation of producer responsibility measures; and
 - (g) make waste management regulations contemplated in section **74**.

- (3) The department must -
- (a) compile an integrated waste management plan;
 - (b) co-ordinate waste management responsibilities in the department through the waste management officer;
 - (c) ensure that waste management takes place in accordance with the national waste management strategy and any national or provincial norms and standards;
 - (d) manage waste management licence applications for which it is the licensing authority;
 - (e) support the other spheres of government in discharging responsibilities in terms of **this** Act; and
 - (f) secure compliance with the objects of this Act.

15. General powers and duties of MECs and provincial departments

- (1) The MEC must -
- (a) ensure that waste management in the province takes place in accordance with the National Waste Management Strategy and any national or provincial norms and standards;
 - (b) provide for the co-ordination **of** waste management in the province and for that purpose designate a waste management officer in **terms** of section **18**;
 - (c) ensure that any other matter that is necessary for the implementation of the province's waste management functions are given effect to.
- (2) The MEC may, in accordance with **this** Act -
- (a) establish waste management standards;
 - (b) identify priority wastes and waste management activities which require management in the province;
 - (c) establish a system for the tracking of the transportation of waste;
 - (d) require the preparation of industry waste management plans that have not been prepared for the Minister **within** the previous five years;
 - (e) take measures to manage contaminated land;
 - (f) provide for the implementation of producer responsibility measures;
 - (g) establish a waste information system, with the concurrence of the Minister; and

- (h) make waste management regulations contemplated in section 74.
- (3) The provincial department responsible for waste management must, aside from any delegation from the MEC -
 - (a) give effect to its obligations in accordance with the national waste management strategy;
 - (b) compile an integrated waste management plan;
 - (c) co-ordinate waste management in the province through the waste management officer;
 - (d) manage waste management licence applications for which it is the licensing authority;
 - (e) support municipalities in the province in **ensuring** that waste management services are provided within the municipality in a manner which prioritises the recovery, re-use or recycling of waste and provides for the treatment and safe disposal of waste **as** a last resort; and
 - (f) secure compliance with the objects of this **Act** that are in the domain of the province.

16. General powers and duties of municipalities

- (1) Every municipality must –
 - (a) conduct municipal activities in accordance with the National Waste Management Strategy and any national or provincial norms and standards;
 - (b) compile an integrated waste management plan;
 - (c) ensure that waste management services are provided within the municipality in a manner which prioritises the recovery, re-use or recycling of waste and provides for the treatment and safe disposal of waste **as** a last resort;
 - (d) designate a waste management officer in terms of section **18**;
 - (e) ensure that provision is made for the management and collection **of** litter;
 - (f) secure compliance with the objects of this **Act** that are in the domain of the municipality; and

- (g) implement any other measures that are necessary for securing the objects of this Act that are within the domain of the municipality.
- (2) A municipality may –
- (a) pass waste management by-laws and standards; and
 - (b) co-operate with another municipality in respect of the provision of joint waste management services.

17. Co-operative governance

In addition to the requirements of this Act, the different authorities shall co-operate and co-ordinate their activities through the mechanisms provided for in the National Environmental Management Act.

18. Appointment of waste management officers

- (1) The Minister must designate **an** officer in the Department **as** the national waste management officer to be responsible for co-ordinating matters pertaining to waste management in the national government.
- (2) The MEC must designate an officer in the provincial administration **as** the provincial waste management officer to be responsible for co-ordinating matters pertaining to waste management in the province.
- (3) **Each** municipality must designate **a** waste management officer from its administration to be responsible for co-ordinating matters pertaining to waste management in the municipality.
- (4) **A** waste management officer must **perform** the duties or exercise the powers assigned or delegated to that officer in terms of this Act.
- (5) A waste management officer may delegate a power or assign a duty to an official in the service of that officer's administration, subject to such limitations or conditions **as** may be prescribed by the Minister or MEC.
- (6) Waste management officers must co-ordinate their activities in such a manner **as** may be set out in the National Waste Management Strategy or prescribed by the Minister.

CHAPTER 3: WASTE MANAGEMENT MEASURES***Part 1: Priority wastes*****19. Identification of priority wastes**

- (1) The Minister or MEC may, by notice in the *Gazette*, declare a waste to be a priority waste if the Minister or MEC reasonably believes that –
 - (a) the waste poses a nuisance or threat to health or the environment because of the quantity or composition of the waste; and
 - (b) specific waste management measures are required to address the nuisance or threat; or
 - (c) the imposition of specific waste management measures in respect of the waste may achieve the objects of the Act.
- (2) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Minister or MEC must follow a consultative process in accordance with sections 77 and 78.
- (3) Subsection (2) need not be complied with if the notice is amended in a non-substantive way.

20. Requirements for the management of priority wastes

- (1) The Minister or MEC must, in respect of any waste that **has** been declared to be a priority waste in terms of section 19 and by notice in the *Gazette*, prescribe the measures that must be taken in respect of a declared priority waste.
- (2) The measures contemplated in subsection (1) may include –
 - (a) a requirement for an identified category of persons or industry to produce **an** industry waste management plan in terms of section 34 in respect of the declared priority waste;
 - (b) a prohibition on the generation of the priority waste;
 - (c) measures for the supervision of the priority waste;
 - (d) measures for the transportation, storage, re-use recycling, **treatment** and disposal **of** the priority waste;

- (e) requirements for the monitoring of, and reporting on, the priority waste; and
- (f) any other measures which the Minister or MEC believes are necessary to manage the risk that is presented by the waste or to achieve the objects of the Act.

21. Consequences of declaration of priority wastes

- (1) No person may import, manufacture, process or sell a priority waste or a product that will result in the generation of a priority waste unless that product complies with the measures prescribed by the Minister or MEC in a notice issued in terms of section 19, or an industrial waste management plan which has been submitted in accordance with the requirements of a notice in terms of section 19, and approved in terms of this Act.
- (2) No person may recycle, re-use, recover, treat or dispose of a priority waste unless it is in accordance with this Act or any measures that have been prescribed by the Minister or MEC.
- (3) Subsection (1) applies –
 - (a) nationwide in respect of a waste declared by the Minister; or
 - (b) in a relevant province only in respect of a waste declared by the MEC responsible for waste management in that province.

Part 2 General duty

22. General duty in respect of waste management

- (1) Any holder of waste must take all reasonable measures to –
 - (a) avoid the generation of waste and where such generation cannot be avoided, to minimise the toxicity and amounts of waste that are generated;
 - (b) re-use, recycle or recover waste;
 - (c) where waste must be disposed of, to ensure that the waste is treated and disposed of in an environmentally sound manner;
 - (d) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts;

- (e) within that person's power, prevent any other person from contravening a provision of this Act in respect of the waste; and
 - (f) take reasonable measures to prevent the waste from being used for an unauthorised purpose.
- (2) Subsection (1)(e) and (f) does not apply to the owner or occupier of premises for domestic waste which is produced on the property where such waste is collected by a municipality or municipal service provider.
- (3) **Any** person who sells a product ~~that~~ may be used by the public and which will result in the generation of hazardous waste must take reasonable steps to inform the public of the impacts of that waste on human health and the environment.
- (4) The measures contemplated in this section may include measures to –
- (a) investigate, **assess** and evaluate the impact of the waste in question on health and the environment;
 - (b) cease modify or control any act or process causing the pollution, environmental degradation or harm to health;
 - (c) comply ~~with~~ any prescribed standard or management practise;
 - (d) eliminate any source of pollution or environmental degradation; and
 - (e) remedy the effects of the pollution or environmental degradation.
- (5) The Minister or MEC may issue a Code of Practise to provide guidance on how to discharge this duty or regulations containing specific requirements, after following a consultative process in accordance with sections 77 and 78.
- (6) Subsection (5) need not be complied with if the Code of Practise is amended in a non-substantive way.

