REPUBLIC OF SOUTH AFRICA

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NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE AMENDMENT BILL

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(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. … of … 2013)

(The English text is the official text of the Bill)

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(MINISTER OF ENVIRONMENTAL AFFAIRS)

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[B - 2013]
GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

___________ Words underlined with a solid line indicate insertions in existing enactments.

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BILL

To amend the National Environmental Management: Waste Act, 2008, so as to substitute certain definitions; to clarify the spheres of government required to compile an integrated waste management plan; to provide for the exclusion of the provincial department responsible for waste management in the compilation of an industry waste management plan; to require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans; to provide the Minister with a discretion to establish a Waste Management Agency where necessary and to prescribe certain matters in relation to the Waste Management Agency; to provide for transitional arrangements regarding authorisations issued in terms of the Environment Conservation Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—
Amendment of section 1 of Act 59 of 2008

1. Section 1 of the National Environmental Management: Waste Act, 2008, (Act No. 59 of 2008), (hereinafter referred to as the “principal Act”), is hereby amended by—

(a) the substitution for the definition of "by-product" of the following definition:

" 'by-product' means a substance that is produced as part of a manufacturing or extraction process that is primarily intended to produce another substance [or product and that has the characteristics of an equivalent virgin product or material] which the generator intends to exploit or market on terms which are advantageous to the generator in a subsequent process, without any further processing;";

(b) the substitution for the definition of "Department" of the following definition:

" 'Department' means the Department [of Environmental Affairs and Tourism] responsible for environmental affairs;";

(c) the substitution for the definition of "Minister" of the following definition:

" 'Minister' means the Minister [of Environmental Affairs and Tourism] responsible for environmental affairs;";

(d) the substitution for the definition of "recovery" of the following definition:

" 'recovery' means the controlled extraction [of a material] or retrieval of [energy] any substance or material from waste to produce a product;";

(e) the substitution for the definition of "re-use" of the following definition:
"'re-use' means to utilise articles from the waste stream [again] for a similar or different purpose without changing the form or properties of the articles;";

(f) the substitution for the definition of "waste" of the following definition:

"'waste' means any substance, whether or not that substance can be reduced, re-used, recycled or recovered—

(a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;

(b) which the generator has no further use of for the purposes of production;

(c) that must be treated or disposed of; or

(d) that is defined as a waste by the Minister by notice in the Gazette,

and includes waste generated by the mining, medical or other sector, but—

(i) a by-product is not considered to be waste; [and] or

(ii) any portion of waste, once re-used, recycled or recovered, ceases to be waste;"; and

(g) the insertion after the definition of "waste treatment facility" of the following definition:

"'the Agency' means the Waste Management Agency that may be established by the Minister in terms of section 34B;".
Amendment of section 4 of Act 59 of 2008

2. Section 4 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).

Amendment of section 11 of Act 59 of 2008

3. Section 11 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

"(1) The [Department and the] provincial departments responsible for waste management must prepare integrated waste management plans.";

(b) the deletion of subsection (3);

(c) the substitution in subsection 4(a) for subparagraphs (i) and (ii) of the following subparagraphs:

"(i) submit its integrated waste management plan to the MEC for [approval] endorsement; and

(ii) include the [approved] endorsed integrated waste management plan in its integrated development plan contemplated in Chapter 5 of the Municipal Systems Act.";

(d) the substitution for subsection (5) of the following subsection:

"(5) The [Department and the] provincial departments contemplated in subsection (1) must submit their integrated waste management plans to the Minister for [approval] endorsement.";

(e) the substitution in subsection (7) for paragraph (a) of the following paragraph:
"(a) Before finalising an integrated waste management plan, [the Department and] every provincial department contemplated in subsection (1) must follow a consultative process in accordance with sections 72 and 73."; and

(f) the deletion in subsection (7) of paragraph (b).

Amendment of section 12 of Act 59 of 2008

4. Section 12 of the principal Act is hereby amended by—

(a) by the substitution in subsection (1) for paragraphs (b), (c), (d), (f) and (h) of the following paragraphs:

"(b) within the domain of the [Department,] provincial department or municipality, set out how that [Department,] provincial department or municipality intends—;

(c) within the domain of the [Department or] provincial department, set out how the [Department or] provincial department intends to identify the measures that are required and that are to be implemented to support municipalities to give effect to the objects of this Act;

(d) set out the priorities and objectives of the [Department,] provincial department or municipality in respect of waste management;

(f) set out the approach of the [Department,] provincial department or municipality to the planning of any new facilities for disposal and decommissioning of existing waste disposal facilities;
(h) describe how the [Department,] provincial department or municipality intends to give effect to its integrated waste management plan; and"

(b) the substitution for subsection (2) of the following subsection:

"(2) In the preparation of an integrated waste management plan the [Department and] provincial departments must give proper effect to the requirements contained in Chapter 5 of the Municipal Systems Act, insofar as such plan affects a municipality.".

Amendment of section 13 of Act 59 of 2008

5. Section 13 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) a provincial department, be submitted to the MEC for approval
and to the Minister for [approval; and] noting;";

(b) the deletion in subsection (1) of paragraph (b); and

(c) the substitution for subsection (2) of the following subsection:

"(2) The annual performance report that the [Department or] provincial department must submit in terms of subsection (1) must contain information on the implementation of its integrated waste management plan, including information on—".
Amendment of section 28 of Act 59 of 2008

6. Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The MEC, with the concurrence of the Minister may, in respect of any activity within the province concerned that results in the generation of waste, by written notice require a person, or by notice in the Gazette require a category of persons or an industry, that generates waste to prepare and submit an industry waste management plan to the MEC for approval."

