

Western Cape, South Africa

Western Cape Health Care Waste Management Act Act 7 of 2007

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Western Cape South Africa

Western Cape Health Care Waste Management Act

Act 7 of 2007

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ACT

To provide for the effective handling, storage, collection, transportation, treatment and disposal of health care waste by all persons in the Province of the Western Cape; and to provide for matters incidental thereto.

WHEREAS, in terms of section 24 of the Constitution, everyone has the right—

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure the ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

AND WHEREAS Government desires to progressively realise environmental rights by providing for the effective management (handling, storage, collection, transportation, treatment and disposal) of health care waste by all persons in the Province of the Western Cape;

AND WHEREAS all generators, transporters, treaters and disposers of health care waste have a constitutional responsibility to manage their health care waste in a responsible manner, and to ensure that the management of their health care waste has no adverse effects on human health and the environment;

BE IT THEREFORE ENACTED by the Provincial Parliament of the Western Cape, as follows:—

1. Definitions

In this Act, unless the context indicates otherwise—

"audit" means the examination of the environmental management practices of a person by a municipality or the Department, or internally by such person, to determine whether such environmental practices are compliant with the provisions of this Act;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Department" means the department responsible for environmental affairs in the Province;

"disposal" means the intentional release or discharge, or burial, deposit, or, placing of any waste material into air or water or onto land; and the words "dispose", "disposes" and "disposed" have corresponding meanings;

"disposal site", means a permitted site in terms of section 20 of the Environment Conservation Act, 1989 ([Act 73 of 1989](#)), used for the accumulation of waste with the purpose of treating or disposing of such waste;

"disposer" means any person or any agent acting on behalf of a person, involved in the disposal of health care waste;

"dump", in relation to health care waste, means to deposit or discharge, or cause or allow to be deposited or discharged, in any manner or at any place other than is set out in terms of this Act, or permitted in terms of section 20 of the Environment Conservation Act, and the words "dumps", "dumped" and "dumping" have corresponding meanings;

"generator" means any person or any agent of a person that generates health care waste, but does not include a household generator of health care waste;

"hazardous", in relation to a substance or a combination of substances, means potentially harmful to human health or the environment;

"Head of Department" means the head of the department responsible for environmental affairs in the Province;

"health care waste" means—

- (1) any waste—
 - (a) generated by or derived from medical care or medical research; or
 - (b) that has been in contact with blood, bodily fluids or tissues from humans, or infected animals from veterinary practices;
- (2) any waste under subparagraph (a), including but not limited to, the following categories of waste:

Infectious waste: Waste that is suspected to contain pathogens in a sufficient concentration or quantity to cause disease in susceptible hosts. This category includes cultures and stocks of infectious agents from laboratory work; waste from surgery and autopsies on corpses with infectious diseases; waste from infected patients in isolation wards; waste that has been in contact with infected patients undergoing haemodialysis; infected animals from laboratories; sanitary waste materials and tissues (including swabs) and any other instruments or materials that have been in contact with infected persons or materials.

Pathological waste: Includes all human tissues, organs, body parts, foetuses, blood and body fluids and those of infected animals.

Sharp waste: Includes items that could cause cuts or puncture wounds and includes, but is not limited to, needles, hypodermic needles, scalpels and other blades, knives, infusion sets, saws, broken glass and nails, and the word "sharp" has a corresponding meaning.

Pharmaceutical waste: Includes expired, unused, spilt and contaminated pharmaceutical products, drugs, vaccines and sera that are no longer required and that need to be disposed of appropriately.

Genotoxic waste: Is highly hazardous waste that may have mutagenic, teratogenic or carcinogenic properties. This waste type includes certain cytostatic drugs as well as vomit, urine or faeces from patients treated with cytostatic drugs, chemicals and radioactive material.

Chemical waste: Includes discarded solid, liquid and gaseous chemicals.

Waste with heavy metals: Includes, but is not limited to, mercury waste from thermometers, blood-pressure gauges, residues from dentistry; cadmium waste from discarded batteries, reinforced wood panels used in radiation proofing, and drugs containing arsenic.

Pressurised container waste: Includes pressurised cylinders and cartridges used in health care facilities to store gases.

Radioactive waste: Includes solid, liquid and gaseous materials contaminated with radionuclides, including waste produced as a result of procedures such as in vitro analysis of body tissue and fluid, in vivo organ imaging and tumour localisation, and various investigative and therapeutic practices.

