



# environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

## SAWS AMENDMENT BILL [B22 – 2011]

### SUMMARY OF PROPOSED AMENDMENTS

SUBMISSIONS	PROPOSED AMENDMENTS	DEA RESPONSE	PORTFOLIO COMMITTEE RESOLUTION
<b>Clause 1(b) – “advisory services”</b>			
<b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b> Concerns around the inclusion of “air pollution concentrations”, “emissions of pollutants” as well as “air pollution warnings” in the definition of “advisory services” goes beyond the management of information system and the scope of ambient air quality referred to in the Objects of Act, to technical advice which in the view of CAIA should remain the responsibility of the competent authority with which companies are engaging in respect of licensing requirements on an ongoing basis.	It is proposed that additional advisory services be restricted to those related to ambient air quality.	See Department's view in the report on the meeting between the Department and CAIA.	
<b>Clause 1(c) – “air quality information services”</b>			

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<p><b>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</b></p> <p>Concerns around the inclusion of the responsibility to the Weather Service to collect, process and provide atmospheric emission information is beyond the scope of the Objects of Act.</p>	<p>Advisory services should be restricted to ambient air quality.</p>	<p>See Department's view in the report on the meeting between the Department and CAIA.</p>	
<p><del>The undefined term "instruments" is too broad.</del></p>	<p><del>It is proposed to replace</del></p>		
	<p>"instruments" with "management information systems"</p>		
<p>Research with the aim of reducing the impact of air pollution is outside the scope of the Objects of the Act.</p>	<p>Delete c(ii)</p>	<p>See Department's view in the report on the meeting between the Department and CAIA.</p>	
<p>It is not clear why training should be included here. Training in meteorological skills does not form part of the principal Act.</p>	<p>Delete (d)</p>	<p>See Department's view in the report on the meeting between the Department and CAIA.</p>	
<p><b>CENTRE FOR ENVIRONMENTAL RIGHTS</b></p> <p>The Centre is concern about the proposed transfer of air quality-related functions to the Weather Service. If the Weather Service</p>	<p>No proposed amendments</p>	<p>The Bill does not transfer air quality related functions to</p>	

<p>is the custodian of these functions, this may create a silo between the information-gathering and dissemination functions and aspects such as enforcement and licensing of activities.</p>		<p>the South African Weather Services. The Bill only provide the South African Weather Service (SAWS) with a legal mandate to gather, manage and make</p>	
		<p>information</p>	
		<p>available through South African Air Quality Information System (SAAQIS) and the National Ambient Air Quality Monitoring Network (NAAQMN).</p> <p>SAWS is an organ of state under the control of the Minister of Water and Environmental and therefore just another operational arm of the Department.</p> <p>The information gathered will be</p>	

			available for decision-making purposes.	
<b>Clause 1(e) – “greenhouse gas”</b>				
<b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b>	Delete		Agree. The definition can be deleted.	
Term is not used in the Bill				
<b>Clause 1(f) – “ozone depleting substance”; “pollution” and “priority area”</b>				
<b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b>	Delete		Agree. The definition can be deleted.	
“ozone depleting substance”: Term is not used in the Bill.				
<b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b>	Delete		The term “pollution” is used in the Bill.	
“pollution”: Term is not used in the Bill.				
<b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b>	Delete		Agree	
“priority area”: Term is not used in the Bill				
<b>Clause 2(a) – “ambient air quality information”</b>				
<b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b>		It is proposed that this term is defined for purposes of the interpretation of section 3 as well as	See Department’s view in the report on the meeting between the Department and	
The source of “ambient air quality information” is not defined.				

	for the proper interpretation of the Act. It is further proposed that the definition should include ambient air quality data generated by	CAIA.	
	licensing authorities		
	in terms of the AQA and South African Weather Services Act; information disclosed by private entities to the licensing authorities in terms of a memorandum of understanding.		
<b>Clause 3(d) – air pollution-related warnings</b>			

<p><b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b></p> <p>The purpose, objectives and the criteria for exercising the discretionary power and/or issuing of air pollution-related warnings are not explained.</p>	<p>It is proposed that the objective for the issuing of such a warning is clearly explained and that related criteria for determining "necessity" in the application of the discretionary power is also included.</p>	<p>See Department's view in the report on the meeting between the Department and CAIA.</p>	
<p><b>Clause 4(iA) – air quality management</b></p>			
<p><b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b></p> <p>Insertion should be restricted to ambient air quality</p>	<p>Should read: "ambient air quality management"</p>	<p>The skill required from a person to be appointed to the Board should be air quality management which includes ambient air quality. The individual should have knowledge pertaining to air quality management.</p>	
<p><b>Clause 7 – principle of secondment of staff</b></p>			

<p><b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b></p> <p>The principle of secondment of staff from the Department, meaning the Department of Environmental Affairs is supported; however, reference to the appropriate skills is required to ensure that the right expertise and competencies are obtained.</p>	<p>It is recommended to include reference to the appropriate skills in ambient air quality management.</p>		
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**Clause 10 – Limitation of liability**

