



ENVIRONMENTAL AFFAIRS
& DEVELOPMENT PLANNING

Provincial Government of the Western Cape

National Environmental Management: Waste Act (Act 59 of 2008) – what do you need to know

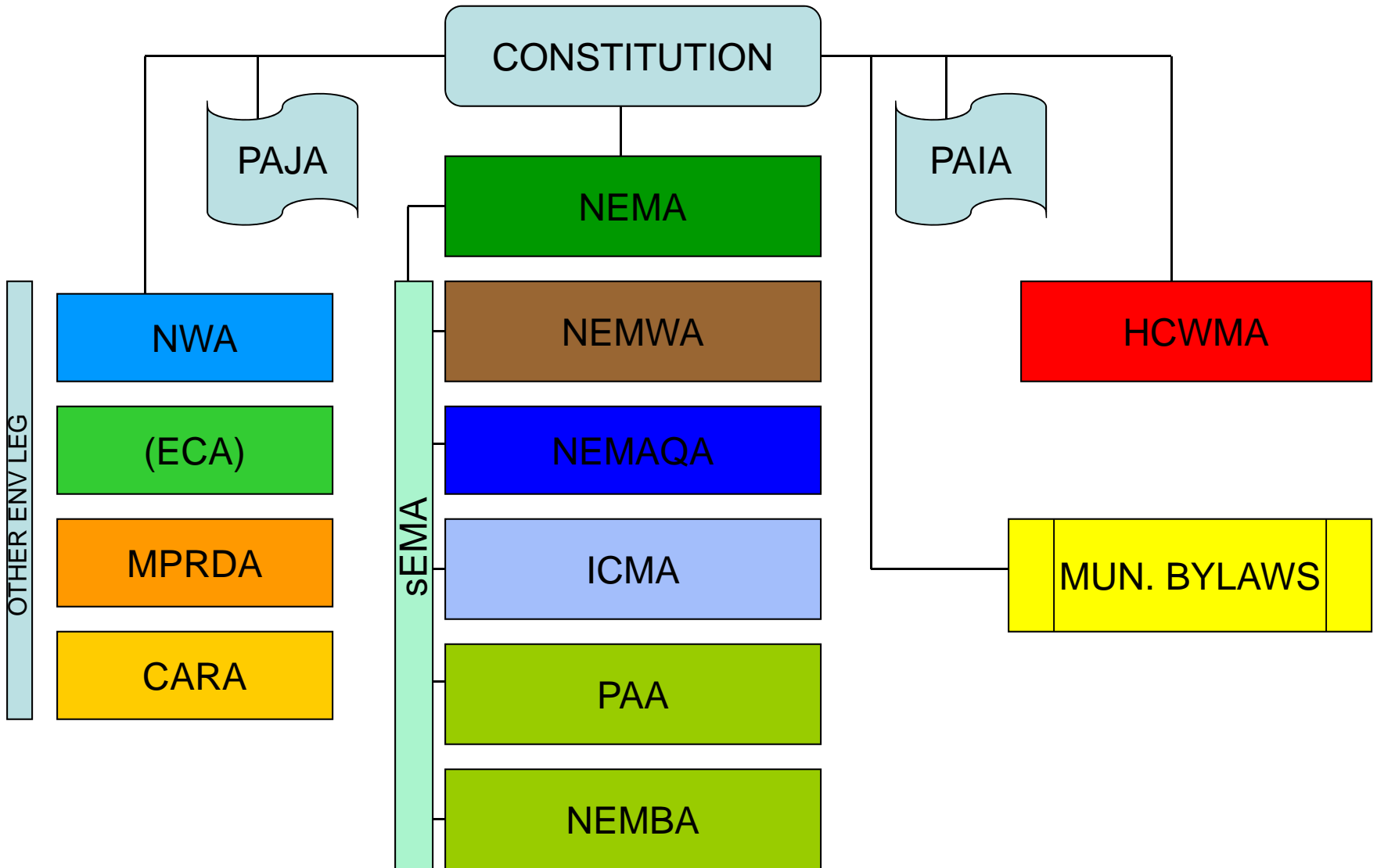
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Eddie Hanekom
Department of Environmental Affairs & Development Planning

Background

- Part of environmental law reform in SA.
- 1st comprehensive act to regulate waste management in a proactive way.
- Framework legislation - basis for the regulation of waste management.
- Waste Act assented to by the President on 6 March 2009 and gazetted 10 March 2009
- Proclamation by National Minister - commencement of Waste Act - 1 July 2009

LEGAL FRAMEWORK



Environmental Management: Waste Act

- Since the enactment of the Waste Act 24 months ago did it have any effect on how waste is managed in South Africa?

