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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 715

18 JULY 2018

**NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008
(ACT NO. 59 OF 2008)**

**REGULATIONS REGARDING THE EXCLUSION OF A WASTE STREAM OR A PORTION OF A
WASTE STREAM FROM THE DEFINITION OF WASTE**

I, Bomo Edna Edith Molewa, Minister of Environmental Affairs, hereby under section 69(1)(dd) read with section 1 (definition of waste) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) made regulations regarding the exclusion of a waste stream or a portion of a waste stream from the definition of waste, in the Schedule hereto.



**BOMO EDNA EDITH MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS**

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CHAPTER 1

DEFINITIONS, PURPOSE AND APPLICATION OF THE REGULATIONS

Definitions

1. In these Regulations, unless the context indicates otherwise, any word or expression that is defined in the Act has the same meaning in these Regulations; and in addition—
 "Act" means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);
 "Applicant" means a person or category of persons who has submitted an application for the exclusion of a waste stream or a portion of waste stream from the definition of waste to the Minister in terms of these Regulations;
 "SANS 10234" means the latest edition of the South African National Standard Globally Harmonized System of Classification and Labelling of Chemicals (GHS);
 "SAWIC" means the South African Waste Information Centre;
 "the Register" means a list of waste stream or a portion of a waste stream excluded from the definition of waste and restricted to the identified permitted uses therein, as published and updated by the Minister on the SAWIC.

Purpose

2. The purpose of these Regulations is to—
 - (a) prescribe the manner in which a person or a category of persons may apply to the Minister for the exclusion of a waste stream or a portion of waste stream for beneficial use from the definition of waste;
 - (b) exclude permitted uses of a waste stream or a portion of waste stream from the definition of waste; and
 - (c) promote diversion of waste from landfill disposal to its beneficial use.

Application of these Regulations

3. These Regulations do not—
 - (a) apply to a generator of domestic waste which falls within the jurisdiction of a municipality; or
 - (b) exempt a holder of any waste which has been excluded from the definition of waste from complying with any other applicable legislation.

CHAPTER 2

APPLICATION FOR EXCLUSION OF WASTE

Persons who may apply for exclusion

4. The following person or categories of persons may apply to the Minister for the exclusion of a waste stream or a portion of such a waste stream for beneficial use from the definition of waste:
- (a) a person who generates waste; or
 - (b) any group of persons who generate the same waste.

Application for exclusion of a waste stream or portion of a waste stream from the definition of waste

5. An application for the exclusion of a waste stream or a portion of a waste stream must be lodged with the Minister, using an application form obtainable from the Department.

Consideration of applications for exclusion of a waste stream or portion of a waste stream from the definition of waste

6. (1) The Minister must upon receipt of the application for exclusion of a waste stream or a portion of a waste stream acknowledge receipt, in writing, of the application within 14 days after date of receipt.
- (2) The Minister may, after consideration of the criteria contemplated in regulation 7 and the risk assessment contemplated in regulation 8 of these Regulations, in writing—
- (a) grant the application and exclude a waste stream or a portion of waste stream from the definition of waste;
 - (b) require the application to be amended within a specified timeframe, and to be resubmitted for consideration;
 - (c) require the submission of additional information within a specified timeframe; or
 - (d) refuse the application and provide reasons for the decision.
- (3) The Minister must, before taking a decision on the application, follow a consultative process contemplated in sections 72 and 73 of the Act.
- (4) The Minister must, after granting an application, publish a government notice indicating the exclusion of a waste stream or a portion of a waste stream from the definition of waste, in the *Government Gazette* for general information.
- (5) Where a waste stream or a portion of a waste stream has been excluded from the definition of waste in terms of these Regulations, such a waste stream or a portion of a waste stream must be managed in terms of the risk management plan developed in terms of regulation 10.

Criteria for exclusion of a waste stream or portion of a waste stream from the definition of waste

7. The Minister may exclude a waste stream or a portion of a waste stream, from the definition of waste for the purposes of beneficial use, provided that the—
- (a) application demonstrates that the waste is being or has been or will be used for a beneficial purpose either locally or internationally;
 - (b) applicant undertakes a risk assessment and submits a risk management plan demonstrating that the intended beneficial use of the excluded waste can be managed in such a way as to ensure that the intended beneficial use will not result in significant adverse impacts on the environment; and
 - (c) risk management plan developed and responding to the risks identified in the risk assessment undertaken in terms of paragraph (b) above accompanies any delivery of the excluded waste to the user.

Elements of the Risk Assessment

8. (1) A risk assessment undertaken in terms of regulation 7(b) must include the following elements:
- (a) provide information that is facility based;
 - (b) description and source of the waste;
 - (c) intended uses of the excluded waste;
 - (d) description of the methodology used to assess the hazardous characteristics of the waste that is to be excluded;
 - (e) identification of any potential risks relating to all the activities associated with the intended beneficial use of the excluded waste; and
 - (f) identification of mitigation measures that can be used to manage the risks identified in paragraph (e) above.
- (2) The results of the risk assessment must be used as the basis of a risk management plan.

