

REPUBLIC OF SOUTH AFRICA

ENVIRONMENT CONSERVATION AMENDMENT BILL

(As amended by the Select Committee on Land and Environmental Affairs (National Council of Provinces)) (The English text is the official text of the Bill)

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 45D—2003]

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GENERAL EXPLANATORY NOTE:

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

To amend the Environment Conservation Act, 1989, so as to enable the Minister of Environmental Affairs and Tourism to make regulations regarding financial matters relating to identified waste types and regarding product control for waste management; to provide for the transfer of the administration of waste disposal sites from the Minister of Water Affairs and Forestry to the Minister of Environmental Affairs and Tourism; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Substitution of section 20 of Act 73 of 1989, as substituted by section 9 of Act 79 of 1992

1. The following section is hereby substituted for section 20 of the Environment Conservation Act, 1989 (hereinafter referred to as the principal Act):

“Waste management

20. (1) No person may establish, provide or operate a disposal site without a permit issued by the Minister in terms of subsections (1) to (9).

(2) A person who wishes to provide or operate a disposal site must apply for a permit referred to in subsection (1) in the prescribed form, supplying such information as may be prescribed.

(3) The Minister may—

(a) issue a permit subject to such conditions as he or she considers fit;

(b) alter or cancel any permit or condition in a permit;

(c) refuse to issue a permit.

(4) The Minister may exempt any person or category of persons from having to obtain a permit, subject to such conditions as he or she considers fit.

(5) The Minister may require further information from the applicant for the purpose of enabling him or her to make a decision on an application.

(6) The issuing of a waste disposal site permit is subject to—

(a) the concurrence of the Minister of Water Affairs and Forestry; and

(b) the inclusion therein of the conditions contained in a Record of Decision issued by the Minister of Water Affairs and Forestry regarding any measures that the Minister of Water Affairs and Forestry

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- considers necessary to protect a water resource as defined in the National Water Act, 1998 (Act No. 36 of 1998);
- (c) In the event of concurrence or conditions not being obtained as contemplated in paragraphs (a) and (b) within a reasonable time the matter shall be referred to the Fair Decision Making and Conflict Management provisions contained in Chapter 4, sections 17 to 22, of the National Environmental Management Act, 1998 (Act No. 107 of 1998), by the Minister. 5
- (7) The Minister must maintain a register in which details of every disposal site for which a permit has been issued shall be recorded. 10
- (8) The Minister may, by notice in the *Gazette*, issue directions with regard to—
- (a) the control and management of disposal sites in general;
- (b) the control and management of certain disposal sites or disposal sites handling particular types of waste; and 15
- (c) the procedure to be followed before any disposal site may be withdrawn from use or utilized for another purpose.
- (9) Subject to the provisions of any other law, no person shall discard waste or dispose of it in any other manner, except—
- (a) at a disposal site for which a permit has been issued in terms of this section; or 20
- (b) in a manner or by means of a facility or method and subject to such conditions as the Minister may prescribe.
- (10) Anything done in terms of this section by the Minister of Water Affairs and Forestry prior to the commencement of the Environment Conservation Amendment Act, 2003, shall be deemed to have been done by the Minister.”. 25

Amendment of section 24 of Act 73 of 1989 as substituted by section 13 of Act 79 of 1992

2. Section 24 of the principal Act is hereby amended by the addition of the following paragraph: 30

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

Insertion of sections 24B and 24C in Act 73 of 1989 35

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

“Regulations regarding products

24B. The Minister may make regulations with regard to the prohibition, control, sale, distribution, import or export of products that may have a substantial detrimental effect on the environment or on human health. 40

Procedure for making regulations

24C. (1) Before making a regulation under section 24(l) or 24B, the Minister must—

(a) publish a notice in the *Gazette* setting out the draft regulations;

(b) notify the Presiding Officer of both Houses of Parliament of such publication; and 45

(c) invite written comments on the draft regulations to be submitted to the Minister within a period of 30 days of publication of such notice.

