

COMMENTS ON THE PROPOSED AMENDMENTS TO THE NATIONAL WASTE INFORMATION REGULATIONS

6 August 2018

BACKGROUND

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents South African business on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As a principal representative of business in South Africa, BUSA represents the views of its members in several national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

INTRODUCTION

BUSA welcomes the opportunity to comment on the proposed amendments to the National Waste Information Regulations, 2012 that were published for public comment on 6 July 2018. The proposed amendments appear to deal with transporters for gain and a requirement for Industry Associations to provide data into the South African Waste Information System (SAWIS).

The proposed amendments in respect of these two areas are problematic as detailed in our comments below.

GENERAL

TRANSPORTER OF WASTE FOR GAIN

The Draft Notice and Proposed Amendments propose that all transporters for gain will have to register with the Minister and be subject to the provisions of the National Waste Information Regulations.

The National Waste Information Regulations' obligations require, inter alia, the submission of information electronically onto the South African Waste Information System ("SAWIS") and recording keeping for up to five years. These obligations are quite onerous for sole proprietors or



small medium and micro sized enterprises which operate in the waste sector ("Small Operators"), many of which transport waste for gain as part of small and informal recycling operations.

The regulatory reach of the Proposed Amendments in its current form is therefore too wide and will frustrate two of the primary objectives of the National Environmental Management: Waste Act 59 of 2008 ("Waste Act") and recent strategies published thereunder, which are to:

- promote recycling; and
- address job creation, transformation and socio-economic development.

The ambit of the Waste Information Regulations currently excludes waste recyclers who recycle less than 500 kilograms of hazardous waste per day calculated over a monthly average and operate from general waste facilities with an operational area of less than 500 square metres. This is presumably to exempt small operators who due to the scale of their operations pose relatively low environmental risks which do not warrant stringent regulation. The same approach should be taken for Small Operators who transport for gain and are likely not going to have the resources to comply with the Waste Information Regulations' obligations. BUSA therefore proposes that the:

- Draft Notice and Proposed Amendments be amended to only require transporters of waste for gain, who transport waste in excess of prescribed thresholds, to register with the Minister and comply with the Waste Information Regulations; and
- thresholds be similar to those applicable to recyclers of waste under the Waste Information Regulations.

Duplicate Registration Requirement

The Draft Notice and Proposed Amendments will require the transporters of waste for gain to register materially the same information under different sets of legislation or legislative instruments. This includes registration under:

- Section 25 of the Waste Act ("Section 25") which allows the Minister or relevant Member of the Executive Council to publish regulations which require transporters of waste for gain to register with appointed waste management officers in the Department or within a relevant Province or Municipality. By-laws have been published under Section 25 requiring such registration; industry waste management plans

The duplication of registration requirements across different legislation places an administrative burden on both the transporters of waste for gain and government departments who have to assess, and capture submitted data. BUSA therefore propose that:

- transporters of waste for gain be exempted from registering under the Proposed Amendments where this information is already being provided to government departments under other legislation; or
- regulations published under Section 25 or any other legislation with substantially the same reporting requirements be repealed upon the enactment of the Proposed Amendments.

Reporting Distortions

The proposed reporting requirements for transporters of waste for gain under the Proposed Amendments may lead to transporters, recyclers and landfills reporting on the same waste



materials which could distort the assessment of actual volumes of waste in circulation. This could lead to a recording distortion should there not be a mechanism to track that the same volumes of waste recorded twice.

PROPOSED AMENDMENTS TO RECOVERY THRESHOLDS

The Proposed Amendments propose to decrease the thresholds that trigger the need for hazardous waste 'recoverers' and recyclers to register and comply with the Waste Information Regulations from 500 kilograms of hazardous waste per day to 100 kilograms of hazardous waste per day.

The rationale for this proposed amendment is not understood as:

- the 500-kilogram hazardous waste threshold is in line with the licensing regulations published under the Waste Act identifying Activities that have or are likely to have a detrimental effect on the Environment² ("Waste Act Regulations"); and
- as indicated above it cannot be the intention of the Legislature to impose stringent information reporting and record keeping obligations on the operators of small scale operations which pose relatively low environmental risks, which low impacts are indicative of their exclusion from the Waste Act Regulations.