Overview

- Definitions
- Objects and application of the Waste Act
- Application of National Environmental
- Management Act
- Institutional and planning matters
- Waste Management Measures
- Licensing of Waste Management Activities
- Waste Information
- Compliance and Enforcement
- Transitional Arrangements

Definitions

- **Clean(er) production:**
 - continuous application of integrated preventative environmental strategies to processes, products and services to increase overall efficiency and to reduce the impact of such processes, procedures and services on health & environment.

Definitions

- Waste minimisation:
 - avoidance of the amount or toxicity of the waste & where waste is generated, the reduction of the amount and toxicity of waste that is disposed of.
- Life cycle assessment (LCA):
 - a process where potential environmental effects or impacts of a product or service throughout the life of the product or service is being evaluated.

Reduction, Re-use, Recover, Recycle

Any person who undertakes an activity involving 4R must ensure that 4R of waste:

- Use less natural resources than disposal
- Less harmful to the environment than disposal.

- Minister (with Minister for Trade and Industry), by notice, may require (s17(2)):
 - 4Rs for products/components manufactured or imported
 - Determine % recycled material in products imported, produced or manufacture.

Definitions

- **commence**

- means the start of any **physical activity**, including **site preparation** or any other activity on the site in **furtherance** of a waste management activity.
- but **does not** include any activity required for **investigation** or **feasibility study purpose** as long as such investigation or feasibility study **does not** constitute a waste management activity.

Definitions

- **Waste**

- means any substance, whether or not that substance can be reduced, re-used, recycled and recovered:
 - that is surplus, unwanted , rejected, discarded, abandoned or disposed of;
 - which the generator has no further use of for the purposes of production;
 - that must be treated or disposed of; or
 - that is identified as a waste by the Minister by notice in the *Gazette*, and includes waste generated by the mining, medical or other sector, but:
 - by-product is not considered waste; and
 - any portion of waste, once re-used, recycled and recovered, ceases to be waste;

Definitions

- **By-product**

- means a **substance** that is produced as part of a process that is **primarily** intended to **produce another substance or product** and that has the **characteristics of an equivalent virgin product or material.**

Definitions

- **general waste**
 - means waste that does not pose an **immediate hazard** or **threat to health** or to the **environment** , and includes —
 - domestic waste;
 - building and demolition waste;
 - business waste: and
 - inert waste.
- **hazardous waste**
 - means any waste that contains **organic** or **inorganic elements** or **compounds** that may, owing to the inherent **physical, chemical** or **toxicological characteristics** of that waste, have a **detrimental** impact on **health** and the **environment**.

Definition of EPR

- **Extended Producer Responsibility Measures**
 - Measures that extend a person's financial or physical responsibility of the product to post consumer stage:
- Includes:
 - waste minimisation programmes
 - fund to promote reduction, re-use and recycling programmes
 - public awareness programmes
 - measures to reduce the potential impact of the product on health and the environment

Obligations on the State

- NEMWA placed obligations and responsibilities on all three spheres of government.
- Government - give effect to the Objects of the Act (Chapter 2)
 - Protect health, well-being and the environment through reasonable measures;
 - Ensure people are aware of impact of waste; and
 - Compliance measures.

General Duty on State (section 3)

- Fulfill section 24 of the Constitution – right to an environment that is not harmful to their health and well-being;
- Ensure that legislative & other measures are used to ensure that environment is conserved & protected for future generations:
- Organs of state **must:**
 - Put in place uniform measures
 - Reduce amount of waste generated;
 - Environmentally sound re-use, recycle and recovery;
 - Safe treatment and disposal.

