

WASTE ACT MADE EASY



*A user friendly guide to the National
Environmental Management Waste Act,
2008 (Act No. 59 of 2008)*



environmental affairs

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Acts of Parliament are from time to time amended therefore the reader is advised to consider the latest version of the Act which will be available in the Department of Environmental Affairs.

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ACRONYMS

DEA	Department of Environmental Affairs
DWA	Department of Water Affairs
ECA	Environmental Conservation Act
EMI	Environmental Management Inspector
EIA	Environmental Impact Assessment
IDP	Integrated Development Plan
IWMP	Integrated Waste Management Plan
IndWMP	Industry Waste Management Plans
MEC	Member of Executive Committee
MSA	Municipal Systems Act
NGO	Non-Government Organisation
NEMA	National Environmental Management Act
NEMWA	National Environmental Management: Waste Act
NWMS	National Waste Management Strategy
SAWIS	South African Waste Information System
SEMA	Specific Environmental Management Act
WEEE	Waste Electronic and Electric Equipment
WMO	Waste Management Officer

i. Executive Summary

Waste management is one of the critical elements of sustainable development primarily because sound waste management practices contribute to sustainability. Legislation regulating waste management in South Africa has historically been fragmented and still is, to some extent. However, the coming into effect of the National Environmental Management: Waste Act (Act No. 59 of 2008), presents a more holistic approach to waste management regulation. Following the enactment of the NEM: WA by cabinet in March 2009, the former Minister of Environmental Affairs published a Proclamation Notice in the *Government Gazette* No: 32189 of 30 April 2009, announcing the date of effect as 1 July 2009. This date excluded section 28(7) (a) which deals with voluntary submission of Industry Waste Management Plans, Part 8 of the Act (sections 35 – 41) which deals with the cleaning and rehabilitation of polluted (contaminated) land and section 46 which requires a person(s) who are applying for waste licenses to appoint independent persons to manage the application process on their behalf.

This guide gives a simplified overview of the contents and application of the Waste Act. The Act is composed of nine chapters which includes the definition of terms or words which are used in the Act, the National Waste Management Strategy and Norms and Standards, Institutional and Planning requirements for government, waste management measures or things to do when handling waste including reduction, reuse and recycling of waste.

It also covers processes or directions on how to deal with polluted land, develop industry waste management plans, the licensing of waste management activities, waste information, compliance and consequences for non compliance as well as general issues. This document provides a simplified guide through each chapter as well as practical examples of implementation where appropriate.

ii. Purpose of the Guide

It is common practice that Acts of parliament are written in a legal language and writing style and in most cases, require a legally qualified person to interpret. Whilst the Act applies to all citizens and affects all sectors of society whether rich or poor, sometimes it is difficult for some sectors of society to understand or relate to the contents. The guide aims to simplify the Act in a way that is more understandable and useable by the general public, but takes cognisance of the *gazetted* version of the Act and attempts to bring a practical element to it. The guide can be used by everyone, however, it must at all times be read with the published version of the Act, noting that Acts of Parliament are from time to time amended and changed. The user is advised to contact the Department of Environmental Affairs to get the latest version of the Act as well as amendments if, any. One can also visit the South African Waste Information Centre at www.sawic.org.za .

1. What is the Waste Act?

The Waste Act is framework legislation developed under the National Environmental Management Act (Act no. 107 of 1998). It is regarded as a specific environmental management Act (SEMA) which deals with the management of waste in South Africa.

1.1. What is the overall purpose of the Act

The overall purpose of the Waste Act is to change the law regulating the management of waste in order to protect the health of people as well as the environment (plants, animals, land, air, water etc). The Waste Act does this by putting minimum requirements for any person who undertakes an activity which produces waste or a person who handles any waste which has already been produced to comply with. This includes storage of waste, transportation, processing, including people who are reusing or recycling waste. The State has an obligation required by the Constitution, to protect the environment and prevent ecological degradation and it does that by making different Regulations which everyone must comply to.

The Waste Act has introduced an improved system for licensing of waste management activities, in order to control these activities and to ensure that they do not impact on human health and the environment. It is interesting to note that the Act also introduces a part that deals with polluted or contaminated land and requires anyone who has polluted land

to take responsibility to assess the extent of contamination and to pay for the cleaning and rehabilitation of such land. This is a new provision in waste legislation in the country. The Waste Act also legislates some of the issues which have been common practice in the waste management sector but not compulsory, for example, reporting to the waste information system, development of integrated waste management plans and development of the national waste management strategy which will be unpacked in the latter chapters of the guide.



