The Newcastle Chamber of Commerce and Industry in partnership with the Institute of Waste Management of Southern Africa - KZN Branch

"Recent Changes to Waste Legislation"
Recent amendments to the National Environmental Management Waste Legislation

30 October 2014

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AGENDA

• The NEMWA
• Recent Changes
• Activities Requiring a WML
• Contaminated Land
• Waste Classification and Management Regulations
• Waste Information Regulations
• National Norms and Standards
NEMWA Legislation Road Map

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Proposed Regulations, Norms & Standards

1. Planning and management of residue deposits and stockpiles
2. Asbestos wastes
3. Exclusion of wastes from Schedule 3
4. Separation of waste
5. Plastic bottle deposits
6. Burning of wastes
7. Import and export of wastes
8. Banning of plastics to landfill
NEMWA 59 of 2008 - GENERAL

Section 4 - Application
- NEMWA regulates all waste except those listed here

Section 5 - Application of NEMA
- Must be read with NEMA and interpreted in terms of NEMA S2 principles

Section 16- Duty of Care
- Holder of waste has a duty of care
- Reduce, re-use, recycle
- Manage to cause no harm + dispose in environmentally sound manner
- If selling products that generate hazardous waste, inform public impact of waste on health and environment.
NEMWA 59 of 2008 - GENERAL

» Section 19 - Listed Waste Management Activities

» Section 20 - Consequences of listing waste management activities
  ➢ May not commence, undertake or conduct a waste management activity without a WML or in compliance with Norms and Standards.

» Section 25 – Duties of persons transporting waste
  ➢ Register as a transporter
  ➢ Ensure that receiving site is authorized.

» Part 8 – Contaminated Land (was suspended)
NEMWA 59 of 2008 - GENERAL

- **Section 43 – Licensing Authority**
  - Minister is competent for hazardous waste, MEC for general waste

- **Chapter 6 – Waste Information**
  - Sections 60 to 64 – Waste Information Systems

- **Section 65 – Compliance and Enforcement**
  - Department of Water Affairs has authority to issue Directives, Compliance notices as described under National Water Act (section 19, 53 and 155) if a person contravenes or fails to comply with any condition of a waste management license or remediation order if this will lead to water pollution.
Section 67 - Offence
- Broad ranging offences
  i.e. If it has the potential to pollute it is probably an offence if it’s not regulated!

Section 68 - Penalties
- R10 mill max/ 10 years imprisonment or both
- R5 mill max/ 5 years imprisonment or both
- Determined by looking at benefit accrued by commission of offence and harm caused to environment.

Section 69 – Regulations by Minster
- Minister may make regulations to guide waste management

Section 74 - Application for Exemption
- Any person may apply for exemption from provisions of the Act to Minister or MEC;
- Requires explanation of reasons for exemption and supporting documents
NEML 2nd Amendment Act 30 of 2013

- **Section 1 of NEMA**
  - NEMWA is a Specific Environmental Management Act to NEMA

- **Section 24G of NEMA**
  - Can apply for 24G for unlawful commencement of a WMA
  - **Section 24G - Consequences of unlawful commencement of activity**
    - **Application of election** to ensure compliance, alternative is risking a directive or prosecution and higher fine;
    - Includes *commenced or conducted a waste management activity* without a waste management licence, and **non compliance with norms and standards**;
    - MEA, MMR or MEC concerned are authorities
    - **Administrative fine** < R5mill
    - Any *pending criminal investigations will suspend* a Section 24G decision
    - **Criminal prosecution** still possible (ie not an amnesty)
Effective date 2 September 2014 BUT practical implementation put on hold by DEA until 8 December 2014 – pending publication of additional regulations/norms and standards to complete the ‘one environmental system’ (DEA media statement of 4 September 2014).

- **Section 1 – Definitions** of residue deposit and stockpile as per MPRDA
- **Section 4 - Application of Act**
  - Residue Deposits and stockpiles ito MPRDA no longer excluded from the ambit of the Waste Act;
- **Section 20A - Geographical Areas**
  - Minister may prohibit or restrict granting of WML for a listed activity in a specified geographical areas;
- **Section 43 – Licensing Authority**
  - Minister Mineral Resources is the licensing authority where waste relates directly to prospecting, extraction, primary processing, residue deposits and stockpiles
Section 43A – Residue Stockpiles and Deposits
- Residue Stockpiles and Deposits to be managed on sites demarcated in the Environmental Management Programme
- no person may temporarily store or permanently deposit any residue on any site other than demarcated area.
- Note: Section 24 S of NEMA

Section 69
- Minister may make regulations for management and control of residue stockpiles and deposits.
NEMW AMENDMENT ACT 26 OF 2014

Section 1- Definitions

- **Deletion of Definitions** – building and demolition waste, building waste, by product, domestic waste, general waste, hazardous waste, inert waste – but many moved to **Schedule 3**
- **Substitution** – recovery, reuse, waste
- **Insertion** – residue deposits, residue stockpiles and ‘the Bureau’ in **Schedule 3**

‘Waste’ is any substance, material or object that is unwanted, rejected, abandoned, discarded or disposed of, or is intended or required to be discarded or disposed of, by the holder of that substance, material or object …. and includes all wastes as defined in Schedule 3, but any waste or portion of waste ceases to be a waste:
- once it have be re-used, recycled or recovered.
- where it has been exempted in terms of S74, or
- excluded from the definition of waste.

