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### LOCAL AUTHORITY

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## LOCAL AUTHORITY NOTICE



# **DISTRICT WASTE MANAGEMENT BY-LAW**

Council Approved: 31 July 2017

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## CHAPTER 1 : DEFINITIONS, OBJECTIVES AND PRINCIPLES

### 1. Definitions

For the purpose of these by-laws, any word or expressions to which the meaning has been assigned in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and NEMWA, read with the National Environmental Laws Amendment Act, 2014 (Act 25 of 2014), as amended from time to time or its corresponding replacement shall bear the same meaning in these by-laws and unless the context indicates otherwise:

**"accreditation"** means registering with the EDM in terms of CHAPTER 10 of these by-laws;

**"accredited service provider"** means any person registered with the EDM in terms of CHAPTER 10 of these by-laws;

**"approved waste receptacle"** means a disposable or reusable receptacle for temporary storage of waste, approved of by the relevant local municipality in which waste is placed for the purpose of storing, accumulating, handling, transporting, treating or disposing of that waste and includes approved bins, bin-liners, wrappers and skips;

**"authorised official"** means any authorised official of the EDM who has been authorised or designated by the EDM to administer, implement and enforce the provisions of these by-laws, or any employee of a service provider acting within the scope of the powers, functions and duties assigned to the service provider by the EDM if such a service provider, for the purpose of the by-laws, has been appointed;

**"authorised waste disposal facility"** means a waste disposal facility as defined herein, duly licensed in terms of section 49 of NEMWA;

**"building and demolition waste"** shall bear the meaning ascribed to it in Schedule 3 of NEMWA.;

**"business waste"** shall bear the meaning assigned to it in Schedule 3 of NEMWA;

**"commercial services"** means –

- (a) The collection and transportation of business waste;
- (b) the conducting or undertaking of waste management activities within the jurisdiction of the EDM which requires a waste management licence; or
- (c) the collection, transportation, sorting, storage, recycling or recovery of waste with the intention of making profit; or
- (d) any person collecting, storing or transporting recyclable waste on behalf of a bona fide non-governmental organisation; and
- (e) the exclusion of municipal waste services.

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"damage to the environment"** means any pollution, degradation or harm to the environment, whether visible or not;

**"domestic waste"** shall bear the same meaning ascribed to it in Schedule 3 of NEMWA;

**"dump"** means to dispose of waste in a manner other than one permitted by law and includes, without derogating from the generality of the foregoing, to deposit, discharge, spill or release waste, whether or not the waste is in a container or receptacle, in or at any place whatsoever whether publicly or privately owned, including but not limited to vacant land, rivers, waste water, catchments and sewage and storm water systems, but excludes littering;

**"e-waste"** means the hazardous portion of wastes from electrical and electronic equipment;

**"EDM"** means—

- (a) the Eden District Municipality, a municipality established as such by establishment notice PN497/2000 published on the 22<sup>nd</sup> of September 2000, exercising its legislative and executive authority through its municipal council; or
- (b) its successor-in-title; or

- (c) a structure or person exercising power delegated in these by-laws or carrying out instructions which power has been delegated or sub-delegated or which instruction has been given as contemplated in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000); or
- (d) a service provider fulfilling a responsibility under these by-laws that is assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

**"enforcement notice"** means a notice issued by an authorised official under section 54 of these by-laws;

**"environment"** means the surroundings within which humans exist made up of—

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the inter-relationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence public health and wellbeing.

**"environmental emergency"** means an unexpected or sudden occurrence resulting from an act or omission relating to waste leading to serious danger to the public or potentially serious pollution of or damage to the environment, whether immediate or delayed;

**"food waste"** shall bear the meaning ascribed to it in Schedule 3 of NEMWA;

**"garden waste"** shall bear the meaning ascribed to it in Schedule 3 of NEMWA;

**"general waste"** shall bear the meaning ascribed to it in Schedule 3 of NEMWA;

**"generator of waste"** means any person who generates or produces waste;

**"hazardous waste"** shall bear the meaning ascribed to it in Schedule 3 of NEMWA;

**"health care risk waste"** means health care risk waste as defined in the Western Cape Health Care Waste Management Act, 2007 (Act 7 of 2007);

**"holder of waste"** means any person who imports, generates, collects, stores, accumulates, transports, processes, treats, exports or disposes of waste;

**"inert waste"** shall have the meaning ascribe to it in Schedule 3 of NEMWA;

**"integrated waste management plan"** means any integrated waste management planning system which the EDM must develop under national or provincial legislation or in terms of the EDM's integrated development plan;

**"land reclamation"** means the plan and engineered disposal of inert or other appropriate waste for the purpose of constructing any facility or changing the natural features of any piece of land;

**"litter"** means any object or matter which is discarded by a person in any place, except in an approved receptacle provided for that purpose or at a waste handling facility or waste disposal facility;

**"local community"** means, in relation to the EDM, that body of persons comprising of—

- (a) the residents within its area of jurisdiction;
- (b) the ratepayers of the EDM or any local municipality sharing the same area of jurisdiction with the EDM;
- (c) any civic organisation and non-governmental private sector or labour organisation or body which is involved in local affairs within the EDM's jurisdiction; and
- (d) visitors and other residing outside of the EDM's jurisdiction who, because of their presence in that area make use of services or facilities provided by the EDM or the local municipalities;

**"local municipality"** means, for purposes of this by-law, the municipalities of George, Mossel Bay, Oudtshoorn, Hessequa, Bitou, Knysna and Kannaland, being municipalities that share municipal executive and legislative authority in their respective areas with the EDM within whose area they fall;

**"minimisation"** means, when used in relation to waste, efforts to reduce and minimise the amount and toxicity of waste that is generated and, in the event where waste is generated, the reduction of the amount and toxicity of waste that is required to be disposed of;

**"minister"** means the national minister responsible for environmental affairs;

**"municipal waste services"** means services relating to the cleansing, collection, transportation and disposal of waste, including domestic waste which is provided by the respective local municipalities and the EDM in accordance with CHAPTER 5 of these by-laws;

**"municipal waste collection services"** means a service provided exclusively by the local municipalities or their service providers to collect domestic waste, general business waste and food waste in accordance with the provisions of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and which, in the case of general business waste, extends only to waste deposited in bin liners, waste bins and any waste container approved by local municipalities;

**"municipal waste disposal services"** means the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality, which services are provided exclusively by the EDM or its service providers to participating local municipalities and municipal waste disposal services in relation to non-participating municipalities shall mean the establishment, operation and control of waste disposal facilities delivered by non-participating local municipalities or its service providers in accordance with the provisions of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**"municipality"** where the word appears in this by-law without the prefix of "participating local" or "non-participating local" or "local", means all municipalities in the district, including the EDM;

**"NEMWA"** means the National Environmental Management: Waste Act, 2008 (Act 59 of 2008) as amended by the National Environmental Laws Amendment Act, 2014 (Act 25 of 2014) and the National Environmental Management: Waste Amendment Act, 2014 (Act 26 of 2014) and as may be further amended from time to time;

**"non-participating local municipalities"** means those local municipalities which at the time of promulgation of these by-laws are not participating local municipalities as defined herein;

**"nuisance"** means any injury, harm, damage, inconvenience or annoyance to any person which is caused in any way whatsoever by the improper handling or management of waste, including but not limited to the storage, placement, collection, transport or disposal of waste or by littering;

**"occupier"** in relation to any premises means any person who is in actual occupation on such premises, any person who, whether as owner, lessee or otherwise, has for the time being control of such premises and shall include a street trader who occupies a site for the purposes of such street trader's business;

**"organ of state"** has the same meaning as ascribed to it in terms of section 239 of the Constitution;

**"organic waste"** shall bear the meaning ascribed to it in Schedule 3 of NEMWA;

**"owner"** means any person that has the title to any premises or land, or any person receiving the rent or profits for allowing the occupational use of any land, premises or part of any premises or who would receive rent or profit if land or premises were let or used, whether he does so on his own account or for another;

**"participating local municipalities"** means the local municipalities of George, Mossel Bay, Knysna and Bitou who are obligated to make use of the municipal waste disposal service to be provided by the EDM as more fully described in CHAPTER 5 of these by-laws;

**"person"** means a natural or juristic person and includes an accredited permit holder and an organ of state;

**"pollution"** has the same meaning ascribed to it as in section 1 of the National Environmental Management Act 107 of 1998;

**"premises"** means—

- (a) land or a portion of land, whether or not a building or structure has been constructed or erected on the land or portion of land; or
- (b) a building or structure and the land on which it is situated;

**"prescribed fee"** means a tariff for the municipal waste disposal services which the EDM may set for the provision of such services to the users thereof and includes a surcharge on such tariff;



**"priority waste"** means any waste declared to be as such in terms of national or provincial legislation;

**"public road"** means any road, street or thoroughfare or any other place, whether a thoroughfare or not, which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes:

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare.