Contents of the Risk Management Plan

9. The risk management plan contemplated in regulation 7(c) must include the following:
- (a) a Safety Data Sheet which complies with the requirements of SANS 10234, where the waste material is classified as hazardous;
 - (b) permitted uses for which the waste material may be used; and
 - (c) a mechanism to record the amount of waste distributed to specific users for a permitted use; including the number of enterprises established or supported and the extent to which previously disadvantaged individuals have been supported.

Reporting

10. The risk management plan contemplated in regulation 7(c), and any reports arising from the risk management plan must be—
- (a) made available to the Department on request; and
 - (b) must be submitted to the Department on an annual basis.

Review, withdrawal and amendment of exclusion of a waste stream or portion of a waste stream from the definition of waste

11. (1) The Minister, where on reasonable grounds believes that a waste stream or a portion of a waste stream excluded from the definition of waste poses a threat to health, wellbeing, and environment, may—
- (a) review any exclusion of a waste stream or a portion of a waste stream from the definition of waste granted in terms of these Regulations; and
 - (b) amend the exclusion of a waste stream, or portion of a waste stream from the definition of waste; or
 - (c) withdraw such exclusion of a waste stream or a portion of a waste stream from the definition of waste.
- (2) Before amending or withdrawing any exclusion of a waste stream or a portion of a waste stream from the definition of waste, the Minister must give the person contemplated in regulation 4 of these Regulations an opportunity to comment, in writing, on the reasons for the amendment or withdrawal.
- (3) The Minister must, before taking a decision to amend or withdraw the exclusion of a waste stream or a portion of a waste stream from the definition of waste, follow a consultative process as contemplated in sections 72 and 73 of the Act.
- (4) The Minister must, after taking a decision to amend or withdraw the exclusion of a waste stream or a portion of a waste stream from the definition of waste, publish such a decision in the *Government Gazette* for general information.

Register of waste streams excluded from the definition of waste

12. The waste streams set out in the Register published on SAWIC are excluded from the definition of waste.

CHAPTER 3

GENERAL MATTERS

Transitional arrangements

- 13. (1)** A person who lawfully commenced any permitted use authorised in terms of section 76(1)(a) of the Act when these Regulations come into effect must continue to comply with the conditions of the exemption issued in terms of section 76(1)(a) of the Act until its expiry, and thereafter conduct a risk assessment and develop a risk management plan in terms of regulation 7, 8 and 9 within 90 days after the expiry of the exemption.
- (2)** A person who lawfully conducts a waste management activity with a valid waste management license issued in terms of the Act when these Regulations come into effect must continue to comply with the conditions of the waste management license until its expiry, and thereafter conduct a risk assessment and develop a risk management plan in terms of regulation 7, 8 and 9 within 90 days after the expiry of the waste management licence.
- (3)** A risk assessment and a risk assessment plan contemplated in sub-regulation (1) and (2) must be submitted to the Minister after the expiry of the 90 days period contemplated in sub-regulation (1) and (2), for consideration, and a decision in terms of these Regulations.
- (4)** Minister must follow the process and procedure set out in regulation 6(2), (3) and (4) read with regulation 7, 8 and 9 in consideration of the risk assessment and risk assessment plan contemplated in sub-regulation (1) and (2).
- (5)** Despite the expiry of the exemption or waste management license contemplated in sub-regulation (1) or (2), an exemption issued in terms of section 76(1)(a) of the Act or a waste management license issued in terms of the Act, continues to be valid for a period of 120 days after its expiry, subject to sub-regulation (6), and provided the holder of the exemption or waste management licence submits the risk assessment and risk management plan in terms of regulation 7, 8 and 9 for consideration and a decision by the Minister.
- (6)** If a holder of a permitted use or waste management license contemplated in sub-regulation (1) or (2) fails to conduct a risk assessment, develop a risk management plan, and to submit risk assessment and risk management plan to the Minister for consideration and decision as contemplated in sub-regulation (1), (2) and (3), the exemption or waste management license expires after the 120 days contemplated in sub-regulation (5).
- (7)** If during the 120 days period referred to in sub-regulation (5) an exclusion of a waste stream or a portion of a waste stream is granted, the exemption or waste management license expires on the date of granting of the exclusion in terms of these Regulations.

- (8) Any application for an exemption submitted in terms of section 74 of the Act which was not decided when these Regulations took effect, must be proceeded with in terms of these Regulations as if such application was an application in terms of regulation 5 of these Regulations.

Offences and penalties

14. (1) A person commits an offence if that person—

- (a) provides or submits misleading information to the Minister in respect of an application for the exclusion of a waste stream or a portion;
- (b) fails to develop and submit a risk management plan contemplated in regulation 7;
- (c) fails to make a report available to the Department on request in terms of regulation 10(a);
- (d) fails to submit a report in terms of regulation 10(b);
- (e) contravenes or fails to comply with any permitted use of waste granted in terms of these Regulations.

(2) A person convicted of an offence in terms of sub-regulation (1) is liable on conviction to—

- (a) to imprisonment for a period not exceeding 15 years;
- (b) an appropriate fine; or
- (c) both a fine and imprisonment.

Short title and commencement

- 15.** These Regulations are called the Waste Exclusion Regulations, 2018 and take effect on the date of publication in the *Gazette*.

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