



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

SELECT COMMITTEE ON LAND AND ENVIRONMENTAL AFFAIRS

BRIEFING ON THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE AMENDMENT BILL [B 32B—2013]

1. PURPOSE

The purpose of this document is to provide the Select Committee with an overview of the amendments contained in the National Environmental Management: Waste Amendment Bill [B32B—2013] (NEMWA Bill).

2. BACKGROUND

- 2.1. The NEMWA Bill amends the National Environmental Management: Waste Act, 2008 (NEMWA). The NEMWA is one of the specific environmental management Acts that falls under the umbrella Act, the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA). The NEMWA regulates 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.
- 2.2. South African waste legislation is influenced and informed by the key elements of the waste hierarchy, which dictates the overall strategic approach for waste management which is based on the principles of reduce, reuse, recycle and recovery of waste. The management of waste through the hierarchal approach is a recognized international model for the prioritization of waste management options. It offers a holistic approach to the management of waste materials, and provides a systematic method for waste management during the waste lifecycle addressing in turn waste avoidance, reduction, re-use, recycling, recovery, treatment, and safe disposal as a last resort. This aims to eventually reduce the reliance of South Africa's waste disposal into landfills where currently up to 90% of our waste ends up in.
- 2.3. The adoption of the waste hierarchy has been in the policy since 2009, but the management of waste has not necessarily followed the hierarchical approach. The proposed amendments

seeks to further reinforce this approach by providing more regularity certainty to industry and spheres of government and more opportunities for the utilisation and beneficiation of various waste streams through incentives and funding through the national fiscus.

- 2.4. There is therefore a need to provide for an institutional mechanism for the implementation of the waste hierarchy of reuse, recycling and recovering and management of waste management plans and waste streams, which has been identified as a regulatory gap. There is also a need to address the funding of the integrated waste management plans and industry waste management plans and to provide for the alignment of existing integrated plans with the new financial provisions.
- 2.5. The intention of the NEMWA Bill is to address the afore-mentioned challenges, and the proposed amendments are discussed below.

3. DISCUSSION

3.1. Clause 1 amends section 1 by deleting certain definitions, such as “building and demolition waste”, “business waste”, “domestic waste”, “general waste”, “hazardous waste”, “inert waste”, “residue deposits” and “residue stockpiles” and insert them in Schedule 3. The definition of “by-product” that is currently linked to the definition of waste, and creates interpretation difficulties, has now been deleted. This has now been resolved by providing a more comprehensive definition of waste. The Bill removes the ambiguity and provides for a comprehensive list of wastes as a new Schedule 3. The Minister will be able to define new wastes or exclude wastes in a prescribed manner. It provides for an enabling mechanism for the re-use, recycling and recovery of waste streams in order to promote the recycling economy within a legal framework for the end of waste.

- 3.2. Clause 2 amends section 4 of the NEMWA to include the disposal of animal carcasses within the scope of the NEMWA.
- 3.3. Clauses 3, 4 and 5 amend sections 11, 12 and 13 of the NEMWA to clarify that the Department is no longer required to compile the integrated waste management plans, because in terms of section 6 of the NEMWA the Department is required to compile a national waste management strategy which sets out in detail how the objectives of the NEMWA must be achieved. Therefore, the amendments are intended to avoid duplication. The amendments further clarify that municipalities are only required to submit their integrated waste management plans to the

MECs responsible for waste management only for endorsement and not for approval. The municipalities' integrated waste management plans must be approved in terms of the process set out in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as part of their integrated development plans. These amendments are intended for the alignment of processes and to also avoid duplication.