**"radioactive material"** means any substance consisting of or containing any radioactive nuclide, whether natural or artificial;

**"radioactive waste"** means any radioactive material which is or is intended to be disposed of as waste;

**"recycle"** means a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material;

**"recyclable waste"** means waste which has been separated from the waste stream and set aside for purposes of recycling;

**"reuse"** means to utilise the whole, portion of or a specific part of any substance, material or object from the waste stream for a similar or different purpose, without changing the form or properties of such substance, material or object;

**"SANS code"** means the South African National Standard: 10228: The Identification and Classification of Dangerous Goods for Transport;

**"service provider"** means any person who has entered into a service delivery agreement with the EDM in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) including for purposes of this by-law, a Public Private Partnership Agreement in terms of Section 120 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003);

**"storage"** means the accumulation of waste in a manner that does not constitute treatment or disposal of that waste;

**"sustainable development"** means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that development serves present and future generations.

**"tariff"** means the charge to users for the provision of municipal waste disposal services as set out in CHAPTER 5 of these by-laws determined and promulgated by the EDM in terms of tariff policy by-laws adopted under section 75 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**"un-compactable waste"** means business waste or domestic waste which by virtue of its mass, shape, size or quantity is inconvenient to remove as part of the routine door-to-door municipal waste services provided by the local municipalities;

**"waste"** means—

- (a) any substance, material or object, which is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered; and
- (b) includes all wastes as defined in Schedule 3 of NEMWA; and
- (c) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the Gazette;

but any waste or portion of waste referred to in paragraphs (a) and (b) above ceases to be a waste—

- i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been reused, recycled or recovered;
- ii) where approval is not required, once a waste is, or has been reused, recycled or recovered;

- iii) where the minister has, in terms of Section 74 of NEMWA exempted any waste or a portion of waste generated by a particular process from the definition of waste; or
- iv) where the minister has in the prescribed manner excluded any waste stream or a portion of a waste stream from the definition of waste;

**"waste disposal facility"** means any site or premises used for the accumulation of waste with the purpose of disposing of that waste at the site or premises;

**"waste handling facility"** means any facility that accepts, accumulates, handles, recycles, reprocesses, sorts, stores or treats waste prior to its transfer for treatment by way of incineration or for final disposal;

**"waste management officer"** means a waste management officer designated in terms of section 10 of NEMWA;

**"waste management plan"** means a plan referred to in CHAPTER 3 of these by-laws;

**"waste management activity"** has the same meaning as ascribed to it in section 1 of NEMWA;

**"waste management licence"** has the same meaning as ascribed to it in section 1 of NEMWA;

**"waste management services"** has the same meaning as ascribed to it in section 1 of NEMWA;

**"waste stream"** means a type of waste, including building waste, business waste, un-compactible waste, food waste, domestic waste, garden waste, hazardous waste, healthcare risk waste, business waste, recyclable waste.

## 2. Principles

- (1) Any person exercising a power in accordance with these by-laws must, at all times, seek to promote the waste management hierarchy approach as outlined in NEMWA and the National Waste Management Strategy, which is in the following order of priority:
  - (a) promoting waste avoidance and minimisation;
  - (b) waste reuse;
  - (c) recycling, recovery;
  - (d) waste treatment; and
  - (e) disposal.
- (2) The by-laws seek to promote sustainable development and environmental justice through fair and reasonable measures for the management of waste within the EDM's area of jurisdiction.
- (3) The by-laws promote participation of all municipal residents, waste generators and holders of waste, including local municipalities in the promotion of responsible citizenship by ensuring sound waste management practices within residential business and industrial environments.

## 3. Objectives of the by-laws

- (1) The objectives of these by-laws are to—
  - (a) give effect to the rights contained in Section 24 of the Constitution by regulating waste management within the area of the EDM's jurisdiction;
  - (b) provide an effective, legal and administrative framework, within which the EDM can manage and regulate waste management activities;
  - (c) give effect to the division of functions and powers between the EDM and local municipalities as contemplated in Section 84 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) as far as it relates to the EDM's executive authority and right to administer—
    - (i) the determination of a waste disposal strategy;
    - (ii) the regulation of waste disposal; and

- (iii) the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality;
  - (d) give effect to the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) by establishing a district inter-municipality waste management forum to promote and facilitate integrated waste management between the EDM and the local municipalities;
  - (e) provide for the effective regulation of waste disposal and determination of a waste disposal strategy as far as it relates to waste disposal facilities within the area of jurisdiction of the EDM;
  - (f) ensure that waste is avoided, or where it cannot be altogether avoided, minimised, reused, recycled, recovered and disposed of in an environmentally sound manner;
  - (g) promote and ensure an effective delivery of municipal waste services and commercial services; and
  - (h) enhance sustainable development within the area of jurisdiction of the EDM.
- (2) In pursuing the objectives of these by-laws, and in particular the objectives set out in sub-section (1), the EDM must, within its area of jurisdiction,—
- (a) endeavour to minimise the consumption of natural resources;
  - (b) promote the reuse and recycling of waste;
  - (c) encourage waste separation at source to facilitate reuse and recycling;
  - (d) promote the effective resourcing, planning and delivery of the municipal waste services and commercial services;
  - (e) endeavour to achieve integrated waste planning and municipal waste services;
  - (f) promote and ensure an environmentally responsible municipal waste service and commercial service; and
  - (g) endeavour to ensure compliance with the provision of these by-laws.

#### **4. Scope of application**

- (1) These by-laws must be read with any applicable provision of NEMWA, the National Health Act, 2003 (Act 61 of 2003), the Western Cape Healthcare Waste Management Act, 2007 (Act 7 of 2007), as well as any other applicable national and provincial legislation as well as the waste management by-laws promulgated by local municipalities.
- (2) In the event of any conflict with any other by-law which directly or indirectly, within the jurisdiction of the EDM, regulates waste management, the provision of this by-law will prevail to the extent of any inconsistency.
- (3) The by-laws do not override any other national and provincial waste related legislation.

#### **5. General duty of care**

- (1) Every person has a duty to manage any waste generated by his or her activities or the activities of those persons working under his or her direction in such a manner that the waste does not cause harm to human health or damage to the environment. In particular the persons must ensure that—
  - (a) waste generation is avoided and where such waste cannot be avoided, minimise the toxicity and amounts of waste;
  - (b) waste is reduced, reused, recycled or recovered;
  - (c) where waste must be disposed of, the waste is treated and disposed of in an environmentally sound manner; and
  - (d) the waste is managed in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impact.

- (2) Any person subject to the duty imposed in sub-section (1) may be required by the EDM or any of its authorised officials to take measures to ensure compliance with this duty.
- (3) The measures referred to in sub-section (2) that the person may be required to undertake include—
  - (a) investigation, assessment monitoring and evaluation of the impact that the activities, the process or a situation has on the environment;
  - (b) informing and educating employees about the environmental risk of their work and the manner in which their task must be performed in order to avoid causing damage to the environment;
  - (c) ceasing, modifying or controlling any act, process, situation or activity which causes damage to the environment;
  - (d) containing or preventing the movement of pollutants or other causes of damage to the environment;
  - (e) eliminating or mitigating any source of damage to the environment; or
  - (f) rehabilitating the effects of the damage to the environment.

## **CHAPTER 2 : WASTE MANAGEMENT INFORMATION SYSTEM**

### **6. Decision to establish a waste management information system**

- (1) The EDM will maintain a waste management information system in terms of this chapter to record how waste is managed within its area of jurisdiction.
- (2) Any amendment to the waste management information system referred to in sub-section (1) must be published by a notice in the provincial gazette and will come into operation on the date announced in the notice which must not be less than three (3) months from the date of its publication.