1.2. The problem statement: Preamble

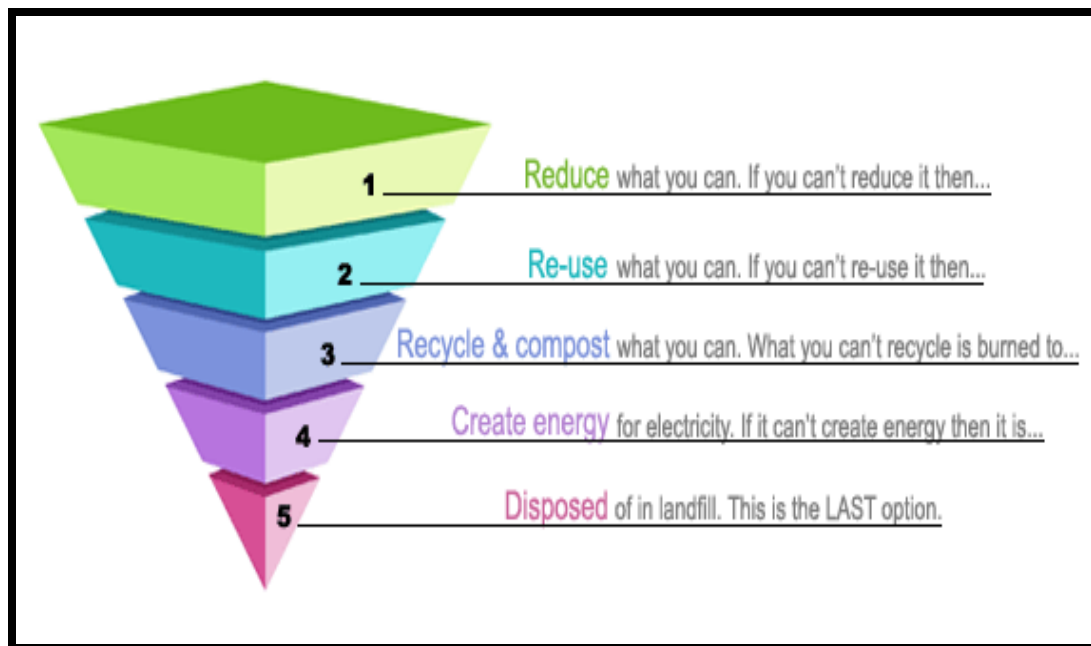
South Africa as a developing country is in a growth path both in terms of population as well as economic growth. In essence, this growth means that citizens become more affluent and therefore produce more waste. This varies from industrial waste which results from manufacturing and processing plants as well as general or domestic waste which include packaging material (paper, cardboards, plastic, bottles and steel/aluminium cans etc) and anything that the user does not have further use of. In this

society, there is also growing complexity of the waste types with the introduction of advanced technologies with a very short life span. Such technologies include cell phones, computers, television sets, which are commonly known as Waste Electronic and Electric Equipment (WEEE) or e-Waste once their lifespan is complete. Computer parts also include small amounts of heavy metals including cadmium that are harmful and toxic, or may cause cancer if inhaled, ingested or absorbed through skin. There is therefore a need for a holistic approach in dealing with these challenging waste types or streams.

The general approach of the Act is that it gives enabling powers to the Minister of Environmental Affairs as well as Members of Executive Committee (MECs) responsible for environmental management at provincial level to pass further regulations on different aspects. The Act does not spell out all the details required to manage different waste types, for example building waste, e-waste, garden waste, batteries, agricultural waste etc. Such details are or can be spelled out in regulations, Municipal by-laws as well as other guiding documents which are published by government from time to time.

The preamble to the Waste Act emphasizes the fact that everyone has a Constitutional right to an environment which is not harmful to their health and well being (section 24 of the Constitution). Therefore the State has to ensure that this right is realised. The current state is that there are still various waste management practices which compromise this right by

exposing people and the environment to harmful substances. The most significant aspect of the Waste Act is that it adopts an internationally recognised waste management hierarchy which says waste must first be avoided; where it cannot be avoided it must be reduced, reused, recycled or recovered and only disposed of if there is nothing else that could be done with it. The waste management hierarchy recommends that only a very small amount of waste must be disposed or buried on land but the current situation in South Africa is that most waste is disposed. The Waste Act aims to systematically change the situation by encouraging the movement of waste to other waste management options as shown in the figure below.



Waste Management Hierarchy

Examples: Recycling



Waste materials: ready for recycling

Chapter 1

Interpretation and principles



CHAPTER 1

1.1.1. Interpretation and principles

This chapter covers Definitions, Objects of the Act, General Duty of the State, Scope of application of the Act as well as the application and relevance of the National Environmental Management Act, 1998 (Act 107 of 1998).

Definitions: The Waste Act has a long list of all the terms which have been used in the text where a dictionary definition may not be sufficient. The main terms defined include 'waste'. Waste is defined as any substance irrespective whether it has a potential to be reduced, re-used, recycled or recovered; that is surplus or the owner or generator does not need it anymore. It also includes waste which can be declared by the Minister as waste in the *Government Gazette* (official government publication) which can include waste generated by mining, medical or any other sector (official government publication). It must be noted that a by-product (which is a secondary product produced in a process) which has the same characteristics as the virgin or raw materials is not regarded as waste and also any waste once it has been taken through the process of reuse, recycle or recovery, and it has the same characteristics as the virgin or raw materials. This is the most important definition in the Act because it forms

the basis for the application or overall scope of the Waste Act. All the other terms are defined in section 1 of the Act.

Note:

The Department has also published an interpretation document available on www.sawic.org.za

Objects of the Act:

The waste Act has several objectives which include:

- * Minimising the utilisation of natural resources
- * Preventing and minimising the generation of waste
- * Reducing, re-using, recycling and recovering waste
- * Treating and safely disposing of waste as a last resort
- * Preventing pollution and environmental degradation
- * Protecting the environment while promoting justifiable economic and social development;
- * Promoting and ensuring effective delivery of waste services;
- * Achieving integrated waste management reporting and planning;
- * Generally, to give effect to section 24 of the Constitution in order to secure an environment that is not harmful to health and well-being.