Part 3: Waste management activities

23. Listing of waste management activities

- (1) The Minister must, or the MEC may, by notice in the Gazette –
- (a) publish **a** list of waste management activities that have, or may have, a detrimental effect on the environment and in respect of which **a** waste management licence is required to conduct the activity or prescribed standards must be complied with; and

- (b) when necessary, amend the list by –
 - (i) adding to the list of waste management activities in addition to those contemplated in paragraph (a);
 - (ii) removing waste management activities from the list; or
 - (iii) making other changes to particulars on the list.
- (2) Until such time as the Minister has published a notice contemplated in subsection (1), Schedule 2 of the Act is applicable.
- (3) A list published by the Minister applies nationally and a list published by the MEC applies to the relevant province only.
- (4) A notice referred to in subsection (1) –
 - (a) must indicate whether a waste management licence is required to conduct the activity, or, if a waste management licence is not required, the requirements or standards that must be adhered to when conducting the activity;
 - (b) may exclude certain quantities or categories of waste or categories of persons from the application of the notice if the waste in question is –
 - (i) of such a small quantity or temporary nature that it is unlikely to cause pollution to the environment or harm to human health; or
 - (ii) adequately controlled by other legislation;
 - (c) may contain transitional and other special arrangements in respect of waste management activities that are carried out at the time of their listing; and
 - (d) must determine the date on which the notice takes effect.
- (5) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Minister or MEC must follow a consultative process in accordance with sections 77 and 78.
- (6) Subsection (4) need not be complied with if the list is amended in a non-substantive way.

24. Conducting of waste management activities

A person may only undertake a waste management activity if it is in accordance with –

- (a) the requirements of this Act, including any standards that have been established for the activity; and

- (b) a licence issued in terms of section 55 if a licence is required.

Part 4: Storage, collection and transportation of waste

25. General requirements for the storage of waste

Any person who stores waste must at least take steps, **unless** specified **otherwise** in this Act, to ensure that –

- (a) the containers in which any waste is stored are intact and not corroded or in any other way rendered unfit for the safe storage of waste;
- (b) measures are taken to prevent accidental spillage or leaking;
- (c) the waste cannot be blown away;
- (d) nuisances such **as** odour, visual impacts and breeding of vectors do not arise; and
- (e) pollution of the environment and **harm to** health are prevented.

26. Storage of general waste

- (1) Any person generates general waste that is collected by a municipality must place the waste in a container approved, designated, **or** provided by the municipality for that purpose.
- (2) Waste which is recyclable and which is managed in accordance with this Act or any applicable by-laws need not be placed in a container contemplated in subsection (1).

27. Duty to provide collection services

- (1) Every municipality has an obligation to progressively ensure that efficient, effective and affordable waste collection services are provided in its **area**.
- (2) This duty is subject to –
 - (a) the need for an equitable allocation of services to all people in the municipal area;
 - (b) the obligation of people utilising the service to pay any reasonable prescribed charges;
 - (c) the right of the municipality to limit the provision of collection services if there is a failure to comply with reasonable conditions set for the provision of such services: provided **that** where the municipality

takes action to limit the provision of services, the limitation must not pose a risk to human health or the environment; and

- (d) the right of the municipality to differentiate between categories of users and geographical areas when setting service standards and levels of service for the provision of municipal services.
- (3) Every municipality must, subject to the provisions of this Act, attempt as far as is reasonably possible to provide containers or receptacles for the collection of recyclable waste that are accessible to the public.

28. Collection of waste

No person may allow waste to be removed from his or her premises unless the waste is collected by –

- (a) a municipality or municipal service provider;
- (b) a person authorised by law to collect that waste, where authorisation is required; or
- (c) a person who is not prohibited from collecting that waste.

29. Duties of persons transporting waste

- (1) The Minister or MEC may, by notice in the *Gazette*, require any person or category of persons who transports waste for gain to register with the waste management officer in the department or province where the transportation takes place and to furnish such information as is specified or that the waste management officer may require.
- (2) Any person engaged in the transportation of waste must take all reasonable steps to prevent any spillage of waste or littering from a vehicle used to transport waste.
- (3) Where waste is transported for the purposes of disposal, a person transporting the waste must ensure that the facility or place to which the waste is transported is authorised to accept such waste prior to offloading the waste from the vehicle.
- (4) Where hazardous waste is transported for purposes other than disposal, a person transporting the waste must ensure that the facility or place to which the waste is transported is authorised to accept such waste prior to

offloading the waste from the vehicle and must obtain written notification that the waste **has** been accepted.

- (5) A person who is in control of a vehicle, or in a position to control the use of a vehicle which is used to transport waste for the purpose of depositing waste is deemed to knowingly cause such waste to be deposited.

Part 5: Recovery, re-use and recycling of waste

30. Recovery, re-use and recycling of waste

- (1) Unless otherwise specified in this Act, every person who undertakes a recovery, re-use or recycling activity must, before undertaking that activity, ensure that the recovery, re-use or recycling of the waste –
- (a) uses less natural resources than disposal; and
 - (b) to the extent possible, is less harmful to the environment **than** disposal.
- (2) The Minister may, by notice in the *Gazette*, require any person or category of persons to –
- (a) provide for the recovery, re-use or recycling of products or components of a product manufactured or imported by that person; or
 - (b) a product to include a determined percentage of recycled material in a product that is produced, imported or manufactured by that person or category of persons.
- (3) A municipality may, by notice, require any person making use of the municipal collection service to separate specified types **of** waste **from** the general waste for the purposes of recovery, re-use or recycling.

Part 6: Separation, treatment, processing, transformation and disposal of waste

31. Separation, treatment, processing, transformation and disposal

No person may establish, provide or operate any waste handling, treatment or disposal facility or close any such facility which was not permitted when this Act came into effect–

- (a) without obtaining a waste management licence; or
- (b) without complying with the relevant standard.

32. Prohibition of unauthorised disposal

- (1) No person may –
 - (a) dispose of waste, or knowingly cause or permit waste to be disposed of in or on any land or at any facility unless the disposal of such waste is authorised by law; or
 - (b) dispose of waste in a manner likely to cause pollution of the environment or harm to human health.
- (2) It shall be a defence for a person charged with an offence under this section to prove that –
 - (a) the waste was generated as a result of normal household activities and that the municipality does not render a collection service in that area and that the most environmentally and economically feasible option for the management of the waste was adopted; or
 - (b) the disposal of the waste occurred as a result of an emergency beyond his control.

33. Littering

- (1) A municipality, or owner in the case of privately owned land to which the public has access, must ensure that sufficient containers or places are provided to contain litter which is discarded by the public.
- (2) No person may –
 - (a) throw, drop, deposit, spill or in any other way discard any litter into or onto any public place, land, vacant erf, stream, watercourse, street or road or on any place to which the public has access, except in a container or a place specifically provided for that purpose; or
 - (b) allow any person under his control to do any of the acts contemplated in (a).
- (3) Notwithstanding the provisions of subsections (1) and (2), the municipality, or owner in the case of privately owned land to which the public has access, must within a reasonable time after any litter has been discarded, remove such ~~litter~~ or cause it to be removed before the litter becomes a nuisance or ground for complaint.