### **7. Purpose of the information system**

The purpose of the information system is for the EDM to—

- (1) facilitate effective waste management within its area of jurisdiction;
- (2) record data relating to the implementation of the integrated waste management plan, if any, and management of waste within the EDM's area of jurisdiction;
- (3) furnish information as required by law to the provincial or national government;
- (4) gather information and undertake strategic planning regarding potential and actual waste generators, waste holders, service providers and accredited permit holders;
- (5) identify specific data collection methods and the medium and format to be used for purposes of collecting waste management information;
- (6) provide information to waste generators, holders of waste, service providers, accredited permit holders, local municipalities and the local community, in a format determined on by the EDM, in order to—
  - (a) facilitate monitoring of the performance of , accredited permit holders (where applicable), waste generators and waste holders;
  - (b) stimulate research; and
  - (c) assist the EDM to achieve the main objectives of these by-laws;
- (7) for such other purpose as the EDM may specify.

**8. Provision of information**

- (1) The EDM may, subject to the provisions of any other law, including the common law, require any waste generator, accredited permit holder, service provider, waste recyclers, local municipalities or any person involved in or associated with the provision of municipal waste services or commercial services within the area of jurisdiction of the EDM, to furnish information in a format and within a timeframe as may be determined by the EDM that may be reasonably required for the information system.
- (2) The information referred to in sub-section (1) may concern—
  - (a) significant sources of waste generation and the identification of such waste generators;
  - (b) quantities and classes of waste generated;
  - (c) waste handling, waste treatment and waste disposal facilities;
  - (d) population and development profiles;
  - (e) reports on progress in achieving any waste management targets;
  - (f) the management of all health care risk waste; or
  - (g) any other information required by legislation, regulation or guidelines.
- (3) The EDM may, at its own discretion and as reasonably as possible, require any facility, person or activity to register and report to the EDM any other information for the purpose of facilitating effective waste management within its area of jurisdiction.
- (4) Such a request as contemplated in (3) above may be made by notice published in the provincial gazette and local newspapers distributed within the area of jurisdiction of the EDM;

**9. Confidentiality of information provided**

No person may disclose confidential information obtained in terms of these by-laws, unless—

- (1) the information is disclosed in compliance with the provisions of any law;
- (2) the person is ordered to disclose information by a court of law; or
- (3) the information is disclosed to enable the person to perform a function in terms of these by-laws.

**10. Registration on and reporting to the waste management information system**

- (1) Any person conducting an existing activity as set out in section 8(1), or a waste management activity as listed in Annexure 1 of the National Waste Management Regulations, must apply to the EDM to be registered on the waste management information system within ninety (90) days of the coming into operation of these by-laws.
- (2) Any person commencing such an activity after the promulgation of the by-laws must apply to be registered on the waste management information system thirty (30) days after the commencement of such activity.
- (3) Where a person conducts more than one activity in different facilities, such activities must be registered individually.
- (4) Registration on the waste information system is subject to the payment of a registration fee to the EDM. Such fee is to be published by notice in the provincial gazette and will be applicable from the date of its publication.
- (5) A registered person must notify the EDM of any changes in respect of that person's registration certificate within thirty (30) days of such change occurring.
- (6) If a registered person transfers ownership of the business or no longer undertakes the activity which caused that person to register, the registered person must notify the EDM in the form determined by the EDM within thirty (30) days prior to the business being transferred or the activity being discontinued.

- (7) Any person who conducts an activity, which has been identified in terms of local, provincial and/or national waste information systems must, upon request, present to the EDM proof that such an activity is registered and the required information is reported.
- (8) A person conducting an activity as contemplated in sub-section (1) of this section, must report accurately on waste quantities and the types of wastes and on any other information as may be required by the EDM on a monthly basis to the EDM Waste Management Information System and keep record of all such information for a period of five (5) years.

### **CHAPTER 3 : WASTE MANAGEMENT PLANS**

#### **11. Preparation and reporting on the implementation of waste management plans by certain generators or holders of waste**

- (1) In addition to any other provisions in national and provincial legislation regarding the preparation of integrated waste management plans, the EDM may, by notice published in the provincial gazette, require present or future generators or holders of specified waste streams or local municipalities to prepare waste management plans.
- (2) A notice referred to in sub-section (1) shall specify the prescribed form and format required for the waste management plan and submission date for it.
- (3) Any person who is required by the EDM to prepare a waste management plan may be required to review and update the plan and to submit an amended plan at intervals specified by the EDM.

#### **12. Contents of waste management plans**

Any waste management plan required in terms of this chapter must include at least—

- (1) an assessment of the quantity and type of waste that is or will be generated;
- (2) a description of the waste management services the producer will require;
- (3) the full details of the sites or areas where waste will be generated, stored, treated or disposed of;
- (4) a description of how the waste generator separates or intends to separate recyclable and non-recyclable material, including the targets set for recycling;
- (5) the waste minimisation or pollution prevention practices and plans of such waste generator;
- (6) the methods of disposal or treating such waste;
- (7) a reporting plan on the implementation of the waste management plan;
- (8) details of the person responsible for the implementation of the waste management plan; and
- (9) any further information that the EDM may require in writing.

#### **13. Annual reporting**

Any person who is required by the EDM to prepare a waste management plan referred to in Section 11 shall, after submission of the waste management plan, annually report on its progress made with the implementation thereof, which report will be in the required format specified by the EDM from time to time.

### **CHAPTER 4 : WASTE MINIMISATION AND RECYCLING**

#### **14. Reduction, reuse, recycling and recovery of waste should result in less environmental harm than disposing of waste**

- (1) All persons must ensure that waste is avoided, or where it cannot altogether be avoided, minimised, reused, recycled or recovered wherever possible and disposed in an environmentally sound manner.
- (2) Any person who is undertaking the reduction, reuse, recycling or recovery of waste, including scrap metal dealers, waste treatment facilities and formalised recycling groups must before undertaking that activity make sure that the activity is less harmful to the environment than disposal of such waste.

**15. Registering with the EDM and compliance with national and provincial laws**

- (1) Reuse, recycling or recovery of waste must be undertaken in a manner which complies with the Waste Act and any other applicable law.
- (2) No person may undertake to collect, transport, sort, store, reuse, recycle or recover waste with the intention of making profit, including scrap metal dealers, waste treatment facilities and formalised recycling groups, unless the person is accredited in terms of CHAPTER 10 of these by-laws.
- (3) Sub-section (2) does not apply to transportation or collection of own recyclable waste, persons engaged in fundraising ventures or *bona fide* non-governmental organisations if the collection, transportation, sorting, storing, reuse and recycling of waste is not for profit.

**16. Obligation to separate waste into recyclables and non-recyclables**

- (1) The EDM may prescribe, by notice published in a provincial gazette, that from a prescribed date generators or holders of particular categories of waste must, for purpose of recycling, separate those categories of waste and must store, dispose of or treat the separated waste in the manner prescribed in the notice.
- (2) Failure to comply with a notice published pursuant to sub-section (1) is an offence.

**17. Storage, collection, treatment, transportation and recovery of recyclable waste**

- (1) The owner or occupier of premises on which recyclable waste is generated and separately stored, must ensure that—
  - (a) until such time as such waste is collected by an accredited service provider from the premises on which it was generated or stored, the waste is placed in an approved waste receptacle and in a secure location;
  - (b) the approved waste receptacle in which the waste is stored is not kept in a public place, except when so required for collection;
  - (c) the approved waste receptacle placed for collection is not damaged and is properly closed so as to prevent the dispersal of its contents;
  - (d) every approved waste receptacle on the premises is kept closed, safe for when waste is being deposited in it or discharged from it and every approved receptacle is kept in a clean and hygienic condition;
  - (e) nuisances such as odour, visual impact and breeding of vectors do not arise;
  - (f) the waste is collected by an accredited service provider within a reasonable time after the generation thereof, but at least once per month;
  - (g) in the event that the quantity of recyclable waste generated is not of sufficient volume to be removed monthly, timeous application be made to the relevant local municipality for consent to have it removed over a longer cycle.
- (2) An accredited service provider must handle, treat or dispose of recycled waste at licensed waste handling treatment or disposal facilities.

