



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

IMPLEMENTATION GUIDE

FOR

THE IMPLEMENTATION OF THE AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 (ACT NO. 59 OF 2008) BY THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE AMENDMENT ACT, 2014 (ACT NO. 26 OF 2014) AND THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT ACT, 2014 (ACT NO. 25 OF 2014)

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TABLE OF CONTENTS

CONTENT	PAGE
1. PREAMBLE	2
2. INTRODUCTION	3
3. DEFINITIONS	5
4. APPLICATION OF THE WASTE ACT TO RESIDUE DEPOSITS AND RESIDUE STOCKPILES AND ANIMAL CARCASSES	10
5. APPLICATION OF SCHEDULE 3 - (SECTION 18 OF THE ACT)	11

1. PREAMBLE

South Africa's commitment to sustainable development is aimed at balancing the broader economic and social developmental needs with the protection of the environmental resources. For the waste sector in South Africa, this means care must be taken to ensure **wise consumption and production patterns, resource efficiency, waste prevention and minimization and waste reuse and recovery.**

Following on the Constitution of the Republic of South Africa, the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (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. Since 2009, certain **implementation challenges** with respect to some provisions of the NEMWA were identified by the Department and stakeholders. These relate to: **regulatory certainty, institutional implementation capacity, interpretation, and administration.**

The waste sector has been identified as having significant potential for **job creation** and contributing to the macro economy of South Africa and other countries in the region. Transitioning to a **RECYCLING ECONOMY**, has sound economic and social justification. This transition would involve **levelling the playing field** for greener products by reforming policies and developing incentives, strengthening market infrastructure, **redirecting public investment**, greening public procurement and improving institutional and implementation capacity.

During the public hearings on the National Environmental Management: Waste Amendment Bill, the then Portfolio Committee on Water and Environmental Affairs identified the different interpretations that exist in relation to the definition of the waste as one of the main stumbling blocks in the effective implementation of the NEMWA. Parliament effected amendments with the intention to remove the ambiguity and provides for a list of categories of wastes as a new Schedule 3. The Minister will be able to define new wastes by notice in the Gazette 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.

The Department through a stakeholder iterative process developed the Amendments to the NEMWA in line with the implementation challenges that have been identified. The Portfolio Committee considered

the National Environmental Management: Waste Amendment Bill, 2013 [B32 of 2013] (Waste Amendment Bill), consulted the public and after the consultation process, further amendments were made to the Bill. Although the National Council of Provinces consulted on the Waste Amendment Bill, no further amendments were made during that process. The National Environmental Management: Waste Amendment Act, 2014 (Act No. 26 of 2014) (Waste Amendment Act) was subsequently published on 2 June 2014 and entered into force immediately on date of publication.

2. INTRODUCTION

The Waste Amendment Act entered into force on 2 June 2014. The National Environmental Management Laws Amendment Act, 2014 (Act No. 25 of 2014) (NEMLA 3) entered into force on 3 September 2014, specifically insofar as residue deposits and residue stockpiles are concerned.

The purpose of this document is to provide a guideline to the public on how the Department of Environmental Affairs will interpret and implement Waste Amendment Act and NEMLA 3 as far as the last-mentioned Act deals with waste issues. As these Acts are implemented and as new issues emerge, the Department will provide further guidance and add to the document.

The definition of “by-product” that was linked to the definition of waste, and previously created interpretation difficulties was deleted. This has now been resolved by providing a more comprehensive definition of waste. The intention with the new definition of waste is to provide for more clarity and certainty and less ambiguity in interpretation.

The definitions of “**building and demolition waste**”, “**business waste**”, “**domestic waste**”, “**general waste**”, “**hazardous waste**”, “**inert waste**”, “**residue deposits**” and “**residue stockpiles**” were moved to the new Schedule 3. The reason for this is to have the definitions and the waste types in one place to provide for the ease of reading. The definitions form an integral part of the waste definition and will in effect still apply to the whole Act. The general rule is that a schedule which expounds sections of an Act has the same force of law as the section in the main Act.