Application of the Act: Since legislation is developed by government, it is important to make sure that matters which are already covered in other legislation are not repeated in new legislation. For example, if the

department of mineral resources has legislation governing mining activities, the other department must not have similar legislation because that will amount to over regulation. This part of the Act lists waste that is already covered by other Acts of Parliament and includes radioactive waste, residue deposits and stockpiles, the disposal of explosives and animal carcasses. These waste types are regulated by other Departments such as Agriculture, Mineral Resources, Energy and Health. The section also mentions that the Waste Act is binding on all organs of state; meaning that it is not only meant for Environmental Affairs, but it is binding on all including other national departments, provinces and municipalities.

Application of NEMA: The Waste Act is called Specific Environmental Management Act (SEMA) under NEMA. This means that NEMA applies to this Act and the principles which are outlined in section 2 of NEMA also apply. These principles include the fact that pollution and degradation of the environment must be avoided and where it cannot be avoided, minimised and rectified or remedied, polluter pays principle, and the promotion of public participation.

Chapter 2

National Waste Management Strategy, Norms and Standards



CHAPTER 2

1.1.2. National Waste Management Strategy, Norms and Standards

National Waste Management Strategy: The Act gives the Minister of Environmental Affairs the power to develop and publish for implementation, a National Waste Management Strategy (NWMS). This is a document which outlines the priorities of the country in terms of ensuring that waste is minimised and managed in a sound manner. All state departments, provinces, municipalities, the private sector and the general public are bound by the strategy, meaning that it has the same weight as an Act of Parliament. The strategy is supposed to set targets for waste reduction, recycling etc, for example, it can come up with the tons of percentage of waste which must be recycled or different waste streams which must be recycled over a period of five or more years. Interesting to mention is that the Act gives a time frame for the development of the strategy, which is two years after the promulgation of the Act. The strategy should also be reviewed at a set interval.

The Minister, however, cannot develop such a strategy in isolation but is required to consult with all the interested and affected parties through various means including workshops, meetings, newspaper adverts,

publishing in the government *gazette* and invite people to send written comments for consideration. All the comments must be submitted to the relevant officials or section in the department for consideration when the strategy is finalised.

Norms and Standards: In a country with (9) nine unique provinces and just below 300 Municipalities, it is important to set national norms and standards for the management of waste in order to promote uniformity. The Act gives the Minister powers to set these standards. For example, the Minister can set standards for planning for and provision of waste management services. This will guide local government on how to provide waste services which includes storage, collection, transportation, separation, treatment and disposal of waste. The Department will have to undertake studies to ensure that these standards will definitely protect human health and the environment. There is a list of other standards which the Minister can set including the waste classification and management, extended producer responsibility, regionalisation of waste services etc. The extended producer responsibility essentially means that the producers or manufacturers of products which subsequently become waste (cans, plastics, papers, card boxes, bottles, tyres, batteries etc), have a responsibility to put measures in place for the collection and management of such waste materials post consumer stage.

The MEC (Provinces) must ensure the implementation of national waste management strategy and may set provincial norms and standards

providing that it is not in conflict with national norms and standards. In cases where a particular province feels that the national standards do not sufficiently cater for their unique circumstances, they can set more stringent standards but should not conflict with the national standards. The norms and standards that the MEC (Provinces) set must provide for planning, regionalization, minimisation of waste as well the treatment and disposal of waste. An example is the national standard for collection of waste which states that two bins must be provided for recyclable and non recyclable materials. A province can say it wants 4 bins (for cans, bottles, plastic, glass) to be separated. This will also be informed by the type of resources which exist in that particular province. Another example is where there is a national standard for remediation of contaminated land; a province can set much lower thresholds or values for certain contaminants because of their climatic conditions or other prevailing conditions. The most important thing to note is that both the Minister and MEC are required to follow a consultative process in setting these standards and therefore the public have a say in what is an acceptable and reasonable standard.

Waste service standards: The Municipalities in South Africa are given a responsibility by the Constitution to deliver/provide waste management services including waste removal, storage and disposal. The Waste Act reiterates that mandate but Municipalities must now ensure that what they do is in line with the national and provincial norms and standards. A Municipality may however; set its own local standards for separation,

compacting and storage of waste for all the waste they are managing. Residents of that municipality are bound by those standards. The Minister and MEC are entrusted with a responsibility to support Municipalities to ensure that waste services are provided. When developing local standards in a form of by-laws, a consultative process outlined in Chapter 4 of the Municipal Systems Act must be followed and people be given an opportunity to contribute.

Chapter 3

Institutional and Planning matters



CHAPTER 3

1.1.3. Institutional and Planning matters

Designation of Waste Management Officers (WMOs): The implementation of any legislation is dependent on the availability of functional, effective and sustainable institutional structures and resources. This means that there must be suitably qualified and experienced people who are going to drive the implementation; these are people who will make the provisions of the Act a reality.

