

REPUBLIC OF SOUTH AFRICA

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**NATIONAL ENVIRONMENTAL  
MANAGEMENT:  
WASTE AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill published in Government Gazette No. 36673 of 18 July 2013)  
(The English text is the official text of the Bill)*

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(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

**[B 32—2013]**

ISBN 978-1-77597-065-1

No. of copies printed ..... 1 800

**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

**To amend the National Environmental Management: Waste Act, 2008, so as to substitute certain definitions; to clarify the spheres of government required to compile an integrated waste management plan; to provide for the exclusion of the provincial department responsible for waste management in the compilation of an industry waste management plan; to require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans; to establish a Waste Management Agency; to provide for the objects, funding, functions and Chief Executive Officer of the Waste Management Agency; to provide for the Board of the Waste Management Agency, the functions, meetings, remuneration and removal of Board members; to prescribe certain matters in relation to the Waste Management Agency; to provide for transitional arrangements regarding authorisations issued in terms of the Environment Conservation Act; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 59 of 2008**

**1.** Section 1 of the National Environmental Management: Waste Act, 2008, (Act No. 59 of 2008), (hereinafter referred to as the “principal Act”), is hereby amended by— 5

- (a) the insertion after the definition of “best practicable environmental option” of the following definition:  
    “**Board**” means the Board contemplated in section 34E;”;
  - (b) the substitution for the definition of “by-product” of the following definition: 10  
    “**by-product**” means a substance that is produced as part of a manufacturing or extraction process that is primarily intended to produce another substance [or product and that has the characteristics of an equivalent virgin product or material], which the generator intends to exploit or market on terms that are advantageous to the generator in a subsequent process, without any further processing;”;
- 15

- (c) the substitution for the definition of “Department” of the following definition:  
 “**‘Department’** means the Department [**of Environmental Affairs and Tourism**] responsible for environmental affairs;”;
- (d) the substitution for the definition of “Minister” of the following definition: 5  
 “**‘Minister’** means the Minister [**of Environmental Affairs and Tourism**] responsible for environmental affairs;”;
- (e) the substitution for the definition of “recovery” of the following definition:  
 “**‘recovery’** means the controlled extraction [**of a material**] or retrieval of [**energy**] any substance or material from waste to produce a product;”;
- (f) the substitution for the definition of “re-use” of the following definition: 10  
 “**‘re-use’** means to utilise articles from the waste stream [**again**] for a similar or different purpose without changing the form or properties of the articles;”;
- (g) the insertion after the definition of “sustainable development” of the following definition: 15  
 “**‘the Agency’** means the Waste Management Agency established by section 34A;” and
- (h) the substitution for the definition of “waste” of the following definition: 20  
 “**‘waste’** means any substance, whether or not that substance can be reduced, re-used, recycled and recovered—  
 (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;  
 (b) which the generator has no further use of for the purposes of production;  
 (c) that must be treated or disposed of; or 25  
 (d) that is defined as a waste by the Minister by notice in the *Gazette*, and includes waste generated by the mining, medical or other sector, but—  
 (i) a by-product is not considered to be waste; **[and]** or  
 (ii) any portion of waste, once re-used, recycled and recovered, 30  
 ceases to be waste;”.

#### **Amendment of section 4 of Act 59 of 2008**

2. Section 4 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).

#### **Amendment of section 11 of Act 59 of 2008** 35

3. Section 11 of the principal Act is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:  
 “(1) The [**Department and the**] provincial departments responsible for waste management must prepare integrated waste management plans.”; 40
- (b) the deletion of subsection (3);
- (c) the substitution in paragraph (a) of subsection (4) for subparagraphs (i) and (ii) of the following subparagraphs:  
 “(i) submit its integrated waste management plan to the MEC for [**approval**] endorsement; and 45  
 (ii) include the [**approved**] endorsed integrated waste management plan in its integrated development plan contemplated in Chapter 5 of the Municipal Systems Act.”;
- (d) the substitution for subsection (5) of the following subsection:  
 “(5) The [**Department and the**] provincial departments contemplated in subsection (1) must submit their integrated waste management plans to the Minister for [**approval**] endorsement.”; 50
- (e) the substitution in subsection (7) for paragraph (a) of the following paragraph:  
 “(a) Before finalising an integrated waste management plan, [**the Department and**] every provincial department contemplated in subsection (1) must follow a consultative process in accordance with sections 72 and 73.”; and 55
- (f) the deletion in subsection (7) of paragraph (b).