Schedule 3 provides of list of defined wastes and ‘pre-classifies’ wastes into hazardous or general categories by source/industry.
NEMW AMENDMENT ACT 26 OF 2014

Section 4 of NEMWA - Application of Act
- Animal carcasses no longer excluded from the ambit of the Waste Act;
  (still excludes radioactive wastes and explosives)

Chapter 3A Financial Provisions
- Provision for charges to be levied on certain wastes to fund industry waste
  management plans and other objects of the Act.
- Requires publication of a pricing strategy
- Draft pricing strategy considers various economic instruments (taxes, tariffs,
  subsidies).
- Aims are to:
  - give appropriate economic value to waste
  - Support a secondary resource economy
  - Reduce waste generation
  - Increase diversion away from landfill
  - Mainstream the polluter pays principle
NEMW AMENDMENT ACT 26 OF 2014

➢ Section 28- Industry Waste Management Plans
  ➢ Can be required for certain wastes or industries.

➢ Part 7A – Waste Management Bureau
  ➢ Implementing agent within the Department
  ➢ Promote re-use, recycling and recovery
  ➢ Manage the disbursement of monies from waste charges
  ➢ Monitor industry waste management plans
  ➢ Policy to be determined
SCHEDULE OF ACTIVITIES REQUIRING A WML
GN R 921 (November 2013), as amended

- Waste management activities divided into **Category A, B and C**
- WML required for **Category A and B.**
- Category A requires a **Basic Assessment** to inform
- Category B requires a **Scoping & EIA** to inform
  (both as per 2010 EIA regulations)
- Applications to (S43):
  - province if general waste,
  - DEA if hazardous
  - But to **DMR** if related to prospecting, extraction or primary processing and residue deposits and stockpiles (S43(1A)).
- **Integrated licence** is provided for in the Act (S44)
- Fees are payable on application(S45(2)).
- Authority is required to **consider a range of factors for decision** (S48).
- WML must/may specify particular requirements (S51)
SCHEDULE OF ACTIVITIES REQUIRING A WML

GN R 921 (November 2013), as amended

- DWA must concur with WML for any disposal license (S49 (2)).

- WML can be transferred, reviewed, varied, renewed, revoked, suspended or surrendered (S52 – 57)

- State Departments have period longer than other EIA process to comment for disposal license (60 rather than 40 days)

- Category C, if above capacity thresholds to comply with Norms and Standards
Currently N&S for:

- Extraction, flaring or recovery of landfill gas
- Scrapping or recovery of motor vehicles
- Storage of Waste
- Composting in Draft

N&S for the Storage of Waste

Purpose: provide uniform approach and minimum standards for design and operation of new and existing waste storage facility.

Applies to any person who stores general or hazardous waste in a waste storage facility. Excludes surface impoundments and lagoons. Excludes temporary storage.

Replaces need for a WML

Registration with authority 90 days prior to (of new waste facilities)
NATIONAL NORMS AND STANDARDS

Sets requirements for:
- Location
- Construction and design
- Access control
- Operations
- Waste Storage Containers
- Above and below ground storage
- Training, Emergency Preparedness plan, Monitoring and Inspection, Auditing, Authority Audits and Inspections, Reporting, Records
- Rehabilitation Plan required not more than 1 year before
- Owners remain liable for damages after operations have ceased
CONTAMINATED LAND

Part 8 of the NEMWA - with effect from 2 May 2014

Contaminated
- includes the presence of a substance or microorganism above its normal level of concentration which may adversely affect, directly or indirectly, the quality of soil or the environment.

Section 35 – Application of the Part

Section 36 - Identification and notification of Investigation Area
- Minister/MEC to identify ‘investigation areas’ where high risk activities have occurred
  - What are ‘High Risk Activities’?
- Or on reasonable grounds believes land to be contaminated
- S36(5) Landowners to notify minister of significantly contaminated land
  - What is significantly contaminated?
CONTAMINATED LAND cont..

- Section 37- Consequences
  - Site assessment + report

- Section 38- Consideration of reports
  - Decide on contamination status and remediation requirements

- Section 39- Orders to remediate

- Section 40 - Transfer
  - no person may transfer contaminated land without informing the transferee that the land is contaminated.

- National Norms and Standards for the Remediation of Contaminated Land and Soil Quality.
  - apply to assessment of site and remediation activity.
WASTE CLASSIFICATION & MANAGEMENT REGULATIONS

- Effective 23 August 2013
- Applies to Waste Generators, Waste Transporters and Waste Managers, but not to domestic waste generators;

Waste Classification

- Waste listed in Annexure 1 does not require classification in terms of SANS 10234;
- All other waste must be classified by the generator in terms of SANS 10234;
  - Within 180 days of generation
  - Kept separate
  - Reclassified every 5 years, 30 days after process change or within 180 days after treatment.