General waste: Is a generic term for waste that, because of its composition and characteristics, does not pose a significant risk to public health or the environment if managed properly. This waste type typically consists of plastics, paper, food and liquids not considered to be infectious or contaminated with hazardous chemicals or radioactivity.

"health care risk waste" means that portion of health care waste that is hazardous and includes infectious waste, pathological waste, sharp waste, pharmaceutical waste, genotoxic waste, chemical waste, waste with heavy metals, radioactive waste, and any other health care waste which is defined as hazardous in terms of the Waste Management Series: Document 1: *Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste*, as published by the Department of Water Affairs and Forestry;

"health care waste management" means the environmentally safe handling, storage, collection, transportation, treatment and disposal of health care waste, and the words "manage" and "managed" have corresponding meanings;

"health care waste mismanagement" means the unsafe or negligent handling, storage, collection, transportation, treatment or disposal of health care waste that has the potential to harm the environment or compromise human health, and the word "mismanage" has a corresponding meaning;

"household generator" means a person who generates health care waste at home as a result of domestic health care treatment, but excludes registered non-governmental organisations and community-based organisations;

"municipality" means a municipality as defined in the Local Government: Municipal Structures Act, 1998 ([Act 117 of 1998](#));

"National Minister" means the Member of the National Cabinet responsible for environmental affairs in South Africa;

"nuclide" means an atom of a specified atomic number and mass number;

"Occupational Health and Safety Act" means the Occupational Health and Safety Act, 1993 ([Act 85 of 1993](#));

"organ of state" means—

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution—
 - (i) exercising a power or performing a function in terms of the [Constitution](#) or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

"other waste" means waste other than health care waste;

"person" means a natural or juristic person, any organ of state, a trust, an unincorporated body or an association, an organisation, or any other institution;

"Province" means the Province of the Western Cape;

"Provincial Minister" means the Member of the Provincial Cabinet responsible for environmental affairs in the Province;

"radionuclide" means a nuclide that exhibits properties of spontaneous disintegration, liberating energy that generally results in the formation of new nuclides and is accompanied by the emission of one or more types of radiation;

"spill" means the accidental release of health care waste into the environment, and the word "spillage" has a corresponding meaning;

"secure area" means a protected area demarcated specifically for the storage, transfer, treatment or disposal of health care waste;

"this Act" includes the regulations made thereunder;

"transport" means the movement of health care risk waste from the point of generation to a temporary or permanent point of storage, treatment or disposal;

"transporter" means any person or any agent acting on behalf of a person that transports health care risk waste from the point of generation to a temporary or permanent point of storage, treatment or disposal;

"treater" means any person or any agent acting on behalf of a person or an institution, involved in the treatment of health care risk waste prior to the final disposal of such health care risk waste;

"treatment facility" means a facility permitted in terms of section 20 of the Environmental Conservation Act for the treatment of health care risk waste;

"treatment" means the manipulation of health care risk waste to completely eliminate all infection risk or potential and to render the waste non-recognisable as health care risk waste, and the words "treat" and "treated" have corresponding meanings;

"waste" means any matter, whether gaseous, liquid or solid or any combination thereof, which is from time to time designated by the National Minister by notice in the Government Gazette as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity as defined in the Environmental Conservation Act and amended in Government Notice 292 of 28 February 2003.

2. Object of Act

The object of this Act is to promote integrated health care waste management, thereby—

- (a) reducing the risks of health care waste to human health;
- (b) preventing the degradation of the environment;
- (c) preventing the illegal dumping of health care waste;
- (d) promoting sustainable development, and
- (e) ensuring responsible management of health care waste in the Province.

3. Principles of interpretation

This Act must be interpreted and applied in accordance with the principles set out in section 2 of the National Environmental Management Act, 1998 ([Act 107 of 1998](#)).

4. Application

- (1) This Act applies throughout the province to all persons involved in the generation, storage, transportation, treatment or disposal of health care waste, but does not apply to household generators of health care waste.
- (2) A municipality may, by means of a by-law, manage and regulate the matters dealt with in this Act.
- (3) Where a municipality passes a by-law that regulates matters dealt with in this Act, that municipality is exempted from the provisions of this Act, with the exception of sections [7](#), [12](#) and

14: Provided that the obligations imposed by the by-law are in accordance with those imposed by this Act and are not less stringent.

5. Prohibition of dumping and mismanagement of health care waste

A person may not dump or otherwise mismanage health care waste.