Part 7: Industry waste management plans

34. Industry waste management plans

- (1) The Minister or MEC may, by notice in the *Gazette*, require any person, category of persons, industry or organ of state that produces waste other than during the course of normal government administration, to prepare and submit **an** industry waste management plan to the Minister or MEC for approval.
- (2) A MEC may not require the preparation of **an** industry waste management plan by any person, category of persons, industry **or** organ **of** state in **respect** of any waste **that has** been the subject of an industry waste management plan required by the Minister in terms of **a** notice issued under subsection (1) within the preceding five years.
- (3) When exercising a power in terms of subsection (1), the Minister or MEC must consider –
 - (a) the impact or potential impact of the waste on the environment, or waste type or characteristics, generated by the person, category **of** persons, industry or organ of state; or
 - (b) the environmentally sensitive nature of a **natural** resource or the amount of natural resources **that** are consumed in the manufacturing or production processes that result in the waste; and
 - (c) the manner in which **an** industry waste management plan could contribute to –
 - (i) the avoidance or minimisation **of** the generation of waste;
 - (ii) the reduction of negative impacts on health **and** the environment; or
 - (iii) the conserving of natural resources.
- (4) The Minister or MEC may, by written notice, require a person to prepare and submit **an** industry waste management plan to the Minister or MEC, **as** the case may be, for approval, whether or not that person falls within a category specified in subsection (1).
- (5) The Minister or MEC may give directions that **an** industry waste management plan **must** be prepared by **an** independent person for the cost of the person contemplated in subsection (1) or (4).

- (6) A person, category of persons, industry or organ of state may elect to prepare an industry waste management plan for approval in terms of this part without the Minister or MEC exercising a power in terms of subsections (1).

35. Preparation of industry waste management plans by organs of state

- (1) The Minister may, by notice in writing, require an industry waste management plan to be prepared by an organ of state and an MEC may, by notice in writing, require an industry waste management plan to be prepared by the provincial department responsible for environmental affairs, where –
- (a) the diversity, complexity and competitive nature of the industry concerned would make it impractical for the a category of persons other than an organ of state to prepare the plan;
 - (b) the knowledge or experience of the persons who are likely to be affected by the industry waste management plan in the areas of re-use, recycling and waste minimisation is limited;
 - (c) the persons who are likely to be affected by the industry waste management plan comprise of numerous small, medium or micro enterprises; or
 - (d) a person required to prepare an industry waste management plan in accordance with section 34 has failed to prepare a plan.
- (2) The Minister or MEC may recover the costs of preparing an industry waste management plan in terms of subsection (1)(d) from the person who was obliged to prepare the industrial waste management plan and who, after written notice, failed to prepare the plan.
- (3) Any organ of state or provincial department that is required to prepare an industry waste management plan in terms of subsection (1) may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan.
- (4) An organ of state required to prepare an industry waste management plan in terms of a notice issued in terms of this section must follow a consultative process in accordance with sections 77 and 78.

36. Contents of industry waste management plans

- (1) The Minister or MEC must specify the information that must be included in an industry waste management plan that must be prepared in terms of section 34 or 31.
- (2) The information that the Minister or MEC specifies in **terms** of subsection (1) may include –
 - (a) measures to prevent pollution or ecological degradation;
 - (b) targets for waste reduction through waste minimisation, recovery, re-use and recycling;
 - (c) measures or programmes to minimise the consumption of natural resources and the final disposal of waste;
 - (d) measures or **actions** to be taken to manage waste;
 - (e) the phasing out of the use of specified substances;
 - (f) opportunities for the reduction of waste generation through changes to packaging, product design or production processes;
 - (g) mechanisms for informing the public of the impact of the waste generating products or packaging on the environment;
 - (h) the extent of **any** financial contribution to be made to support consumer-based waste reduction programmes;
 - (i) the period that is required for implementation of the plan;
 - (j) the identification of laws that may have a bearing on the implementation of the plan;
 - (k) methods for monitoring and reporting; and
 - (l) any other matter ~~that~~ may be necessary to give effect to the objects of this Act.

37. Consultation

- (1) **Any** person required to produce **an industry** waste management plan in terms of section 34 must take appropriate steps to bring the contents of a proposed industry waste management plan to the attention of relevant organs of state, interested persons and the public.
- (2) The steps contemplated in subsection (1) must include the publication of a **notice** in at least two national newspapers where the industry waste management plan will be submitted to the Minister or ~~at~~ least two

newspapers circulating in the province where the industry waste management plan will be submitted to **an** MEC –

- (a) describing the nature and purpose of the industry waste management **plan**;
 - (b) stating where further information on the industry waste management plan can be obtained;
 - (c) stating a reasonable period within which written representations on, or objections to, the industry waste management plan may be submitted, and the address or place where representations or objections **must** be submitted; and
 - (d) containing such other particulars **as** the Minister or MEC may require.
- (3) Any comments submitted in respect of an industry waste management plan must be considered and a copy of all comments submitted to the Minister or MEC together with the industry waste management plan.

38. Consideration of industry waste management plans

- (1) On receipt of **an** industry waste management plan, the Minister or MEC may –
 - (a) approve the industry waste management plan in writing, with conditions, and give directions for the implementation of the plan;
 - (b) require additional information to be furnished and a revised industry waste management plan to be submitted for approval;
 - (c) require amendments to be made to the industry waste management plan within timeframes specified by the Minister or MEC; or
 - (d) reject the industry waste management plan if it does not comply with the requirements of a notice in terms of section 34(1) or 35(1) **or** if **a** consultation procedure in accordance with section **37** was not followed.
- (2) An industry waste management plan that **has** been rejected in terms of subsection (1) may be amended and resubmitted to the Minister or MEC.
- (3) On receipt of any information or amendments requested in terms of subsection (1)(b) or (c) or any amended plan submitted in terms of subsection (2) **for** the first time, the Minister or MEC must reconsider the industry waste management plan.

- (4) **An** approval in terms of subsection (1) must at least specify the period for which the approval is issued, which period may be extended by the Minister or MEC.
- (5) Notice must be given in the relevant *Gazette* of any industry waste management plan which has been prepared in terms of section 34 and which has been approved by the Minister or MEC.
- (6) **An** industry waste management plan which has been prepared by an organ of state or province in terms of section 35 and which **has** been approved by the Minister or MEC must be published in the relevant *Gazette* together with an indication of when and how the plan must be implemented, if applicable.

39. Specification of measures to be taken

- (1) If the Minister or MEC rejects an industry waste management plan in terms of subsection (1) more than once, or if any person, category of persons or industry who or which is required to prepare an industry waste management plan fails to do so, the Minister or MEC may by notice, in writing and without any criminal proceedings being affected, specify the waste management measures that must be taken by that person, category of persons or industry to ensure that that person, category of persons or industry is not unduly advantaged by the failure to submit an industry waste management plan.
- (2) When specifying the waste management measures to be taken in subsection (1), the Minister or MEC must consider, and to the extent possible, align the measures to be taken with the measures that are set out in any other approved industry waste management plans that are related to the activities of the person, category of persons or industry whose plan has been rejected more than once or who failed to submit a plan.

40. Review of industry waste management plans

An industry waste management plan which has been approved by the Minister or MEC must be reviewed at intervals specified in the approval or when specified by the Minister or MEC by notice in the relevant *Gazette*.

Part 8: Contaminated land

41. Application of this part

This part of the Act applies to the contamination of land even if the contamination

—

- (a) occurred before the commencement of this Act;
- (b) originated on land other than the land that is identified in terms of section **42**;
- (c) arises, or may arise, at a different time **from** the actual activity that caused the contamination; or
- (d) arises through an act or activity of a person that results in a change to preexisting contamination.