Note:

A WMO can be considered suitably qualified if they possess some of the following qualities:

- * A person who is specifically responsible for waste management in the national, provincial or municipality. The WMO may in addition to their role, assume other responsibilities as directed by their authority
- * A middle to senior management level
- * A person who has broad knowledge of waste management and related matters
- * A person who can be mandated to represent their respective administration in meetings with other WMO and be mandated to take a position and/or decisions
- * A person who has sufficient authority to make decisions on day to day waste management issues

The Waste Act recognised this by requiring the designation of Waste Management Officers at National Department, Provincial and all Municipalities. The WMOs will be responsible for coordinating matters

pertaining to waste management from the government side. The public must have someone who will be the entry point for waste management issues at every level of government. The duties of the WMO are guided by the responsibilities and powers of the sphere of government. For example, where the Act says the Minister must develop the NWMS, the national WMO must ensure that it happens, by advising the Minister or running with such a process. Equally, local WMOs must facilitate the local government role with that administration to ensure that waste services are provided and continually improved. Important to note is that the Act is not prescriptive on how each sphere can select such a person, but that it must be in writing.

Note:

In order to unpack this section, the National DEA developed a guideline which can be accessed at www.sawic.org.za.

Integrated Waste Management Plans: The Department of Environmental Affairs as well as provincial departments responsible for waste management are required to develop Integrated Waste Management Plans (“IWMPs”). These are Plans which outlines how each is going to deal with waste and it also identified required resources.

The Waste Act also requires all Municipalities to develop IWMPs and these are the most important plans because waste services are provided at local government level. The Municipality must, after developing the Plan, submit

it to the provincial department responsible for environmental management i.e. waste management; for approval, but importantly ensure that it is included in their Integrated Development Plan (IDP). The development of IWMPs was introduced in the era of the 1999 NWMS as well as the White Paper on Integrated Pollution and Waste Management developed in 2000 but was not mandatory. The Waste Act now makes it mandatory. This is a planning tool by which waste will be quantified and characterized, and targets for different management options set; including resources for the provision of services.

The Act outlines the content of IWMP, the approval process as well as reporting on the implementation. This process is largely linked to the existing local government processes outlined in the Municipal Systems Act (MSA), and seek to elevate the profile of waste issues in the local government space. IWMPs are supposed to be five year plans, with an opportunity to review them annually. The annual performance report must include the following: (section 13(2))

- (a) the extent to which the plan has been implemented during the period;*
- (b) the waste management initiatives that have been undertaken during the reporting period;*
- (c) the delivery of waste management services and measures taken to secure the efficient delivery of waste management services, if applicable;*
- (d) the level of compliance with the plan and any applicable waste management standards;*
- (e) the measures taken to secure compliance with waste management standards;*
- (f) the waste management monitoring activities;*
- (g) the actual budget expended on implementing the plan;*
- (h) the measures that have been taken to make any necessary amendments to the plan;*
- (i) in the case of a province, the extent to which municipalities comply with the plan and, in the event of any non-compliance with the plan, the reasons for such non-compliance.*

Note:

The annual performance report is the document prepared by municipalities providing information/reporting on the work or progress of that particular municipality.

The Act does not require Municipalities to prepare separate annual reports; however, a report on waste must be included in the annual performance report required in terms of section 46 of the MSA. In cases where the Minister of DEA is not satisfied with the reporting process, he/she may prescribe other reporting requirements with a view to improve coordination of waste management.

Chapter 4

Waste Management Measures



CHAPTER 4

1.1.4. Waste Management Measures

Waste management measures include: 1. waste management plans, 2. prohibition on the generation of priority waste, 3. measures for the management of the priority waste, 4. measures for the minimisation, storage, re-use, recycling and recovering treatment and disposal of waste.

Priority Waste: the Minister may declare a waste to be priority waste.

These are some waste types which either by their nature, quantity, toxicity, risk, or interaction with other elements of the environment are very dangerous to humans, pose a threat to the environment, and are persistent or difficult to manage. The example is asbestos which causes respiratory problems and has since been phased out in South Africa. Many people still continue to be exposed to it although it was phased out. This section of the Act gives the Minister powers to declare any waste which he/she believes and has proof or reasonable grounds, that it poses a threat to humans and the environment, as priority waste. Once a waste type is declared as a priority waste, anyone handling it will have to adhere to the measures which will be set and the Minister can determine additional requirements for handling such waste. The Act does not list any waste, but gives guidance on considerations which must be done before such a declaration, as well as assessment of alternatives. Measures may include the banning of generation of such waste, banning of export or import, disposal, transportation etc.

General Duty in respect to waste management: This section outlines the duty or obligation for anyone who is a holder of waste to take steps within his or her power, to avoid the generation of waste, reduce, reuse, recycle and only treat and dispose waste as a last resort. They must also prevent any unauthorised person from having access to that waste.

Note:

The important part to note is that any person, who sells a product which can generate hazardous waste or which can potentially harm the consumer, must ensure that that product is labelled appropriately. This links with the Consumer Protection Act because any product which is sold to the consumers will, in all likelihood, generate waste after use.

It also links with the polluter pays principle because it places a responsibility on the holder of waste to remedy any pollution which might result from their activity.

Reduction, Reuse, Recycling and Recovery of waste:



The Act encourages the consideration of the other waste management options such as reduction, reuse, recycling and recovery of waste other

than disposal. This means that reduction, reuse, recycling of waste must be environmentally sound. Although Industries are required to make an assessment themselves, the Minister may identify waste streams which must either be reused, recycled etc. for example, if the Minister believes that it is better for waste tyres to be recycled or used for energy recovery purposes, he or she may publish a notice in a gazette to ban the disposal of waste tyres at landfill sites. This can apply to any other waste type which the Minister has reasonable grounds to believe that it can be directed to other management options other than disposal.