Application of NEMA (Section 5)

- Waste Act **must** be read with NEMA.
- Interpretation and application to be guided by NEMA principles includes:
 - Sustainability
 - Polluter pays
 - Precautionary
 - Duty of care

APPLICATION OF WASTE ACT (Section 4)

- ✓ All organs of state
- ✗ Radioactive waste (Hazardous Substances Act; NNRA)
- ✗ Mining residue deposits & stockpiles (MPRDA)
- ✗ Explosives (Explosives Act)
- ✗ Animal carcasses (Animal Health Act)

Institutional and Planning Matters (Chapter 3)

- Waste management officers (WMOs):
 - Act creates a specialized system of officials who are charged with the broad responsibility of coordinating waste management matters at each level of government;
 - National, provincial and local government – annual Management Khoro; and
 - Address historical fragmentation of waste management functions within government.

Specific areas of cooperative governance

- Waste management licensing
- Integrated waste management planning
- Information management & reporting
- Compliance & enforcement
- Declaration of priority waste
- Waste minimisation & EPR
- Land remediation
- Regulations

Roles and responsibilities

- Broad categories of role-players, viz. the state, private sector and civil society.
- 3 distinct roles of the state:
 - **Policy making** functions, includes norms & standard & target setting;

Roles & responsibilities

- **Regulation** – drafting regulation, listing & licensing of waste management activities, & declaring priority waste; and
- **Waste service delivery** – collection, transport and disposal of domestic waste.

Division of responsibilities

- **Municipal**

- Provision of waste management services: waste minimisation, waste removal, waste storage & waste disposal (Schedule 5b of Constitution);
- Obligated to designate a WMO from their administration to coordinate matters pertaining to waste management;
- Must submit Council approved IWMP to the MEC for approval; and
- IWMP must be integrated into IDP as sector plan;

Municipal roles & responsibilities

- Municipal annual performance report must include information on the implementation of IWMP;
- Provide for implementation of waste minimisation, re-use, recycling and recovery targets and initiatives (per sect. 12(b)(iv) - IWMP); also compliance to General Duty (sect. 16(1)(a) & (b) – w.r.t. waste minimisation;
- Set local waste service standards – e.g. waste separation, waste collection (esp. private sector), etc.

Provincial government

- Obligated to promote & implement NWMS and national norms and standards;
- Designate WMO to coordinate waste matters;
- Prepare an IWMP and an annual performance report on its implementation – both submitted to Minister for approval;
- Provincial environmental departments is licensing authority for general waste activities.

Provinces roles & responsibilities

- Provinces discretionary powers, some is exercised in consultation with the Minister:
 - Setting of provincial norms & stds
 - Declaring a priority waste
 - Listing a waste management activity
 - Registering waste transporters
 - Requesting preparation of industry waste management plans
 - Identification of contaminated land
 - Establishing a provincial waste information system

Regulations (Sections 69 – 71)

- Minister and MEC - competence to make regulations on far-reaching issues – requires consultation between Ministers of Trade and Industry, Finance and Cooperative Governance & Traditional Affairs (COGTA).
- Regulations may provide for penalties for convictions of 15 years imprisonment and/or fines.

WASTE MANAGEMENT MEASURES

Chap 4- General duty in respect of waste management

- **Holder of waste:**
 - means any person who imports, generates, stores, accumulates , transports, processes, treats, or exports waste or disposes of waste.
- **Section 16 - A holder of waste must:**
 - Avoid generation of waste and where such generation cannot be avoided, to minimise the toxicity and amounts of waste that are generated;
 - Reduce, re-use, recycle and recover waste;
 - Where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner;
 - 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; and
 - Prevent any employee or any person under his or her supervision from contravening this Act.

NEM: Waste Act came into effect on 1 July 2009

- Listed waste management activities
S19(1) The Minister may by notice in the *Gazette* publish a list of **waste management activities** that have, or are likely to have, a detrimental effect on the environment.
- Consequences of listing activities
S 20. No person may commence, undertake or conduct a waste management activity, except in accordance with—
 - (a) the requirements or **standards** determined in terms of s19(3) for that activity; or
 - (b) a **waste management license** issued in respect of that activity, if a license is required.

Listing of Waste Management Activities

- On 3 July 2009 the Minister published a list of waste management activities into the Waste Act which from 3 of July requires a waste management licence (GN 718).
- A person who wished to commence, undertake or conduct:
 - a **Cat A** activity, must conduct a **Basic Assessment** process,
 - a **Cat B** activity, must conduct a **Scoping-Environmental Impact Reporting** process.