42. Identification and notification of investigation areas

- (1) The Minister or MEC may, by notice in the **Gazette**, identify **as** investigation *areas* —
 - (a) land on which specified high-risk activities take place, or have taken place, and that may result in **land** contamination; and
 - (b) specified land that the Minister or MEC suspects to be contaminated.
- (2) For the purposes of subsection (1), contamination refers to the presence of a significant risk of **harm**, whether or not that risk eventuated **prior** to the commencement of this Act.
- (3) A notice published by the Minister applies nationally and a notice published by the **MEC** applies to the relevant province only.
- (4) Before publishing **a** notice in terms of subsection (1), or any amendment to the notice, the Minister or **MEC** must follow a consultative process in accordance with sections 77 and **78**.
- (5) Subsection (4) need not be complied with if the notice is amended in a non-substantive way.
- (6) Notwithstanding **the** provisions **of** subsection (1), the Minister or **MEC** may issue a notice to **a** person in respect of specific land indicating that the **Minister** or MEC suspects the land to be contaminated and requiring the land to be managed **as an** investigation area.

43. Consequences of identification and notification of investigation areas

- (1) **An** owner of an investigation area contemplated in section 42, or person who undertook or undertakes the high **risk** activity or activity which caused, or may have caused, the contamination contemplated in section 42, must cause a site assessment to be conducted **within** a period specified by the Minister or **MEC** to determine whether –
 - (a) the land has actually been contaminated; and
 - (b) **if** the land **has** been contaminated, whether that contamination presents a significant **risk** of harm.
- (2) A site assessment report must be submitted to the Minister or **MEC** **within** 30 days of the site assessment being conducted.
- (3) The site assessment report must comply with any standards or guidelines published by the Minister or **MEC** and must at least include information regarding –
 - (a) whether the investigation area is contaminated;
 - (b) if the investigation area **has** been contaminated, an assessment of whether that contamination presents a significant **risk** of harm; and
 - (c) **if** the investigation area presents a significant **risk** of harm, how the area should be remediated.
- (4) **An** assessment made in terms **of** subsection (2)(b) must be **supported** by information on whether –
 - (i) the contamination has already caused harm;
 - (ii) the substances present in **or** on the land are toxic, persistent or bioaccumulative or are present in large quantities **or** high concentrations or occur in combinations;
 - (iii) there are exposure pathways available to the substances;
 - (iv) the uses of the land **and** land adjoining increases the **risk** of harm;
 - (v) the substances have migrated or are likely to migrate from the land;
 - (vi) the acceptable exposure for human and environmental receptors has been exceeded; and
 - (vii) any standards set by the Minister or **MEC** have been exceeded.
- (5) For the purposes of determining whether there is a significant **risk** of harm, the land may be regarded **as** being contaminated at any particular time if the

harm could come into existence only in certain circumstances and those circumstances do not exist ~~at~~ that time, where those circumstances are reasonably foreseeable and consistent with the approved use of land ~~at~~ that time.

44. Consideration of site assessment reports

- (1) On receipt of a site assessment report, the Minister or MEC may decide that
 -
 - (a) the investigation area presents a significant risk of harm and declare the investigation area to be a remediation site;
 - (b) the investigation area does not present a significant risk of harm and does not require any remediation action; or
 - (c) the investigation area does not present a significant risk of harm, but that limited measures are required to address such risks as are present.
- (2) If the Minister or MEC declares an investigation area to be a remediation site in terms of subsection (1)(a), the Minister or MEC must make such remediation order as is necessary to neutralise that harm.
- (3) If the Minister or MEC decides that the investigation area does not present a significant risk of harm, the Minister or MEC may make an order regarding the measures that must be taken

45. Orders to remediate contaminated land

A remediation order issues in terms of section 44(2) must describe—

- (a) the person who is responsible for undertaking the remediation;
- (b) the land to which the order applies;
- (c) the nature of the contamination;
- (d) the measures that must be taken to remediate the land;
- (e) the period within which the order must be complied with; and
- (f) any other matter prescribed by regulation.

46. Transfer of remediation sites

- (1) No person may transfer a remediation site without the permission of the Minister or MEC, as the case may be.

- (2) The Minister may not authorise the transfer of a remediation site unless he or she is satisfied that the person to whom the land will be transferred is willing and able to undertake any remediation that is required within an acceptable period.

47. Contaminated land register

- (1) The waste management officer must keep a register of remediation sites which includes information on –
- (a) the owner and any users of the land;
 - (b) the location of the land;
 - (c) the origin of the contamination; and
 - (d) the status of any remediation activities on the land.
- (2) The waste management officer may remove a remediation site **from** the register if a remediation order **has** been complied with.

Part 9: Other measures

48. Producer responsibility

- (1) The Minister or MEC may, by notice in the *Gazette*, identify –
- (a) a product or class of products;
 - (b) the producer responsibility measures that must be taken in respect of that product or class of products; and
 - (c) the category of persons who must take those measures.
- (2) The Minister or MEC may, in a notice published in **terms** of subsection (1) -
- (a) specify the requirements in respect of the implementation **and** operation of a waste minimisation programme, including the requirements in respect of the avoidance of waste generation, recovery, re-use and recycling;
 - (b) determine the financial arrangements of a waste minimisation programme, after consultation with the Minister or MEC responsible for finance;
 - (c) establish institutional arrangements for the administration of a waste minimisation programme.

- (d) indicate the percentage of products that must be recovered under a waste minimisation programme;
 - (e) specify labelling requirements;
 - (f) prohibit or restrict the sale of **any** product or classes of products in such circumstances **as** may be prescribed;
 - (g) require the producer of a specified product or class of product to carry out a life cycle assessment in relation to the product, in such manner or in accordance with such standards or procedures **as** may be specified; and
 - (h) specify the requirements that must be complied **with** in respect of the design, composition or production of a product or packaging, including a requirement that –
 - (i) cleaner production measures be implemented;
 - (ii) the composition, volume or weight of packaging be restricted; and
 - (iii) packaging be designed, produced and used so **as** to be capable of being re-used.
- (3) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must –
- (a) follow a consultative process in accordance with sections 77 and 78, unless the notice is amended in a non-substantive way;
 - (b) take into account the Republic's obligations in terms of any applicable international agreements; and
 - (c) consider **any** sound scientific information.

49. Recognition programmes

A waste management officer may establish a programme for the public recognition of significant achievements in the area of waste prevention, minimisation or other forms of management.

CHAPTER 4: LICENSING OF WASTE MANAGEMENT ACTIVITIES**50. Licensing authority**

- (1) The department is the licensing authority where –
 - (a) unless otherwise indicated by the Minister by notice, the waste management activity involves the establishment, operation, cessation or closure of a facility at which hazardous waste is to be or **has** been stored, treated or disposed **of**;
 - (b) the waste management activity involves obligations in terms of **an** international obligation, including the importation or exportation of hazardous waste;
 - (c) the waste management activity will be undertaken by –
 - (i) a national department;
 - (ii) a provincial department responsible for environmental affairs; or
 - (iii) a **statutory** body, excluding any municipality, performing **an** exclusive competence of the **national** sphere of government; or
 - (d) the waste management activity will **affect** more **than** one province or traverse international boundaries.
- (2) With the exception of the instances set out in subsection (1), the provincial department responsible for environmental **affairs** where the waste management activity will be, or is being, carried out, is the licensing authority.
- (3) The Minister and an MEC may agree that applications for waste management licences with regard to any waste management activity or class of waste management activity –
 - (a) contemplated in subsection (1) may be dealt with by the provincial department responsible for environmental **affairs**; or
 - (b) in respect of which the provincial department responsible for environmental **affairs** **has** been identified **as** the licensing **authority**, may be dealt with by the department.

- (4) The licensing authority may dispense with the requirement for a waste management licence if it is satisfied that the purpose of this Act will be met by the grant of a licence, permit or other authorisation under any other law.
- (5) In the interests of co-operative governance, a licensing authority may promote arrangements with other organs of state to combine their respective licence requirements into a single licence requirement.

