



## The National Environmental Management: Waste Act

*"A more careful control of possible consequences on the natural environment is required in the wake of industrialization, especially in regard to toxic residue, and in those areas marked by an excessive use of chemicals in agriculture."*

*Pope John Paul II, addressing the conference of the Food and Agricultural Organisation, Nov 1989*

### 1. Introduction

The long-awaited National Environmental Management: Waste Act (NEMA),<sup>1</sup> was signed into law on 6<sup>th</sup> March 2009. A unique characteristic of this Act is that it attempts to ensure that hazardous wastes generated by the mining and power-generation industries are governed, which will have the effect of tremendously increasing the volumes of hazardous wastes to be managed. The Act also commits South Africa to adopting a 'waste hierarchy' in its approach to waste management, by promoting cleaner production, waste minimisation, re-use, recycling and waste treatment, with disposal seen as a last resort.

NEMA defines waste as any substance which the generator has no further use for, for the purposes of production, whether or not that substance can be reduced, re-used, recycled or recovered, and which is surplus, unwanted, rejected, discarded, disposed of or abandoned. It is a substance that must be treated or disposed of; or that is identified as a waste by the Minister by notice in the *Gazette*. It must be noted however, that a by-product is not considered waste; and any portion of waste, once re-used, recycled and recovered, ceases to be waste<sup>2</sup>.

NEMA divides waste into two classes based on the risk it poses - general waste and hazardous waste. *General waste* means waste that does not pose an immediate hazard or threat to health or to the environment, and includes domestic waste; building and demolition waste; business waste; and inert waste. *Hazardous waste* means any waste that contains organic or inorganic elements or

compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment.

### 2. Activities that Negatively Affect the Environment

In April 2009 the Department of Environmental Affairs and Tourism released a list of waste management activities that have, or are likely to have, a detrimental effect on the environment. These activities were separated into waste (Category A) and hazardous waste (Category B).

Category A deals with processes such as the storage and transfer of waste; the recycling, re-use and recovery of waste; the treatment of waste; the storage and disposal of waste; treatment and processing of animal waste; and the construction, or decommissioning of waste-related facilities which can harm the environment.

Category B details the manner in which hazardous waste can be stored, including the temporary storage of hazardous waste in lagoons<sup>3</sup>; the re-use of hazardous waste in road building and road surfacing; the biological, physical or physico-chemical treatment of hazardous waste at facilities; the incineration of waste; and its disposal on land.<sup>4</sup>

### 3. The Current State of Affairs

Section 24 of the Constitution<sup>5</sup> places a burden on

all spheres of government to ensure a safe and clean environment to all the citizens of South Africa. As a result, every citizen has the right to live in an environment that is not harmful to health or well-being. The Constitution further advocates for the prevention of pollution and ecological degradation, for conservation, as well as for ecologically sustainable development<sup>6</sup>.

The reality in South Africa, however, is that waste management services are inefficient. Although local legislation has become stricter due to an alignment with European norms and policies, many local municipalities are struggling to comply. Too little waste follows the formal disposal paths of incineration and landfills, and too much goes via the informal paths of littering, illegal dumping and illegal burning. Campaigns on waste education for citizens revolve around reduction, re-use, recycling<sup>7</sup>, as well as encouraging people to avoid illegal methods of disposal.

In South Africa about 533 million tons of waste is produced annually, over 85% of which is mining waste.

The current state of South African waste management is as follows:

- 39% of households have no regular waste collection.
- 66% of the 1300 landfills operate without permits.
- 90% of non-permitted landfills are municipal landfills.
- About 80% of waste ends up in landfill sites, with a considerable portion of it being building rubble. In most developed countries it ranges from 15% to 20%.
- 96% of micro, small and medium sewage plants are not adequately operated and maintained<sup>8</sup>.
- 8.3% of households use the bucket sanitation system.

Waste management has an important role to play in the strategies aimed at curbing poverty and disease. Untreated waste that accumulates in any area, be it rural or urban, business or residential, poses an environmental threat and is a human health hazard. It develops into a breeding ground for pests and promotes the increase of disease-causing agents such as lice, flies and rodents. Poor waste management has contributed to the recent spate of service-delivery protests and to the growth of illegal medical waste dumping sites.