BUSA proposed that the 500-kilogram hazardous waste threshold triggering the need for reporting obligations for waste recyclers and 'recoverers' be maintained.

ACCESS TO INFORMATION

BUSA does not understand what the purpose of availing the information to other registered persons is. Other registered persons may be a direct competitor. Persons with specific organisation/business knowledge can deduce production volumes from waste stream information. This provision is therefore not supported.

CHANGE IN REPORTING TIMEFRAMES

The change in timeframe for reporting poses a challenge. Not all information is available in 30 days due to different financial reporting timelines (month closures) in organizations and/or waste data not always readily available. Hence this would create a risk of not being able to report within the 30-day period and it is recommended that the 60-day reporting period remain.

INDUSTRY ASSOCIATIONS

Registration is already being done by the members individually and by waste management service providers. The use of Industry Associations as contemplated is not supported. Enforcement of reporting of registered entities is a responsibility of the Department.

Associations are not waste generators or waste traders or waste processors. The Constitution provides for waste management functions across all three spheres of government and hence compliance and enforcement of the regulations can be dealt with accordingly. Delegation of such functions to Associations is inappropriate. There is no legal basis to require an entity which is not a waster generator or waste manager to register in terms of the Act. Furthermore, NEMA has not delegated any such functions to Associations. By their nature, Associations do not engage in their



member's individual business practices and are accordingly unable to confirm if their members are or are not involved in waste related matters.

DETAILED COMMENTS

Further detailed comments on specific matters relating to the content of the the proposed amendments to the National Waste Information Regulations, 2012, is as indicated in the table below.

DETAILED COMMENTS

	ISSUE	COMMENT	PROPOSAL
	Definitions		
1.	In these regulations “the Regulations” means the National Waste Information Regulations, 2012, published under the Government Notice No. R. 625 in Government Gazette No. 35583 of 13 August 2012.		
	Amendment of regulation 1 of the Regulations		
2.	Regulations 1 of the Regulations is hereby amended -		
(a)	by the deletion of the definition of “ these Regulations ”; and		
(b)	By the insertion after the definition of “ The Act ” of the following definitions: <u>“Transporter of waste for gain” means a person who is in the business of transporting waste and receives and income for provision of such services, including waste that is transported as an ancillary activity to primary business activities, excluding when the transportation is done by a municipality; and</u> <u>“Vehicle registration certificate” means a certificate issued by the Department for a</u>		

	ISSUE	COMMENT	PROPOSAL
	<u>vehicle registered on the South African Waste Information System which is used to transport waste for gain;</u> ”.		
	Amendment of regulations 3 of the Regulations		
3.	Regulation 3 of the Regulations is hereby amended by the addition of the following subregulation: <u>“(4) These regulations do not apply to residue stockpiles or residue deposits.”</u>	Welcome the exclusion of residue stockpiles or residue deposits.	
	Amendment of regulation 4 of the Regulations		
4.	Regulation 4 of the Regulations is hereby amended by the addition of the following sub regulations: <u>“(2) Information held in the SAWIS about registered person may only be accessed by other registered persons.”</u>	Section 4 deals with Confidentiality of information and 4(1) sets out when such information can be made available. In this context, more information is needed on this point before we can understand the implications?	Information held in the SAWIS about registered person should only be accessed by that registered person or by approved government officials.
	Amendment of regulation 5 of the Regulations		
5.	Regulation 5 of the Regulations is hereby amended -		
(a)	By the substitution for subregulation (3) of the following subregulation:		