**CHAPTER 5 : MUNICIPAL SERVICE****Part 1: Division of Functions and Powers****18. General duty of local municipalities to provide municipal waste collection services**

- (1) Local municipalities within the area of jurisdiction of the EDM have a duty to their respective local communities of progressively ensuring efficient, affordable, economical and sustainable access to municipal waste collection services.
- (2) The duty referred to in sub-section (1) is subject to—
  - (a) the obligation of the members of the local community to pay the prescribed fee for the provision of the municipal waste collection services, which must be in accordance with any nationally prescribed laws and standards for rates and tariffs; and

- (b) the right of the local municipalities to differentiate between categories of users and geographical areas when setting service standards and levels of service for the provision of the municipal service;
- (c) any regulations or other guidelines issued in terms of NEMWA relating to waste collection, storage and transport;
- (d) any regulation of waste disposal or waste disposal strategy determined in terms of these by-laws.

**19. General duty of the EDM to provide municipal waste disposal services to participating local municipalities**

- (1) The EDM has a duty to participating local municipalities and their respective local communities to progressively ensure efficient, affordable, economical and sustainable access to the municipal waste disposal services as defined in section 1 of these by-laws.
- (2) The duty referred to in sub-section (1) is subject to—
  - (a) the EDM adopting a tariff which must reflect the costs reasonably associated with rendering the service of transportation, establishment, operation and management of such bulk waste transfer facilities and waste disposal sites as may be required, including capital, operating, maintenance, administration replacement closure, rehabilitation and post closure monitoring costs and interest charges;
  - (b) the participating local municipalities:
    - (i) including such tariffs raised by the EDM in each of the participating local municipalities' annual budgets and collect all monies that are due and payable to it;
    - (ii) complying with the provisions of section 37 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003);
    - (iii) making payment of the prescribed fee for the delivery of such services by the EDM as may be prescribed by the EDM;
  - (c) the right of the EDM to differentiate between different categories of users, services, service tariffs, geographical and other matters as long as the differentiation does not amount to unfair discrimination;
  - (d) any regulations or other guidelines issued in terms of NEMWA relating to waste classification, norms and standards for the assessment of waste for landfill disposal and norms and standards for the disposal of waste to landfill sites;
- (3) A participating local municipality making use of municipal waste disposal services delivered by the EDM is liable for the payment of prescribed fees for such services and is not exempted from or entitled to a reduction of such prescribed fees due to non-usage, partial or limited use of such services.
- (4) The EDM reserves the right to review such prescribed fees contemplated in sub-section (3) on an annual basis.

**20. Non-participating local municipalities**

- (1) Non-participating local municipalities remain responsible to their respective local communities for—
  - (a) municipal waste collection services as contemplated in section 18 of these by-laws;
  - (b) the transportation of waste collected; and
  - (c) the safe disposal thereof at licensed waste disposal facilities in strict compliance with the provisions of applicable national and provincial legislation.
- (2) The EDM may—
  - (a) for reasons of environmental preservation;
  - (b) to promote equitable, affordable and sustainable waste disposal services; and
  - (c) after a consultative process with non-participating local municipalities, provide municipal waste disposal services to non-participating local municipalities.



- (3) Non-participating local municipalities will from the date of commencement of such service be deemed participating local municipalities and will have the same obligations as participating local municipalities as prescribed in these by-laws.

## **Part 2: Establishment of a District Inter-Municipal Waste Management Forum**

### **21. District inter-municipal waste management forum established**

The EDM has, in pursuance of section 28 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) established a district inter-municipal waste management forum to promote and facilitate integrated waste management services between the EDM and local municipalities.

### **22. Composition of the district inter-municipal waste management forum**

- (1) A district inter-municipal waste management forum shall consist of—
- (a) the waste management officer of the district municipality;
  - (b) the waste management officers of the local municipalities; or
  - (c) in the event of no waste management officer being appointed, a duly authorised official appointed by the municipal manager of the EDM and the local municipalities.
- (2) The waste management officer or authorised official of the EDM is the chairperson of the forum.
- (3) The chairperson may invite any other person to the meeting not mentioned in sub-section (1).

### **23. Role of the district inter-municipal waste management forum**

- (1) The role of the district inter-municipal waste management forum is to serve as a consultative forum for the EDM and the local municipalities in the district of the EDM to discuss and consult each other on matters of mutual interest, including—
- (a) the implementation of national and provincial policy and legislation relating to waste management services affecting local government interests in the district;
  - (b) mutual support in terms of section 88 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
  - (c) the provision of waste management services in the district;
  - (d) the coordination and alignment of such waste management services in the district;
  - (e) coherent planning and development of waste management strategies and the regulation of waste management services in the district;
  - (f) to coordinate and align the functions of the various authorised officials appointed by the EDM and local municipalities in exercising their powers under these by-laws;
  - (g) to settle any specific disputes relating to waste management services without resorting to judicial proceedings; and
  - (h) any other matter of strategic importance to waste management services which affect the interests of the local municipalities.
- (2) Notwithstanding the above, the established district inter-municipal waste management forum is not bestowed with any executive powers, but each waste management officer or duly authorised official will advise and report to their respective councils of the EDM and each local municipality.

### **24. Meetings of the district inter-municipal waste management forum**

- (1) The chairperson of the district inter-municipal waste management forum—
- (a) convenes a meeting of the forum; and

- (b) determines the agenda for the meeting of the forum.
- (2) Suggestions for inclusion in the agenda for a meeting may be submitted by local municipalities to the chairperson.
- (3) A majority of the local municipalities may request the chairperson, in writing—
  - (a) to convene a meeting of the district inter-municipal waste management forum at a time and place as set out in the request; or
  - (b) to include the agenda of a meeting any specific matter for discussion.
- (4) The chairperson of the district inter-municipal waste management forum presides at meetings of the forum, but if that chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.
- (5) The forum must meet with service providers and accredited permit holders and other role players concerned with the development of waste management services in the district at least once a year to coordinate the effective provision of services and planning in the district.
- (6) The EDM is responsible for providing administrative and other support services to the forum.

## **CHAPTER 6 : SERVICE PROVIDERS**

### **25. Service providers / Contractors**

- (1) The EDM may discharge any of their obligations by entering into a service delivery agreement with a service provider in terms of the Local Government: Municipal Systems Act, 2000(Act 32 of 2000) or in terms of a Public Private Partnership Agreement as contemplated in section 120 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).
- (2) Subject to the provisions of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and any other legislation, the EDM may assign to a service provider any power enjoyed by the EDM under these by-laws provided that the assignment is required for the service provider to discharge an obligation under its service delivery agreement. Accountability shall remain with the EDM.
- (3) Any reference in these by-laws to "the EDM or service provider" should be read as the EDM if it has not entered into a service delivery agreement or should be read as the service provider if the EDM has entered into a service delivery agreement.
- (4) Service providers must provide services in accordance with the relevant service delivery agreement or Public Private Partnership Agreement and must at all times accord with the provisions of these by-laws.

## **CHAPTER 7 : CATEGORISATION OF WASTE**

### **Part 1: Establishment of categorisation system**

### **26. Categorisation of waste**

- (1) Within six (6) months after this by-law comes into operation, the EDM must prescribe a system for categorising waste.
- (2) The system for categorising waste must take into account any national waste classification system established in terms of NEMWA and determine thereby—
  - (a) which waste classes are allowed on municipal waste disposal facilities; and
  - (b) establish controls regarding the collection, storage, transport and disposal of waste categories.

### **27. Determination of waste categories and waste management per category**

- (1) As soon as reasonably practical after the EDM has prescribed the system for categorising waste, it must by notice in the provincial gazette determine—

- (a) the procedure to determine waste categories in accordance with the prescribed waste categorisation system; and
  - (b) set objectives for the minimisation and management of waste for the categories determined in terms of section 26.
- (2) A notice under sub-section (1) must state the requirements for achieving the waste management and minimisation objectives and the dates from which the objectives will apply.
- (3) Before determining the waste management or minimisation objectives in terms of sub-section (1)(b), the EDM must—
- (a) publish a notice in the relevant gazette and local media setting out—
    - (i) the proposed waste management or minimisation objectives for the specified category of waste;
    - (ii) the dates from which specific objectives will apply; and
    - (iii) the requirements for complying with the objectives.
  - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested and affected parties and take those steps which the EDM considers to be appropriate; and
  - (c) consider all comments received on or before the dates specified in the notice.

#### **28. Preliminary determination of categories of waste and waste management objectives**

The local municipalities may make a preliminary determination of the categories of waste or waste management objectives until—

- (1) a system for categorising waste has been prescribed; or
- (2) waste management or minimisation objectives have been determined.

