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## NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT 59 OF 2008





# *National Environmental Management: Waste Act 59 of 2008*

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- **National Environmental Management: Waste Amendment Act 26 of 2014**
- **National Environmental Management Laws Amendment Act 25 of 2014**
- **Contaminated land provisions**



# ***National Environmental Management: Waste Amendment Act 26 of 2014***

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- **Commencement on 2 June 2014**
  
- **Amended NEM:WA**
  - Amending definition of waste
  - Repeal of section 78 - all appeals now lodged in terms of section 43 of the NEMA
  - Established the waste management bureau
  - Introduced waste management charges



## Definition: Waste

- Any substance, material or object (irrespective of whether it can be re-used, recycled or recovered)
  - That is **[surplus]**, unwanted, rejected, discarded, abandoned or disposed of, or intended or required to be discarded or disposed of and includes all waste as defined in schedule 3;
  - **[which is of no further production use for generator];** or
  - Any other substance declared by the Minister as waste
  
- By-product deleted



## **Definition: Waste**

- *“includes all waste defined in Schedule 3”*
  - Includes / limited to
  - Part (ii) Creates the impression that it is only schedule 3 and declared wastes that qualify. Par (i) however indicate non-exhaustive list
  - Schedule 3 must still meet the requirements of part (i)

\* Schedule 3 exhaustive?



## **Definition: Waste**

- The clarification notes to the bill noted that the object of the changes to definitions and Schedule 3 are:
  - provide more clarity and certainty
  - less ambiguity with respect to its interpretation
  - Provide for a comprehensive list of wastes as a new Schedule 3
- Schedule 3: Sources of waste
- The wording of the NEMWA may make it impossible to regard Schedule 3 as exhaustive.



## **Definition: Waste**

### **➤ Ceases to be waste**

*“(b) ...*

- (i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;*
- (ii) Where approval is not required, once a waste is, or has been re-used, recycled or recovered;*
- (iii) Where the Minister has, in terms of section 74, exempted any waste or portion of waste generated by a particular process from the definition of waste; or*
- (iv) Where the Minister has, in the prescribed manner excluded any waste stream or a portion of a waste stream from the definition of waste”*



## **Pricing strategy**

- Draft published 2 February 2015 (comments for 60 days)
- Final notice must be published within 30 days of commenting period
- Sets out basis and guiding methodology for setting waste management charges
- Section 13B: allocation to work of Waste Management Bureau and implementation of approved industry waste management plans
- Action plan 2015, 2016 and 2017





# *National Environmental Laws Amendment Act 25 of 2014*

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## **General**

- Amends the following Acts-
  - NEMA
  - NEM:WA
  - National Environmental Management: Amendment Act 62 of 1998
- Commenced 1 September 2014



# *National Environmental Laws Amendment Act 25 of 2014*

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## ➤ **Section 4(b) (deleted)**

- NEMWA applicable to residue deposits and residue stockpiles

## ➤ **Section 43(1A)**

- Minister of MR is licencing authority for WML in respect of –
  - Prospecting and exploration of mining resources
  - Extraction and primary processing of a mineral resource
  - Residue deposits and residue stockpiles from prospecting, mining, exploration or production operations.



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- **Consequences of residue deposits and residue stockpiles being waste**
  - Require waste management licences
  - Waste classification regulations are applicable
    - Classification in terms of SANS10234
  - Need to assess waste in accordance with Norms and Standards for Assessment of Waste for Landfill Disposal prior to disposal
    - Leachable Concentration and total concentration analysis
  - Dispose at landfill which complies with the Norms and Standards for Disposal of Waste to Landfill



# *National Environmental Laws Amendment Act 25 of 2014*

## ➤ **Section 20A**

- Minister may prohibit or restrict the granting of WML for a listed activity in a specified geographical area for specific period of time
  - Must be for the purposes of ensuring protection of the environment, conservation of resources, sustainable development or human health and well-being
  - Does not act retrospectively in respect of activities already authorised in terms of WML (environmental authorisations?)
- Prohibition may be lifted or amended



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## ➤ DRAFT AMENDMENT OF WASTE MANAGEMENT ACTIVITIES:

➤ 13 February 2015

➤ Activity 11 in category B:

*“Prospecting, mining, exploration or production operation, resulting in development of residue stockpiles and residue deposits. The management and control of these waste must take place in accordance with the regulations for management and control of residue deposits and residue stockpiles or an integrated environmental authorization as provided for in terms of NEMA”.*



## Part 8 in Chapter 4: NEMWA

- Came into effect 2 May 2014
- Applicable even if the contamination
  - Occurred before the commencement of the NEMWA
  - Originated on other land
  - Arises or is likely to arise at a different time from the actual activity
  - Arises from an act or activity of a person that results in a change to pre-existing contamination



## Contaminated land: NEMWA

### Contaminated : meaning

*“The presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the environment adversely”.*



# Contaminated land: NEMWA

## Contaminated: meaning

- Substance or micro-organism must -
  - Be in or under any land, site, buildings or structures
  - Above the concentration that is normally present in or under that land
  - Directly or indirectly affect or potentially affect the quality of soil or the environment adversely





## Investigation areas

- **Minister or MEC may identify investigation areas**
- **Cause a site assessment to be conducted**
- **Decide whether investigation area is-**
  - Contaminated and presents risk to health and environment and must be remediated urgently
  - Contaminated and does not present immediate risk to health and environment and needs to be monitored and managed
  - Not contaminated
- **If contaminated and requires remediation: Minister or MEC must declare remediation site and make remediation order**
- **If contaminated and requires monitoring and management of risk: Minister or MEC may make an order specifying the measures to prevent risk to health and environment**



## Obligation to notify

- Owner of land that is significantly contaminated
- Person who undertakes activity that causes land to be significantly contaminated

- Significant?

Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd  
“ ... the threshold level of significance will not be particularly high ”

\* Conviction: R5 million and/or 5 years



## Section 40 – Transfer of remediation sites

- No person may transfer
  - Contaminated land without notifying the transferee that land is contaminated
  - A remediation site without notifying the Minister or MEC
    - \* Conviction: R5 million and/or 5 years
- 38(5): Minister / MEC may amend remediation order if ownership passes and new owner assumes responsibility in writing



## **Section 41 – Contaminated land register**

- Minister must maintain a national contaminated land register of investigation areas
- Section 40(2): Minister must notify Registrar of Deeds of remediation sites
- \* Liability if purchase land not an investigation area but contaminated?



## *Contaminated land: NEMWA*

### **Transitional arrangements**

- If remediating contaminated land in terms of a compliance notice or directive before 2 May 2014 – continue complying with such notice or directive
- If remediating in terms of a WML issued in terms of the NEMWA before 2 May 2014 – continue complying with such licence.



# Contaminated land: NEMWA

## Potential issues

- Problems relating to registration of remediation orders against title deeds in deeds office
- What is contaminated: definition not clear (screening levels in Norms and Standards but these are not absolute values or default remediation values)
- Abandonment of contaminated land
- Government funds for abandoned contaminated land?



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**Thank You**