	ISSUE	COMMENT	PROPOSAL
	“(3) Where a person <u>referred to</u> in a subregulation (1) [(a)] conducts more than one activity in different facilities <u>or in the same facility</u> , such activities must be registered individually; <u>and</u>		
(b)	<p>By the addition of the following subregulations:</p> <p><u>"(5) A person registered as a transporter of waste for gain must within 30 days from the date of registration contemplated in subregulation (2), add the details of the vehicle used for transportation of waste for gain on the SAWIS, in order to receive a vehicle registration certificate.</u></p> <p><u>(6) The vehicle registration certificate issued in terms of regulation 5(4) is valid for a period of three years from the date of issue of registration certificate.</u></p> <p><u>(7) Industry associations, are required to report and register their members in terms of Regulation 8 on the SAWIS. Such registration must include a detail list of its members."</u></p>	<p>It is unclear what the purpose of Industry Associations are in this context and is not supported as industry associations are not waste generators. There is no legal basis to impose such obligations in terms of the Act</p>	
	Amendment of regulation 6 of the Regulations		
6.	Regulation 6 of the Regulations is hereby amended by the substitution for		

	ISSUE	COMMENT	PROPOSAL
	subparagraph (iii) of paragraph (a) of sub regulation (1) of the following subparagraph: “(iii) waste management method [or], <u>waste transporter</u> or hazardous waste generator; and”.		
	Amendment of regulation 7 of the Regulations		
7.	Regulation 7 of the Regulation is hereby amended -		
(a)	By the substitution for subregulation (5) of the following subregulation: “(5) If a person intends to recommence with an activity for which the registration was withdrawn, the person must comply with the legal requirements as set out in [regulation 6] regulations 5”; and		
(b)	by the addition of the following subregulation: “ <u>(6) Any person registered as a transporter of waste for gain must within 30 days of any change occurring, update such change on the SAWIS, which includes –</u> (i) <u>The addition of a vehicle registration;</u> (ii) <u>The removal of a vehicle registration;</u> <u>or</u> (iii) <u>The renewal of the vehicle registration certificate.</u> ”.		



	ISSUE	COMMENT	PROPOSAL
	Amendment of regulation 8 of the Regulations		
8.	Regulation 8 of the Regulations is hereby amended -		
(a)	<p>by the substitution for subregulations (1), (2), (3) and (9) of the following subregulations:</p> <p>“(1) the submission of information to the SAWIS commence ninety (90) days after the end of registration period <u>contemplated</u> in regulation [6(1)] 5(1).</p> <p>(2) A registered person conducting an activity listed in Annexure 1 must submit quarterly information as prescribed in Annexure 2, within [sixty (60)] (30) days of the end of a reporting period.</p> <p>(3) Subregulations (1) <u>and (2)</u> does not apply to the registered generators of hazardous waste or <u>registered transporters of waste for gain</u>.</p> <p>(9) If a registered person is not able to submit the required information to the SAWIS, a registered person must submit the required information to the Department by facsimile, post, <u>email</u> or hand delivery within [sixty (60)] (<u>30</u>) days of the end of the reporting period.” And</p>	<p>This timeframe for reporting could potentially be an issue. Not all information is available in 30 days due to different financial reporting timelines (month closures) in organizations and/or waste data not always readily available. Hence this would form a risk of not being able to report within the 30-day period.</p>	<p>Revert back to the 60-day timeframe i.e. a registered person conducting an activity listed in Annexure 1 must submit quarterly information as prescribed in Annexure 2, within (60) days of the end of a reporting period</p>
(b)	By the addition of the following subregulation”	See General Comment	



	ISSUE	COMMENT	PROPOSAL
	“(10) Industry associations must submit annual information within (60) days from the end of a calendar year.”		
	Amendment of regulation 12 of the Regulations		
9.	Regulation 12 of the Regulations is hereby amended by the substitution for paragraphs (a) and (b) of subregulation (1) of the following paragraphs: “(a) provides incorrect or misleading information to the SAWIS [;] or Department; or (b) fails to comply with regulation 4(1); 5 (1), (2), (3), (4); (6), 6(2), 7(1), (2), (3), (5), (6), 8(1), (2), (4), (5), (8), (9), (10) [and] or 9.”		
	Transitional provisions in respect of an activity listed in Annexure 1		
10.	Any person who conducts an activity listed in paragraphs (b), (c), (f), (g) or (l) of Annexure 1 is required to apply to register in terms of regulation 5 of these Regulations, within 90 days after the promulgation of these Regulations. All other registrations issued for transportation of waste in terms of Section 25 of the Waste Act will lapse after 90 days.		