Who is the producer of this waste?

Extended Producer Responsibility (EPR): The Minister can identify products or a class of products where the extended producer responsibility can apply. The Minister may further specify the requirements in the implementation, financial responsibility, institutional arrangements, percentage of products, labelling of products. This, for example, applies in cases where the producers is identifiable e.g. plastic producers, cans, television sets, tyres, etc; then the Minister can order those producers to take measures in managing their waste throughout their lifecycle. The Minister of DEA is however, supposed, to consult with the Minister of Trade and Industry to avoid negatively affecting the economy. The general public is also supposed to be given an opportunity to comment on the process. In South Africa, there are voluntary, industry led EPR schemes which has been implemented even before the promulgation of the Waste Act e.g. used oil, batteries, cans etc.

Listing of Waste Management Activities: There are activities or facilities that are managing waste wherein their processes have a potential to cause harm to humans and/or the environment. The Minister can publish a list of such activities and make requirements or standards which must be adhered to. In that list the Minister must indicate whether a licence is required or not. The MEC for the environmental portfolio may also publish a list after agreeing with the Minister and such a list must not conflict with the national list. The list, for example, will have activities and thresholds or amounts of waste handled, where by a licence is required. Currently, all waste disposal sites require a licence regardless of size.

Note:

The only difference is that some activities require a Basic Assessment process whereas others require an Environmental Impact Assessment process, in line with the NEMA: EIA Regulations and that is determined by the size, the volume of waste and the nature of the waste handled. A copy of the latest EIA Regulations and the List of Waste Management Activities can be obtained from www.sawic.org.za

Storage, collection and transportation of waste: The Waste Act sets the requirements for storage of waste as well as the containers for storage. The main consideration is pollution prevention from spillage and escape of waste from the storage area. Only approved storage containers must be used for storing waste, particularly municipal waste. This also links with the collection of waste by Municipalities, that they have a right to limit the services. This is meant to encourage waste minimisation on the part of generators or consumers. The Act, in section 23, places a responsibility on Municipalities to provide receptacles accessible to the members of the community for recyclable waste materials. The Municipality can decide how they are going to do this because the Act does not prescribe the manner, meaning they can either provide bins for recyclable materials themselves or partner with industry to provide containers and collect the waste. There is also an option of providing a two bin system or communal collection areas for recyclable materials (at accessible places). On the issue of transportation of waste, transporters are also supposed to ensure that they only transport waste to a suitable designated facility either for disposal of, or for processing and that the facility is licensed. The Minister, MEC or municipality can require any person who is transporting waste for profit to

register with the relevant Waste Management Officer (WMO) and submit information on their activities e.g. types and volumes of waste transported etc.



Storage and Transportation of waste

Treatment, processing and disposal of waste: The main issues covered in this section are the prohibition of unauthorised disposal of waste (section 26) and littering. The Act reiterates what was covered in the Environmental Conservation Act of 1989 prohibiting any act of throwing waste or in leaving waste in places not designated for discarding waste i.e. waste bins. It also places a responsibility on any owner of premises be it private or public, to provide containers for discarding litter, for example, owners of restaurants; parks, lodges even streets in Municipal areas must place bins

which are suitable to carry waste and must ensure that they are emptied on a regular basis.

Industry Waste Management Plans: The Act has a dedicated section on the preparation of Industry Waste management Plans (section 28-33) by industry. This is in cases where any activity results in the generation of waste which needs to be managed. Where such waste affects more than one province, the Minister is the competent authority and where it only affects one province, the MEC is the competent authority. The IndWMP is a plan which must be prepared by industry and approved by the Minister or MEC, to indicate what measures and activities they are going to put in place to manage the waste. It also has to set targets for waste minimisation and set resources aside for the management of that waste. Industries can either be ordered by the authorities to prepare such plan or do it voluntarily.

Industry waste management plans should contain the following content as set out by the Minister:- 1. the amount of waste generated, 2. measures to prevent pollution, 3.targets, measures for waste management minimization, 4. opportunities for the reduction of waste, 5. mechanisms for informing the public of the impact of waste generation.

These plans are a form of co-regulation, whereby government and industry work together to manage waste and industry gets an opportunity to initiate or come up with plans on their own. The Act provides for the content and approval process for such plans as well as other requirements on how the

public must be involved. The example is the Packaging Industry, which can develop a plan on how they are going to collect all the packaging materials (paper, plastic, bottles, cans etc) and divert them to recycling instead of disposal. In the process, they will have to indicate how this will contribute to job creation, coupled with public awareness campaigns. An IWMP, once approved by the competent authority, is binding to the industry and penalties for non compliance are applicable. Industry waste management plans may be submitted to the Minister (national) or MEC (provincial) for approval.

Contaminated land: Most industrial processes result in the generation of hazardous waste and if that waste is not properly managed, it can result in contamination of land. The Waste Act, for the first time in waste legislation, provides for the identification of contaminated land, site assessments and remediation (rehabilitation) of contaminated land. The Act outlines the process that will be followed in declaring an area as contaminated site by the Minister or MEC. This process links with the Registrar of Deeds, to ensure that before ownership of contaminated land is transferred, remediation plans are in place. This will also protect unsuspecting buyers of land from taking over contaminated land unknowingly. What is important to note is that this section applies to land that was contaminated even before the waste act came into force. The Minister in consultation with the Minister of Water and Forestry and any other organ of state may identify areas of land on which high risk activities has taken place as high risk areas. The Minister may further order an investigation into that land/ area. On receipt of such assessment report the Minister may order a land to be contaminated. The Minister must keep a national contaminated land register of investigation areas that includes information on the owners, location and nature and origin of the contamination.