**Amendment of section 12 of Act 59 of 2008**

4. Section 12 of the principal Act is hereby amended by—
- (a) the substitution for the words in paragraph (b) of subsection (1) preceding subparagraph (i) of the following words:
    - “(b) within the domain of the **[Department,]** provincial department or municipality, set out how that **[Department,]** provincial department or municipality intends—”;
  - (b) the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs:
    - “(c) within the domain of the **[Department or]** provincial department, set out how the **[Department or]** provincial department intends to identify the measures that are required and that are to be implemented to support municipalities to give effect to the objects of this Act;
    - (d) set out the priorities and objectives of the **[Department,]** provincial department or municipality in respect of waste management;”;
  - (c) the substitution in subsection (1) for paragraph (f) of the following paragraph:
    - “(f) set out the approach of the **[Department,]** provincial department or municipality to the planning of any new facilities for disposal and decommissioning of existing waste disposal facilities;”;
  - (d) the substitution in subsection (1) for paragraph (h) of the following paragraph:
    - “(h) describe how the **[Department,]** provincial department or municipality intends to give effect to its integrated waste management plan; and”; and
  - (e) the substitution for subsection (2) of the following subsection:
    - “(2) In the preparation of an integrated waste management plan the **[Department and]** provincial departments must give proper effect to the requirements contained in Chapter 5 of the Municipal Systems Act, insofar as such plan affects a municipality.”.

**Amendment of section 13 of Act 59 of 2008** 30

5. Section 13 of the principal Act is hereby amended by—
- (a) the substitution for subsection (1) of the following subsection:
    - “(1) Annual performance reports on the implementation of the integrated waste management plans must, in the case of a provincial department, be submitted to the MEC for approval and to the Minister for noting.”; and
  - (b) the substitution for the words in subsection (2) preceding paragraph (a) of the following words:
    - “(2) The annual performance report that the **[Department or]** provincial department must submit in terms of subsection (1) must contain information on the implementation of its integrated waste management plan, including information on—”.

**Amendment of section 28 of Act 59 of 2008**

6. Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 45
- “(2) The MEC, with the concurrence of the Minister may, in respect of any activity within the province concerned that results in the generation of waste, by written notice require a person, or by notice in the *Gazette* require a category of persons or an industry, that generates waste to prepare and submit an industry waste management plan to the MEC for approval.”. 50

**Amendment of section 29 of Act 59 of 2008**

7. Section 29 of the principal Act is hereby amended by—
- (a) the substitution for subsection (1) of the following subsection:
    - “(1) The Minister or MEC, with the concurrence of the Minister may, by notice in writing, require an industry waste management plan to be prepared by an organ of state, excluding a municipality and a provincial

department responsible for waste management, within a stipulated timeframe.”;

- (b) the deletion of subsection (2);
- (c) the substitution for the words in subsection (3) preceding paragraph (a) of the following words:
  - “(3) When exercising a power under subsection (1) [**or (2)**], the Minister or MEC must consider whether—”; and
- (d) the substitution for subsections (5) and (6) of the following subsections:
  - “(5) An[y] organ of state [**or provincial department**] contemplated in subsection (1) [**and (2), respectively,**] may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan.
  - (6) An organ of state [**or provincial department**] contemplated in subsection (1) [**and (2), respectively,**] must follow a consultative process in accordance with sections 72 and 73, unless that plan is being prepared as a result of a person who was required to prepare that plan failing to do so, in which case section 31(2) applies.”.

#### **Amendment of section 30 of Act 59 of 2008**

- 8.** Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
  - “(1) The Minister, in a notice contemplated in section 28(1) or 29(1), or the MEC, with the concurrence of the Minister, in a notice contemplated in section 28(2) or 29[(2)](1), must specify the information that must be included in the industry waste management plan.”.

#### **Amendment of section 32 of Act 59 of 2008**

- 9.** Section 32 of the principal Act is hereby amended by—
- (a) the substitution for the words in subsection (1) preceding paragraph (a) of the following words:
    - “(1) The Minister, acting in terms of section 28(1) or 29(1), or the MEC acting in terms of section 28(2) or 29[(2)](1), may on receipt of an industry waste management plan—”; and
  - (b) the substitution in subsection (1) for paragraph (d) of the following paragraph:
    - “(d) reject the plan with reasons if it does not comply with the requirements of a notice in terms of section 28(1) or (2) or 29(1) [**or (2)**], as the case may be, or if a consultation process in accordance with section 31 was not followed.”.

