

2 May 2019

The Director-General
Department of Environmental Affairs
Private Bag X 447
PRETORIA
001

Attention: Mr Anben Pillay
apilly@environment.gov.za

Dear Mr Pillay

CONSULTATION ON INTENTION TO REQUIRE A PERSON WHO CONDUCTS A WASTE MANAGEMENT ACTIVITY LISTED UNDER THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 (ACT NO. 59 OF 2008) ON THE DATE OF COMING INTO EFFECT OF THE ACT, AND WHO IMMEDIATELY, BEFORE THAT DATE, LAWFULLY CONDUCTED THAT WASTE MANAGEMENT ACTIVITY UNDER GOVERNMENT NOTICE NO. 91 OF 01 FEBRUARY 2002, TO APPLY FOR A WASTE MANAGEMENT LICENCE UNDER THE ACT

INTRODUCTION

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and sectoral 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).

BUSA thanks the Department of Environmental Affairs for the opportunity to submit comments for consideration on the Notice of the intention to require a person who conducts a waste management activity listed under NEMA that was lawfully conducted under Government Notice 91 to apply for a waste management licence.

COMMENTS

The Notice contains a number of incorrect references to laws and the Minister's intention is ambiguous. Although the Notification states that its purpose is to make the public aware that the Minister intends requiring various people who lawfully conducted hazardous waste management activities under entitlements other than a waste management licence ("WML") to apply for WMLs, subsequent text suggests that the Minister's intention is to require all waste management activities that are currently conducted under entitlements other than WMLs to be regulated by WMLs.

The Notification refers to transitional statutory provisions which is problematic for two reasons. Firstly, it makes an incorrect reference to section 82 of the ECA. This must have been intended to be a reference to the Waste Act. Secondly, although the notice purports to intend to regulate all hazardous waste management activities, it refers only to the transitional provisions that regulate those operating general communal and general small waste disposal sites.

The Notification also makes no reference to the transitional provisions of the Waste Act that govern:

- Waste management activities that were operating lawfully before the ECA came into force in 1989; or
- Waste management activities that were lawfully conducted under section 20 of the ECA.

The Notification allows only one year for anyone undertaking a waste management activity not authorised by a WML to apply for a WML within one year. It will be difficult to comply with this requirement due to the necessity to comply with the EIA Regulations, 2014, to conduct a basic assessment or a scoping and EIA.

Detailed comments on the Notification are presented in Annexure A.

CONCLUSIONS

The Notice is fatally flawed and the stated purpose is not clear. The ambiguity regarding whether the Notice applies to hazardous or all waste management activities also raises issues of regulatory oversight as hazardous waste is the sole competency of the national department and general waste a provincial competency. The Notification must clearly define the waste management activities that must be licensed and state the regulatory competency.

The Notification must be republished to ensure that the intention of the Minister is clear and not ambiguous.

BUSA requests a meeting to clarify the intention in order to provide more constructive inputs.