



## INFORMATION ALERT:

### THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT 59 OF 2008

The National Environmental Management: Waste Act 59 of 2008 ("the Act") was assented to by the President of the Republic of South Africa on 6 March 2009 and was published in the Government Gazette on 10 March 2009. It will come into effect on a date still to be determined by the Minister by proclamation in the Government Gazette.

The Act *inter alia*:

- ✓ Creates a **general duty on the State** to put in place uniform measures that seek to reduce the amount of waste generated and to ensure that, where waste is generated, the waste is re-used, recycled and recovered in an environmentally friendly manner prior to it being treated and disposed of in a safe manner.
- ✓ Facilitates the establishment of a **national waste management strategy** as well as **national and provincial norms and standards for the management of waste** including those relating to the classification of waste, waste management services and the storage, treatment and disposal of waste (including the planning and operation of waste treatment and waste disposal facilities).
- ✓ Provides for various **specific waste management measures**, including:
  - The declaration of **priority wastes** by the Minister by notice in the Gazette and the waste management measures to be taken in relation to declared priority wastes.
  - The creation of various **general duties on a "holder" of waste** to take reasonable measures, including to avoid the generation of waste, to reduce, re-use, recycle and recover waste, to dispose of waste in an environmentally sound manner, and to manage the waste so that it does not endanger health or the environment.
  - Stipulating that, where **reduction, re-use, recycling and recovery of waste** is undertaken, unless otherwise provided for in the Act it must be ensured that such activities use less natural resources than the disposal of the waste and, to the extent that it is possible, are less harmful to the environment than the disposal of such waste.
  - The declaration of certain wastes which will be subject to **extended producer responsibility** and the specification of certain extended producer responsibility measures that must be taken.
  - The declaration of certain **listed waste management activities** which cannot be commenced with, undertaken or conducted without complying with the requirements or standards to be determined or without a waste management licence if such a licence is required. Pending publication of such list/s, Schedule 1 of the Act is applicable ("*Waste management activities in respect of which a waste management licence is required*").
  - Setting specific requirements for the **storage, collection and transportation of waste**.
  - Setting specific requirements for the **treatment, processing and disposal of waste**, including a prohibition against the disposition of waste at an unauthorised disposal facility.
  - Requirements regarding the preparation of **industry waste management plans** by individuals and organs of state.
  - Provisions regarding **contaminated land**, including:
    - ✓ The application of the Act to land that was contaminated prior to the commencement of the Act.
    - ✓ The identification and notification of investigation areas, such as land where high-risk activities have taken place or are taking place that are likely to cause contamination, including the consequences attached to such identification and notification, such as the remediation of the land after consideration of the requisite site report, as well as a limitation on the transfer of remediation sites.
- ✓ Provides for the **licensing and control of waste management activities**, including:
  - The procedure for **application for a licence**, including the factors to be taken into account by the licensing authority, as well as the criteria for a **fit and proper person** which must be taken into account when considering an application.
  - Provisions regarding the **decision of licensing authorities on applications**, the issuing of waste management licences, the contents of the licence, and the transfer of licences.
  - The Act makes provision for the review, variation, renewal, revocation, suspension and surrender of licences.

v The Act further makes provision for **compliance issues**, including penalties and offences, regulations, the consultative process that must be followed by the Minister or the MEC before exercising a power in terms of the Act, and the procedures to be followed for appeals and exemptions.

When in effect, the Act will repeal the relevant provisions of the Environment Conservation Act 73 of 1989 (including section 20 of that Act dealing with waste disposal site permitting), but also provides for transitional provisions in respect of permits issued in terms of the Environment Conservation Act 73 of 1989 and other transitional provisions, including regarding the Schedule 1 listed waste management activities.

**Please find attached a copy of the Act.**

**Should there be any queries in regard to the above, please contact Warburton Attorneys .**



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