#### **Amendment of section 34 of Act 59 of 2008**

- 10.** Section 34 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
  - “(1) An industry waste management plan that has been required by the Minister in terms of section 28(1) or 29(1), or by the MEC in terms of section 28(2) or 29[(2)](1), must be reviewed at intervals specified in the approval or at intervals specified by the Minister or MEC by notice in writing or in the relevant *Gazette*.”.

#### **Insertion of sections 34A, 34B, 34C, 34D, 34E, 34F, 34G, 34H, 34I, 34J and 34K in Act 59 of 2008**

- 11.** The following sections are hereby inserted in the principal Act after section 34:

##### **“Establishment of Waste Management Agency**

**34A.** (1) The Waste Management Agency is hereby established.

(2) The Agency is a public entity for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and must comply with the provisions of that Act.

## Objects of Agency

**34B.** The objects of the Agency are to—

- (a) function as the implementing agent for the Department in respect of matters relating to this Act; and
- (b) facilitate the preparation of industry waste management plans for those activities that generate waste.

## Functions of Agency

**34C.** (1) The Agency must—

- (a) facilitate the development of industry waste management plans;
- (b) promote best practices in the re-use and recycling of waste;
- (c) manage and coordinate the implementation of industry waste management plans;
- (d) manage the disbursements of industry waste management plans;
- (e) perform any other functions that the Minister may assign or delegate to the Agency in relation to the implementation of this Act.

(2) The Agency may—

- (a) open and operate its own bank accounts;
- (b) invest any of its money, subject to section 34D;
- (c) borrow money, subject to section 66 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (d) charge fees as prescribed by the Minister.

## Funding

**34D.** The funds of the Agency consist of—

- (a) income derived by it from the performance of its duties and the exercise of its powers;
- (b) money appropriated by Parliament;
- (c) voluntary contributions, donations and bequests;
- (d) money borrowed in terms of section 34C(2)(c); and
- (e) income derived from investments referred to in section 34C(2)(b).

## Board of Agency

**34E.** (1) The Agency must act through its Board.

(2) The Board must consist of—

- (a) not less than five, but not more than seven members appointed in terms of subsections (3) and (4);
- (b) the Director-General or an official of the Department designated by the Director-General; and
- (c) the Chief Executive Officer, as an *ex officio* member.

(3) The Minister must appoint members of the Board after—

- (a) publishing a notice in the *Gazette* and two national newspapers circulating in the Republic, calling upon members of the public to nominate persons contemplated in subsection (1)(a); and
- (b) compiling a shortlist of candidates together with their curriculum vitae.

(4) Nominations made pursuant to a notice in terms of subsection (3)(a) must be supported by—

- (a) the personal details of the nominee;
- (b) the nominee's qualifications or experience; and
- (c) any other information that may be prescribed.

(5) If the shortlist compiled in terms of subsection (3)(b) does not contain suitable persons, the Minister must call for further nominations in the manner set out in subsection (3)(a).

(6) The Board must consist of—

- (a) persons who are citizens of the Republic or have the right of permanent residence in the Republic and have distinguished themselves in the field of the waste management sector or possess the

- relevant qualifications, experience or skills in relation to waste management; and
- (b) at least one member who has a legal qualification and one member with financial expertise.
- (7) The Minister must appoint one of the members of the Board as chairperson and another member of the Board as the deputy chairperson.
- (8) Members of the Board contemplated in subsection (2)(a) are appointed for a period of three years and are eligible for re-appointment for another final term of three years.
- (9) In the absence of a Board all the functions of the Board are vested in the Minister.
- (10) In accordance with section 49(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Board is the accounting authority of the Agency.

