

3 JULY 2020

# ENVIRONMENTAL ALERT



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### Extended Producer Responsibility – the “New Approach” under our Circular Economy to achieve the elimination of waste generation

The Minister of Environment, Forestry and Fisheries (Minister) recently published for comment draft regulations and notices (Draft EPR Regulations / Notices) in terms of the National Environmental Management Act 59 of 2008 (NEMWA) proposing the establishment of Extended Producer Responsibility (EPR) schemes, as provided for in section 18, for waste products from select industrial sectors, namely lighting; paper, packaging and some single use products; and electrical and electronic equipment (Priority EPR Sectors).

## Extended Producer Responsibility – the “New Approach” under our Circular Economy to achieve the elimination of waste generation

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Publication of the Draft EPR Regulations/ Notices follows the withdrawal in December 2019 of a 2017 notice calling on the same sectors to submit Industry Waste Management Plans (IWMP) in terms of section 28 of NEMWA (S28 Notice). Due to failure of the submitted IWMPs to meet the requirements under NEMWA, the Minister announced upon the withdrawal that *“a new approach is required in order to achieve the same objectives that were intended when this section 28 notice process initially began. The new approach will be centered on the extended producer responsibility (EPR) principle...”*.

In terms of the Draft EPR Regulations, the Priority EPR Sectors will need to implement EPR schemes which comprise of systems putting into effect obligations under which producers are given full responsibility to implement EPR – thereby contributing to ensuring the effective and efficient management of the waste streams within the Priority EPR Sectors and encouraging the implementation of *inter alia* circular economy initiatives (being the ultimate goal of eliminating waste generation).

### EPR explained

EPR is a waste management policy approach founded on product stewardship and the “polluter- pays principle” captured in section 2 of National Environmental Management Act 107 of 1998. The intention of EPR is to extend a producer’s financial or physical responsibility for its product across its product’s life cycle, to the post-consumer stage (including waste disposal).

Under NEMWA, EPR measures can take various forms and include:

- (i) waste minimisation programmes;
- (ii) financial arrangements for any fund that has been established to promote the reduction, re-use, recycling and recovery of waste;
- (iii) awareness programmes to inform the public of the impacts of waste emanating from the product on health and the environment; and
- (iv) any other measures to reduce the potential impact of the product on health and the environment.

### EPR in South Africa

EPR has become increasingly central to the local waste management discourse. This follows as South Africa’s waste generation continues to increase, with significant volumes still being diverted to already limited landfill space.

When published in 2011, the National Waste Management Strategy (2011 NWMS) noted EPR as one of the instruments under NEMWA that could give effect to the section 16 general duty of waste holders to avoid generating waste and, failing that, minimise the volume and toxicity

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...continued

The purpose of the Draft EPR Regulations is to provide the framework for the development, implementation, monitoring and evaluation of EPR schemes by producers, importers and brand owners in accordance with NEMWA.

of the waste generated. The 2011 NWMS distinguishes between voluntary and mandatory EPR, noting the former being applicable to IWMPs and the latter through the promulgation of EPR schemes under NEMWA.

Although still in draft form, the revised NWMS published in December 2019 (2019 Draft NWMS) recognises EPR as a component underpinning the overall strategic approach of waste minimisation and a circular economy. As explained by the Minister during the 2019 Plastics Colloquium – *“The circular economy therefore requires integrating the entire product life cycle from raw material extraction, through product design, use and ultimately recovery and recycling or re-use.”*

According to the second draft of the South Africa: State of Waste Report, which informs and was published for comment together with the 2019 Draft NWMS, EPR is also recognised as the preferred economic instrument to reduce waste generation and increase diversion of waste from landfill.

## Draft EPR Regulations / Notices

The Draft EPR Regulations apply to “producers” within the Priority EPR Sectors, meaning any person or category of persons or a brand owner (a person, category of persons or company who sells any commodity under a registered brand label) who is engaged in the commercial manufacture, conversion refurbishment or import of new and/or used products as identified in the Draft EPR Notices.

Stakeholders will need to identify their role in the product life cycle and whether they fall within the definition of “producers” in order to ensure compliance.

The purpose of the Draft EPR Regulations is to provide the framework for the development, implementation, monitoring and evaluation of EPR schemes by producers, importers and brand owners in accordance with NEMWA. In this regard, the Draft EPR Regulations provide for:

- registration of producers;
- EPR measures to be implemented by producers;
- minimum requirements and criteria for EPR schemes to operate;
- financial arrangements for EPR schemes;
- monitoring, reporting and evaluation;
- EPR scheme performance reviews; and
- registration, operational requirements and obligations of product responsibility organisations (non-profit companies established by producers or any person operation in any of the industrial sectors covered in the Regulations to support the implementation of their EPR scheme).

Each of the Draft EPR Notices provides for, amongst other things, lists of products to which they apply within the Priority EPR Sectors, as well as recovery, collection and recycling targets where applicable.

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Failure to comply with various provisions under the Draft EPR Regulations will be an offence, which may, upon conviction, lead to an “appropriate fine”, imprisonment for a period 15 years, or both.

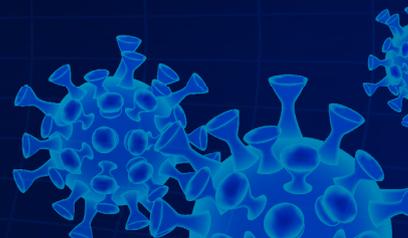
Failure to comply with various provisions under the Draft EPR Regulations will be an offence, which may, upon conviction, lead to an “appropriate fine”, imprisonment for a period 15 years, or both. These penalties appear to be more extensive than presently provided for under any other environmental law, with an “appropriate fine” seemingly being discretionary and the period of imprisonment exceeding the 10-year period prescribed by NEMWA, which lists non-compliance with a notice under section 18(1) as an offence in its own right.

Comments on the Draft EPR Regulations /Notices are due by 27 July 2020, with affected players in the Priority EPR Sectors being encouraged to consider the drafts for purposes of timeously seeking legal assistance where necessary in order to meaningfully engage with the Department of Environment, Forestry and Fisheries.

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### **BBBEE STATUS:** LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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