Chapter 5

Licensing of Waste Management activities



CHAPTER 5

1.1.5. Licensing of Waste Management Activities

The section deals with the licensing of waste management activities. It replaces the permitting process which was provided for in section 20 of ECA, 1989. The Act outlines who the licensing authority is for different activities. The Minister is the licensing authority for hazardous waste activities as well as activities undertaken by a national department, provincial department, statutory bodies or in case where the activity involves international obligations for national government. The MEC is the licensing authority for all general waste activities in their provinces. The Minister and MEC may, however, enter into an agreement to exchange any of the powers given to them but that has to be published in a gazette.

The section on licensing also outlines the following:

(a) Cooperative governance in waste management license applications

If the licensing authority decides to issue a license, it may issue an integrated license jointly with other organs of state or issue a license as part of a consolidated authorization consisting of different authorizations.

The integrated license must specify the statutory provision in terms of which it has been issued, identify the authorities that have issued it, indicate to whom applications for the cancellation of the license must be made as well as indicate the appeal procedure to be followed.

(b) Application process for a license

An application for a waste management license must be submitted to the waste management authority. Each application must be accompanied by the prescribed fee and the necessary information.

(c) Appointment of persons to manage waste management license applications

Appointed persons must have the necessary expertise in waste management applications.

(d) Procedure for waste management license applications

An applicant must take the necessary steps to bring the application to the relevant organs of state and must include the publication of the notice in at least two newspapers.

(e) Factors to be considered by the licensing authorities

All relevant factors must be taken into account including the need and desirability of the waste management activity, the likelihood of pollution caused by the activity, the best practical environmental options, any increased health and environmental risks and any guidelines published by the licensing authority.

(f) Decisions by licensing authorities

The licensing authority has the right to grant, refuse or reject the application. The authority must within 20 days of reaching a decision inform the applicant of their decision. If an application has been refused a new application can only be lodged after a three year period has lapsed.

(g) Issuing of licenses

A waste management license is subject to the conditions and requirements as specified in terms of section 50, or as the Minister or MEC has prescribed for the activity in question.

(h) Contents of licenses

The waste management license must specify the:-

- waste management activity;
- premises or area of operation;
- person to whom it is issued;
- period of the validity of the license, renewal date;
- name of licensing authority;
- amount of waste that must be generated, stored, processed, re-used and recycled.

(i) Transfer, review, variation, renewal, revocation and surrender of licenses

The holder of a waste management license can with the permission of the waste management authority transfer the license to the new owner. The application for a transfer of a waste management license must be accompanied by the prescribed fee and relevant documentation.

The licensing authority must review a license at intervals specified in the license.

A license authority may by written notice to the holder of a waste management license vary the license if its necessary or desirable to prevent pollution, meet those demands, make an amendment.

An application can be made for a waste management license to be renewed by a licensing authority. The application must be accompanied by the prescribed fee and relevant documentation.

A licensing authority may, by written notice to the license holder revoke or suspend that license if the license holder has contravened a provision of the act or a condition of the license and such contravention has an effect on the environment and health.

A license holder may surrender his license with the permission of the licensing authority. The licensing authority may request such information as it requires to consider the request.

(j) Designation of waste management control officers

A waste management officer may require a waste management license holder to appoint a waste management officer depending on the size and nature of the waste management activity.

(k) Criteria for fit and proper persons.

The following factors must be taken into account to establish whether a person is fit and proper

- whether the person held a waste management license that has previously been suspended or revoked,
- whether the person has the ability to comply with the Act,