#### **29. Giving effect to determination of categories of waste and waste management objectives**

Local municipalities must give effect to any determination of a category of waste and the waste management and minimisation objectives as determined in terms of this by-law and any requirements for complying with the waste management and minimisation objectives when exercising any power or performing any duty in terms of this by-law.

#### **30. EDM coordination of waste handling and/or disposal**

- (1) The EDM may, by a notice published in the provincial gazette and local media, direct that a category of waste be handled in a specific manner and/or disposed of at a particular waste disposal facility.
- (2) No person may dispose of such waste other than as specified in the notice referred to in sub-section (1).

### **Part 2: Management of certain types of waste**

#### **Hazardous and Health Care Risk Waste**

##### **31. Generation of hazardous waste**

- (1) Any person who will carry on an activity which will generate hazardous waste (other than the generator of minimum quantities of such waste within a household pursuant to the normal operation of a household) must, before carrying on that activity—
  - (a) prepare a waste management plan setting out what provision is made for managing, storing, treating, collecting, transporting and disposing of hazardous waste generated from such activities;
  - (b) provide proof that all waste management services will be provided by an accredited service provider; and

- (2) The waste management plan referred to in this section must be submitted to the EDM or its authorised official for approval before the activities which will generate waste identified in sub-section (1) are carried out and the plan must include—
  - (a) the information set out in section 12(1) to (9);
  - (b) an analysis of the composition of the waste concerned; and
  - (c) certification of the analysis of the composition of the waste by an appropriately qualified chemist if so required by the EDM at own cost of waste generator.
- (3) If the waste identified in sub-section (1) is being generated as a result of activities which commenced prior to the commencement of these by-laws, the generator must prepare a waste management plan and submit it to the EDM or its authorised official by approval within 180 (one hundred and eighty) days of the commencement of these by-laws.
- (4) The waste management plan must be renewed and updated regularly as determined by the EDM.
- (5) It is an offence to carry on an activity which generates hazardous waste without an approved waste management plan.

### **32. Storage of hazardous waste**

- (1) Any person carrying on an activity which generates hazardous waste, must ensure that such waste generated on the premises is kept and stored there until it is collected by an accredited service provider from the premises.
- (2) Hazardous waste stored on any premises must be stored in such a manner that it does not become a nuisance or cause harm to human health or damage to the environment and in accordance with the requirements of any applicable legislation relating thereto.
- (3) Any person who stores hazardous waste must at least take steps to ensure that—
  - (a) the containers in which this waste is stored are intact and not corroded or any other way rendered unfit for the safe storage of this waste;
  - (b) adequate measures are taken to prevent accidental spillage or leaking;
  - (c) in the event of a spillage or leak contemplated in sub-section 3(b) a spill kit is available to ensure an immediate response to the incident;
  - (d) the waste cannot be blown off or washed away;
  - (e) nuisances such as odour, visual impacts and breeding of vectors do not arise;
  - (f) pollution of the environment and harm to health are prevented; and
  - (g) the waste is collected by an accredited service provider within a reasonable time after the generation thereof, but at least within 30 (thirty) days.

### **33. Collection and disposal of hazardous waste**

- (1) Only an accredited service provider may transport hazardous waste and must do so in accordance with the conditions of an accreditation permit issued to him, as well as the requirements of any relevant SANS codes in respect of the type of vehicle, the markings and manner of construction of such vehicle, procedures for safety and cleanliness, documentation relating to the source, transportation and disposal of such waste and subject to the requirements of any other legislation.
- (2) A person accredited to collect and dispose of hazardous waste must inform the EDM at intervals stipulated in the accreditation permit of its removal of hazardous waste, the date of such removal, the quantity of the waste removed, the composition of the waste removed and the waste disposal or treatment facility at which the waste has been disposed of.
- (3) Any person carrying on an activity which generates hazardous waste must ensure that such waste is disposed of or treated at an appropriately licensed waste disposal facility or waste treatment facility.

**34. Health Care Risk Waste**

- (1) A generator, transporter, treater or disposer of health care risk waste must, before carrying on that activity, strictly comply with the provisions of the Western Cape Health Care Risk Waste Management Regulations, 2013, published in terms of the Western Cape Health Care Waste Management Act, 2007 (Act 7 of 2007) published on the 15<sup>th</sup> of March 2013 and any amendments thereto as may be published by the province of the Western Cape thereafter.
- (2) The EDM may enact additional by-laws providing guidelines for the management of Health Care Risk Waste.

**CHAPTER 8 : TRANSPORTATION, BULK WASTE TRANSFER FACILITIES AND DISPOSAL OF WASTE****35. Transportation of waste**

- (1) No person may—
  - (a) operate a vehicle for the conveyance of waste upon a public road unless the vehicle has a body of adequate size and construction for the type of waste being transported;
  - (b) fail to maintain a vehicle used for the conveyance of waste in a clean, sanitary and roadworthy condition at all times;
  - (c) fail to cover loose waste on an open vehicle with a tarpaulin or suitable net;
  - (d) cause or permit any waste being transported in or through the EDM's area of jurisdiction to become detached, leak or fall from a vehicle transporting it, except at a bulk transfer station or a waste disposal facility; or
  - (e) transport waste in a manner that could cause nuisance or environmental pollution.
- (2) Subject to the provisions of sub-section (1), all transportation of waste must comply with the National Road Traffic Act, 1996 (Act 93 of 1996).
- (3) Any person engaged in the transportation of waste must take all reasonable measures to prevent any spillage of waste or littering from a vehicle used to transport waste and, where waste is spilled, immediately clean up the spilled waste.

**36. Bulk waste transfer facilities**

- (1) Waste generated within the area of jurisdiction of participating local municipalities must be transported by the relevant local municipality or its service provider to designated bulk waste transfer facilities licensed to accept such waste or must be diverted to a licensed waste treatment facility for purposes of recycling or treatment of such waste.
- (2) Notwithstanding the provisions of sub-section (1), a person may dispose of those forms of recyclable waste specified by the EDM in a notice in terms of section 30(1) at a designated garden waste handling facility or a building waste handling facility earmarked for that purpose.

**37. Disposal of waste**

- (1) Waste deposited at designated bulk waste transfer facilities as contemplated in section 36 must be transported from such bulk waste transfer facilities to a waste disposal facility licensed to accept such waste or recycled or treated at a licensed or permitted waste treatment facility.
- (2) In disposing of waste, a service provider or the person in charge of a disposal site must comply with the provisions of these by-laws and with the provisions of any other legislation regulating the disposal of waste.
- (3) No person may burn waste, either in a public or private place, for the purposes of disposing of that waste.
- (4) No person may incinerate waste, either in a public or private place, except in an incinerator at a place where the relevant national or provincial authorities permit such incineration.
- (5) The disposal of waste at any waste disposal facility is, in addition to any condition imposed by the national departments of environmental or water affairs, subject to such conditions as the EDM may impose, including

which persons other than its service providers may enter the waste disposal site, the hours of opening and closing, the nature of the waste which may be disposed of, the position in any such waste disposal facility in which the waste must be placed and any other matter which the EDM considers necessary to ensure the environmentally sound management of waste.

- (6) Every person who enters a waste disposal facility must—
- (a) enter the premises of the waste disposal facility at an access point determined by the person in charge of such waste disposal facility;
  - (b) at the request of the person in charge of the waste disposal facility, provide the EDM or that person with any information regarding the composition of the waste disposed of or to be disposed of; and
  - (c) comply with any instruction by the person in charge of the waste disposal facility respect of access to the actual place where and the manner in which waste must be deposited.
- (7) No person may—
- (a) bring any liquor or an intoxicating or narcotic substance onto the premises of a waste disposal facility or enter such facility under the influence of liquor or such substance;
  - (b) enter the premises of a waste disposal facility for any purpose other than the disposal of waste in terms of these by-laws unless authorised to do so by the person in charge of the waste disposal facility or the council and then only at such times and subject to such conditions as the council or such person may impose;
  - (c) dispose of waste at a waste disposal facility where the disposal of the waste concerned is not permitted; or
  - (d) light a fire on the premises of a waste disposal facility without the prior written consent of the person in charge of that facility.
- (8) Any person who contravenes sub-section (7)(c) is liable for all costs reasonably incurred by the EDM in removing or otherwise dealing with the waste concerned.
- (9) The person in charge of a waste disposal facility may at any time require a vehicle or a container on a vehicle brought onto the premises of the waste disposal facility for the purposes of disposing of waste to be weighed at the weigh bridge.
- (10) The person in charge of a waste disposal facility or an authorised official may, at a waste disposal facility, inspect the content and nature of waste to be disposed of or process and may take samples and test any waste found on any vehicle to ascertain its composition.
- (11) Any person contravening any preceding provision of this section, may be refused entry or instructed by the person in charge of the waste disposal facility to leave such waste disposal facility and if such person fails or refuses to comply with such instruction, he or she may be removed from such facility by an authorised official.

