**National Assembly**

 **Question No 144**

**Mr S Tambo (EFF) to ask the Minister of Transport:**

What (a) regulatory and (b) consequence management measures has his department put in place for companies such as a certain company (name furnished), whose alleged negligence resulted in the devastating gas tanker explosion in Ekhuruleni? NW149E

**REPLY**

 **(a)** The transportation of dangerous goods is regulated under Chapter VIII of the National Road Traffic Act, 1996 (“the Act”) and Chapter VIII of the National Road Traffic Regulations, 2000 in order to protect everyone directly involved (such as consignors or carriers), or those who might become involved (such as members of the emergency services and public). Suffice it to state that the Dangerous Goods Regulations, incorporate the SA National Standards (SANS) compiled by the SA Bureau of Standards, oblige transport operators involved in the carriage of dangerous goods, to ensure that they know what they have to do to minimise the risk of incidents as well as guarantee an effective response.

**(b)** In addition to the Chapters referred to above, section 49 outlines the duties of the operator” whereas section 50 provides for “power of MEC in respect of motor vehicles, drivers and activities of operators. It is the latter section which directly speaks to and will assist in my reply. The Act and its Regulations (incorporating SABS Standards) create several offences under the Dangerous Goods Chapter.

1. In terms of section 49 (a) read together with section (89)2) the operator of a dangerous goods motor vehicle must (and commits an offence if he fails to) notify the particular registering authority within seven days of any change in the circumstances in relation to his registration as the operator of such vehicle.
2. In terms of section 49 (a) read together with section 89(2) the operator must also return the operator card in respect of that motor vehicle to that registering authority, and contravenes the Act if he fails to do so.
3. In terms of section 49 (b) read together with section 89(2) the operator must also:
	* keep safe and protect from theft an operator card issued to him;
	* notify the nearest police station within 24 hours, and the registering authority where he is ordinarily resident within seven days, after becoming aware.

1. In terms of section 32 read together with sections 49-(c) and 89(2) if the operator does not exercise proper control over the driver of such dangerous goods motor vehicle, particularly to ensure compliance with all the relevant provisions of the Act, including regarding:
	* the professional driving permit; and
	* the loading of such vehicle, he commits an offence.
2. In terms of section 49 (d) read together with section 89 (2) offences are created if the operator fails to ensure that such dangerous goods motor vehicle does not comply with fitness requirements – the roadworthy certification, basically.
3. In terms of section 49 (f) read together with section 89(2) the operator commits an offence if he fails to ensure that all the requirements for the conveyance of dangerous goods and substances are not complied with.
4. In terms of sections 49 (f) and (g) read together with section 89(2), it is a criminal offence if the operator does not conduct his operations with due care as to the safety of the public, and fails to take all reasonable measures to ensure that such motor vehicle is operated on a public road in compliance with the provisions for the loading and transportation of goods as prescribed by or under the Act.

In addition to the above offences section 50 of the Act prescribe certain powers to be exercised by MEC of respective Provinces in matters pertaining to the transportation and conveyance of dangerous goods. For ease of reference, the aforesaid section provides as follows:

***“Power of MEC in respect of motor vehicles, drivers and activities of operators***

1. ***Power of chief executive officer in respect of motor vehicles, drivers and activities of operators***

* 1. *The chief executive officer may, on account of any evidence regarding the state of fitness of a motor vehicle in respect of which an operator is registered, produced to him or her in accordance with subsection (4), by written notice-*

* + 1. *notify such operator that such motor vehicle is suspected of being unroadworthy and that the operator should forthwith take adequate steps to ensure its continued roadworthiness in accordance with Chapter V;*

* + 1. *require from such operator to indicate in writing what precautions he or she has taken to ensure the continued roadworthiness of such motor vehicle in accordance with Chapter V;*

* + 1. *direct such operator to produce such motor vehicle for inspection, examination or testing at a time and place specified in such notice; and*

* + 1. *suspend the operator card issued in respect of such motor vehicle, if such motor vehicle has been examined or tested under paragraph (c) and found to be unroadworthy in terms of Chapter V, for such period as such motor vehicle is so unroadworthy.*

* 1. *The chief executive officer may, on account of the record of a driver of a motor vehicle in respect of which an operator is registered, by written notice-*

* + 1. *inform such operator that it is suspected that he or she does not exercise proper control over the driver under his or her authority as required by section 49;*

* + 1. *require such operator to indicate in writing what precautions he or she has taken in order to ensure proper control over drivers under his or her authority;*

* + 1. *require such operator to produce for examination the records regarding drivers which an operator is required to keep in terms of this Act; and*

* + 1. *direct that the driver concerned be retested in terms of section 25.*

* 1. *The chief executive officer may, if the record of an operator indicates that such operator does not comply with the provisions of this Act, by written notice-*

* + 1. *direct such operator to carry out his or her duties in terms of section 49 properly;*

* + 1. *appoint a person whom he or she deems fit, to investigate the activities or specific activities of such operator and direct the person so appointed to make a written recommendation to him or her regarding what measures should be taken in respect of such operator;*

* + 1. *direct such operator to appear before him or her or before any other person appointed by him or her, in order to furnish reasons for his or her failure to carry out his or her duties in terms of section 49; and*

* + 1. *notify such operator-*

* + - 1. *that an operator card shall only be issued to him or her on such conditions as the chief executive officer may deem fit;*

* + - 1. *that no further operator card shall be issued to him or her for such period as the chief executive officer may specify in the notice; or*

* + - 1. *that the operator card or cards relating to such motor vehicle or vehicles as the chief executive officer may determine in respect of which he or she is registered as the operator is or are suspended until the chief executive officer is satisfied that the grounds for the suspension have lapsed:*

*Provided that-*

*(aa) the period of any suspension under subparagraph (iii) shall not exceed*

*12 months;*

*any decision by the chief executive officer under this paragraph shall only be taken on the basis of a recommendation by a person appointed under paragraph (b); and*

*the chief executive officer shall, within 21 days after the date of the notice, in writing furnish such operator with the reasons for his or her decision.*

* 1. *The chief executive officer may, in the exercise of his or her powers under this section-*

* + 1. *require any operator, subject to any lawful objection, to make discovery of documents by way of affidavit or by answering interrogatories on oath and to produce such documents for inspection;*

* + 1. *require any operator to allow inspection of any records and documents required to be kept by the operator in terms of this Act;*

* + 1. *appoint a commission to take the evidence of any person in the Republic or in a prescribed territory or in a foreign state and to forward such evidence to him or her in the same manner as if the commission were a commissioner appointed by a court; and*

* + 1. *at any time require that an inquiry be instituted into the operational activities of an operator by a person appointed by him or her for that purpose and, if such operator is a company, also into those of any other company in a group of companies to which the operator belongs or of which the operator is the controlling company”.*

In view of the above, non-compliance with the Act will lead to criminal prosecution of the operator as the case may be and, if found guilty, a fine or jail sentence. Some of the penalties for non-compliance with the Act include–

• court orders for suspension or cancellation of a license or permit;

 • disqualification of a person from obtaining a license or permit;

• cancellation of a license or/and permit; and

• fines for non-compliance, depending on the offence