	ISSUE	COMMENT	PROPOSAL
	Substitution of Annexure 1 of the Regulations		
11.	Annexure 1 of the Regulations is hereby amended by the substitution for Annexure 1 of the following Annexure:		
	“ANNEXURE 1 LIST OF PERSONS CONDUCTING THE FOLLOWING ACTIVITIES MUST REGISTER ON THE SAWIS IN TERMS OF REGULATION 5		
	Generators of waste		
(a)	Generators of hazardous waste in excess of 20kg per day, calculated monthly as a daily average.		
	Recovery or recycling of waste		
(b)	Recovery of energy from general waste in excess of three tons per day, calculated monthly as a daily average.		
(c)	Recovery of waste at a facility that has the capacity to process in excess of 10 tons of general waste or in excess of 100kg of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.		
(d)	The scrapping of recovery of motor vehicles at a facility that has an operational area in excess of 500m ² .		

	ISSUE	COMMENT	PROPOSAL
(e)	Recycling of general waste at a facility that has an operational area in excess of 500m ² .		
(f)	Recycling of hazardous waste in excess of 100kg per day calculated as a monthly average.		
	Treatment of waste		
(g)	Treatment of waste using any form of treatment at a facility that has the capacity to process in excess of 10 tons of general waste or 100kg of hazardous waste per day excluding the treatment of effluent, wastewater or sewerage.		
(h)	Treatment of health care risk waste regardless of size or capacity of the facility.		
	Disposal of waste		
(i)	Disposal of general waste to land covering an area in excess of 200m ² .		
(j)	Disposal of any quantity of hazardous waste to land.		
	Exportation of hazardous waste		
(k)	Hazardous waste exported from the Republic of South Africa.		



	ISSUE	COMMENT	PROPOSAL
	Transportation of waste		
(l)	Transportation of waste for gain, excluding when the transportation is done by a municipality.”		
	Substitution of Annexure 2 of the Regulations		
12	Annexure 2 of the Regulations is hereby amended by the substitution of Annexure 1 of the following Annexure:		
	“ANNEXURE 2 REPORTING REQUIREMENTS IN TERMS OF REGULATION 8		
	The required quarterly information for reporting to the SAWIS, read with the Annexure 1 of these Regulations must include -		
(a)	The month and year to which the information applies;		
(b)	Categories of waste as detailed in Annexes 3 and 4;		
(c)	Source from which waste comes; and		
(d)	The quantity of waste reported in tones.”.		



	ISSUE	COMMENT	PROPOSAL
	Substitution of Annexure 3 of the Regulations		
	Annexure 3* of the Regulations is hereby amended by the substitution for Annexure 3 of the following Annexure:		
	Substitution of Annexure 4 of the Regulations		
	Annexure 4* of the Regulations is hereby amended by the substitution for Annexure 4 of the following Annexure:		
	Substitution of Annexure 5 of the Regulations		
	Annexure 5* of the Regulations is hereby amended by the substitution for Annexure 5 of the following Annexure:	Coprocessing: Some operations recover both energy and materials from various waste streams, the definition of which is covered in other waste related legislations	Include an additional hybrid category:R1 + R2 to address coprocessing as this includes recovery of both energy and materials with zero waste consequences.

* See Annexure 3, 4, and 5 below.

CONCLUSION

BUSA welcomes the opportunity to comment on the proposed amendments to the National Waste Information Regulations, 2012 that were published for public comment on 6 July 2018. The proposed amendments in respect of transporters for gain and a requirement for Industry Associations to provide data into the South African Waste Information System (SAWIS) are particularly problematic.

BUSA looks forward to further engagement with the Department on these proposed amendments.