51. Application for waste management licences

- (1) A person who requires a waste management licence must apply for the licence by lodging an application in the form required by the licensing authority with the licensing authority.
- (2) An application for a waste management licence must be accompanied by -
 - (a) the prescribed processing fee; and
 - (b) such documentation and information as may be required by the licensing authority.

52. Procedure for waste management licence applications

- (1) The licensing authority -
 - (a) may, require the applicant, at the applicant's expense, to obtain and provide it with other information in addition to the information contained in or submitted in connection with the application by a given date;
 - (b) may conduct its own investigation on the likely effect of the waste management activity on health and the environment;
 - (c) may invite written comments from any organ of state which has an interest in the matter; and
 - (d) must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.
- (2) An applicant must take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.
- (3) The steps contemplated in subsection (2) must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity applied for is, or is to be, carried out -

- (a) describing the nature **and** purpose of the waste management licence applied for;
 - (b) giving particulars of the waste management activity, including the place where it is or is to be carried out;
 - (c) stating where further information on the waste management activity can be obtained;
 - (d) stating a reasonable period within which written representations on or objections to the application may be submitted, and the address or place where representations or objections must be submitted; and
 - (e) containing such other particulars **as** the licensing authority may require.
- (4) The licensing authority may, in writing, dispense with the requirements of subsections (1)(a) or (3) where the applicant has also applied for an environmental authorisation in terms of any regulations and notices passed in respect of section 24 of the National Environmental Management **Act** and the licensing authority is satisfied that the objectives of subsection (3) will be achieved through a public participation process required in terms of that application procedure.
- (5) Where a licensing authority **has** dispensed with the requirements of subsection (4), the applicant must furnish the licensing authority with copies of all representations or objections that are made in **terms** of the public participation process conducted **as** part of the application for environmental authorisation and the responses of the applicant to such representations or objections.

53. Factors to be **taken into account** by licensing authorities

When considering an application for a waste management licence, the licensing authority must take into account all relevant matters, including –

- (a) the need for, and desirability **of**, the waste management activity, including what, if any, similar waste management activities have already been licensed;
- (b) the pollution being or likely to be caused by the activity which is the subject of the application, whether alone or together with existing operations or pollution and the effect or likely effect of that pollution

on the environment, including health, social conditions, economic conditions and cultural heritage;

- (c) the need for the activity **that** is being applied for;
- (d) the best practicable environmental options available that could be taken –
 - (i) to prevent, control, abate, or mitigate pollution; and
 - (ii) to protect the environment, including health, social conditions, economic conditions, cultural heritage from harm **as** a result of the ~~undertaking~~ undertaking of the waste management activity;
- (e) section **24** of the National Environmental Management Act, any applicable notice issued or regulation made pursuant to ~~that~~ section and any reasons for a decision in respect of **an** application made in terms of such regulations;
- (f) whether the applicant is a fit and proper person **as** contemplated in section **64**;
- (g) the applicant's submissions;
- (h) any submissions from organs of state, interested persons and the public; and
- (i) any guidelines issued by the Minister or MEC relevant to the application.

54. Decisions of licensing authorities

- (1) The licensing authority may –
 - (a) grant **an** application;
 - (b) refuse an application; or
 - (c) to reject **an** application where it does not comply ~~with~~ the requirements **of this Act.**
- (2) **Any** decision by a licensing ~~authority~~ to **grant an** application must be consistent with –
 - (a) **this** Act, including **any** integrated waste management plans prepared in terms of this Act;
 - (b) any applicable national or provincial environmental management policies;

- (c) the national environmental management principles section out in section 2 of the National Environmental Management Act;
 - (d) any transitional and other special arrangements contemplated in section 85 ;
 - (e) any applicable industry waste management plan contemplated in sections 34 or 35;
 - (f) the objectives of any applicable waste management plan; and
 - (g) any norms, standards or minimum requirements that have been set in terms of this Act.
- (3) After a licensing authority has reached a decision in respect of a licence application, it must days –
- (a) notify the applicant of the decision and give written reasons for the decision;
 - (b) in a manner determined by the licensing authority, instruct the applicant to notify any persons who have objected to the application of the decision and the reasons for the decision.
- (4) An application which is rejected in terms of subsection (1)(c) may be amended and resubmitted to the licensing authority for reconsideration.

55. Issuing of waste management licences

A waste management licence is subject to such conditions and requirements –

- (a) as are specified in terms of section 56;
- (b) as the licensing authority may determine; and
- (c) as the Minister or MEC has prescribed for the waste management activities of the kind in question.

56. Contents of waste management licences

- (1) A waste management licence must specify –
- (a) the waste management activity in respect of which it is issued;
 - (b) the premises or area of operation where the waste management activity may take place;
 - (c) the person to whom it is issued;
 - (d) the period for which the licence is issued and period within which any renewal of the licence must be applied for;

- (e) the name of the licensing authority;
 - (f) the periods at which the licence may be reviewed;
 - (g) the **amount**, volume, characteristics and type of waste that **may** be generated, handled, processed, transformed, stored, treated or disposed of;
 - (h) **any** other operating requirements relating to waste management;
 - (i) monitoring, auditing and reporting requirements; and
 - (j) **any** other matters which are necessary for the protection of the environment.
- (2) A licence may—
- (a) specify conditions in respect of waste minimisation, recovery, reuse and recycling;
 - (b) specify conditions for the closure of a waste disposal facility or cessation **of** the waste management activity;
 - (c) specify conditions in respect of odour, vector control, dust and noise;
 - (d) require the holder of a waste management licence to establish committees for the participation of interested **and** affected parties;
 - (e) provide that the licence is conditional on the holder of **a** waste management licence providing **an** environmental management plan to the satisfaction of the licensing authority;
 - (f) require the holder of a waste management licence to undertake site remediation work;
 - (g) require the holder of a waste management licence to provide financial assurance for the undertaking of site remediation work;
 - (h) require the holder of the waste management licence to comply with all lawful requirements of an environmental management inspector carrying out **his** or her duties in terms of the National Environmental Management Act, including a requirement that the holder of the licence must, on request, submit to the inspector a certified statement indicating—
 - (i) the extent to which the conditions and requirements of the licence have or have not been complied with;
 - (ii) particulars of any failure to comply with **any** of those conditions or requirements;

- (iii) the reasons for any failure to comply ~~with~~ **any of** those conditions or requirements; and
- (iv) any action taken, or to be taken, to prevent any recurrence of *that* failure or to mitigate the effects of that failure.

57. Transfer of waste management licences

- (1) If ownership of a waste management activity for which a waste management licence was issued is transferred, the licence may, with the permission of a licensing authority, be transferred by the holder of the licence to the new owner of the waste management activity.
- (2) A person applying for permission for the transfer **of** a waste management licence must lodge the application with the licensing authority.
- (3) The application must be in the form required by the licensing authority.
- (4) **An** application for the transfer of a licence must be accompanied by –
 - (a) the prescribed processing fee; and
 - (b) such documentation and information **as** may be required by the licensing authority.
- (5) **An** applicant must take appropriate steps to bring the application for the transfer of a waste management licence to the attention of interested persons and the public.
- (6) Such steps must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity applied for is carried out –
 - (a) describing the reasons for the transfer of a waste management licence;
 - (b) giving particulars of the waste management activity, including the place where it is carried out;
 - (c) stating a reasonable period within which written representations **or**, or objections to, the application may be submitted, and the address or place where representations or objections must be submitted; and
 - (d) containing such other particulars **as** the licensing authority may require.
- (7) When considering **an** application for the transfer **of** a licence, the licensing authority **may** request any additional information and must take into account

all relevant matters, including whether the person to whom the licence is to be transferred is a fit and proper person **as** contemplated in section 64.