(2) Prior to publishing final regulations the Minister must consider the comments referred to in subsection (1). 50

(3) Any regulation made under section 24(l) or 24B is not subject to the publication for comment requirements contained in section 32.”.

Short title and commencement

4. (1) This Act is called the Environment Conservation Amendment Act, 2003.
- (2) Section 1 comes into effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ENVIRONMENT CONSERVATION AMENDMENT BILL

1. PURPOSE AND SUMMARY

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

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

2. BACKGROUND AND DISCUSSION

Part IV of the Environment Conservation Act, 1989 (Act No. 73 of 1989), titled “Control of Environmental Pollution”, comprises three sections: Sections 19 and 19A deal with the prohibition and removal of litter, while section 20 deals with management of waste sites. The latter section is administered by the Minister of Water Affairs and Forestry. All three of these sections are complemented by sections 24 and 24A, which empower the Minister of Environmental Affairs and Tourism to make regulations regarding various aspects concerning waste management and littering, respectively.

The above provisions are not sufficient to give effect to the Government’s policy of integrated waste management as set out in the White Paper on Integrated Pollution and Waste Management for South Africa (N227/2000 Government Gazette 20978 of 17 March 2000). The overall objective of the amendments is accordingly to further facilitate the Government’s general policy on integrated pollution control and waste management.

In addition, the Environment Conservation Act does not give the Minister and the Department of Environmental Affairs and Tourism regulatory powers over products, materials or substances that cause or may cause harm to the environment or human health, should these enter the waste stream. The most recent example is asbestos, which is found in building material, friction material and other materials. Until the relevant material becomes waste, the department does not have regulatory powers over such substances. Analogous legislation is the Hazardous Substances Act 1973, (Act No. 15 of 1973), which is administered by the Department of Health. However, this is mainly invoked in the area of medical products. Similarly the Department of Agriculture administers the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), but this is invoked only in the agricultural sector. It is proposed to amend the Environment Conservation Act to allow the Minister to make regulations in order to prohibit, control or regulate products that may have a detrimental effect on the environment or human health.

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

In order to promote recycling and waste minimisation in respect of certain waste types such as plastic bags, glass and tyres, amongst others, certain additional regulatory powers need to be allocated to the Minister of Environmental Affairs and Tourism in terms of the Environment Conservation Act in order to effectively deal with the impact

of waste on the environment. The traditional approach to controlling pollution is the “command and control” approach. This relies either on administrative sanctions (e.g. permitting requirements on scheduled emissions) or criminal measures (e.g. fines or imprisonment if such permit conditions are breached) to regulate pollution emissions. The proposed amendment to enable the Minister to require compulsory charging and deposit systems on certain waste types or waste products will complement the existing legal mechanisms by providing for greater efficiency in the Government’s obligation to combat pollution, as contained in section 24 of the Constitution. The Minister intends to use these mechanisms to impose obligatory charging schemes on plastic carrier bags, and a deposit scheme on second-hand and unusable tyres and glass. This may be extended to certain additional waste types in the future to be identified by the Minister.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

There are no organisational and personnel implications with regard to the amendments proposed in clauses 1 and 2 of the Bill. Standard procedures with regard to the transfer of functions will take place between the two mentioned departments with regard to the permitting process of landfill sites.

4. FINANCIAL IMPLICATIONS FOR STATE

The administration of the amended Environment Conservation Act will not place an unduly onerous additional financial burden on the Department of Environment Affairs and Tourism. Two of the three amendments are simply empowering regulatory provisions while the third, the transfer of the management of waste sites from the Minister of Water Affairs and Forestry to the Minister of Environmental Affairs and Tourism, is not creating new administrative infrastructures, but merely rearranging existing ones.

5. DEPARTMENTS/BODIES CONSULTED

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

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

The Department of Environmental Affairs and Tourism and the State Law Advisers are of the opinion that the procedures contemplated in section 76 of the Constitution should be followed since it falls within a functional area listed in Schedule 4 of the Constitution.