<p><b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b></p> <p>The inclusion of limitation of liability clause is unreasonable. The objective and functions of the Weather Service is to provide services in the public interest. In providing such a public service, they have accountability to ensure that actions undertaken in terms of statutory provisions and obligations are conducted with due care by competent and skilled employees and agents. It would be unreasonable to exonerate them from negligence, gross negligence and intentional actions causing harm.</p>	<p>Delete</p>	<p>The Department submits that this clause only limits the liability of the Weather Service with respect to any act or omission in good faith and it would not protect SAWS against gross negligence. It is a standard clause found generally found in legislation.</p>	
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**Clause 11 – Amendment of Schedules**

<p><b><u>DR LISA RAMSAY</u></b></p> <p>Concern about the type of information available free of charge and the information that is commercialized (Schedules 1 and 2).</p>	<p>Proposal to re-look at Schedules 1 and 2 in order to ensure that academic research does not suffer as a result of commercialization of certain information.</p>	<p>The raw data is made available. What is sold is re-packaged information.</p>	
<p><b><u>MR GARETH MORGAN</u></b></p> <p>Mr Morgan enquired as to the comprehensive review of clause 11 (Amendment of Schedules). He indicated that Minister's power to amend Schedules 1 and 2 should be exercised in consultation with the Portfolio Committee. The review of clause 11 must ensure that the commercialization of certain weather-related information should not cloud the information that must be freely available to the members of the public.</p>		<p>The Department supports the view that any amendments to Schedules 1 and 2 must also be tabled in Parliament. Text is provided in the Schedule hereto.</p>	
<p><b>Clause 12 – offences and penalties</b></p>			



<p><b><u>SOUTH AFRICAN RADIO LEAGUE</u></b></p> <p>The League was more concern about the exclusion of the general public in the dissemination of weather related information or warnings.</p>	<p>The League recommended that the Bill should be carefully redrafted to ensure that the general public is afforded an opportunity to disseminate</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
	<p>weather related information or warnings.</p>		
<p><b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b></p> <p>Industrial operations that experience an incident that may result in an unusual atmospheric emission may require an "air pollution related warning" to be given in terms of other legislation. Under such circumstances there is no time to wait for written permission from the Weather Service.</p>	<p>It is proposed that the scope of this provision exclude air pollution related warnings.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	

<p><b><u>CENTRE FOR ENVIRONMENTAL RIGHTS</u></b></p> <p>There is no indication in the Bill as to the specific circumstances in which the Weather Service's permission is required; nor how such permission should be sought. Also, there is no indication of the time-frame within which the Weather Service would have to indicate whether or not it will provide this permission. Therefore, it appears that this clause may be unconstitutional in its current form.</p>	<p>The following proposed amendment is suggested:</p> <p>"30A.(1) No person may –</p> <p>(a) Issue a severe weather warning without the necessary written permission from the Weather Service;"</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	

<p><b><u>SOCIETY OF MASTER MARINES OF SOUTH AFRICA</u></b></p> <p>The wording of "severe weather" is not defined and is also vague. The Bill should take cognizance of the country's obligations under the International Convention for the Safety of Life at Sea (SOLAS) 1974 which requires the master of every ship in certain situations to communicate information by all means at his disposal to ships in the vicinity and also to competent authorities.</p>	<p>The following proposed amendments are recommended:</p> <p>(a) The term "severe weather" should be defined.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
	<p>30A.(1)(a): No person may issue a severe weather or air pollution-related warning without the necessary written permission from the Weather Service (except in the case of a ship's master acting in terms of his obligation under the Convention for the Safety of Life at Sea (SOLAS), 1974 (as amended)."</p>		

<p><b><u>THE FW DE KLERK FOUNDATION</u></b></p> <p>No problem with the technical aspect of the Bill. However, the Foundation have concerns around the wording of section 30A(1)(a), (b) and (c). These clauses are unconstitutional as they appear to infringe on the right to freedom of expression. Therefore, should be deleted from the Bill.</p>	<p>No proposal on the amendments. However, recommended to the portfolio committee to reword the current clause (s30A(1)(a), (b) and (c)).</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
<p><b><u>e.tv (PTY) LTD and e.sat TV (PTY) LTD</u></b></p> <p>Of particular concern to e.tv and e.sat is the proposed creation of new criminal offences through the insertion of a new section 30A into the Act. The companies submitted that section 30A(1)(a) and (c) in its present form is the unconstitutional as it appears to unjustifiably limits the right to freedom of expression and because it is impermissibly vague.</p>	<p>Proposal to either delete or reword the current wording of section 30A(1)(a) and (c).</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
<p><b><u>WEATHER.CO.ZA</u></b></p> <p>Concern on clause 12 in its current form. The clause appears to be anti-competition towards private companies disseminating weather related information.</p>	<p>Proposal to revise the current wording of the clause.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
<p><b><u>OCEAN SATELLITE IMAGING SYSTEMS</u></b></p> <p>Concern around the inclusion of section 30A(1)(a) in the Bill.</p>	<p>Proposal to revise the current wording of the clause.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	