58. Review of waste management licences

- (1) A licensing authority must review a waste management licence at intervals specified in the licence, or when circumstances demand that a review is necessary.
- (2) The licensing authority must inform the licence holder, in writing, of **any** proposed review and the reason for such review if the review is undertaken other **than** is provided for in a waste management licence.
- (3) For purposes of the review, a waste management officer may require the licence holder to compile **and** submit a waste impact **report** contemplated in section 71.

59. Variation of waste management licences

- (1) A licensing authority may, by written notice to the holder of a waste management licence, vary the licence –
 - (a) if it is necessary or desirable to prevent pollution;
 - (b) if it is necessary or desirable for the purposes of achieving waste management standards or minimum requirements;
 - (c) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
 - (d) at the written request of the holder of the waste management licence;
 - (e) if it is transferred to another person in terms of section 57; or
 - (f) if it is reviewed in terms of section 58.
- (2) The variation of a waste management licence includes –
 - (a) the attaching of **an** additional condition or requirement to the waste management licence;
 - (b) the substitution of a condition or requirement;
 - (c) the removal of a condition or requirement; or
 - (d) the amendment of a condition or requirement.
- (3) If a licensing authority receives a request **from** the holder of a waste management licence in terms of subsection (1)(d), the licensing authority

must require the holder of the waste management licence to take appropriate steps to bring the request to the attention of relevant organs of state, interested persons and the public if the variation of the licence will authorise **an** increase in the environmental impact **regulated** by the waste management licence.

- (4) Steps in terms of subsection (3) must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity authorised by the licence is, or will be, carried out –
 - (a) describing the nature and purpose of the request;
 - (b) giving particulars of the waste management activity, including the place where it is, or will be, carried out;
 - (c) stating a reasonable period within which written representations on or objections to the request may be submitted and the address or place where representations or objections must be submitted; and
 - (d) containing such other particulars **as** the licensing authority may require.
- (5) Sections 53 and 54, read with the necessary changes **as** the context may require, apply to the variation of a waste management licence.

60. Renewal of waste management licences

- (1) A waste management licence may, on application by the holder of the licence, be renewed by a licensing authority.
- (2) The holder of a waste management licence must, before the expiry **date** of the licence, apply for the renewal of the licence to the licensing authority of the area in which the activity is carried out by lodging an application **with** the licensing authority in the form required by the licensing authority.
- (3) **An** application for the renewal of a licence must be accompanied by –
 - (a) the prescribed processing fee; **and**
 - (b) such documentation and information **as** may be required by the licensing authority.
- (4) Sections 53, 54 and **56** read **with** the necessary changes **as** the context may require, apply to **an** application for the renewal of a waste management licence.

61. Revocation and suspension of waste management licences

- (1) The licensing authority may, by written notice to the holder of a waste management licence, revoke or suspend that licence if the licensing authority is of the opinion that the holder of the waste management licence has contravened a provision of this Act or a condition of a waste management licence and such contravention may have, or is having, a significant effect on health or the environment.
- (2) The licensing authority may not revoke or suspend a ~~waste~~ management licence before it has afforded the holder of the waste management licence an opportunity to make a submission in respect of the intended revocation or suspension and the licensing authority has considered such revocation or suspension.
- (3) Notwithstanding the provisions of subsection (2), **if** urgent action is necessary for the protection of the environment, the licensing authority may issue a notice of revocation or suspension and afford the holder of the waste management licence an opportunity to make a submission **as** soon thereafter **as** is possible.

62. Surrender of waste management licences

- (1) A holder of a waste management licence may not surrender that licence without the permission of the licensing authority.
- (2) In considering a request to surrender a waste management licence, the licensing authority may request such information **as** it requires to consider the request and the licensing authority may require the holder of the waste management licence to take such steps **as** it deems necessary for the protection of the environment before accepting that surrender of the licence.

63. Waste management control officers

- (1) A waste management officer **may** require the holder of a waste management licence to designate a waste management control officer, having regard to the size and nature of the waste management activity for which the licence was granted.
- (2) A waste management control officer **must** –

- (a) work towards the development and introduction of cleaner production technologies and practices;
 - (b) identify and submit potential measures in respect of waste minimisation, including the recovery, re-use and recycling of waste, to the waste management licence holder and the licensing authority;
 - (c) take all reasonable steps to ensure compliance by the holder of the waste management licence with the licence conditions and requirements and the provisions of this Act; and
 - (d) promptly report any non-compliance with any licence conditions or requirements or provisions of this Act to the licensing authority through the most effective means reasonably available.
- (3) Nothing in this section affects the obligations and liability of the holder of a waste management licence to comply with the conditions and requirements of the licence.

64. Criteria for fit and proper persons

In order to determine whether a person is a fit and proper person for the purposes of an application in terms of this Chapter, a licensing authority must take into account all relevant facts, including whether –

- (a) ~~that~~ person has contravened or failed to comply with this Act, the Environment Conservation Act, the National Environmental Management Act or any other legislation applicable to waste management;
- (b) that person has held a waste management licence or other authority that **has** been suspended or revoked or that person has not complied with a material condition of such waste management licence or authority;
- (c) that person **has** been a director or senior *manager* who is, or was, a director or manager of a company or ~~firm~~ to whom paragraph (a) or (b) applies;
- (d) ~~that~~ person has the ability to comply with this Act and any conditions subject to which the application may be granted; and

- (e) the management of the waste management activity which is the subject of the application will be in the hands of a technically competent person.

CHAPTER 5: WASTE INFORMATION SYSTEMS

65. Establishment of national waste information system

(1) The Minister must establish a waste information system for the recording, collection, management and analysis of data and information which must include

–

- (a) data on the quantity, type and characteristics of waste generated, re-used, recycled, recovered, stored, **transported**, treated, transformed and disposed of;
 - (b) a register of –
 - (i) waste management activities that have been licensed;
 - (ii) people to whom licences have been granted; **and**
 - (iii) the locations where licensed waste management activities may be conducted;
 - (c) information on compliance with this **Act**;
 - (d) information on the impacts of waste management activities on the environment; and
 - (e) any other matter that is necessary for the purposes of administering an effective and integrated waste management **system**.
- (2) The national waste information system may be implemented incrementally.

66. Objectives of national waste information system

The objective of the waste information system is to –

- (a) store, verify, analyse, evaluate and provide data and information for the protection of the environment **and** management of waste;
- (b) provide information for the development and implementation of any integrated waste management plans required in terms of this Act; and
- (c) provide information to organs of state and the public –
 - (i) for education, awareness raising, research and development purposes;
 - (ii) for planning, including the prioritization of regulatory, waste minimisation and cleaner production initiatives;
 - (iii) for obligations to report in terms of any legislation;
 - (iv) for the undertaking of environmental impact assessments;
 - (v) for public safety and disaster management;
 - (vi) on the status of waste generation, collection, recovery, re-use, recycling, transportation, treatment, transformation and disposal; and
 - (vii) the impacts of waste on the environment.

67. Provision of information

- (1) The Minister may, by notice in the *Gazette* or in writing, require any person or organ of state to provide, within a reasonable time or on a regular basis any **data**, information, documents, samples or materials to the Minister that are reasonably required for the purposes **of** the waste information system or the management **of** waste.
- (2) A notice referred to in subsection (1) may also indicate whether and in what manner the information to be furnished must **be** verified.

- (3) Where the Minister requires a province or municipality to furnish data, information, documents, samples or materials in terms of subsection (1), the MEC or municipality concerned may, by notice in the Gazette or in writing, require any person or organ of state to provide, within a reasonable time or on a regular basis, such data, information, documents, samples or materials and the verification of such information to the MEC or municipality that are reasonably required to discharge its obligations in terms of subsection (1).

