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**COMMENT BY THE SOUTH AFRICAN
BREWERIES LIMITED –
NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE BILL, (B39 OF 2007)**

Prepared for
Parliament Monitoring Group, Portfolio Committee
21 St Johns Street
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Attention: Ms Albertina Kakaza, Committee Secretary

Per Email: akakaza@parliament.gov.za

1. INTRODUCTION

- 1.1 The South African Breweries Limited ("**SAB**") would like to thank the Portfolio Committee for the opportunity to submit comments on the National Environmental Management: Waste Bill, (B39 of 2007) ("**Waste Bill**").
- 1.2 SAB supports the Department of Environmental Affairs and Tourism's ("**DEAT**" or "**the department**") efforts to develop contemporary waste management standards.
- 1.3 As a result, the SAB submitted comments to the department with respect to the earlier version of the Bill, gazetted on 12 January 2007, Comment by the South African Breweries Limited – National Environmental Management: Waste Management Bill (GN1832, GG29497 of 12 January 2007) submitted to the department on 13 April 2007.
- 1.4 We are grateful that several of the concerns and recommendations made in our earlier comment to the department, appear to have been heeded, and have been incorporated into the current version of the Waste Bill.
- 1.5 Nevertheless, there are several aspects of the Waste Bill which we believe require further consideration, and for this reason, we wish to reiterate several of our concerns raised in our earlier comment, as well as highlight other aspects of the Bill which we believe may require further consideration.
- 1.6 Our comments which follow below focus both on issues of concern from SAB's own operational perspective, as well as issues which we believe are public interest concerns.

2. SECTION 1: DEFINITIONS

2.1 "Waste"

2.1.1 Whilst we welcome the amendments made in the current version of the Waste Bill, to the definition of this term, in particular the department's efforts to distinguish between waste and raw material/products, we draw to your attention that the proposal to declare that reused, recycled and recovered waste ceases to be waste, may conflict with foreign and international law. We are advised that the Basel Convention, to which South Africa is a signatory, continues to classify reused, recycled and recovered waste as "waste".

2.2 "Acceptable Exposure" and "Contaminated"

2.2.1 Definitions for these terms in the Waste Bill are welcomed. It is unfortunate that neither definition indicates the standards which will apply. Consequently, both definitions are vague, and will leave those involved with waste management, unclear on when the exposure will be acceptable, and similarly when land will have been contaminated.

2.2.2 Moreover, the definition of "contaminated" requires refinement, in our view, to indicate that it is only where substances occur at levels of concentrations which could have an adverse impact on health or the environment, that contamination exists. It would seem unnecessary to regulate substances which occur at concentrations above that which is "normal", but which present no risk of harm to either the soil, water or to public health.

2.3 "Storage"

2.3.1 There are many instances where the generators of waste will need to store the material for a period of time. With this in mind, and whilst we have no fundamental concern with the current definition of the term "storage", we are concerned that it may result in a "one size fits all" scenario. We would prefer to see "storage" which requires compliance under the legislation to be separated from storage which is for a short duration and involves no hazardous waste material, and therefore requires either no compliance with the Act, or compliance via less onerous standards.

2.4 Other terms requiring definition

2.4.1 There are certain other terms or words utilised in the Waste Bill, which we believe require definition, namely:

- "litter";
- "product";
- "rehabilitation" and/or "remediation";
- "raw material";
- "waste handling"; and
- "norms".

3. CHAPTER 2 & 3: NATIONAL WASTE MANAGEMENT STRATEGY, NORMS AND STANDARDS; AND INSTITUTIONAL AND PLANNING MATTERS

3.1 As a general comment, we are concerned that the Waste Bill has followed contemporary South African environmental legislation, in creating, in our view, unnecessary layers and complexity, through the administrative planning and management tools stipulated. These layout requirements

are likely to detract from the practical enforceability of the Waste Bill, for some time after its promulgation. Support for our concern may be found in the length of time it has taken, (and will still take), to introduce all of the provisions and standards required under the National Environmental Management: Air Quality Act 39 of 2004 and the National Environmental Management: Biodiversity Act 10 of 2004.

