

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 541

05 APRIL 2019

**NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008
(ACT NO. 59 OF 2008)****CONSULTATION ON INTENTION TO REQUIRE A PERSON WHO CONDUCTS A WASTE MANAGEMENT ACTIVITY LISTED UNDER THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 (ACT NO. 59 OF 2008) ON THE DATE OF COMING INTO EFFECT OF THE ACT, AND WHO IMMEDIATELY, BEFORE THAT DATE, LAWFULLY CONDUCTED THAT WASTE MANAGEMENT ACTIVITY UNDER GOVERNMENT NOTICE NO. 91 OF 01 FEBRUARY 2002, TO APPLY FOR A WASTE MANAGEMENT LICENCE UNDER THE ACT**

I, Nomvula Paula Mokonyane, Minister of Environmental Affairs, hereby, under Section 82, read with Sections 72 and 73 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), give notice of my intention to require any person who lawfully conducted a hazardous waste management activity on the date of coming into effect of the Waste Act, namely 01 July 2009, to apply for a waste management licence as provided in the Schedule hereto.

Before 01 July 2009, waste management activities were regulated in a fragmented way by different environmental legislation such as the Environment Conservation Act, 1989 (Act No. 73 of 1989) (ECA) and the National Water Act, 1998 (Act No. 36 of 1998) (NWA).

Waste management activities are currently conducted lawfully if the holders are in possession of any of the following historic authorisations issued to them by the competent authority at the time:

- a) Environmental Authorisations or Records of Decision (RoD);
- b) Permits issued under the Environment Conservation Act, 1989;
- c) Exemptions issued by the Department of Water and Sanitation under the Environment Conservation Act, 1989;
- d) Directives issued by the Department of Water and Sanitation under the Environment Conservation Act, 1989; or
- e) Registration Certificates issued by the Department of Water and Sanitation under the Environment Conservation Act, 1989.

As a result, there has been, and still is, confusion or ambiguities regarding the lawfulness or unlawfulness of a number of waste management activities being conducted, which creates challenges from a compliance and enforcement perspective.

The transitional provision regarding listed waste management activities in Section 82 gives the Minister of Environmental Affairs the power to call on all current lawful users to apply for a waste management licence in terms of the National Environmental Management: Waste Act, 2008, thereby ensuring uniformity and consistency. Environment Conservation Act, 1989; Section 82 states that:

"A person who conducts a waste management activity listed in Schedule 1 on the date of coming into effect of this Act, and who immediately before that date lawfully conducted that waste management activity under Government Notice no. 91 of 01 February 2002, may continue with the activity until such time that the Minister, by notice in the Gazette, directs that person to apply for a waste management licence under the Act".

Section 82 will, therefore, ensure legal clarity on how lawful waste management activities are dealt with from the compliance and enforcement perspective.

The aim of the Notice is to require a person, who conducted and is still conducting a hazardous waste management activity listed in Schedule 1 when the Environment Conservation Act, 1989, came into effect on 01 July 2009, and who immediately before that date lawfully conducted that activity under Government Notice No. 91 of 1 February 2002, to apply for a waste management licence in terms of Section 82 of the Act.

In terms of the Notice, lawful users are required to apply for a waste management licence in terms of the Act within a period of one year after publication of the Notice.

The intended outcomes of the Notice are that:

- The holders of valid authorisations (permits, exemptions, directives, registration certificates, environmental authorisations) for hazardous waste activities which commenced or were conducted before the coming into effect of the National Environmental Management: Waste Act, 2008, are granted one year to apply for a waste management licence under the National Environmental Management: Waste Act, 2008 to continue legally with that waste management activity.
- Waste management activities which commenced before 1 July 2009 without a valid permit, exemption, directive, registration certificate or environmental authorisation, must apply for a waste management licence immediately and the waste management activities which commenced after 1 July 2009 without a valid waste management licence are regarded as illegal activities and should apply for a Section 24G approval.
- The Section 82 Notice will apply to all hazardous waste management activities, which include but is not limited to waste disposal, landfilling, recycling, reuse, treatment and recovery of waste.

Members of the public are invited to submit to the Minister, within 30 days after publication of this notice in the *Gazette*, written representations on, or objections to, the following addresses:

By post to: The Director-General
Department of Environmental Affairs
Attention: Mr Anben Pillay
Director: Waste and Chemicals Policy and Information Management
Private Bag X447
PRETORIA
0001

By hand at: Ground Floor (Reception), Environment House, 473 Steve Biko Road, Arcadia, Pretoria, 0001.

By email: apillay@environment.gov.za

Any enquiries in connection with the notice can be directed to Ms Tanya Faber at Tel: (012) 399 9110; or Mr Anben Pillay at Tel: (012) 399 9827.

The draft Notice can also be accessed at <http://sawic.environment.gov.za/>, under "Draft documents for comment".

Comments received after the closing date may not be considered.



**NOMVULA PAULA MOKONYANE
MINISTER OF ENVIRONMENTAL AFFAIRS**

SCHEDULE

Definitions

1. In this Notice any word or expression to which a meaning has been assigned in the Act bears that meaning, unless the context otherwise indicates—

“authorisation” means permission issued by a relevant competent authority allowing the proponent/applicant to conduct a listed waste management activity;

“relevant competent authority” means the Minister of the Department of Environmental Affairs;

“lawful person” means any person who had received, at the date of coming into effect of this Act, the following authorisations from the Minister of Environmental Affairs, Provincial Departments of Environmental Affairs, the Department of Water and Sanitation or any other licensing authority that was authorized to issue licenses or permits to conduct a waste management activity in accordance with the Environment Conservation Act, 1989 (Act No. 73 of 1989):

- (a) Environmental Authorisations or Records of Decision (RoD);
- (b) Permits issued under the Environment Conservation Act, 1989 (Act No. 73 of 1989);
- (c) Exemptions issued by the Department of Water and Sanitation under the Environment Conservation Act, 1989;
- (d) Directives issued by the Department of Water and Sanitation under the Environment Conservation Act, 1989; or
- (e) Registration Certificates issued by the Department of Water and Sanitation under the Environment Conservation Act, 1989.

“waste management activity” means an activity that is listed in terms of Section 19 of the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008);

“the Act” means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008); and

Purpose

2. The purpose of this Notice is to require a lawful person who commences, undertakes or conducts a hazardous waste management activity to apply for a waste management licence in terms of the Act within a period of one year after the publication of this Notice in the *Gazette*.

Application of this Notice

3. (1) This Notice applies to—

- (a) Any person who lawfully commenced, undertook or conducted a hazardous waste management activity before the coming into effect of the Act and in respect of which a waste management licence is required in accordance with Section 20(b) of this Act.

- (2) This Notice does not apply to—

- (a) Any person who unlawfully commenced, undertook or conducted a hazardous waste management activity without a waste management licence before the coming into effect of this Act; and

- (b) Any person who unlawfully commenced, undertook or conducted a hazardous waste management activity without a waste management licence after the coming into effect of this Act.

Time frames for applying

- 4. Any person who lawfully commenced, undertook or conducted a hazardous waste management activity before the coming into effect of the Act must apply for a waste management licence with the competent authority within one year after the publication of this Notice in the *Gazette*.