



ENVIRONMENTAL ALERT

IN THIS ISSUE

UNLOCKING THE POTENTIAL OF THE WASTE ECONOMY: REVISED DRAFT REGULATIONS FOR THE EXCLUSION OF WASTE STREAMS PUBLISHED

The Minister of Environmental Affairs (Minister) recently published revised draft Regulations to Exclude Waste Streams from the Definition of Waste (Revised Draft Regulations) in terms of the National Environmental Management: Waste Act, No 59 of 2008. The Revised Draft Regulations prescribe the manner in which application may be made to the Minister for the exclusion of certain waste and waste streams (collectively Wastes) from the definition of waste under NEMWA (Exclusion Applications) and proposes a list of Wastes that will not be considered waste, once the Revised Draft Regulations are enacted.

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The Revised Draft Regulations are welcomed and a step towards removing the regulatory barriers to job creation and social upliftment through the re-use or recovery of waste, otherwise destined for landfill.

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Once an Exclusion Application has been approved, the Wastes will no longer be regulated under NEMWA. The Revised Draft Regulations also specifically allow for the recovery or treatment of any waste stream excluded under an Exclusion Application without a waste management licence (WML) issued under NEMWA.

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Background

Prior to its amendment in 2014, NEMWA recognised that waste which had the characteristics of an equivalent virgin product or material that could be used as a raw material in other processes should be considered “a by-product” and excluded it from regulation under the Act. While industry saw this as an opportunity to proactively find markets for waste that would otherwise be disposed of at landfill sites, the Department of Environmental Affairs (DEA) applied a very strict interpretation of NEMWA’s “by-product” definition which made it near impossible

for most waste, which had re-use/recovery potential, to fall within the ambit thereof. This eventually discouraged industry from considering the prospects of supplying waste to small or medium sized enterprises who had little or no licensing and environmental compliance track records due to:

- the licensing requirements for the re-use/recovery of waste before 29 November 2013; and
- the penalties under NEMWA for allowing third parties to re-use/recover waste without the necessary waste management licences.

The NEMWA “waste” definition was eventually amended to remove all references to “by-products” and substituted with provisions allowing for the Minister to exclude waste streams from the definition of waste through publishing regulations. Industry continued to lobby for legislative amendments to unlock the waste industry in line with the “fit for purpose” and “fit for use” approach in other international jurisdictions.

National policies also reinforced the economic opportunities of waste. Goal 3 of the 2012 National Waste Management

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CONTINUED

The Revised Draft Regulations appear to signal the DEA's recommitment to address over-regulation in the waste sector by reducing the number of waste management activities requiring a WML.



Strategy (Strategy) highlights the social and economic impact of waste management and commits to the creation of 69,000 new jobs within the waste sector by 2016. This aligns with the DEA Green Economy Plan (GEP) which identifies sustainable waste management practices and specifically waste beneficiation as one of the nine key areas in green economy programmes. In a 2014 report commissioned by the Department of Science and Technology titled "A National Waste Research, Development and Innovation Roadmap for South Africa", it was estimated that increased recovery and recycling of waste could potentially unlock R17,4 billion annually, "which would otherwise have been lost through disposal to landfill".

Although draft regulations for the exclusion of a waste stream (or a portion thereof) from the definition of waste were published shortly after the amendment (2014 Draft Regulations), they were never promulgated which frustrated attempts to meet the Strategy's GEP commitments.

The Revised Draft Regulations, together with the recently proposed legislative amendments substituting licensing requirements with prescribed norms and standards, appear to signal the DEA's recommitment to address over-regulation in the waste sector by reducing the

number of waste management activities (WMAs) requiring a WML and making real attempts at facilitating job creation in a manner that directs waste away from landfills.

Key features of Revised Draft Regulations

The Revised Draft Regulations differ from the 2014 Draft Regulations, particularly by providing for a non-exhaustive list (Listed WMA) of excluded waste streams including:

- waste slag from ferrochrome metallurgy;
- ash from combustion plants; and
- gypsum or biomass (bark, offcuts, sawdust) from pulp, paper and cardboard production and processing.

For each of these waste streams the Revised Draft Regulations prescribe a number of uses that may be conducted without a WML. The list may, however, be amended by the Minister by, among other things, adding or removing waste streams, subject to a public participation process being followed. Any person who generates waste, or a group of waste generators where the waste in question has the same physical, chemical or biological properties, may furthermore apply to the Minister for the exclusion of waste by following the prescribed Exclusion Application process.

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Comments to the Revised Draft Regulations must be submitted to the Minister by 3 July 2017.



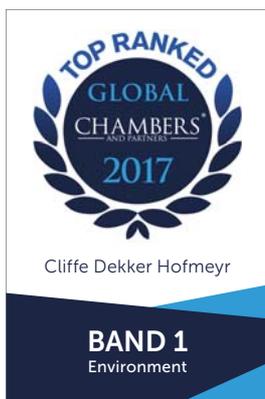
The Revised Draft Regulations' proposed transitional provisions require:

- the continuation of a WMA lawfully undertaken in terms of a WML until such time as the license expires;
- the continuation of a Listed WMA in compliance NEMWA requirements for six months after the commencement of the Revised Draft Regulations; and
- automatic withdrawal of a WML application where the Revised Draft Regulations come into operation prior to the application being granted.

Comment period

Comments to the Revised Draft Regulations must be submitted to the Minister by 3 July 2017.

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