## **CHAPTER 9 : COMMERCIAL SERVICES**

### **38. Provision of commercial services by accredited service providers**

- (1) Only accredited service providers may provide commercial services.
- (2) Any person requiring commercial services must satisfy himself or herself that the contractor is accredited to collect and dispose of the category of waste that has been generated and must take responsible steps to ensure that the relevant waste is collected and disposed of in terms of these by-laws.
- (3) The owner or occupier of premises on which business, industrial or recycled waste is generated must ensure that, until such time as such waste is collected by an accredited service provider from the premises on which it was generated—
- (a) the waste is stored within a bulk container or other approved receptacle;
  - (b) no nuisance or health risk of any kind whatsoever is caused by the waste in the course of generation, storage or collection;

- (c) the container in which the waste is stored is not kept in a public place, except for the purpose of collection;
  - (d) the waste is collected by an accredited service provider within a reasonable time after its generation; and
  - (e) the service rendered by an accredited service provider is in respect only of that portion of the business, industrial or recycled waste authorised in its accredited permit.
- (4) An accredited service provider must dispose of business or recyclable waste at an appropriately licensed waste handling facility or licensed waste disposal facility and in disposing of waste, an accredited service provider must comply with any notice given in terms of sub-section (7).
- (5) Any person who transports waste for gain must adhere to the requirements as set out in Section 25 of the National Environment Management Waste Act, 2008 (Act No. 59 of 2008).
- (6) The EDM may, by notice in the provincial gazette, require any person or category of transporters to register and report to the EDM information as set out in that notice. The notice may include, but not be limited to—
- (a) the application forms;
  - (b) a prescribed fee;
  - (c) renewal intervals
  - (d) list of transporters, types and thresholds of waste transported; and
  - (e) minimum standards or requirements to be complied with.
- (7) The EDM may direct, by notice published in the provincial gazette, that a category of waste be disposed of at a particular waste facility or disposal site and no person may dispose of waste other than as specified in the notice that has been gazetted under this section or as specified by the EDM under other legislation prior to these by-laws coming into operation.

## **CHAPTER 10 : ACCREDITATION OF SERVICE PROVIDERS**

### **39. Establishment of an accreditation permit system**

- (1) The EDM may establish an accreditation permit system in terms of this chapter.
- (2) A decision to establish an accreditation permit system in terms of sub-section (1) must be published by notice in the provincial gazette and comes into operation on the date announced in the notice, which may not be less than three (3) months from the date of publication.
- (3) If the EDM has not established an accreditation permit system, persons providing commercial services may be treated as accredited service providers by generators of waste for purposes of CHAPTER 9 of these by-laws.

### **40. Subject to the establishment of an accreditation permit system in terms of sub-section 39(1)**

- (1) No person may collect or transport any of the waste streams listed in sub-section (2) hereunder—
- (a) without having first obtained and being in possession of an accreditation permit; and
  - (b) except in properly constructed vehicles or containers that prevent leakage or spillage of waste and are suitable for the waste stream which is being collected or transported as specified in the National Road Traffic Act, 1996 (Act 93 of 1996).
- (2) The following categories of waste are covered by the accreditation permits under this chapter of the by-laws—
- (a) business waste not collected as part of a municipal waste service;
  - (b) industrial waste;
  - (c) recyclable material;

- (d) building waste;
  - (e) hazardous and health care risk waste;
  - (f) garden and park waste; and
  - (g) organic waste.
- (3) An accreditation permit issued under this chapter—
- (a) may not be ceded or assigned without the prior written consent of the EDM;
  - (b) is valid only for the category of waste specified; and
  - (c) expires within three (3) years of the date of issue, unless extended by the EDM;
  - (d) may require an annual performance review in accordance with the provision of section 43(1) and section 46.

#### **41. Application for accreditation permit**

- (1) An application for an accreditation permit must be in writing on a form prescribed by the EDM.
- (2) The information provided in the application form must include the following—
- (a) the name and residential and postal address of the person providing commercial service;
  - (b) if the person providing commercial services is a company or close corporation, its registration number, the names of its directors or members and the address of its registered head office; and
  - (c) the nature of the commercial services to be provided or intended to be provided by the person.
- (3) The EDM must determine the prescribed fees to be imposed on each vehicle used by a person to collect or transport waste and the application must be accompanied by the relevant fees.
- (4) The prescribed form for the application, as well as the prescribed fees to accompany it may be published by the EDM in the provincial gazette will become effective on the date announced in such notice.

#### **42. Adjudication of accreditation permit application**

- (1) The EDM must designate within its administration a waste management officer to adjudicate applications for an accreditation permit on its behalf.
- (2) The person designated as the waste management officer must not be an employee or director of a service provider or accredited permit holder or a councillor of the EDM and must be suitably qualified to adjudicate applications in terms of this section.
- (3) The waste management officer must consider each application having regard to the following—
- (a) the applicant's compliance with the National Road Traffic Act, 1996 (Act 93 of 1996) and with these by-laws;
  - (b) the environmental, health and safety record of the applicant;
  - (c) the nature of the commercial service to be provided; and
  - (d) any other matter which the waste management officer considers relevant.
- (4) After considering an application, a waste management officer must either—
- (a) approve the application by issuing an accreditation permit subject to any terms or conditions it considers appropriate; or
  - (b) refuse the application, which refusal must be accompanied by written reasons.



- (5) The waste management officer may refuse an application only because the applicant—
  - (a) failed to submit a complete and satisfactory application to the EDM; or
  - (b) failed to comply with the standards established in these by-laws.
- (6) If the waste management officer refuses an application for an accreditation permit, the applicant may appeal to the municipal manager of the EDM on the basis set out in section 56 of these by-laws, with all the changes that may be necessary to apply those provisions.
- (7) If the waste management officer fails to consider and grant or refuse the accreditation permit application within 2 months of his receipt of the application, the validity of an existing accreditation permit is automatically extended until the waste management officer makes a decision and the EDM must—
  - (a) inform the applicant in writing that the period of consideration is extended; and
  - (b) inform the applicant of the date by which a decision will be made.
- (8) Notwithstanding the above, an accreditation permit application by a service provider who holds a waste management licence issued by the national or provincial authority to undertake or conduct a waste management activity will, upon providing a copy of the valid waste management licence and any information reasonably required by the EDM together with the application, be granted.

#### **43. Accreditation permit terms and conditions**

- (1) When issuing an accreditation permit, the EDM may, subject to the provisions of sub-section (2), impose any conditions necessary in the furtherance of national, provincial or municipal waste management policies.
- (2) An accreditation permit issued by the EDM must—
  - (a) specify the permit period and the procedure for the renewal of the permit;
  - (b) specify the category or categories of waste that the permit holder may collect and transport;
  - (c) contain a requirement that the permit holder must comply and ensure compliance by its employees, agents and subcontractors with these by-laws and applicable provincial and national legislation; and
  - (d) require the permit holder to keep monthly written records on a form prescribed by the EDM in respect of the quantities of each category of waste it collects and transports during the permit period, which quantities must be confirmed and verified by the EDM in an application for renewal of an accreditation permit or application for a new accreditation permit by the same contractor.

#### **44. Renewal of accreditation permits**

- (1) If accredited permit holders intend to renew their permits, they must do so within three (3) months prior to the expiry of an existing permit and the waste management officer must assess and grant or refuse the accreditation permit application within two (2) months after receipt of the application in accordance with section 42(4) which shall apply *mutatis mutandis*;
- (2) If the waste management officer fails to consider or to grant or refuse the accreditation permit renewal application within two (2) months, the validity of the existing permit is automatically extended until the waste management officer makes its decision and the municipality must—
  - (a) inform the applicant in writing that the period for consideration is extended; and
  - (b) inform the applicant of the date by which a decision will be made.
- (3) When considering whether to grant another permit, the waste management officer must confirm and verify the previous records kept by the permit holder in terms of section 43(d).