6. Responsibilities of generator, transporter, treater or disposer of health care waste

- (1) A generator, transporter, treater or disposer of health care risk waste has a duty of care to implement reasonable measures to ensure, in accordance with this Act and any other relevant legislation, that all health care risk waste is minimised, separated at source, packaged, stored, transported, treated and disposed of, where applicable, in a safe manner that poses no threat to human health or the environment.
- (2) Without limiting the generality of the responsibility imposed by subsection (1), a generator, transporter, treater or disposer of health care waste must comply with the following requirements, where applicable:
 - (a) A generator of health care waste must ensure that the generation of health care waste is as far as possible minimised at source.
 - (b) A generator must segregate different categories of health care waste at the point of generation and put reasonable measures in place to maintain this segregation at all times thereafter.
 - (c) Only a generator, treater, transporter or disposer registered in terms of [section 6\(2\)\(a\)](#) may store health care risk waste.
 - (d) A generator, transporter, treater or disposer of health care risk waste must at all times store health care risk waste in appropriate, clearly labelled containers, as prescribed by the Provincial Minister.
 - (e) A generator, transporter, treater or disposer of health care risk waste must prevent public access to health care risk waste containers and storage facilities.
 - (f) A generator, transporter, treater or disposer of health care risk waste must ensure that his or her storage area for health care risk waste is clearly demarcated and includes appropriate signage.
 - (g) A generator, transporter, treater or disposer of health care risk waste must ensure that all health care risk waste is treated at a treatment facility before disposal.
 - (h) A generator, transporter, treater or disposer of health care waste must ensure that all health care waste is disposed of at a disposal site.
 - (i) A generator, transporter, treater or disposer of health care risk waste must ensure that radioactive waste for which he or she is responsible is managed in terms of the provisions of the Hazardous Substances Act, 1973 ([Act 15 of 1973](#)).
 - (j) A generator, transporter, treater or disposer of health care risk waste must maintain up-to-date written or electronic records of the health care risk waste that he, she or it generated, treated, transported or disposed of.
 - (k) A generator, transporter, treater and disposer of health care risk waste must keep the written or electronic records referred to in subsection (2)(j) for a period prescribed by the Provincial Minister.
 - (l) A generator, transporter, treater or disposer of health care risk waste must make these records available to the public, if requested, in terms of the Promotion of Access to Information Act, 2000 ([Act 2 of 2000](#)).

- (m) A generator, transporter, treater or disposer of health care risk waste must submit all the information contemplated in subsection (2)(j) to the Department at a frequency to be prescribed by the Provincial Minister, and the Provincial Minister may stipulate the format and the specific dates for submission of such information.
- (n) A generator, transporter, treater or disposer of health care risk waste must, within a prescribed period after the promulgation of this Act, register with the Department by submitting to the Department a duly completed registration form that is available from the Department.
- (o) A generator, transporter, treater or disposer of health care risk waste must perform and record internal audits at a frequency to be prescribed by the Provincial Minister, and must make them available to inspectors on request.

7. Spillage and dumping of health care risk waste

- (1) A person who spills health care risk waste and a person who is in control of health care risk waste at the time that it is spilt, other than health care risk waste spilt on the premises of hospitals, clinics and surgeries, must—
 - (a) immediately notify the municipality concerned that such waste has been spilled;
 - (b) immediately take steps to make the area safe for the public;
 - (c) rehabilitate the place at which the spillage has occurred;
 - (d) ensure that the health care risk waste spilt is treated, transported and disposed of in accordance with this Act; and
 - (e) take measures to avoid the recurrence of a spill.
- (2) Where the dumping of health care risk waste occurs, the municipality concerned may—
 - (a) take any steps it deems necessary in order to ensure the safety of the public, and to ensure that the area at which the dumping has occurred is rehabilitated;
 - (b) instruct whoever has dumped the health care risk waste to take whatever steps the municipality deems necessary to ensure the safety of the public, and to rehabilitate the area at which the dumping has occurred;
 - (c) ensure that the health care risk waste is treated or disposed of in accordance with this Act, whether the dumping occurs on the premises of the generator or during the transportation, treatment or disposal of the health care risk waste;
 - (d) recover from whoever has dumped the health care risk waste, any costs which the municipality incurs in cleaning up the health care risk waste and in rehabilitating the area at which the dumping has occurred, and any other costs directly associated with the dumping of the health care risk waste, whether the dumping has occurred on the premises of the generator or during the transportation, treatment or disposal of the health care risk waste; and
 - (e) lay criminal charges against the person or persons responsible for the dumping of health care risk waste.

8. Staff safety and training

A generator, transporter, treater or disposer of health care waste must comply with the Occupational Health and Safety Act, 1993 ([Act 85 of 1993](#)), in respect of staff safety and training regarding health care waste, and as prescribed by the Provincial Minister.