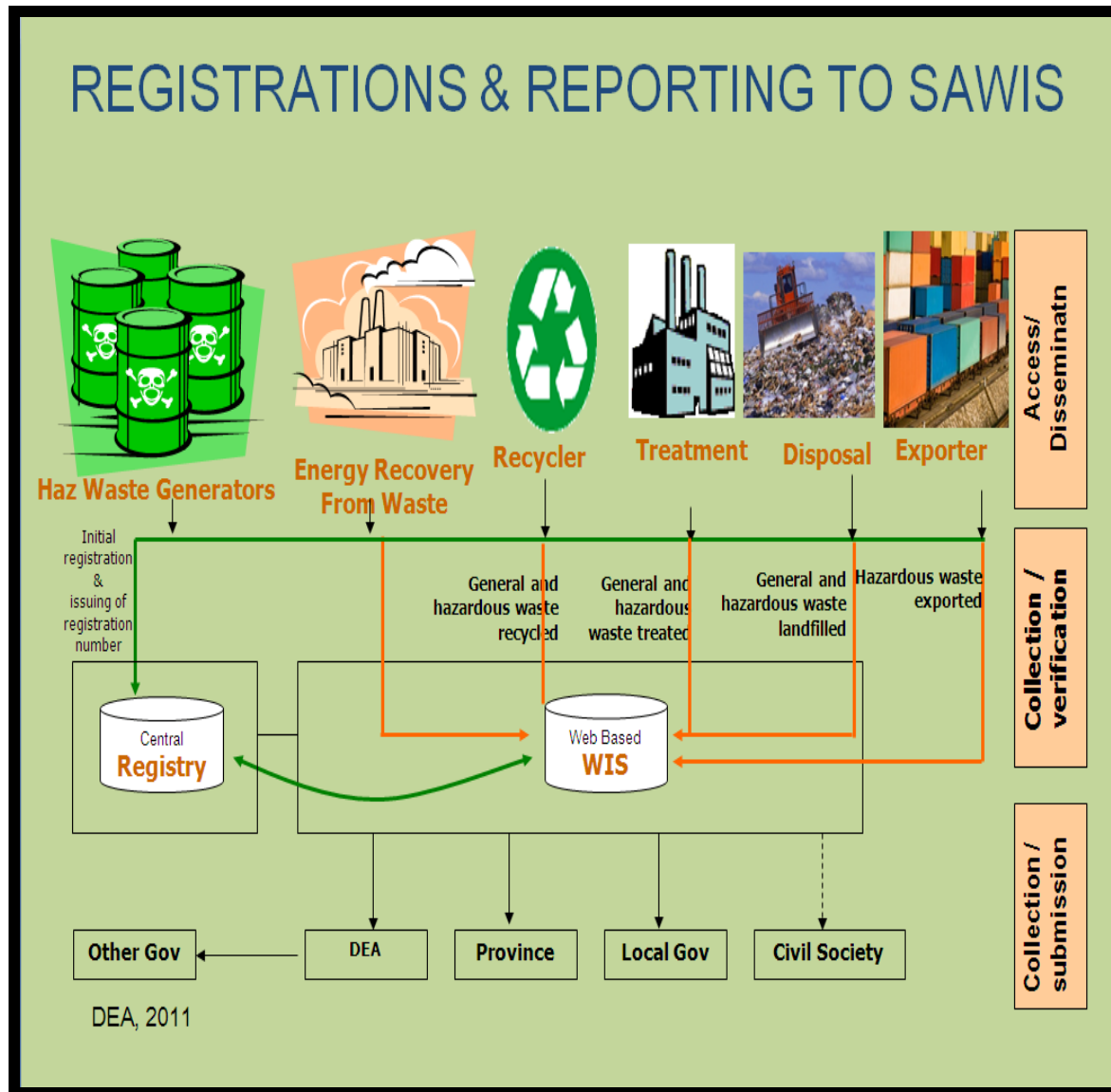
Important to mention is that a licensing authority may come up with further guidelines on licensing process to ensure that applicants have the same understanding on the requirements, however, the content of the Act takes precedence.

Note:

More information on licensing process and requirements including Frequently Asked Questions (FAQs) document can be accessed on www.sawic.org.za.

Chapter 6

Waste Information



CHAPTER 6

1.1.6. Waste Information

Information forms the core part in managing waste and monitoring the success of different policy interventions. Thus, the establishment of waste information systems could not be left out of the Waste Act. This section provides for the Minister (national) and/ or MECs (provincial) to establish waste information systems for the recording, collection, management and analysis of waste information. The main objectives of these systems are to store, verify and analyse information with a view to inform the planning, educating the public as well as assessing the status of generation, collection, recycling, transportation, treatment and disposal of waste. The information will also be used to assess the impact of the Waste Act in minimising waste. Access to information in these systems will be in accordance with the Promotion of Access to Information Act, 2000. Further Regulations outlining who should report, what information and at what intervals, will be developed in support of this section.

Note:

The process for development of the South African Waste Information System (SAWIS) was initiated before the promulgation of the Act and the system can be accessed at www.sawic.org.za.

ACTIVITIES REGISTRATION

Single Activity Site

Activity: Treatment of Hazardous waste



Registration Infor

Site: D00721

Treatment: D00721-01

SITE: Masdon, PTA

Multiple Activity Site

Activity: Treatment of Hazardous waste



SITE: Don, PE

Activity: Recycling of General waste



Registration Infor

Site: D00422

Treatment: D00422-01

Recycling: D00422-02

Multiple Sites Activities

Each site must be registered individually-
Company may link activities for reporting



Site: D00329

Activity: D00329-01



Site: D00330

Activity: D00330-01



Site: D00331

Activity: D00331-01

An example of how activities can be registered on SAWIS

Chapter 7

Compliance and Enforcement



CHAPTER 7

1.1.7. Compliance and enforcement

The Act gives compliance powers to the Minister of Water Affairs, particularly because waste disposal to land can have a detrimental impact on water resources, including surface or ground water.

The powers to request a waste impact report have been given to the environmental management inspector (EMI), commonly known as the 'green scorpions' as well as the waste management officer, in case they have reason to believe that any of the provisions of the Act were contravened or violated. Such a request must specify the kind of information required as well as time period within which the report must be submitted.



Unauthorised disposal



Offences and Penalties: The Act lists the different sections of the Act where-in non compliance constitutes an offence. The penalties for each offence are set by the Magistrate, however, the Act gives the maximum of R10 000 000 or maximum of 10 years imprisonment or both. Penalties vary depending of the extent and severity of the offence.