### **Disqualification, removal from office and filling of vacancies**

- 34F.** (1) A person may not be appointed as, or continue to be, a member of the Board if he or she—
- (a) is an unrehabilitated insolvent;
- (b) has been declared by a court to be mentally ill;
- (c) has been convicted of an offence in the Republic or elsewhere and was sentenced to imprisonment without the option of a fine, other than an offence committed prior to 27 April 1994, associated with a political objective for which amnesty was granted by the Truth and Reconciliation Commission;
- (d) is a member of Parliament, a provincial legislature or any municipal council;
- (e) is not a citizen of, or does not have the right of permanent residence in, the Republic; or
- (f) has, as a result of improper conduct, been removed from a position of trust by a court of law.
- (2) The Minister may remove a member of the Board from office—
- (a) on the grounds of misconduct, incapacity or incompetence;
- (b) if the member is absent from three consecutive meetings of the Board without leave from the Board;
- (c) if the member becomes disqualified as contemplated in subsection (1); or
- (d) for any other sound and compelling reason.
- (3) A decision to remove a member of the Board from office in terms of subsection (2) must be based on the recommendation of an independent panel appointed by the Minister.
- (4) The Minister may dissolve the Board on reasonable grounds.
- (5) If a member of the Board dies, resigns by written notice to the Minister or is removed from office, the Minister may, having followed the procedure contemplated in section 34E(3), appoint a person in that vacancy for the remaining part of the term of office.

### **Functions and meetings of Board**

- 34G.** (1) The Board must perform any function imposed upon it in accordance with a policy direction issued by the Minister and in terms of this Act.
- (2) The Board must—
- (a) oversee the functions of the Agency;
- (b) give effect to the strategy of the Agency in the performance of its functions; and
- (c) notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects of the Agency.
- (3) The Board may determine its own procedure, but any decision of the Board must be taken by resolution of the majority of the members present at any meeting of the Board and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberate vote.

### Remuneration of Board members

**34H.** A member of the Board, other than the Chief Executive Officer and an official designated by the Director-General in terms of section 34E(2)(b), must be paid such remuneration and allowances out of the funds of the Agency as may be determined by the Minister, in consultation with the Minister of Finance. 5

### Chief Executive Officer of Agency

**34I.** (1) The Board must, with the approval of the Minister, appoint a suitably qualified and skilled person as the Chief Executive Officer of the Agency. 10

(2) The appointment of the Chief Executive Officer must be made after following a transparent and competitive selection process.

(3) The Chief Executive Officer must be appointed for a term not exceeding five years and must be subject to such conditions relating to remuneration and allowances as the Board may determine. 15

(4) The Chief Executive Officer must enter into a performance agreement with the Board within three months of taking up the post as Chief Executive Officer.

(5) The Chief Executive Officer must be responsible for the administration and the general management and control of the day-to-day functioning of the Agency, subject to the directions and instructions of the Board. 20

(6) The Chief Executive Officer must be responsible and accountable to the Board for all money received by the Agency and the utilisation of that money.

(7) The Chief Executive Officer must report to the Board on matters that may adversely affect the functioning of the Agency. 25

(8) If the Chief Executive Officer is—

- (a) absent for a period of more than two months;
- (b) unable to carry out his or her duties; or
- (c) there is a vacancy in the office of the Chief Executive Officer, the Board may, with the concurrence of the Minister, appoint any person who meets the requirements contemplated in subsection (1) to act as Chief Executive Officer, until the Chief Executive Officer is able to resume those duties or until the vacant position of Chief Executive Officer is filled. 30

(9) If the Chief Executive Officer is absent for a period of less than two months the Board may, with the concurrence of the Minister, appoint any person to act as Chief Executive Officer. 35

(10) The acting Chief Executive Officer has all the powers and may perform all the duties of the Chief Executive Officer.

(11) The Chief Executive Officer may not serve for more than two consecutive terms. 40

### Employees of Agency

**34J.** (1) Subject to subsection (2), the Chief Executive Officer—

- (a) must, on such conditions as he or she may determine, appoint such number of employees or receive on secondment such number of persons as are necessary to enable the Agency to perform its functions; 45
- (b) is responsible for the administrative control of the Agency and for the discipline of the employees and persons contemplated in paragraph (a); and
- (c) must ensure compliance with applicable labour legislation. 50

(2) The Board must approve—

- (a) the general terms and conditions of employment of the employees contemplated in subsection (1);
- (b) a human resource policy; and
- (c) the structures for remuneration, allowances, pensions, subsidies and other benefits for employees contemplated in subsection (1) in accordance with a system approved by the Minister, with the concurrence of the Minister of Finance. 55

(3) The terms and conditions of employment contemplated in subsection (2)(a) must be in line with the guidelines issued from time to time by the Minister responsible for the public service and administration.

