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# OFFICE OF THE SECRETARY



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## NEGOTIATING MANDATE

### NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE BILL [B39b-2007]

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The Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) deliberated on the National Environmental Management: Waste Bill [B39b-2007] (the Bill).

After deliberation, the Committee supports the principles underlying the Bill, taking into account the comments and the observations of the Committee as contained in the attached report

The permanent delegate representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and a mandate to negotiate in favour of the Bill.

**HON. PE PASHA**  
**CHAIRPERSON: PORTFOLIO**  
**COMMITTEE ON AGRICULTURE**  
**AND LAND ADMINISTRATION;**  
**ECONOMIC DEVELOPMENT AND PLANNING**

09/06/2008  
**DATE**

0136566178

**REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE  
AND LAND ADMINISTRATION; ECONOMIC DEVELOPMENT AND  
PLANNING ON THE NATIONAL ENVIRONMENTAL MANAGEMENT:  
WASTE BILL [B39B-2007]**

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### **1. Introduction**

The National Environmental Management: Waste Bill [B39B - 2007] (the Bill) was referred to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) for consideration and with the responsibility to report back its recommendations to the House.

### **2. Background**

In terms of Section 24 of the Constitution, every person in South Africa has the right to an environment that is not harmful to their health or well being; as well as the right to have the environment protected through reasonable legislative and other measures.

In order to deal with the large and complex challenges pertaining to waste management in the country in a more focussed way, the Department of Environmental Affairs and Tourism (DEAT) began to develop the National Environmental Management: Waste Bill in 2005 under the National Environmental Management Act (NEMA Act, 1998).

The results of improper waste management impacts negatively on health and the environment, which are unfortunately borne by poor communities.

### **3. Objectives of the bill**

The objective of the Bill is to provide a basis for the regulation of different types of waste management in the country in such a way that the environmental aspects thereof are optimally managed as well as any other matters connected therewith. The Bill seeks to:

- Reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation

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**Report of the Portfolio Committee on Agriculture and Land Administration;  
Economic Development and Planning on the National Environmental  
Management: Waste Bill [B39B-2007]**

0136566178

2

- Secure ecologically sustainable development;
- Provide for institutional arrangements and planning matters;
- Provide for national norms and standards for regulating the management of waste by all spheres of government;
- Provide for specific waste management activities;
- Provide for the remediation of contaminated land;
- Provide for the national waste information system;
- Provide for compliance and enforcement; and
- Provide for matters connected therewith.

#### **4. Method of work**

The Speaker referred the Bill to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning for consideration. Consequently the Committee was briefed by the permanent delegate representing the Province of Mpumalanga in the NCOP, Hon. A Watson, on 16 May 2008. The Committee met again on 30 May 2007 to consider the report and agree on the mandate that should be submitted to the NCOP.

In attendance of the briefings were Officials from the provincial Department of Agriculture and Land Administration (DALA) and the National Department of Environmental Affairs and Tourism (DEAT) including the Legal Services Section of the Mpumalanga Provincial Legislature.

Copies of the Bill were delivered to the three municipalities where the public hearings were conducted. Municipal Managers were requested to ensure that Community liaison officers assist in circulating the Bill to community members, NGO's, community-based groups and local businesses. The Bill was also sent to the following companies:

- ✓ Komatilands Forests Pty (Ltd)
- ✓ Tweefontein Timber Company
- ✓ York Timbers
- ✓ SAPPI Waste Paper Mpumalanga

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**Report of the Portfolio Committee on Agriculture and Land Administration;  
Economic Development and Planning on the National Environmental  
Management: Waste Bill [B39B-2007]**

0136566178

3

An advert of the Bill was placed in the Sowetan on 27 May 2008 to call for written comments for submission not later than 30 May 2008. The Committee received no written submissions in this regard. However, Sappi Waste Paper Mpumalanga did indicate that via the Paper Recycling Association of SA (PRASA) they had participated in various workshops and forums that were hosted by DEAT. They believe that their comments and recommendations are fully accommodated in the Bill.

Public Hearings were conducted as follows:

DATE	DISTRICT	VENUE	ATTENDANCE
20/05/2008	Enkangala region	Municipal Offices, Sakhelwe, (Dullstroom) ; Emakhazeni Municipality	77
20/05/2008	Gert Sibande region	Silobela Community Hall (Carolina); Albert Luthuli Municipality	87
27/05/2008	Ehlanzeni region	Ekuthuleni Hall, Simile (Sabie); Thaba Chweu Municipality	65

At the public hearings the members of the public raised general concerns about the following issues:

- Littering;
- domestic waste disposal (including sewerage disposal) and community grievances associated therewith;
- Educating communities about waste management issues
- destruction of ecosystems caused by pollution
- diseases caused by air pollution from nearby mines and companies (sawdust and solid waste); and
- how companies should benefit the surrounding communities that are affected by their waste disposal.