Implementation timeframes

- 3 years if previously classified under MR (Aug 2016)
- 18 months if it produced prior to the Regs (Feb 2015)
- 180 days after generation

SANS 10234 follows the GHS and requires determination of hazard class and hazard category.

Supplement to SANS 10234 contains existing data.
WASTE CLASSIFICATION & MANAGEMENT REGULATIONS cont..

- **Safety Data Sheets**
  - For all hazardous wastes, with exclusions (Asbestos, PCB, laboratory wastes etc)
  - Also not required for HCRW
  - Ito SANS 10234

- **Waste Management**
  - Transporters and managers cannot accept unclassified waste (from Aug 2016 if the waste was classified under the MR)
  - Labelling of containers (or accompanying records) required from Aug 2014 – but deferred to Aug 2016 if previously classified.
    - Info such as date of placement, quantities, types, categories etc
  - Generators must ensure waste is managed with 18 months of generation.
  - Managers may not store waste for more than 18 months.
  - Management of waste in existing facilities must commence within 5 years.
Assessment for Disposal

- Generators must ensure that 1) waste is *assessed* prior to disposal and
- 2) waste is disposed in accordance to Norms and Standards (except for domestic and businesses)
- Managers must also comply with N&S
- Exclusions on assessment requirements for certain wastes
- Only effective from Aug 2016 if waste was previously classified.

Waste Management Activities that do not require a Waste Management License

- Provides for motivation to be submitted to Minister
- Has to demonstrate consistent and repeatable action without impact to health and environment
WASTE MANAGEMENT & CLASSIFICATION REGULATIONS cont..

- **Record Keeping (from 23 August 2014)**
  - Waste generators to keep records for 5 years, including who managed the waste

- **Waste Manifest System (from 23 August 2014)**
  - Applies to all hazardous waste (except if managed at same site)
  - Generator to complete for each consignment
  - Transporter/Manager may not accept waste without a manifest
  - Transporter to complete and provide into to generator and manager.
  - Managers to complete and confirm acceptance and management (ie ‘safe disposal certificate’)
  - Keep copies for 5 years.

- **Offences and Penalties**
  - Non compliance or falsifying information
  - Max penalty is R 10 mil and/or 10 years
Waste Information Regulations

- Effective 1 January 2013.
- Aim to regulate the collection of data and information to fulfil the objectives as set in the Act.
- Apply to all persons conducting ‘waste management activities’ (includes haz waste generators).
- Comply with provincial plan if one exists.
- Register with SAWIS and receive certificate
  - within 90 days of Regs;
  - 30 days of commencing new activity.
- Registration is per facility
- Quarterly submission of info
  - actual for haz waste,
  - estimated for general (for 5 years), but not disposal sites
- Record keeping
- Verification through audits and surveys
- Offences and penalties (15 years in jail)
NATIONAL NORMS AND STANDARDS


- Prescribes the requirements to **assess** waste prior to disposal.
- Need to ID chemical substances and determine total ("TC") and leachable concentrations("LC") of the elements and chemical substances in the waste, as specified.
- Also require ID of organic compounds
- Utilise standard assessment methodology, at SANAS labs by Aug 2016
- Compare to threshold limits specified in the standards.
- Determine waste Types (Type 0 - Type 4).
- This informs appropriate landfill Class. i.e. is disposal possible and if so to which landfill type.
- Existing LC results under the MR can be compared to LC thresholds up to Aug 2016.

- Prescribes the requirements for waste disposal to landfill.
- Specifies the minimum engineering requirements for containment barriers – Class A to D.
- Prescribes information required in WML application.
  - Reports and drawings certified by a RPCE.
  - Service life considerations
  - Total solute seepage, acceptable and action leak rates.
  - Alternative elements of proven equivalent performance.
  - Drainage layer info
  - Alternative layout designs
  - Construction Quality assurance
  - Compliance to SANS specifications
  - Compatibility of liner to wastes
NATIONAL NORMS AND STANDARDS

» National Norms and Standards for Disposal of Waste to Landfill cont..
  » All new landfills and new cells at existing landfills must comply
  » But old cells with MR liners may be used for the life of the cell (subject to conditions).

» Waste acceptance criteria for disposal sites;
  » Type 0 may not be disposed.
  » Type 1 to Class A or Hh/HH
  » Type 2 to Class B or GLB +
  » Type 3 to Class C or GLB +
  » Type 4 to class D or GLB-

» Prescribed disposal requirements for certain wastes which do not have be classified into WCMR.
National Norms and Standards for Disposal of Waste to Landfill cont..

- Prescribed certain wastes, classified under MR, that may be disposed at same sites up until Aug 2016.

Waste disposal restrictions

- Prohibitions on disposal of certain wastes to landfill
  - e.g. explosive, high pH, flammable, reactive, batteries, oils and solvents, PCB containing, haz WEEE, tyres, liquid wastes, haz waste with calorific value, brines, garden wastes, carcasses
- compliance timeframes from immediate to 15 years from Regulations.
End of Section