68. Access to information

information contained in the waste information system must be made available by the Minister, subject to any limitations imposed by law, and the payment of a reasonable charge determined by the Minister.

69. Establishment of provincial waste information systems

- (1) The MEC may, with the concurrence of the Minister, establish a provincial waste information system.
- (2) The Minister may, by notice and for the purposes of ensuring efficient administration, exempt a category of persons who must furnish information to the provincial waste information established in terms of subsection (1) from furnishing that information to the waste information system established in terms of section 65.
- (3) If the Minister exercises a power in terms of subsection (2), the MEC is responsible for furnishing the information to the Minister.

CHAPTER 6: COMPLIANCE AND ENFORCEMENT

70. Application of the National Environmental Management Act

~~Part~~ 2 of Chapter 7 of the National Environmental Management Act is applicable to *this* Act.

71. Waste impact reports

- (1) A waste management officer may, in writing, require any person to submit a waste impact report in a specified form and within a specified period to the waste management officer if –
 - (a) the waste management officer reasonably suspects that the person **has** on one or more occasions contravened or failed to comply with this Act or any conditions of a waste management licence or exemption and **that** that contravention or failure **has** had, or may have, a detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, or **has** contributed to the degradation of the environment; or
 - (b) a review of a waste management licence is undertaken in terms of section **58**.
- (2) A waste management officer may indicate that a waste impact report to be submitted in terms of subsection (1) must be compiled **by** an independent person.
- (3) The costs incurred in compiling a waste impact report, including any costs of **an** independent person, are the liability of the person required to submit the report.
- (4) **If** the person who is required to submit a waste impact report in terms of subsection (1) fails to submit the report within the specified period, the waste management officer may –
 - (a) appoint **an** independent person to compile the report; and
 - (b) recover the cost of compiling the report **from** the person required to submit the report.

CHAPTER 7: OFFENCES AND PENALTIES**72. Offences**

A person is guilty of an offence **if** that person –

- (a) contravenes a provision of section **21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 39, 43, 46, 48** or **67**;
- (b) fails to submit or to prepare an industry waste management plan **as** required by section **34**;
- (c) fails to submit a waste impact report **as** required in terms of section **71**;
- (d) undertakes a waste management activity without a waste management licence where a waste management licence is required;
- (e) contravenes or **fails** to comply with a condition or requirement of a waste management licence;
- (f) fails to comply with a remediation order issued in terms of section 45;
- (g) supplies false or misleading information in **any** application made in terms of this Act;
- (h) supplies false or misleading information to a waste management officer; or
- (i) contravenes or **fails** to comply with a condition subject to which exemption from a provision **of** this Act was granted in terms **of** section **82**.

73. Penalties

- (1) A person convicted of an offence referred to in section **72** is liable to a fine not exceeding **R10 000 000**, or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.
- (2) A *fine* contemplated in subsection (1) must be **determined** with due consideration of –
 - (a) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment; and
 - (b) the monetary or other benefits which **accrued** to the convicted person through the commission of the offence.

CHAPTER 8: GENERAL MATTERS***Part 1: Regulations*****74. Regulations by Minister**

The Minister may make regulations that are not in conflict with this Act regarding

—

- (a) the identification, categorisation and classification of waste;
- (b) requirements for monitoring;
- (c) the nature, **type**, time period and format of data and information to be submitted in terms of a waste information system established in terms of this Act;
- (d) waste management planning;
- (e) the exercise of the duty of care;
- (f) priority waste measures;
- (g) standards in respect of the environmentally sound management of waste;
- (h) standards in respect of waste management activities;
- (i) the manner in which **an** application for **a** waste management licence must be made;
- (j) measures that must be taken in respect of the implementation of waste minimisation, including the setting **of targets** or percentage of products **that** must be recovered under a recycling, re-use, refundable deposit or take-back programme;
- (k) the prohibition or restriction of the import and sale of any product or classes of products in such circumstances **as** may be prescribed;
- (l) procedures for the importation and **exportation** of waste;
- (m) the obligation of producers of a specified product or class of product to carry out a life cycle assessment in relation to the product, in **such** manner or in accordance with such standards or procedures **as** may be specified;

- (n) the requirements ~~that must~~ be *complied with* in respect of ~~the~~ design, composition or production of a product or ~~packaging~~, including requirements in respect of –
 - (i) the restriction of the composition, volume or weight of packaging;
 - (ii) the reuse of packaging; and
 - (iii) ~~the~~ use of alternate materials that are less harmful to the environment;
- (o) the utilisation of waste by way of recovery, re-use and *recycling*;
- (p) the reduction of waste by –
 - (i) ~~the adoption~~ of certain ~~manufacturing processes~~, and
 - (ii) ~~the~~ use of alternative materials or products;
- (q) ~~the financial arrangements of waste minimisation~~ programmes;
- (r) ~~the institutional arrangements for the~~ administration of ~~waste~~ minimisation programmes;
- (s) incentives and disincentives in respect of waste *management* practises;
- (t) control over waste management facilities;
- (u) labelling;
- (v) the location, planning and ~~design~~ of waste management activities;
- (w) the dissemination of information to the public;
- (x) ~~the quality to~~ which soil must conform;
- (y) the manner in which a site ~~assessment~~ in terms of section 43 must be conducted and ~~the person who may~~ conduct *such assessments*;
- (z) ~~the~~ contents of a site assessment report contemplated in section 43;
- (aa) requirements in respect of the ~~funding~~ or ~~insuring~~ of a waste management activity; and
- (bb) any other ~~matter~~ which the Minister considers necessary for the purposes of *achieving* the objects of *this Act*.

75. Regulations by MECs **responsible** for waste **management**

The MEC may ~~make~~ any regulations for the province concerned, not inconsistent with *this Act*, in respect of any ~~matter~~ for which the MEC may or must make regulations in terms of *this Act*, including a ~~matter~~ referred to in section 74.

76. General

- (1) Regulations made in terms of this Act may –
- (a) restrict or prohibit any act, either absolutely or conditionally;
 - (b) apply –
 - (i) generally to the Republic or a province, as the case may be, or only in a specified areas or category of areas; or
 - (ii) generally to all persons or only to a specified category of persons;
 - (c) differentiate between different –
 - (i) areas or category of areas; or
 - (ii) persons or categories of persons;
 - (iii) types, classes or categories of waste; and
 - (d) incorporate by reference any guideline, minimum requirements, code of practise or any national or international standard relating to waste management.
- (2) Regulations made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of any offence and liable on conviction to –
- (a) imprisonment for a period not exceeding five years;
 - (b) an appropriate fine; or
 - (c) both a fine and imprisonment.
- (3) (a) Before publishing any regulation made in terms of this Act, or any amendment to the regulations, the Minister or MEC must follow a consultative process in accordance with sections 77 and 78.
- (b) Paragraph (a) need not be complied with if the regulations are amended in a non-substantive way.

Part 2: Consultative process

77. Consultation

- (1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section and section 78, the Minister or MEC must follow such consultative process as may be appropriate in the circumstances

- (2) When conducting the consultations contemplated in subsection (1), the **Minister must –**
- (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the powers;
 - (b) in accordance with **the** principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the MEC responsible for waste management in each province that will be affected by the exercise of the power; **and**
 - (c) allow for public participation in the process in accordance with section 78.
- (3) When conducting the consultations contemplated in subsection (1), the **MEC must –**
- (a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the powers;
 - (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the **Constitution**, consult the Minister and all other national organs of state that will be affected by the exercise of the power; and
 - (c) allow for public participation in the process in accordance with section 78.