9. Appointment of inspectors

- (1) The Head of Department, in the case of paragraph (a) or a municipal manager in the case of paragraph (b), may appoint the following persons in writing as inspectors to act in terms of this Act:
 - (a) any person employed by the Department; or
 - (b) any person employed by the municipality as health practitioner, environmental officer or law enforcement officer.
- (2) A person appointed as health officer for the Province in terms of section 80(1)(b) of the National Health Act, 2003 ([Act 61 of 2003](#)), is regarded as an inspector in terms of this Act.

10. Powers of inspectors

- (1) Any inspector appointed in terms of [section 9](#) may—
 - (a) at a reasonable time enter premises and sites of a generator, transporter, treater or disposer where health care waste is being generated, handled, stored, treated or disposed of, or on which he or she reasonably suspects that health care waste is being generated, handled, stored, treated or disposed of;
 - (b) at a reasonable time gain access to vehicles on or in which health care waste is being contained or transported, or in which he or she reasonably suspects that health care waste is being contained or transported.
- (2) Where an inspector enters premises or a site or gains access to a vehicle in terms of subsection (1), he or she may, for the purpose of administering this Act, undertake any inspection or enquiry, including but not limited to—
 - (a) inspecting and searching the premises, site or vehicle for the presence of health care waste;
 - (b) inspecting the processes whereby health care waste is handled, stored, treated, transported and disposed of;
 - (c) requesting information regarding the health care risk waste from the person who is in control of the health care waste, or from the owner or the person in charge of the premises, site or vehicle;
 - (d) examine and make copies of or take extracts from any written record kept in terms of [section 6\(2\)\(j\)](#) and request an explanation of any entry in the written or electronic record from the person who is in control of the written or electronic record, or from the owner or the person in charge of the premises, site or vehicle.
- (3) An inspector may issue a compliance notice, as prescribed in the regulations, to the person in charge of the premises or site if a provision of this act has not been complied with.
- (4) A compliance notice remains in force until the relevant provision of the Act had been complied with and the inspector has issue a compliance certificate in respect of that notice.

11. Offences and penalties and consequences of criminal conviction

- (1) A person who contravenes or fails to comply with—
 - (a) any provision of [section 5](#), [6](#) or [7\(1\)](#); or
 - (b) a compliance notice issued in terms of [section 10\(3\)](#), is guilty of an offence and upon conviction is liable to a fine or imprisonment for a period not exceeding five years, or to both a fine and imprisonment not exceeding five years.

- (2) In the event of a continuing or repeated offence, an additional fine or imprisonment for a period not exceeding ten years for every subsequent occasion on which the offence is so continued or repeated may be imposed.

12. Duties of municipalities

- (1) A municipality must—
- (a) enforce the relevant provisions of this Act within its area of jurisdiction;
 - (b) notify the Department of any incident of spillage or illegal dumping;
 - (c) perform audits of generators, transporters, treaters and disposers of health care waste within its area of jurisdiction to ensure compliance with the provisions of this Act;
 - (d) report annually to the Provincial Minister:
 - (i) the number of incidents of dumping and spillage of health care waste within its area of jurisdiction;
 - (ii) the number of incidents of dumping of health care risk waste pursued in a court of law; and
 - (iii) the number of incidents of health care waste successfully prosecuted in a court of law.
- (2) The Provincial Minister may request a municipality to provide additional reports or information relevant to this Act.

13. Duties of Head of Department

- (1) The Head of Department must monitor the performance of the management of health care waste in the Province by—
- (a) administering the relevant provisions of this Act,
 - (b) developing and maintaining a database which—
 - (i) allows for the reporting of all the information requested in [section 6\(2\)\(k\)](#) and (n); and
 - (ii) enables restricted access to the information recorded in terms of subsection 6(2)(k) and (n), on request.
- (2) The Head of Department may perform audits on any generator, transporter, treater or disposer of health care waste in the Province.

14. Regulations

The Provincial Minister may after consultation with the standing committee of the Provincial Parliament responsible for Environmental Affairs—

- (a) make regulations regarding any aspect related to the management of health care waste; and
- (b) set targets for waste minimisation in general for a specific institution or sector of generators, transporters, treaters or disposers,

by notice in the *Provincial Gazette*.

15. Short title and commencement

This Act is called the Western Cape Health Care Waste Management Act, 2007, and comes into operation on a date to be determined by the Premier by proclamation in the *Provincial Gazette*.