**Minister’s supervisory powers**

**34K.** (1) The Minister— 5  
 (a) must monitor the performance by the Agency of its functions;  
 (b) may prescribe norms and standards for the performance by the Agency of its functions; or  
 (c) may issue directives to the Agency on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning. 10  
 (2) The Agency must perform its functions subject to any norms and standards prescribed or directives issued by the Minister in terms of subsection (1)(b) or (c).”

**Insertion of section 69A in Act 59 of 2008**

12. The following section is hereby inserted in the principal Act after section 69: 15

**“Regulations for Agency**

**69A.** The Minister must, after consultation with the Board, make regulations regarding—  
 (a) any matter required or permitted by this Act to be prescribed;  
 (b) the setting of fees; 20  
 (c) the circumstances and manner in which fees may be charged by the Agency for services, the method of reporting to the Minister on Board meetings and the frequency of those reports;  
 (d) interim measures for the continued management and functioning of the Agency in the event that the Minister dissolves the Board in terms of section 34F(4) of this Act; or 25  
 (e) any ancillary or incidental administrative or procedural matter in relation to the Agency that is necessary to prescribe for the proper implementation or administration of this Act.”

**Repeal of section 78 of Act 59 of 2008** 30

13. Section 78 of the principal Act is hereby repealed.

**Insertion of section 80A in Act 59 of 2008**

14. The following section is hereby inserted in the principal Act after section 80:

**“Transitional provisions in respect of authorisations issued in terms of Environment Conservation Act** 35

**80A.**(1) An authorisation issued under the Environment Conservation Act and that has not lapsed when the National Environmental Management: Waste Amendment Act, 2013 comes into operation, remains valid.  
 (2) The holder of an authorisation issued under the Environment Conservation Act may, at any time after the coming into operation of the National Environmental Management: Waste Amendment Act, 2013, request a variation of the authorisation by submitting a written request to the relevant licensing authority. 40  
 (3) The written request contemplated in subsection (2) must be considered by the licensing authority in accordance with section 54 of this Act.” 45

**Amendment of Table of Contents of Act 59 of 2008**

- 15.** The Table of Contents of the principal Act is hereby amended by—
- (a) the insertion after item 34 of the following items:
- |   |    |
|---|----|
| <u>34A.</u> Establishment of Waste Management Agency;                       | 5  |
| <u>34B.</u> Objects of Agency;  |    |
| <u>34C.</u> Functions of Agency;  |    |
| <u>34D.</u> Funding;  |    |
| <u>34E.</u> Board of Agency;  |    |
| <u>34F.</u> Disqualification, removal from office and filling of vacancies; |    |
| <u>34G.</u> Functions and meetings of Board;                                | 10 |
| <u>34H.</u> Remuneration of Board members;                                  |    |
| <u>34I.</u> Chief Executive Officer of Agency;                              |    |
| <u>34J.</u> Employees of Agency; and  |    |
| <u>34K.</u> Minister’s supervisory powers”;                                 |    |
- (b) the insertion after item 69 of the following item: 15
- “69A. Regulations for Agency”; and
- (c) the insertion after item 80 of the following item:
- “80A. Transitional provisions in respect of authorisations issued in terms of Environment Conservation Act”.

**Short title and commencement** 20

**16.** This Act is called the National Environmental Management: Waste Amendment Act, 2013, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL  
ENVIRONMENTAL MANAGEMENT: WASTE AMENDMENT BILL,  
2013**

**1. INTRODUCTION**

- 1.1 The purpose of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (the “NEMWA”), 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 and for securing ecologically sustainable development. In this regard, the NEMWA provides for institutional arrangements and planning matters; the establishment of a national waste information system; national norms and standards for the management of waste by all spheres of government; licensing and control of waste management activities, as well as waste management measures and the remediation of contaminated land.
- 1.2 Since 2009, the National Department and the provincial departments responsible for waste management have identified certain implementation challenges with respect to some provisions of the NEMWA.

**2. PURPOSE OF BILL**

The purpose of this Bill is to amend the NEMWA, in order to—

- substitute certain definitions;
- clarify the spheres of government required to compile an integrated waste management plan;
- provide for the exclusion of the provincial department responsible for waste management in the compilation of an industry waste management plan;
- require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans;
- establish a Waste Management Agency; and
- provide for transitional arrangements regarding authorisations issued in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989).