#### 4. The Role of Municipalities

Where waste management is concerned, the functions and powers of district municipalities are outlined in section 84(1) of the Local Government: Municipal Structures Act,<sup>9</sup> and include solid waste disposal sites for the district as a whole or for more than one local municipality within the district. Local municipalities, on the other hand, are responsible for providing waste management services including waste disposal facilities, the implementation of public awareness campaigns, provision of waste collection services, and the management of waste disposal facilities, amongst others. There is a common misunderstanding in district municipalities that waste management is the function of local municipalities exclusively. In fact, although it is the mandate of local municipalities to provide waste management services, district municipalities still have an important role to play. By virtue of being mandated to ensure integrated planning, provide capacity building, offer both technical and financial support to local municipalities, and to undertake those local municipal functions that a particular local municipality may not be able to perform, district municipalities are expected to be far more involved in waste management than some actually are.

On 13 January 2003 the Minister of Provincial and Local Government re-allocated certain functions to local municipalities, but then repealed this decision later in the same year. The new notice included the re-allocation of the environmental health function to district municipalities throughout the country as of 1 July 2004. However, this has been implemented on an *ad hoc* basis, leaving some district municipalities and their related local municipalities operating in a vacuum. The demand on environmental health officers in these instances is high, as they are assigned responsibility for all environmental functions without clear guidance on their specific waste management responsibilities<sup>10</sup>.

#### 5. Challenges Facing Municipalities

The limited view of waste management, together with the understanding that waste management is limited to waste collection and disposal, and that such services are the mandate of local municipalities, has resulted in many districts having insufficiently planned waste management services. Furthermore, the fact that waste management is reduced in importance in relation to other services has resulted in insufficient resources being allocated

to this function, even in those district municipalities that are properly involved in waste management.

Although the roles and responsibilities of local and district municipalities have been clearly defined in relevant pieces of legislation, the situation is more complex due to certain realities. It is argued that three factors cloud the implementation of these functions and roles as outlined in legislation. Firstly, many local municipalities are frail and are unable to cope with their mandates, hence needing the assistance of district municipalities in relation to capacity building and guidance. Secondly, most district municipalities themselves lack the capacity to assist local municipalities. The third factor is the political dynamism between local and district municipalities and the effect thereof on the manner in which the two spheres operate. The relations between the two vary from cordial and co-operative to conflictual and unproductive<sup>11</sup>.

Other challenges facing the local waste industry relate to illegal dumping, appropriate waste collection strategies in informal settlements, the education of communities regarding illegal dumping, enforcement of appropriate legislation, the costs of establishing waste treatment and disposal facilities, and the costs associated with waste collection.

## 6. Conclusion

One of the aims of NEMA is to reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation; by securing ecologically sustainable development; and by providing for institutional arrangements and planning matters<sup>12</sup>. The success of the Act will rest on how well it is implemented by the relevant stakeholders, and whether transgressors are fined and/or imprisoned as asserted in the Act.

An aspect of rights which is usually neglected is that rights come with responsibilities. In the same way that the Constitution bestows environmental rights upon us in section 24, as stewards of creation every individual has a responsibility to care for the earth, using its resources wisely, and preserving these resources for future generations – and this extends to proper waste management in our daily lives.

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<sup>1</sup> Act No. 59 of 2008.

<sup>2</sup> Section 1 National Environmental Management: Waste Act 59 of 2008.

<sup>3</sup> The design of hazard waste involves a membrane lined pond system to prevent seepage and potential contamination of the ground water and enables the department to monitor the quantity and quality of the leachate and leakage accurately as seen with the Brugspruit Hazardous Waste Lagoon

<sup>4</sup> *Government Gazette* No.32188, 30 April 2009.

<sup>5</sup> Section 24 of the Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>6</sup> *Supra*.

<sup>7</sup> Naidoo, K. *An Analysis of Municipal Solid Waste Management in South Africa using the Msunduzi Municipality as a Case Study*. 2009.

<sup>8</sup> South African Market Summaries. "Waste Management". July 2009.

<sup>9</sup> Act No. 117 of 1998.

<sup>10</sup> Afrika, M. *Role of District Municipalities in Waste Management in South Africa*. CSIR. 2010.

<sup>11</sup> Atkinson, D., Van der Watt, T. and Fourie, W. (2003). *Role of District Municipalities*. Hologram Project, HSRC, Pretoria, Available on [http://www.hsrc.ac.za/Research\\_Publication-17901.phtml](http://www.hsrc.ac.za/Research_Publication-17901.phtml), Accessed on 27<sup>th</sup> July 2011.

<sup>12</sup> National Environmental Management: Waste Act 59 of 2008.

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