Amendment of section 29 of Act 59 of 2008

7. Section 29 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

"(1) The Minister or MEC with the concurrence of the Minister may, by notice in writing, require an industry waste management plan to be prepared by an organ of state, excluding a municipality and a provincial department responsible for waste management, within a stipulated timeframe."

(b) the deletion of subsection (2); and

(c) the substitution for subsections (3), (5) and (6) of the following subsections:

"(3) When exercising a power under subsection (1) [or (2)], the Minister or MEC must consider whether—.
(5) An organ of state or provincial department contemplated in subsection (1) and (2), respectively, may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan.

(6) An organ of state contemplated in subsection (1) and (2), respectively, must follow a consultative process in accordance with section 72 and 73, unless that plan is being prepared as a result of a person who was required to prepare that plan failing to do so, in which case section 31(2) applies."

Amendment of section 30 of Act 59 of 2008

8. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister, in a notice contemplated in section 28(1) or 29(1), or the MEC, with the concurrence of the Minister, in a notice contemplated in section 28(2) or 29[2](1), must specify the information that must be included in the industry waste management plan.".

Amendment of section 32 of Act 59 of 2008

9. Section 32 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:
"(1) The Minister, acting in terms of section 28(1) or 29(1), or the MEC acting in terms of section 28(2) or 29[(2)](1), may on receipt of an industry waste management plan—"; and

(b) the substitution in subsection for paragraph (d) of the following paragraph:

"(d) reject the plan with reasons if it does not comply with the requirements of a notice in terms of section 28(1) or (2) or 29[(2)], as the case may be, or if a consultation process in accordance with section 31 was not followed.".

Amendment of section 34 of Act 59 of 2008

10. Section 34 of the principal Act is hereby amendment by the substitution for subsection (1) of the following subsection:

"(1) An industry waste management plan that has been required by the Minister in terms of section 28(1) or 29(1), or by the MEC in terms of section 28(2) or 29[(2)](1), must be reviewed at intervals specified in the approval or at intervals specified by the Minister or MEC by notice in writing or in the relevant Gazette.".

Insertion of sections 34A and 34B in Act 59 of 2008

11. The following sections are hereby inserted in the principal Act after section 34:
Establishment of Waste Management Agency

34A. (1) The Minister may, with the concurrence of the Minister responsible for finance and the Minister responsible for public service and administration, by notice in the Gazette, establish a Waste Management Agency as a juristic person.

(2) The notice contemplated in subsection (1) must determine the composition, objectives and functions of the Agency.

(3) The Agency must act through its Board.

(4) The Agency must comply with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(5) The Minister must, with the concurrence of the Minister responsible for finance and the Minister responsible for public service and administration, prescribe the following matters:

(a) The composition of the Board;

(b) the appointment of Board members;

(c) disqualification, removal from office, term of office and filling of vacancies for Board members;

(d) the functions of the Board;

(e) remuneration and allowances of members of the Board;

(f) meetings of the Board;

(g) conduct of meetings;

(h) disclosure of interests by Board members;

(i) directives issued by the Minister in relation to the Agency or the Board.
(j) committees of the Board;
(k) the Chief Executive Officer of the Agency;
(l) the staff of the Agency;
(m) the conditions of employment applicable to the staff of the Agency;
(n) the delegation of functions;
(o) finances of the Agency;
(p) the business plan; and
(q) the Annual report.

Minister's supervisory powers

34B. (1) The Minister—

(a) must monitor the performance by the Agency of its functions;
(b) may prescribe norms and standards for the performance by the Agency of its functions; or
(c) may issue directives to the Agency on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning.

(2) The Agency must perform its functions subject to any norms, standards and directives prescribed or issued by the Minister in terms of section 34A(5)(i) and subsection (1)."

Repeal of section 78 of Act 59 of 2008

12. Section 78 of the principal Act is hereby repealed.
Insertion of section 80A in Act 59 of 2008

13. The following section is hereby inserted in the principal Act after section 80:

"Transitional provisions in respect of authorisations issued in terms of Environment Conservation Act

80A. (1) An authorisation issued under the Environment Conservation Act and that has not lapsed when the National Environmental Management: Waste Amendment Act, 2013 comes into operation, remains valid.

(2) The holder of an authorisation issued under the Environment Conservation Act may, at any time after the coming into operation of the National Environmental Management: Waste Amendment Act, 2013, request a variation of the authorisation by submitting a written request to the relevant licensing authority.

(3) The written request contemplated in subsection (2) must be considered by the licensing authority in accordance with section 54 of this Act."

Amendment of Table of Contents of Act 59 of 2008

14. The Table of Contents of the principal Act is hereby amended by—

(a) the insertion after item 34 of the following items:
"34A. Establishment of Waste Management Agency;

34B. Minister’s supervisory powers;“; and

(b) the insertion after item 80 of the following item:

"80A. Transitional provisions in respect of authorisations issued in terms of Environment Conservation Act".

Short title and commencement

15. This Act is called the National Environmental Management: Waste Amendment Act, 2013, and takes effect on a date fixed by the President by proclamation in the Gazette.