<p><b><u>AFRIFORUM</u></b></p> <p>This clause appears to infringe on freedom of expression and right to information.</p>	<p>Afriforum welcomes the proposed rewording of clause 12.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
<p><b><u>SOUTH AFRICAN NATIONAL EDITORS' FORUM</u></b></p> <p>Concern with regard to the inclusion of section 30A as it appears to censor dissemination of information relating to weather-related warnings. The clause might restrict members of the media to inform the public about weather-related information.</p>	<p>The clause should be deleted or substantially revised.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
<p><b><u>MR STEVE PIKE</u></b></p> <p>Concern about the implication of this clause on his business. He is an owner of a web-based company that analyses and publishes weather data.</p>	<p>No proposed amendments.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
<p><b><u>DR LISA RAMSAY</u></b></p> <p>Concern about the implication of this clause on academic research. In addition, the clause seems to criminalise academic criticism against the Weather Service.</p>	<p>Proposal to revise clause 12.</p>	<p>If the proposed text by the Department is accepted, this concern will fall away.</p>	
<p><b>Clause 13 – Amendment of schedule 1</b></p>			
<p><b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b></p> <p>14. The sources of data on ambient air quality data and atmospheric emission data which will be collected in terms of this provision needs to be clearly defined. Paragraphs 5.2.1.3 and 5.2.14 of the National Framework refer to SAAQUIS as the</p>	<p>It is proposed that these terms are defined for purposes of the proper interpretation</p>	<p>See Department's view in the report on the meeting between the Department and</p>	

repository of information for access by the public. The intention is clearly not for the policy relating to the requirements for providing the information by licensees remains the responsibility of the Department.	Schedule 1, consistent with the use of these terms elsewhere in the Act.	CAIA.	
15. The warning services referred to here, requires further consideration to ensure that there is coherence with existing provisions in this regard.		If the proposed text by the Department is accepted, this concern will fall away.	
<b>Amendment of Schedule 2</b>			
<b><u>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</u></b> 15. It is not clear what is envisaged here. The information provided by industry in terms of licensing requirements is done so to provide a policy basis for the Department and to monitor compliance with requirements. It cannot be used as the basis of a consultancy service to the regulated industry.	It is proposed that the inclusion of this service be reviewed.	See Department's view in the report on the meeting between the Department and CAIA.	
<b><u>CHAIRPERSON OF THE PORTFOLIO COMMITTEE</u></b> Tagging  The chair enquired as to whether the Amendment Bill is tagged correctly as a section 75 Bill. The chair requested the Office of the Chief State Law Adviser to whether the Bill should not be tagged as a section 76 Bill.		The Office of the Chief State Law Adviser provided the chairperson with a detailed report on tagging.	

<p><b>CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION</b></p> <p>Section 26: Intellectual Property Rights</p> <p>It is of concern that this section of the Act has not been amended to provide similar protection in respect of intellectual property considerations which may be relevant in respect of the additional information which will be managed by SAAQUIS, particular in respect of information submitted in compliance with regulatory requirements.</p>	<p>It is proposed that an appropriate amendment here be considered.</p>	<p>This issue should be addressed during the further tolling out of the further phases of SAAQUIS. It is not an issue that could be and should be addressed in this Bill.</p>	
<p><b>CENTRE FOR ENVIRONMENTAL RIGHTS</b></p> <p>Section 3 of the Act sets out the objectives of the Weather Service, and section 6, the functions of its Board. Clause 2 of the Bill seeks to amend section 3 of the Act by extending the objectives of the Weather Service to include ambient air quality. No amendments are proposed to section 6 of the Act.</p> <p>Proposal to refer to section 24 of the Constitution, NEMA, NEMAQA as well as the National Framework for Air Quality Management.</p>	<p>The following addition to clause 2 is proposed:</p> <p>“(j) to implement this Act with due regard to section 24 of the Constitution, and to the objectives of and environmental management principles described in section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), the Air Quality Act, and the National Framework</p>		

	<p>for Air Quality Management established in terms of section 7 of the Air Quality Act.”</p> <p>Also the following proposed amendments to section 6 of the Act:</p>		
	<p>“(c) set policy, standards and objectives within the framework issued by the Minister, and with due regard to section 24 of the Constitution, and to <u>the objectives of and environmental management principles described in section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), the National Environmental Management: Air Quality Act, 2004</u></p>		



	(Act No. 39 of 2004), and the National Framework for Air Quality Management established in terms of section 7 of the National		
	Environmental		
	Management: Air Quality Act, 2004; and ensure that the executive management implements these policies, standards and objectives."		

<p><b><u>SOCIETY OF MASTER MARINES OF SOUTH AFRICA</u></b></p> <p>The objectives of the Act do not specifically mention the requirement to fulfill the international obligations of the Government under SOLAS.</p>	<p>The following amendments to section 3 of the Act are proposed:</p> <p>“(g) to fulfill the meteorological obligations of the</p>	<p>The Convention for the Safety of Life at Sea (SOLAS), 1974 does not fall within the mandate of the Department, but that of the</p>	
	<p>Government under the international</p>	<p>Department of Transport.</p>	
	<p>Convention for the Safety of Life at Sea (SOLAS), 1974 (as amended).”</p>		