Listing of Waste Management Activities

- Procedure – NEMA EIA Regulations – environmental impact assessment process to be followed.
- Public participation – 2 newspapers circulating in area.
- Fit & proper person.
- To declare financial arrangements:
 - Capital equipment;
 - Operational cost;
 - Monitoring; and
 - Closure & rehabilitation
- Concurrency between Dept Water Affairs & environmental authorities – waste disposal facilities.
- Licensing authority:
 - General waste – Prov Env Depts
 - Hazardous waste - DEA

LICENSING OF WASTE MANAGEMENT ACTIVITIES

- Integrated WML's – could trigger other legislation (NEMA, NEM:AQA, Nat Water Act & NEM:ICMA)
- Applications forms:
 - Western Cape – general waste (<http://www.capegateway.gov.za/eadp>)
 - Dept Environmental Affairs (DEA) – hazardous waste (www.deat.gov.za).

CONTAMINATED LAND

- For the 1st contaminated land is being dealt with comprehensively in SA legislation.
- Previously being dealt with under Sect 28 of NEMA (Duty of care).
- This provision of Act is **not enacted yet**.
- Rehabilitation of land is listed activity.

CONTAMINATED LAND – part 8 (Chap 4)

- DEA currently in process developing norms and standards.
 - Soil screening values for 3 land uses;
 - Residential;
 - Informal residential; and
 - Commercial/industry.
- Standards to be gazetted before soon.

Transfer of remediation sites

- No person may **transfer** contaminated land without informing the person to whom that land is to be transferred that the land is contaminated.
- In the case of a **remediation site**, without **notifying** the Minister or MEC and complying with any conditions that are specified by the Minister or MEC, as the case may be.

COMPLAINT & ENFORCEMENT ACTIONS

- Enforcement done by Environmental Management Inspectors (EMI) (sect 31 NEMA).
- Compliance notices (sect 31 NEMA) or directives (sect 28 NEMA).
- Waste impact reports:
 - EMI may require a person to submit a waste impact report if contravention with the Act is suspected or failed to comply with the Act, or conditions of a waste management license and it may have a detrimental effect on health or the environment.
- Criminal prosecutions – schedule 1 offence.
- Penalties:
 - R 5,000,000 and/or 5 years
 - R 10,000,000 and/or 10 years

National Waste Management Strategy

- Implementation vehicle of Waste Act;
- Costing of implementation underway;
- **8 main goals:**
 - Promote waste minimisation, re-use, recycling and recovery of waste;
 - Ensure effective and efficient delivery of waste management services;

National Waste Management Strategy

- Grow the contribution of waste sector to green economy;
- Ensure that the public are aware of impact of waste on their health, well-being and the environment;
- Achieve integrated waste management planning;

National Waste Management Strategy

- Ensure sound budgeting and financial management for waste management services;
- Provide measures to remediate contaminated land;
- Established effective compliance with enforcement of the Waste Act.

New draft regulations

- DRAFT NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES GG 34413 – 60 commenting period.
- DRAFT NATIONAL STANDARD FOR THE DISPOSAL OF WASTE TO LANDFILL GG 34414.
- DRAFT STANDARD FOR ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL GG 34415.

New draft regulations

- DRAFT NATIONAL STANDARDS FOR THE EXTRACTION, FLARING OR RECOVERY OF LANDFILL GAS IN SA GG 34416.
- DRAFT NORMS AND STANDARDS FOR THE STORAGE OF WASTE GG 34418.
- DRAFT WASTE CLASSIFICATION AND MANAGMENT REGULATIONS GG 34417.

New draft regulations

- Remediation of contaminated land – to published in August 2011.

New draft regulations

- Amendment to the WMA List GG 33880
 - Taking out sewage treatment works;
 - Increasing thresholds for storage and treatment of hazardous waste;
 - Ensuring that definitions in are aligned with definitions in EIA Regs.

Progress?

- Improved integrated waste management planning:
 - Prov. IWMP
 - 30 municipal IWMP's
 - Industry waste management plans;
- IPWIS – registration and reporting of waste volumes;
- Bigger emphasis on waste minimisation.

Progress?

- Improvement in time to issue waste management authorisations;
 - More control over waste stream;
 - Opportunities for consultants in waste management industry;
- Improved law monitoring compliance and enforcement;
- Setting of targets to improve waste management and service delivery.



- Have the Waste effected you?

- Eddie.Hanekom@pgwc.gov.za