**Report of the Portfolio Committee on Agriculture and Land Administration;  
Economic Development and Planning on the National Environmental  
Management: Waste Bill [B39B-2007]**

0136566178

4

## 5. Committee Observations

From the comments made by the Department of Agriculture and Land Administration (see attached Annexure 1), the Committee noted that many municipalities will need both expertise and funding to address their waste management priorities. Further noted that funding or expertise alone may not be sufficient but concerted effort, nationally, must be embarked upon to ensure that enough funds and a strong civil engineer complement is available in the country, especially for servicing smaller or rural municipalities.

## 6. Committee Comments

In consideration of the Bill, the Committee makes the following specific comments:

### Definitions of Waste

The definition of waste is not broad enough to cover all aspects of waste, whether in the mining, medical or any other sector. Waste should be broad enough to include those.

### Section 35

It provides that the Act will apply to the contaminated land even if the contamination occurred before the commencement of the Act. The application of part 8 of the Act is retrospective in effect, since the contamination refers to the presence of a significant risk of harm, whether or not that risk occurred before the Act commenced.

If the Act is retrospective in its application in the sense that it affects existing rights and obligations, amending or supplementing those rights and obligations, it may offend against the two principles of fundamental law. Firstly, it may have an unfair result. Parties under the impression that they had certain entitlements might find that those entitlements are withdrawn or reduced. Parties under the impression that they had certain obligations might find that those obligations are then increased.

For these reasons, there is a general presumption in statutory interpretation that legislation should not interfere with rights and obligations already in existence, in other words, it should regulate future rights and obligations only and should be prospective in its application. However, this presumption will hold unless the particular statute expressly provides in clear terms that it is to have a retrospective effect.

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**Report of the Portfolio Committee on Agriculture and Land Administration;  
Economic Development and Planning on the National Environmental  
Management: Waste Bill [B39B-2007]**

0136566178

5

**Section 38(2)**

It provides the Minister or the MEC, as the case may be, decides that the investigation area is contaminated and requires remediation, the Minister or MEC must declare the land to be a remediation site and make such remediation order as is necessary to neutralize that risk.

**Section 40**

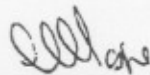
It also provides that no person may transfer contaminated land without informing the person to whom the land is transferred that the land is contaminated and without informing the Minister or MEC and complying with conditions specified by the Minister or MEC.

The legal effect of these two sections is that once land is declared a remedial site, transfer of that land would not take place without the permission of the MEC or Minister. This is an effective compliance mechanism to ensure that the owners of remedial sites do not dispose of their property with the aim of avoiding liability, as no transfer would occur without permission from the Minister and further as the Registrar of Deeds would be notified of land declared as remedial sites.

**7. Recommendations**

The Committee examined the National Environmental Management: Waste Bill [B39B - 2007] and supports the principles underlying the Bill.

The Committee recommends that the delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) be conferred with authority and a mandate to negotiate in favour of the Bill taking into account the comments and the observations of the Committee as contained in this report.



**Hon. PE Pasha**  
**Chairperson: Portfolio Committee on**  
**Agriculture & Land Administration;**  
**Economic Development & Planning**

09/06/2008  
**Date**

**Report of the Portfolio Committee on Agriculture and Land Administration;**  
**Economic Development and Planning on the National Environmental**  
**Management: Waste Bill [B39B-2007]**

## ANNEXURE 1

### MPUMALANGA DEPARTMENT OF AGRICULTURE & LAND ADMINISTRATION

**DATE: 30 May 2008**

#### **Key Issues for NCOP Negotiating Mandate on National Environmental Management: Integrated Waste Bill [B39B – 2007]**

The Department is content with the Bill as written. Most of the provisions will allow for Provincial Environmental Departments to effectively regulate the waste management services provided in the Province. The points outlined below are some of the few areas which the department would like to be clarified prior to the enactment of the Bill. As noted, some of these issues may raise issues of constitutionality, while others may be subject of a variety of interpretations and thus lead to ambiguity in application.

#### **Inconsistency regarding Section 11 and 29 enforcement provisions**

Section 68 provides for criminal sanction against a failure to provide an industry waste management plan in terms of section 28 only. Section 28 refers only to private sector institutions. This implies that criminal enforcement can only be applied against extra-governmental institutions and persons. The point of argument is whether this discrimination passes the Constitutional test in terms of section 36 of the Constitution, 1996. This may be challenged constitutionally as biased against industry and excluding government liability against criminal sanction. The justification for this has been that the Constitution discourages intergovernmental litigation. However, the Act as written does not just discourage access to courts for enforcing the Act against other organs of state, it completely excludes litigation, as a result of a failure to submit integrated waste management plans by municipalities and industry waste management plans by other organs of state. It is submitted that the provisions should allow for intergovernmental litigation with regard to sections 11 and 29 as a last resort, as stated in the Constitution.