The abovementioned Amendment Acts do not apply retrospectively. **Section 12 of the Interpretation Act regulates the effect of repealed law** and stipulates as follows:

- (1) Where a law repeals and re-enacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.
- (2) Where a law repeals any other law, then unless the contrary intention appears, the repeal shall not -
 - (a) revive anything not in force or existing at the time at which the repeal takes effect; or
 - (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
 - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.“

When compiling this document the Department based its views on the premise that our law supports the principle of 'effectual and purposeful' legislation. In other words, unless the contrary is clear, it is presumed that the legislature does not intend legislation which is futile and nugatory.

The document will be published on www.environment.gov.za and www.sawic.environment.gov.za.

3. DEFINITIONS-

Definition:

“**Recovery** is the controlled extraction or retrieval of any substance, material or object from waste;”.

Interpretation:

The recovering of “energy” has been removed from the definition, as the National Environmental Management: Waste Act, 2008 is not primarily concerned with the recovery of energy per se, but is it concerned with the management and handling of waste (the “fuel”), which is an input into the energy generating process or co-generation process. Only when the activities in question are listed under sections 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (e.g. Listing Notice 1, 2 or 3 published by Government Notice R983, R984 or R985, respectively, in *Government Gazette* 38282 of 4 December 2014 as amended), section 21(1)(b) of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (e.g. activities published under Government Notice 893 in *Government Gazette* 37054 of 22 November 2013 as amended), section 19(2) of the NEMWA (e.g. Notice No. 921 in *Government Gazette* 37083 of 29 November 2013 as amended) a waste management licence, an environmental authorisation or an atmospheric emission licence are required or specific norms and standards need to be adhered to.

Definition:

“**re-use**’ means to utilise the whole, a portion of or specific part of any substance, material or object from the waste stream for a similar or different purpose without changing the form or properties of such substance, material or object;”.

Interpretation:

The definition is clear. No explanation is required.

Definition:

'waste' means—

- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to this Act; or
- (b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the *Gazette*,

but any waste or portion of waste referred to in paragraphs (a) and (b) ceases to be a waste—

- (i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been, re-used, recycled or recovered;
- (ii) where approval is not required, once a waste is, or has been, re-used, recycled or recovered;
- (iii) where the Minister has, in terms of section 74, exempted a waste or portion of waste generated by a particular process from the definition of waste; or
- (iv) where the Minister has, in a prescribed manner, excluded a waste stream or any portion of a waste stream from the definition of waste.

Interpretation:

Waste falls under any one or more of the following categories:

- (a) any substance, material or object that is unwanted, rejected, abandoned, discarded or disposed of by the holder of that substance, material or object; or
- (b) any substance, material or object that is intended or required to be discarded or disposed of by the holder of that substance, material or object; or
- (c) wastes defined as waste by the Minister by notice in the *Gazette*.

Schedule 3 wastes are regarded as wastes and already included in the abovementioned two categories (a) and (b) above.

The definition makes provision that waste can be either exempted or excluded from the definition of waste. The procedure for exemption is set out in sections 74-77 of the Waste Act. The procedure for

the exclusion from the definition of waste must be prescribed by regulation. The Department is in the process of finalising the regulations.

Exemption

A person may in terms of section 74 apply to the Minister, in writing, for any waste or a portion of waste generated by a particular process to be exempted from the definition of waste. The exemption will be granted for a specific period and will be coupled with conditions. It is intended to use applications for exemptions to distinguish between hazardous and non-hazardous waste from the same source. The Minister is in the process of adding by Notice in the Gazette certain non-hazardous portions of wastes that were previously included in Category A of Schedule 3 to Category B of Schedule 3.

Exclusion

An application to the Minister for the exclusion of a waste stream or a portion of a waste stream from the definition of “waste” is done in terms of regulations. Once the exclusion is granted a waste stream or a portion of a waste stream is excluded from the definition of waste, in other words, the Act does not apply to the waste stream. There are no conditions. It is not excluded for a period. However where a waste stream is listed in both Category A and Category B of Schedule 3, it is also possible to exclude the waste stream from one of the Categories in which case the provisions of the Waste Act and regulations will be applicable for the remaining category.