**3. OBJECTS OF BILL**

**Clause 1: Amendment of section 1**

This amendment seeks to revise certain definitions to provide clarity and to remove any ambiguity in the NEMWA.

**Clause 2: Amendment of section 4**

The current provisions of the NEMWA are not applicable to the disposal of animal carcasses. This clause will ensure that the disposal of animal carcasses will be regulated under the NEMWA.

**Clause 3: Amendment of section 11**

This amendment provides that the National Department will not be required to prepare an integrated waste management plan, but will rather prepare the National Waste Management Strategy setting out how the objectives of the NEMWA will be achieved. The intention of the amendment is to avoid the duplication of plans. The amendment will also provide for municipal integrated waste management plans to be submitted to the MEC for endorsement and not for approval.

**Clause 4: Amendment of section 12**

This is a consequential amendment that provides that the National Department will no longer be required to develop an integrated waste management plan.

**Clause 5: Amendment of section 13**

This amendment is consequential and provides that the reports on the implementation of the provincial integrated management plans must be submitted to the MEC for approval and to the Minister for noting.

**Clause 6: Amendment of section 28**

This amendment provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans.

**Clause 7: Amendment of section 29**

This amendment provides that the provincial departments responsible for waste management will not be required to prepare industry waste management plans, but will have to prepare and implement integrated waste management plans. This amendment is intended to avoid the duplication of plans. The amendment further provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 8: Amendment of section 30**

This amendment that relates to the issuing of a notice by the Minister or the MEC, specifying information to be included in the industry waste management plans, is consequential and provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 9: Amendment of section 32**

This amendment that relates to the actions of the Minister or the MEC upon receipt of the industry waste management plans, is consequential and provides for the MEC responsible for waste management to act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 10: Amendment of section 34**

This amendment that relates to the review of industry waste management plans, is consequential and provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 11: Insertion of sections 34A, 34B, 34C, 34D, 34E, 34F, 34G, 34H, 34I, 34J and 34K**

This amendment establishes a Waste Management Agency to deal with the different waste streams on behalf of the Department. The Waste Management Agency acts through its Board. These sections provide for the objects, functions, funding and employees of the Waste Management Agency. The Board's composition, functions, remuneration and removal from office are provided for, as well as the appointment of the Chief Executive Officer of the Agency. The Minister must monitor the performance by the Waste Management Agency of its functions.

**Clause 12: Insertion of section 69A**

This amendment authorises the Minister, after consultation with the Board, to make regulations in relation to the methods of reporting by the Board, interim measures for the continued management and functioning of the Waste Management Agency if the Minister dissolves the Board, or other regulations that may relate to certain administrative or procedural matters that the Waste Management Agency may require to be prescribed for the purpose of proper implementation or administration of the Act.

**Clause 13: Repeal of section 78**

This amendment repeals section 78 of the NEMWA, since all appeals will be lodged in terms of section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), and considered and processed in accordance with the national appeals regulations developed in terms of section 43 of the National Environmental Management Act, 1998.

**Clause 14: Insertion of section 80A**

In its current form, the NEMWA does not contain transitional arrangements in respect of the authorisations issued in terms of the Environment Conservation Act, 1989. In this regard, the relevant licensing authority does not have the legal mandate to consider any applications for review of such authorisations. This amendment will provide the relevant licensing authority with the necessary legal mandate to consider and vary such authorisations.

**4. BODIES CONSULTED**

The Department together with the provincial departments responsible for waste management identified the areas of amendments. The draft Bill was further discussed with representatives of provincial departments responsible for waste management and other national departments through MinTech Working Groups 9 and 11.

**5. FINANCIAL IMPLICATIONS FOR STATE**

There would be no financial implications for the Department.

**6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The amendments do not require new structures or capacity within the Department.

**7. COMMUNICATION IMPLICATIONS**

Appropriate communication measures will be implemented by the Government Communication and Information System.

**8. PROVINCIAL IMPLICATIONS**

None

**9. CONSTITUTIONAL IMPLICATIONS**

None

**10. PARLIAMENTARY PROCEDURE**

10.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Part A of schedule 4 of the Constitution, dealing with “environment” and “pollution control”, respectively.

10.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.



Printed by Creda Communications

ISBN 978-1-77597-065-1