In following this trend, the Waste Bill stipulates that in order to properly implement the Bill, it will be necessary to still develop a national waste management strategy; national, provincial and local norms and standards; and for a number of organs of state to prepare integrated waste management plans; aside from the need to develop and implement a number of regulations.

- 3.2 It is unclear to us why the Waste Bill requires a national waste management strategy to be developed, when such a strategy has in fact already been developed, at significant expense and delay. The National Waste Management Strategy (National Waste Management Strategies and Action Plans for South Africa, DEAT, et al, 1999), has, as we understand it, formulated a strategy envisaged in Chapter 2 of the Waste Bill. Whilst we concede that it may be necessary to update this strategy, we fail to understand why a further delay of two years after the promulgation of the Waste Bill will occur, before the strategy, which will become an important cog in the implementation of the Waste Bill, is required.
- 3.3 We also fail to understand why the requirement for integrated waste management plans through the Waste Bill is necessary, as the development of such plans is already regulated under Chapter 3 of the National Environmental Management Act 107 of 1998.
- 3.4 With respect to national, provincial and local standards, whilst we accept the need for this issue to be revisited in order to ensure that appropriate contemporary standards are adopted, it is unfortunate that the Waste Bill suggests reinventing a wheel that has for some time existed. The

Department of Water Affairs and Forestry's Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (Third Edition, 2005), which has continued to be utilised by the DEAT since it took charge of the administration of solid waste management, has in our view already identified appropriate hazardous waste categories, and in many respects set standards associated with waste classification, handling, storage, transport, treatment and final disposal. It is therefore unfortunate that the Waste Bill has not rather implemented many of the norms and standards already known, rather than forcing the process to commence afresh once the Bill is promulgated, thereby further delaying its practical implementation.

4. CHAPTER 4, PART 2: GENERAL DUTY

- 4.1 SAB has no concern with the content of this provision.
- 4.2 Our concern lies with the fact that the Bill will almost certainly be implemented in a piecemeal fashion. Section 16 is likely to be one of those provisions which will be immediately implemented once the Bill is promulgated, given its general nature.
- 4.3 However, standards for issues such as waste minimisation, reduction, reuse, recycling, recovery and disposal, are unlikely to be set immediately, and will require the development of regulations, a waste management strategy, and national norms and standards.
- 4.4 On this basis, it will become difficult for waste generators to know when they have complied with the general waste management duty set out in Section 16.
- 4.5 This concern is linked to our earlier concern with the unduly complex and layered administrative requirements of the Bill. We accordingly recommend that the general duty either not be implemented until such

time as appropriate regulations, the National Waste Management Strategy and norms and standards have been set, alternatively that the Bill be amended to incorporate the necessary standards for issues such as waste minimisation, reduction, recycling, reuse and recovery, rather than requiring the development of such standards through the aforementioned administrative instruments.

5. SECTION 24: TRANSPORTATION OF WASTE

5.1 There is no apparent link or coordination between the obligations for persons transporting waste under the Waste Bill, and those provisions contained in the National Road Traffic Act 93 of 1996 for the transportation of hazardous substances, (including Waste).

5.2 In SAB's view, this may result in duplication and contradictions between the two laws, and we recommend that the Waste Bill be amended to reflect the necessary level of cooperative governance to ensure that this will not occur.

6. SECTION 42: RECOGNITION PROGRAMME

6.1 The Waste Bill, having taken the positive step to include a provision for recognising significant achievements in the area of waste, then fails to provide for positive fiscal incentives as part of such programme, to encourage and reward those who take appropriate steps to significantly reduce the impact of their wastes on the environment.

