



ENVIRONMENTAL LAW

ALERT

1 July 2009, marked the commencement of the National Environmental Management:Waste Act, 59 of 2008. Although certain sections are still to commence (including the highly contentious contaminated land provisions), the Act:

- imposes various duties on "holders of waste" (being any person who stores, accumulates, transports, processes, treats and disposes of waste). These duties are potentially far reaching as "waste" is broadly defined and includes "any substance, whether or not that substance can be reduced, re-used, recycled and recovered and that is surplus, unwanted, rejected, discarded, abandoned or disposed of; for which the generator has no further use of for the purposes of production; that must be treated or disposed of; or that is identified as a waste by the Minister but a by-product is not considered waste and any portion of waste, once it is re-used, recycled and recovered, ceases to be waste";
- stipulates that no person may commence, undertake or conduct a waste management activity except in accordance with a waste management licence or in accordance with prescribed requirements and standards. Waste management licences are required for, among other things, the temporary storage of general and hazardous waste and the treatment of general and hazardous waste;
- contains transitional provisions in respect of permits issued in terms of section 20 of the Environment Conservation Act, 73 of 1989 ("ECA"). Although permits issued in terms of section 20 of the ECA will initially remain valid, holders of such permits will be required to apply for waste management licences (failing which the permits will lapse). While the section 20 permits remain valid, the provisions of the Waste Act will apply to the permit holder; and
- the contaminated land provisions contained in Part 8 of the Waste Act (which are still to commence on a date to be determined by the Minister) will require that owners of (or persons who conducted activities resulting in) land that is

significantly contaminated must inform the Minister and the MEC of that contamination as soon as it becomes aware of the contamination. Failure to comply with this requirement will be an offence for which a person is liable, on conviction, to a fine not exceeding R5million or a term of imprisonment not exceeding 5 years or both. It should be noted that this provision applies to contamination which occurred, amongst other things, before the commencement of the contaminated land provisions, which originates on land other than the land in question and also to contamination which emerges at a time different to the time the contamination causing activity occurred.

Those who may be most affected by these provisions include waste management companies, industry generally, financiers and investors.

Please contact us for further information or to be advised on the specific implications for your business.

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