**45. Display of accreditation permit**

- (1) Upon issuing an accreditation permit to a contractor to collect or transport a specific category of waste, the EDM must issue the contractor with a numbered sticker for each vehicle to be used by him, which shall—
  - (a) confirm that the accredited permit holder is authorised to collect or transport the category of waste specified on the sticker; and
  - (b) be colour coded for easy identification of the waste stream to which the certificate applies.
- (2) The contractor must affix the sticker referred to in sub-section (1) to each vehicle to be utilised in providing the service and display it at all times.
- (3) A waste disposal facility is authorised and directed to admit waste to its facility for processing or disposal only from contractors who are accredited permit holders and whose vehicles display the necessary sticker as required in sub-section (1) above.

**46. Prohibited conduct**

Accredited permit holders may not—

- (1) operate in contravention of the terms and conditions of the accreditation permit;
- (2) fail or refuse to give information or give false or misleading information when required to do so in terms of these by-laws; or
- (3) fail to take all reasonable steps to prevent an act or an omission by an employee acting in the course and scope of his duties which is unlawful in terms of these by-laws.

**47. Suspension and revocation of accreditation permits**

- (1) An accreditation permit issued under these by-laws may be suspended or revoked by the municipal manager of the EDM on the grounds that the permit holder—
  - (a) has failed to comply with the obligations set out in these by-laws;
  - (b) has failed to comply with any national or provincial legislation which regulates the collection, transportation or disposal of any waste;
  - (c) has failed to comply with the terms of the accreditation permit and any conditions set out in section 43; or
  - (d) on any other ground that the municipal manager considers relevant and which is fair and reasonable in the circumstances.
- (2) An accreditation permit may only be suspended or revoked by the municipal manager after—
  - (a) he has given adequate notice to the accredited permit holder in terms of section 3(2)(b)(i) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) that he intends to make a decision regarding the suspension and revocation of the accreditation permit; and
  - (b) after the accredited permit holder has been given a reasonable opportunity to make representations to the municipal manager as to why its certificate should not be suspended or revoked in terms of Section 3(20)(b)(ii) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
- (3) The length of time afforded to the accredited permit holder to make representations and the nature of the representations allowed must be fair and reasonable in the circumstances, taking into account the nature and severity of the infringement, the potential risk of harm to the environment, human life or property or any other factor relevant in the circumstances.
- (4) The municipal manager must make a decision within two (2) weeks of receiving the representations, if any, of the accredited permit holder or within two (2) weeks after the closing date for making representations specified by the municipal manager in terms of sub-section (3) and must inform the accredited permit holder of his decision within seven (7) days of making it.

- (5) If an accreditation permit is suspended or revoked in terms of sub-section (4), the holder of the suspended accreditation permit may appeal the executive committee or executive mayor of the EDM on the basis set out in section 56 with all the necessary amendments of the wording to these provisions.
- (6) At no time may the EDM disclose any confidential commercial information submitted as part of the accreditation permit application procedure to any other party, other than to the party who disclosed such information to the EDM.

#### **48. Transitional provisions and exemptions**

- (1) Any person lawfully providing commercial services within the area of jurisdiction of the EDM when a notice is issued in terms of section 39(2) that the EDM intends to establish an accreditation permit system, must, if that service requires an accreditation permit, apply for the accreditation permit, but may continue to provide commercial services while the accreditation permit is being considered by the EDM, but may do so only if that person has submitted an application for an accreditation permit within three (3) months after the section 39 notice is issued.
- (2) The EDM may, having regard to the main objectives of these by-laws and its integrated waste management plan, exempt any form of commercial service from the provisions of CHAPTER 9 of these by-laws and must indicate the terms and scope of any exemption in a notice published in the provincial gazette.

### **CHAPTER 11 : ADMINISTRATIVE ENFORCEMENT PROVISIONS**

#### **Part 1: Authorised Officials**

#### **49. Designation of authorised officials**

- (1) Municipalities must designate authorised officials vested with the power to exercise the powers of an authorised official under these by-laws and to discharge the municipalities' right of access to premises in terms of section 101 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).
- (2) An authorised official is not a peace officer within the meaning of the Criminal Procedure Act, 1977 (Act 51 of 1977) and has no powers of arrest in respect of any offence created in these by-laws.
- (3) In designating an authorised official, municipalities must have regard to—
  - (a) a person's technical understanding and experience of matters relating to waste management; and
  - (b) any other factor that may be relevant to the supervision and enforcement of these by-laws, whether technical or administrative.
- (4) An authorised official may be an employee of a municipality or any service provider of that municipality.
- (5) Upon designation, authorised officials must be issued with a means of identification by the municipalities, which must state the name and function of the authorised official, and must include a photograph of the officer.
- (6) An authorised official acting within the powers vested in him by these by-laws is required to—
  - (a) present identification on demand by any member of the public; and
  - (b) liaise with and or coordinate action with any environmental management inspector designated in terms of the National Environmental Management Act, 1998 (Act 107 of 1998) in enforcing the National Environmental Management Act or specific environmental management act within the area of jurisdiction of such municipalities.

#### **50. Powers to execute work and inspect vehicles and premises**

- (1) In addition to the powers, an authorised official as an authorised representative of the relevant municipality under section 101 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other legislation may—
  - (a) enter any land or premises to execute work or conduct an inspection and the occupier or owner of such land and premises will be obligated to grant such access provided the authorised official is properly identifiable as contemplated in section 49(5) and entry is required at reasonable hours of the day;

- (b) may search any vehicle or other mode of conveyance with the consent of the owner or person in charge of the vehicle.
- (2) Where consent is not obtained in sub-section (1)(b), a vehicle or other mode of conveyance may be searched or stopped and searched only pursuant to a warrant issued in accordance with the law.
- (3) A search conducted in terms of these by-laws must be conducted in a manner that conforms to the requirements of the Bill of Rights and any other law and, in particular, must be conducted with strict regard to decency and order, respect for a person's dignity, freedom of security and personal privacy.
- (4) To the extent that access to premises does not fall within the scope of section 101 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other legislation, an authorised official who has reasonable grounds to suspect that there is an environmental emergency and that any delay in obtaining a search warrant will cause harm to public health or damage to the environment may, without warrant, enter and search any premises associated with the emergency, provided that the entry and search be conducted in conformity with the requirements of the Bill of Rights and any other law and, in particular, with strict regard to decency and order, respect for the person's dignity, freedom and security and personal privacy.
- (5) Where, in the opinion of an authorised official, any search of a vehicle as contemplated in these by-laws, gives rise to the reasonable apprehension to the presence of waste in or on that vehicle is a serious and immediate danger to public health or to the environment, the authorised official must seize the vehicle in order to prevent, or where prevention is impossible, mitigate harm to public health or damage to the environment.
- (6) In the event of the seizure of any vehicle under sub-section (5), the relevant municipality must—
  - (a) forthwith take steps to dispose of such waste in order to prevent, and where prevention is impossible, mitigate harm to public health or damage to the environment and the cost of such disposal must be borne by the owner of the vehicle; and
  - (b) return the said vehicle within 48 (fortyeight) hours after disposing of such waste to the control of the accredited permit holder or person from whose possession or control it was taken.

#### **51. Powers to question**

- (1) In order to monitor or enforce compliance with these by-laws, an authorised official may, subject to the requirements of the Bill of Rights and any other law, including the common law, require an accredited permit holder or any other person to disclose information, either orally or in writing and either alone or in the presence of witnesses, on any matter to which these by-laws relate, require that the disclosure be made under oath or affirmation and exercise any other power of an authorised official.
- (2) An authorised official may be accompanied by an interpreter and any other person reasonably required in assisting the authorised official in conducting the inspection.
- (3) An authorised official must, on request, provide his identification as an authorised official.

#### **52. Supervision of an accreditation permit**

- (1) If an accreditation permit system has been established in terms of section 39 of these by-laws, authorised officials of the EDM must inspect the work place of an accredited permit holder not less than twice a year and an authorised official is entitled to enter the workplace of an accredited permit holder for this purpose.
- (2) Such an inspection must be conducted in conformity with the requirements of the Bill of Rights and any other law and in particular an authorised official must, in conducting an inspection under sub-section (1), do so with strict regard to decency and order, respect for a person's dignity, freedom and security and personal privacy.
- (3) If, after an inspection as contemplated in sub-section (1), an authorised official is of the opinion that an accredited permit holder is complying with these by-laws he may, subject to the provisions of sub-section (4) issue the accredited permit holder with a certificate confirming compliance, which must state—
  - (a) the name and residential and postal address of the accredited permit holder;
  - (b) the time, date and scope of the inspection; and
  - (c) any remarks which in the opinion of the authorised official may be relevant.