6.2 In our view, this is a serious unfortunate omission of the Waste Bill. Whilst the setting of waste management standards through the Bill will require all to comply, the attainment of significant reductions in waste generation, as well as the taking of measures to improve waste recovery, reuse and recycling, will require significant expenditure on the part of industry. In our view, there is no better leverage for ensuring compliance,

than the creation of fiscal incentives which will allow industry to see the benefits in taking measures to reduce waste volumes and to reuse and recycle waste streams.

6.3 To date, where government has introduced fiscal measures to ensure compliance, most of these have been from a negative perspective, in the form of taxes and levies. Our recommendation is that government shifts its focus to positive fiscal incentives for appropriate levels of waste management compliance. Through careful thought, any concerns which government may have that positive incentives could detract from the fiscus, could be mitigated or removed altogether. For example, where volumes of waste are reduced, this is likely to reduce the burden on government having to provide waste management facilities at the cost of millions of rands to establish and manage, or through the reduction of the significant expenditure required by local government to collect, store and dispose of waste.

6.4 Although focusing mainly on negative fiscal incentives, some important work is currently being undertaken by the Department of Finance, Treasury Section, in considering financial measures for the management of an array of environmental issues. Consequently, it should not be difficult for DEAT to convince the Department of Finance, given that the latter's attention is already focused on fiscal measures for environmental management, to consider the benefits of creating positive incentives for waste management.

6.5 There are a number of positive fiscal incentives in various foreign jurisdictions. We recommend that the department reviews these provisions, and adopts or adapts them for South African waste management. Examples of positive fiscal incentives could include:

- reduction in taxation for the reduction in waste volumes;
- reduction in waste charge rates where volumes of waste generated can be kept below specified thresholds or hazard levels;
- the adoption of clean technology to treat wastes; and

- the introduction of measures to package and transport products, in such a way as to reduce packaging required.

7. **SECTION 65: COMPLIANCE POWERS OF MINISTER OF WATER AFFAIRS AND FORESTRY**

- 7.1 We believe we understand why the latest version of the Waste Bill has included a provision which makes reference to the powers conferred on the Minister of Water Affairs and Forestry under the provisions of the National Water Act 36 of 1998. We assume this is as a result of the potential impacts of waste management activities on surface and groundwater quality, which this Minister is charged with administering.
- 7.2 However, it is unclear why the Waste Bill deems it necessary to specify that the Minister of Water Affairs and Forestry may exercise powers conferred on him or her under the National Waste Management Act, in respect of any person who contravenes or fails to comply with any condition of a waste management licence or a remediation order.
- 7.3 In our view, such a provision is superfluous, given that the powers of the Minister of Water Affairs and Forestry under the National Water Act exist automatically, and can be enforced by that Minister wherever any activity, including a waste activity, has an adverse impact on water resources.
- 7.4 Whilst SAB is in favour of the Waste Bill applying a cooperative governance approach, the contents of Section 65 may be misleading or confusing. DEAT's efforts to achieve cooperative governance, for which they are to be congratulated, are probably adequately served through the contents of Section 44, alternatively could be achieved through a general cooperative governance provision introduced under Chapter 8 of the Waste Bill.

8. SECTION 67: OFFENCES

- 8.1 Whilst SAB supports compliance with all regulatory requirements, it is suggested that a balance is needed between reporting non-compliance, and incriminating one's self in the process.
- 8.2 Section 67(i) makes it an offence for a person to fail to submit a waste impact report required in terms of Section 66(1) of (2) of the Waste Bill.
- 8.3 In the first instance, we question the constitutionality of this provision, with respect to the right to remain silent.
- 8.4 Alternatively, we recommend that consideration be given to introducing a provision under the Waste Bill which provides that any information contained in a waste impact report may not be used against the entity disclosing it, in any subsequent criminal proceeding. In our view, such a provision will ensure a far higher level of cooperation, and thereby improve levels of waste management throughout the country.

SIGNED AND DATED ON THIS 19 DAY OF NOVEMBER 2007

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SOUTH AFRICAN BREWERIES LIMITED