1. any person that commits an offence in terms of section 15, 16(1), of the act will be liable to a fine of not exceeding R10 000 000.00 or imprisonment for a period not exceeding 10 years;
2. any person that commits an offence in terms of section 21, 22(1), 24, 27 will be liable to pay a fine not exceeding R5 000 000.00 or imprisonment not exceeding 5 years;
3. any person that commits an offence in terms of section 67 (m) will be liable to a fine or to imprisonment for a period not exceeding six months or to both a fine and imprisonment;

4. any person who is found guilty of an offence and who continues to commit that offence is liable on conviction to a fine not exceeding R1000 or imprisonment for a period not exceeding 20 days.

Chapter 8

General provisions



CHAPTER 8

1.1.8. General provisions

Regulations by the Minister and MEC: Section 69(1) of the Act lists about 26 Regulations which may be passed by the Minister. These Regulations cover matters pertaining to the management of different waste streams, waste information management, contaminated land assessments, planning and provision of waste services etc. The MEC also has powers to pass Regulations but must first agree with the Minister on the Regulations.

Consultation and Public Participation: the Minister or MEC must before exercising any of their powers, consult with all the affected departments or municipalities to ensure that their views are taken into consideration. The general public must also be consulted and the Act prescribes an advert in a least one nationally distributed newspaper, and most importantly, a publication in the *Government Gazette*. What this means is that the Minister or MEC must ensure that there are systems in place within their administration for the management of the public participation processes.

Exemptions and Appeals: Anyone can apply to be exempted from any of the provisions of the Act to the relevant authority (Minister or MEC). In doing so, they will have to provide reasons for not complying and the decision will be taken by the authority whether to grant that exemption or

not. An example is when a person or organisation feels that they cannot conduct a fruitful public participation process because the community is located far away from the activity (landfill site, contaminated site, waste treatment facility etc).

The applicants can also appeal any decision granted by the authority, for example, if the Minister refuses to grant a licence to a particular applicant for the establishment of a waste disposal site, and the applicant is not satisfied with that decision, the applicant can lodge an appeal by following the prescribed process.

Chapter 9

Miscellaneous- other important matters



Chapter 9

1.1.9. Miscellaneous- other important matters

Delegations and assignments: The Minister or MEC can assign any of their powers to the officials in their Departments in writing, in order to make administration smooth and effective. Such powers have to come with conditions and limitations and must be reviewed from time to time. It can be for example, a Director-General in case of the national Department or the Head of Department in case of a provincial department or any other official.

Repeal and amendments of laws and savings: This Section mainly replaces provisions of the ECA 1989 and taking over Regulations which were set under ECA. The example is the Waste Tyre Regulations; Plastic bags Regulations and the Asbestos Regulations which are now considered to have been passed under the Waste Act. Any person, who was operating a waste disposal site before the coming into effect of the ECA, may continue to operate until such time that the Minister calls them to apply for a waste management license.

Transitional arrangements for permits issued in terms of ECA: This section sets out the process for transition to the new dispensation. Depending on the status of the application or permit, the Act outlines what should happen in each case.

Note:

Section 20 of the Environmental Conservation Act (ECA) made provision for the issuing of permits (now called licenses under the Waste Act).



Transitional provisions regarding listed waste management activities:

Schedule 1 of the Act lists all activities which require a waste management license and says anyone who lawfully undertook such activities before the coming into effect of the Waste Act, may continue until such time that the Minister calls them to apply by Notice in a *gazette*.

Note:

It should be noted that Schedule 1 in the Act has been amended and that the new waste activity list can be accessed from www.sawic.org.za. All amended and new gazetted documents can also be accessed from this website.

Short title and commencement: the Waste Act is considered as specific 'environmental management Act' under the National Environmental

Management Act (Act 107 of 1998). This means that the NEMA principles apply and that NEMA provisions are applicable to the Waste Act.

Note:

It is classified the same way as the Biodiversity Act, Protected Areas Act and Air Quality Act.

The National Environmental Management: Waste Act, 2008, took effect on the date determined by the Minister in a gazette.

Note:

The Minister of Environmental Affairs determined 1 July 2009 as the date of effect for the whole Act except the following sections:

- section 28(7)(a)- dealing with voluntary preparation and submission of Industry Waste Management Plans
- section 46- dealing with the appointment of persons to manage the application process for a waste management license
- section 35-41 (Part 8) - dealing with the identification, assessment and remediation of contaminated land.

The Proclamation Notice was published on 30 April 2009, Notice No: 32189. These delayed sections will be brought into effect on dates determined by the Minister in a Gazette.

1.3.10. Schedules explained

Schedule 1- Waste management Activities requiring waste licence: This is a list of waste management activities in terms of section 19 of the Act and it has Category A and B. This list is a living list and is reviewed on an on-going basis.

Note:

It is important to get the latest version of the List from the Department of Environmental Affairs before undertaking any waste management activity.

Schedule 2- Laws repealed or amended: This schedule lists all the sections of other legislation which have been repealed with the coming into effect of the Waste Act. The main ones being section 20 of the Environmental Conservation Act as well as other Government Notices pertaining to the management of waste.

Concluding remarks

The National Environmental Management: Waste Act presents South Africa with a great opportunity to change the current waste management practices with a view to protect the people and the environment. It is framework legislation and requires a lot more work on the part of the authorities to ensure that everyone has the same understanding. It also presents an opportunity for continuous improvement in the application of certain elements of the Act. The authorities have an opportunity to implement the Act on an incremental basis as the capacity is built. The general public has to contribute to the implementation of the Act by being responsible citizens and doing their part, but also contributing to all the processes through the public participation mechanisms which have been provided.

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