- 3.4. Clause 6 inserts a new Chapter 3A in the NEMWA empowering the Minister responsible for environmental affairs to, in concurrence of the Minister of Finance, publish a pricing strategy to achieve the objectives of the NEMWA in relation to waste management or any waste stream, within three months of the commencement of the NEMWA Bill. The pricing strategy is to contain the basis and a guiding methodology or methodologies for setting waste management charges, which will be used for the funding of the implementation of industry waste management plans for those activities that generate specific waste streams; the re-use, recycling or recovery of waste in previously disadvantaged communities; the identification, further development and promotion of best practices in the minimisation, re-use, recycling and recovery of waste; the implementation of approved guidelines, norms and standards for the minimisation, re-use, recycling and recovery of waste; the monitoring of the implementation and impact of industry waste management plans; the creation and the monitoring of the impacts of incentives and disincentives for the minimisation, re-use, recycling and recovery of waste; or the management of the disbursements of incentives for the minimisation, re-use, recycling and recovery of waste.
- 3.5. Clause 7 amends section 28 of the NEMA to ensure that when the Minister calls for industry he or she consults with the MECs affected by the waste in question or where the waste activity is conducted. The MEC has the power to call for the development of industry waste management plans in instances where the waste management activity only affects that province, but must do so in concurrence with the Minister. Industry waste management plans must be developed in accordance with the pricing strategy contemplated in the new Chapter 3A.
- 3.6. Clauses 8, 9, 10, 11 and 12 amend sections 29, 30, 32, 33 and 34 of the NEMWA to provide for consequential amendments. However clause 10(c) inserts a new subsection (5A) that the Minister and the MEC must follow the consultation processes as set out in sections 72 and 73, as is appropriate under the circumstances before considering the industry waste management plan for approval.

- 3.7. Clause 13 inserts a new Part 7A in section 34 which establishes within the Department of Environmental Affairs an implementation Bureau dealing with waste management to be known as the "Waste Management Bureau". The Bureau will have to exercise its powers and perform its functions within the framework of a policy published by the Minister. The Minister responsible for environmental affairs is obliged to monitor the exercising of powers and performance of functions of the Bureau; sets service level standards and norms for the Bureau for the execution of its powers and functions; can issue directives to the Bureau in the case of non-compliance with the policy determined to ensure the effective and efficient functioning of the Bureau and for the achievement of the objectives of this Act.
- 3.8. The objects of the Bureau are to, amongst others, to promote and facilitate the minimisation, re-use, recycling and recovery of waste; to manage the disbursement of incentives and funds derived from waste management charges for the minimisation, reuse, recycling, recovery, transport, storage, treatment and disposal of waste and the implementation of industry waste management plans; to monitor implementation of industry waste management plans and the impact of incentives and disincentives; to progressively build capacity within the Bureau to provide specialist support for the development and implementation of municipal waste management plans and capacity building programmes; and to support and advise on the development of waste management plans, tools, instruments, processes, systems, norms, standards and municipal waste management plans and capacity building programmes.
- 3.9. The Bureau has to comply with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999). In the event of absence of a functional Bureau or a Chief Executive Officer, the powers and duties of the Bureau revert to the Director-General of the Department of Environmental Affairs, who, in such a case, must exercise those powers and perform those duties until the Bureau is functional or a Chief Executive Officer is appointed.
- 3.10. Clause 14 inserts a new section 69A empowering the Minister to develop regulations on matters pertaining to the Waste Management Bureau.
- 3.11. Clause 15 repeals section 78 of the NEMWA (appeals). For purposes of streamlining appeals will be lodged and processed in terms of section 43 of NEMA.
- 3.12. Clause 16 amends the Table of Contents of the NEMWA and also provides for transitional provisions in respect of any existing industry waste management plan. The clause provides for

the review and alignment of such plans developed in accordance with the pricing strategy contemplated in the new Chapter 3A and the Act referred to in section 3A.

- 3.13. Clause 18 inserts a new Schedule 3 in the NEMWA providing a comprehensive list of waste as a consequence of the amendment of the definition of "waste".
- 3.14. The NEMWA Bill will come into operation on the date of publication by the President in the *Gazette* in terms of section 81 of the Constitution.