78. Public participation

- (1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section, the Minister or MEC must give notice of the proposed exercise of the relevant power –
- (a) in the *Gazette*; and
 - (b) in at least one newspaper distributed nationally or, if the exercise of power will only affect a specific area, in at least one newspaper distributed in that area.
- (2) The notice must –
- (a) invite members of the public to submit to the Minister or MEC, within no less than 30 days of publication of the notice in the *Gazette*, written representations on or objections to the proposed exercise of power; **and**

- (b) contain sufficient information to enable members of the public to submit representations or objections.
- (3) The Minister or MEC may, in appropriate circumstances, allow **any** interested person or community to present oral representations or objections to the Minister or MEC, or a person designated by the Minister or MEC.
- (4) The Minister or MEC must give due consideration to all representations or objections received or presented before exercising the power concerned.

Part 3: Delegations and exemptions

79. Delegations

- (1) The Minister or MEC, **as** the case **may** be, may delegate or assign to **an** official in their respective departments –
 - (a) any power or duty of the Minister or MEC contained in this Act, excluding the power to publish or amend a regulation in terms of section 74 or 75 or the strategy in terms **of** section 7, a notice or standards in terms **of** sections 8, 9, or **20** ;or
 - (b) any power or **duty** reasonably necessary to assist the Minister or MEC in exercising a power or performing **a** duty of the Minister or MEC.
- (2) The Minister **must** regularly review and, if necessary, amend **or** withdraw a delegation or assignment under subsection (1).
- (3) **A** delegation or assignment to **an** official under subsection (1) –
 - (a) is subject to such limitations and conditions **as** the Minister or MEC may impose;
 - (b) may either be to a specific individual or to the holder of a specific post in the relevant department;
 - (c) may authorize **that** official to subdelegate or **further** assign, in writing, the power **or** duty concerned to another official in the department, or to the holder of a specific post in the department; and
 - (d) does not divest the Minister or MEC of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (4) The Minister or MEC may confirm, vary or revoke any decision taken by **an** official **as** a result of a delegation or subdelegation in terms **of** this section,

subject to any rights that may have become vested **as** a consequence of that decision.

80. Applications for exemption

- (1) Any person or organ of state may, in writing, apply for exemption from the application of a provision of this Act to the Minister or to the MEC, where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption.
- (2) **An** application in terms of subsection (1) must be accompanied by –
 - (a) **an** explanation of the reasons for the application; and
 - (b) any applicable supporting documents.

81. Consideration of applications

- (1) The Minister or MEC may request the applicant to **furnish** additional information where such information is necessary for the purposes of informing the Minister or MEC's decision.
- (2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister or MEC must, before deciding the application, request the applicant –
 - (a) to conduct at least a public participation process **as** set out in section 77, or any aspect of such process; and
 - (b) to submit any comments received **from** the public following such process to the Minister or MEC.

82. Decisions on applications

- (1) The Minister or the **MEC** may –
 - (a) grant an application for exemption, subject to such conditions; or
 - (b) refuse **an** application for exemption
- (2) The provisions of section **55**, to the extent that it is applicable, **and** section **56**, read **with** the necessary changes, apply to the consideration of applications for exemptions.
- (3) If an application is granted, the Minister or **MEC** must issue a **written** exemption notice to the applicant stating –

- (a) the name, address **and** telephone number of the person to **whom** the exemption is granted;
- (b) the provision of this Act from which exemption **is** granted;
- (c) the conditions subject to which the exemption is granted; and
- (d) the period for which exemption is granted, if the exemption is granted for a period,

83. Review of exemptions

- (1) The Minister or MEC may –
 - (a) from time to time review any exemption granted in terms **of this** section; and
 - (b) on good grounds withdraw such exemption or amend the exemption, or any part thereof.
- (2) Before withdrawing or amending **an** exemption, the Minister **or MEC must** give the person to whom the exemption **was** granted an opportunity to comment, in writing, on the reasons for the withdrawal or amendment.

CHAPTER 9: MISCELLANEOUS

84. Repeal and amendment of legislation

- (1) The legislation set out in the Table in Schedule 1 is hereby repealed or amended to the extent set out in the third column of the Table, subject to **the** provisions of subsections **(2) and (3)** of this section and section **85**.
- (2) Anything done or deemed to have been done under a provision repealed by subsection (1) and which can be done in terms of a provision **of this Act** must be regarded **as** having been done under that provision of **this Act**.
- (3) **Anything** done or deemed to have been done under **a** provision repealed by subsection (1) and which can be done in terms **of the constitutional or** statutory powers of a municipality, remains in force in the **area of** the municipality until repealed by the municipality **of that** area.

85. Transitional provisions

- (1) Despite the repeal of section 20 of the Environment Conservation Act by section 84 of **this** Act, a permit issued in terms of section 20 of the Environment conservation Act which was valid immediately before the date on which section 84 took effect continues to be a valid permit subject to subsections (2) and (3).
- (2) The holder of a permit issued in terms of section 20 of the Environment Conservation Act must apply to the licensing authority for a waste management licence when required to do so by the licensing authority in writing, within the period stipulated by the licensing authority, if the holder wishes to continue the activity authorised by the permit.
- (3) **If** a permit issued in terms of section 20 of the Environment Conservation Act lapses after the period referred to in subsection (2) because the holder of the permit did not apply for a waste management licence or because the licensing authority refused **an** application contemplated in terms of subsection (2), the holder remains liable for **taking** all measures that are necessary to ensure that the cessation of the activity which was authorised by the permit is done in **a** manner which does not result in harm to health or the environment.
- (4) During the period for which a permit issued in terms of section 20 of the Environment Conservation Act continues to be valid, the provisions of **this** Act, read with the necessary changes **as** the context may require, apply in respect of the holder of such a permit, **as** if that person is the holder of a waste management licence issued in terms of section 55.
- (5) Despite the repeal of section 20 of the Environment Conservation Act by section 83 of **this** Act, any application for a permit made in terms of section 20 of the Environment Conservation Act which was not decided when section 83 took effect, must be proceeded with in terms of **this Act as** if that application was **an** application for a waste management licence in terms of section 51.

86. Short title and commencement

- (1) This Act is called the National Environmental Management: Waste Management **Act**, 2007 and takes effect on a date determined by the Minister by notice in the Gazette.
- (2) Different dates may be determined in terms of subsection (1) for different provisions of the Act.

SCHEDULE 1

(Section 85)

Legislation repealed or amended

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 73 of 1989	Environment Conservation Act, 1989	Sections 19, 19A and 20
Act No. 79 of 1992	Environment Conservation Amendment Act, 1992	Sections 8 and 9
Act No. 107 of 1998	National Environmental Management Act, 1998	<p>The amendment of section 1 by the substitution for the definitions of “specific environmental management Act” and “specific environmental management Acts” of the following definition –</p> <p>‘specific environmental management Act’ means –</p> <ul style="list-style-type: none"> (i) <u>the National Environmental Management: Biodiversity Act, 2003</u> (ii) <u>the National Environmental Management: Protected Areas Act, 2003;</u> (iii) <u>the National Environmental Management: Air Quality Act, 2004; or</u> (iv) <u>the National Environmental Management: Waste Management Act, 200...</u> <p><u>and includes and regulations or other subordinate legislation made in terms of any of those Acts;</u></p>

SCHEDULE 2**(section 23)****Waste Management Activities for which a Waste Management Licence is
Required**

Nb.	Activity
1.	The accumulation and storage of waste other than the storage contemplated in section 26 and the storage of health care waste provided it conforms to the standards stipulated in the latest version of SANS 10248 .
2.	The handling of waste.
3.	The treatment of waste .
4.	The recovery and recycling of waste.
5.	The disposal of waste.