#### **Contaminated Land Remediation**

Section 35 provides for Retrospective Application of the Act with regards to rehabilitation/ remediation of contaminated land. The same provision is contained in Chapter 7 of the National Environmental Management Act, 107 of 1998. The application is important to address historical land contamination, especially at the magnitude of the legacy of mining and other industrial activities such as metal processing in Mpumalanga. For this it is of paramount importance. However, this application may be against the spirit of the Constitution, since it criminalises or places a duty on individuals on a provision that did not exist when the activity was commenced. There is a high likelihood that this provision will be challenged up to the Constitutional Court. Government should be ready for such challenge. The judiciary is generally against retrospective application.

**Applicability of Clause to Mining Operations** – The Bill should preferably be able to address contamination that occurred in industrial activities that fall within mining operations, but are outside the scope of the Minerals & Petroleum Resource Development Act. These would include secondary operations and storage areas outside of the mine shafts. This is critical for Mpumalanga given the legacy of derelict mining operations on adjacent land, for example coal mining areas around Witbank and gold and asbestos mining areas around Barberton.

**Remediation by Competent Authority** – The lead Department must consult with National Treasury to allow for the provision of a **Remediation Fund** (in the form of Disaster Management Fund) for future rehabilitation of primary industrial operations and major waste disposal/ treatment facilities (such a GLB+; HH landfills and high volume waste treatment facilities). The Act should provide for the licensing authority to require the license or industry waste management plan applicant to set up a Remediation Account for post operations remediation of contaminated land. Precedence can be found in the MPRDA provisions.

#### **Hazardous Waste Management Role of Provinces**

While a provision has been put fourth for delegation of licensing functions between the MEC and Minister, there are still gaps regarding the application of this section. It has to be realised that the national environmental policy of the RSA calls for integrated environmental management. The skill requirement for licensing, compliance monitoring and enforcement of conditions for a GLB+ site are not that different from those for an HH site. It thus follows that a Provincial Environmental Department that has capacity to provide for the licensing of a big general landfill site will also be able to license a hazardous waste disposal site. The Act should also note the capacity requirements for DEAT to monitor compliance with license conditions across the country.

- If Minister Licenses, will DEAT also be responsible for compliance monitoring and enforcement;
- Procedure for delegation by Minister to MEC;

It is proposed that the Act should have followed the corollary provided through the Air Quality Act, 39 of 2004 with regard to atmospheric Emission Licenses. It must provide for intervention authority for DEAT to intervene where a PED is incapable of carrying out the function. It may also provide for an MEC to approach the Minister to take over the function where the PED does not have capacity.

#### **Licensing of Facilities – Mainstreaming of Process**

Other areas that should be clarified with regards to practicality, based on the current reality of the Environment Conservation Act procedures show that the main bottle-necks around the licensing function occur between DWAF and DEAT (in terms of the Act 50 of 2003 provisions). Thus, there should be clarity is to whether DWAF is a mainstream process authority on license approval (i.e. whether a DWAF RoD on water resource protection is a pre-requisite for any license to be issued). Again the MPRDA provisions



are adhered to, and DWAF reserves intervention rights. This should be a threat to the protection of water resources should a license be approved. This should be on a case by case basis, not to provide that every license must be subject to a Water Resource Protection RoD (as a critical path, and thus a bottle-neck) in the process. Alternatively, Regulations should be drafted as soon as possible to provide for:

- Institutional and Procedural provisions for Consultations with DWAF, especially for Provinces – otherwise DWAF becomes the critical path of the process;
- Delegation of authority to issue RoD at DWAF regional offices, i.e. by Responsible officials;

### **Local Government Aspects**

A critical aspect is to ensure that the Act provides for the development of capacity within municipalities or probably through building waste management capacity within the Provincial Local Government Departments. The greatest challenge to the successful implementation of the Act would be the availability of resources and capacity to address historical waste management shortcomings at local government. The following issues should be discussed and provided for in the Act, legislation or outlined in Regulations in terms of the Act:

- Consideration of historical and existing unlicensed sites (municipal owned dumps) as contaminated land within scope of Bill;
- Resource allocation for addressing waste facility backlog
- Expertise for Waste Management – Placement of Engineers and Scientists within Provincial Local government Departments to provide assistance to municipalities for waste management planning and interventions to address challenges and backlogs.

There must be recognition that many municipalities will need both expertise and funding to address their waste management priorities. Funding or expertise alone may not be sufficient. A nationally concerted effort must be embarked upon to ensure that enough funds and a strong civil engineer complement is available in the country, especially for servicing smaller rural municipalities.