

NOTICE 737 OF 2013**DEPARTMENT OF ENVIRONMENTAL AFFAIRS****EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE
AMENDMENT BILL, 2013**

The Minister of Water and Environmental Affairs intends introducing the National Environmental Management: Waste Amendment Bill, 2013 in Parliament during August 2013. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

A copy of the draft Bill can also be obtained from Mr Sibusiso Shabalala.

E-mail address: sshabalala@environment.gov.za or Tel: (012) 310 3449.

BOMO EDITH EDNA MOLEWA

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

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MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE AMENDMENT BILL, 2013

1. INTRODUCTION

1.1 The purpose of the National Environmental Management: Waste Act, 2008 (Act no. 59 of 2008) (the "NEMWA"), was to reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. In this regard, the NEMWA provides for institutional arrangements and planning matters; the establishment of a national waste information system; national norms and standards for the management of waste by all spheres of government; licensing and control of waste management activities, as well as waste management measures and the remediation of contaminated land.

1.2 Since 2009, the National Department and the provincial departments responsible for waste management have identified certain implementation challenges with respect to some provisions of the NEMWA.

2. PURPOSE OF BILL

The purpose of this Bill is to amend the NEMWA, in order to—

- substitute certain definitions;
- clarify the spheres of government required to compile an integrated waste

- management plan;
- provide for the exclusion of the provincial department responsible for waste management in the compilation of an industry waste management plan;
 - require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans;
 - provide the Minister with a discretionary power to establish a Waste Management Agency when necessary; and
 - provide for transitional arrangements regarding authorisations issued in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989).

3. OBJECTS OF BILL

Clause 1: Amendment of section 1

This amendment seeks to revise certain definitions to provide clarity and to remove any ambiguity in the NEMWA.

Clause 2: Amendment of section 4

The current provisions of the NEMWA are not applicable to the disposal of animal carcasses. This clause will ensure that the disposal of animal carcasses will be regulated under the NEMWA.

Clause 3: Amendment of section 11

This amendment provides that the National Department will not be required to prepare an integrated waste management plan, but will rather prepare the National

Waste Management Strategy setting out how the objectives of the NEMWA will be achieved. The intention of the amendment is to avoid the duplication of plans. The amendment will also provide for municipal integrated waste management plans to be submitted to the MEC for endorsement and not for approval.

Clause 4: Amendment of section 12

This is a consequential amendment that provides that the National Department will no longer be required to develop an integrated waste management plan.

Clause 5: Amendment of section 13

This amendment is consequential and provides that the reports on the implementation of the provincial integrated management plans must be submitted to the MEC for approval and to the Minister for noting.

Clause 6: Amendment of section 28

This amendment will provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans.

Clause 7: Amendment of section 29

This amendment provides that the provincial departments responsible for waste management will not be required to prepare industry waste management plans, but will have to prepare and implement integrated waste management plans. This amendment is intended to avoid the duplication of plans. The amendment further provides that the MEC responsible for waste management must act in concurrence

with the Minister when requesting an organ of state to compile and submit industry waste management plans.

Clause 8: Amendment of section 30

This amendment that relates to issuing of a notice by the Minister or the MEC, specifying information to be included in the industry waste management plans, is consequential and provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

Clause 9: Amendment of section 32

This amendment that relates to the actions of the Minister or the MEC upon receipt of the industry waste management plans, is consequential and provides for the MEC responsible for waste management to act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

Clause 10: Amendment of section 34

This amendment that relates to the review of industry waste management plans, is consequential and provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

Clause 11: Insertion of sections 34A and 34B

This amendment will provide the Minister with a discretionary power, in concurrence

with the Minister responsible for finance and Minister responsible for public service and administration, to establish a Waste Management Agency to deal with the different waste streams on behalf of the Department. The Waste Management Agency acts through its Board. The Minister must make regulations in relation to, *inter alia*, the composition of the Board, functions of the Board and remuneration and allowances of Board members must monitor the performance by the Waste Management Agency of its functions.

Clause 12: Repeal of section 78

This amendment repeals section 78 of NEMWA, since all appeals will be lodged in terms of section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), and considered and processed in accordance with the national appeals regulations developed in terms of section 43 of the National Environmental Management Act, 1998.

Clause 13: Insertion of section 80A

In its current form, the NEMWA does not contain transitional arrangements in respect of the authorisations issued in terms of the Environment Conservation Act, 1989. In this regard, the relevant licensing authority does not have the legal mandate to consider any applications for review of such authorisations. This amendment will provide the relevant licensing authority with the necessary legal mandate to consider and vary such record of decisions.

4. BODIES CONSULTED

The Department has not consulted any stakeholders in relation to the Bill.

5. FINANCIAL IMPLICATIONS FOR THE STATE

There would be no financial implications for the Department.

6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The amendments do not require new structures or capacity within the Department.

7. COMMUNICATION IMPLICATIONS

Appropriate communication measures will be implemented by the Government Communication and Information System.

8. PROVINCIAL IMPLICATIONS

None

9. CONSTITUTIONAL IMPLICATIONS

None

10. PARLIAMENTARY PROCEDURE

10.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Part A of schedule 4 of the Constitution, dealing with "environment" and "pollution control", respectively.

10.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.