When is the waste management licence required?

When there is an intention to conduct a listed activity as contained in the Waste Management activity list a waste management licence is required. The applicant can satisfy the requirements of the NEM: Waste Amendment Act, 2014 through applying for an integrated environmental authorisation. Section 24L of the National Environmental Management Act, 1998 and section 44 of the National Environmental Management: Waste Act, 2008 makes it possible for integrated environmental authorisations to be issued.

When does waste cease to be waste?

The definition as in the Waste Act provides for four instances in which waste ceases to be waste, namely:

- (i) Once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been, re-used, recycled or recovered;
- (ii) Where approval is not required, once a waste is, or has been, re-used, recycled or recovered;
- (iii) Where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or
- (iv) Where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.

The Department will implement (i) as follows:

“Application” in this context refers to either an application for a waste management licence or an integrated environmental authorisation. It does not refer to an application for the approval of an industry waste management plan. Industry waste management plans are broad plans aimed at amongst others the avoidance or minimisation of the generation of waste, the reduction of negative impacts of waste on the health and the environment, the phasing out of the use of specific substances, the management of waste, to prevent certain waste types of ending up on landfills, etc. If the plan makes provision for the recycling, re-using or recovery of waste, the individual facilities will still require a waste management licence or must still adhere to certain norms or standards (if a licence is not required).

Waste ceases to be waste once an application for its re-use, recycling or recovery **has been approved** in terms of the Waste Act **AND** once it is, or has been, re-used, recycled or recovered. The holder of the waste management licence or the integrated environmental authorisation must apply to the conditions of such waste management licence or integrated environmental licence.

4. APPLICATION OF THE WASTE ACT TO RESIDUE DEPOSITS AND RESIDUE STOCKPILES AND ANIMAL CARCASSES

Residue deposits and residue stockpiles now fall within the ambit of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) from 3 September 2014, when the deletion of section 4(1)(b) will only take effect when the National Environmental Management Laws Amendment Act, 2014 (Act No. 25 of 2014) (3 September 2014) entered into force. The effect of this amendment is that residue deposits and residue stockpiles are dealt with under the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008). However, Government took a decision that the “One Environmental System” would only be implemented from 8 December 2014, when it was envisaged that the whole suite of legislation necessary for the implementation of the “One Environmental System would be in effect. However, the Department held the view that the regulations relating to residue deposits and residue stockpile in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA), by virtue of the application of the Interpretation Act, continued to exist until the regulations pertaining to residue deposits and residue stockpiles made under section 69(1)(iA) of NEMWA were published for implementation 24 July 2015.

The disposal of animal carcasses was excluded within the scope of the NEMWA. The deletion of section 4(1)(d) has the effect that the disposal of animal carcasses will be regulated under the NEMWA. The deletion of section 4(1)(d) is in effect from 2 June 2014.

5. APPLICATION OF SCHEDULE 3 OF NEMWA

Schedule 3 comprises of two non-exhaustive lists, namely Category A and Category B, which categorise waste according to their source and whether it is hazardous waste or general waste respectively. Even if waste cannot be read in Categories A or B, it will still be regarded as being waste if it complies with paragraph (a) of the definition of waste, namely “any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be

discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered”.

The Waste Classification Regulations made under section 69 of the NEMWA cannot be used to re-classify the waste from a source which is listed in only one category. For this reason the Department is in the process of amending the Schedule 3, by including the non-hazardous portions of certain waste streams, currently included only in Category A also in Category B.

If waste from the same source appears in more than one category, the classification methodology of the Waste Management and Classification Regulations can be used to determine the suitable classification. If waste from the same source is listed in both Category A and B and the holder of the waste believes that the particular waste should be listed in Category B, then the holder of the waste can apply to be either exempted or excluded from the other category. After consideration of the relevant exemption or exclusion application a person may be required to classify his or her waste in accordance the waste classification regulations to determine on which category the waste must be listed, unless the classification has already been done in terms of the Waste Classification Regulations.