- (4) If the accredited permit holder fails to obtain a certificate confirming compliance at three (3) inspections conducted over a period of two (2) years, the authorised official may recommend that the EDM review the accreditation permit and, should there be reasonable grounds, the EDM may revoke the certificate in terms of section 47, but may do so only if the consecutive inspections occurred at no less than four (4) month intervals.

- (5) Authorised officials must keep a register recording each inspection that it has undertaken.

### **53. Supervision of owners and occupiers**

Owners and occupiers must keep their premises clean and free from any waste, which in the opinion of an authorised official is likely to cause a nuisance, harm to public health or damage to the environment and must take reasonable steps to prevent an employee acting in the course of his employment from committing an act or emission that may cause a nuisance, harm to public health or damage to the environment.

### **54. Enforcement notices**

- (1) If, in the opinion of the authorised official, a person is—
- (a) causing a nuisance, harm to public health or damage to the environment; or
  - (b) an accredited permit holder is failing to comply with the terms of the accreditation permit granted in terms of these by-laws; or
  - (c) as owner or occupier has failed to satisfy an obligation in terms of section 52 of these by-laws, the relevant authorised official may issue or cause to be issued on that person an enforcement notice in terms of this section.
- (2) An enforcement notice issued under this section must state—
- (a) the name and residential and postal, if either or both of these be known, of the affected person;
  - (b) the nature of the nuisance, harm to public health or damage to the environment that the affected person is causing or is likely to cause;
  - (c) the steps required to forestall or remediate the nuisance, harm to public health or damage to the environment in sufficient detail to enable compliance with the enforcement notice;
  - (d) that the affected person must, no later than 21 (twenty-one) calendar days from the date on which the enforcement notice is issued, take steps to comply with the notice;
  - (e) that failure to comply with the requirements of the enforcement notice within the period contemplated in sub-section (d) may result in civil and criminal liability; and
  - (f) that written representations may be made to the relevant municipality, depending on which municipality's authorised official has issued the enforcement notice, in terms of section 56 or a designated committee or internal functionary to who powers under these by-laws have been delegated, at the specified place, within 21 (twenty-one) calendar days of receipt of the notice.
- (3) If an affected person fails to comply with an enforcement notice, the relevant municipality, or anyone authorised by the relevant municipality, may perform the steps required in the enforcement notice, provided that the relevant municipality does so in conformity with the requirements of the Bill of Rights and any other law, and, in particular, an authorised official must act with strict regard to decency and order, respect for a person's dignity, freedom and security and personal privacy.
- (4) Where the relevant municipality incurs any expenditure as a result of performing such steps, the municipality may recover any reasonable and necessary expenditure from the person who failed to act as direct, or where criminal proceedings have not been instituted, by means of civil proceedings.
- (5) If an accredited permit holder commits an offence in terms of these by-laws and has, within the last two years, been convicted of the same offence, the EDM may revoke his accreditation permit immediately.

**55. Complaints**

Any person may lodge a complaint with the EDM or its authorised official or through any other channel established by the EDM, that any other person is causing harm to public health or damage to the environment by engaging in basic services or commercial services, in which event the authorised official, unless he has reasonable grounds to believe that the complaint is frivolous, must investigate the complaint and may, if he is satisfied that such harm has or is likely to be caused, issue an enforcement notice.

**56. Representations**

- (1) Any affected person may make representations to the relevant municipality or a designated committee or internal functionary of such municipality to which the municipality has delegated its powers, in the manner specified in the enforcement notice.
- (2) Representations must be made by submitting a written statement, which has been sworn or affirmed to, to the relevant municipality, designated committee or internal functionary within 21 (twenty-one) calendar days of service of the notice.
- (3) Any representation not lodged within 21 (twenty-one) calendar days shall not be considered, except where the affected person has shown good cause and the relevant municipality, the designated committee or internal functionary condones the late lodging of the representations.
- (4) The relevant municipality, designated committee or internal functionary must duly consider the representations and any response therein by an authorised official or any other person if there be such a response and may, on its own volition, conduct any further investigation to verify the facts that, in its opinion, is necessary.
- (5) If the relevant municipality, designated committee or internal functionary should conduct any further investigations, the result of the investigations must be made available to the affected person, who must be given an opportunity of making a further response if he so wishes and the relevant municipality, designated committee or internal functionary must also consider his further response.
- (6) After the relevant municipality, designated committee or internal functionary is satisfied that the requirements of sub-section (5) has been satisfied, the relevant municipality, designated committee or internal functionary must make an order in writing and give a copy of it to the affected person setting out its findings. Such an order must—
  - (a) confirm alter or set aside, in whole or in part, any enforcement notice; and
  - (b) if compliance with the order (or the altered order) is required, specify the period within which the affected person must comply with any order made by it.
- (7) If the enforcement notice is confirmed, in whole or in part, or is altered but not set aside, the relevant municipality, designated committee or internal functionary must inform the affected person that he must discharge the obligations set out in the enforcement notice.
- (8) If an affected person lodges a representation, any requirement in terms of section 54 of these by-laws requiring compliance with an enforcement notice is suspended, unless, in the opinion of the relevant municipality, the affected person has caused an environmental emergency, in which event and without derogation from any right that the affected person may have or may in the future have, in common law or under any other law, to any relief of whatever nature, the affected person must immediately comply with any such requirement on being ordered by the relevant municipality, orally or in writing, to do so.
- (9) If there is an environmental emergency and if the affected person, despite receiving a lawful order made in terms of sub-section (8) fails to comply with it, the relevant municipality may itself cause an environmental emergency to be stopped, reversed or abated, in which event the relevant municipality may institute civil proceedings for the recovery of any reasonable and necessary expenditure which it has incurred or may incur in effecting.

**Part 2: Enforcement Provisions****57. Establishment of an administrative penalty system**

- (1) The EDM may establish an administrative penalty system in terms of this section.

- (2) A decision to establish an administrative penalty system in terms of sub-section (1) must be published by notice in the provincial gazette and comes into operation on the date announced in the notice, which may not be less than 3 months from the date of its publication.

**58. Infringement notices**

- (1) If the EDM has established an administrative penalty system, an authorised official of the EDM may issue an infringement notice to any person whom he believes may have committed an offence listed in schedule 1.
- (2) The infringement notice must—
- (a) specify, at the time when the notice is issued, the name and the residential and postal address, if either or both of these be known, of the person on whom the infringement notice is served;
  - (b) state the particulars of the infringement;
  - (c) specify the amount of the penalty payable in respect of that infringement designated in Schedule 1;
  - (d) specify the place where the penalty may be paid; and
  - (e) inform the person on whom the infringement notice is served that he may, no later than 21 days after the date of service of the infringement notice,—
    - (i) pay the penalty; or
    - (ii) inform the municipality in writing at an address set out in the notice that he elects to be tried in court on a charge having committed an offence in terms of these by-laws.
- (3) If it appears to the authorised official that an alleged offence cannot adequately be punished by the payment of an administrative penalty, then the authorised official may refrain from accepting the administrative penalty and may cause civil or criminal proceedings to be brought against the alleged offender in an appropriate court if, in his opinion, there are good grounds for doing so.

**59. Trial**

If a person who elects to be tried in court in terms of sub-section 58(2)(e)(ii) notifies the EDM of his election, the authorised official must, if he believes that there are sufficient grounds in law for doing so, within 10 calendar days, take all necessary steps as envisaged in the Criminal Procedure Act, 1977 (Act 51 of 1977) in order to secure the attendance and prosecution of the accused, or in the event of his considering that there are no grounds for taking further steps, ensure that the infringement notice is cancelled.

**60. Withdrawal of infringement notice**

- (1) Within 1 year after the infringement notice has been issued, the EDM or its authorised official may, whether or not the penalty has been paid, withdraw an infringement notice on the basis that new information has been received by the EDM or on any other good cause, by—
- (a) sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn; and
  - (b) providing reasons to the municipal manager of the EDM for the withdrawal of the infringement notice.
- (2) Where an infringement notice is withdrawn after the penalty has been paid, the amount shall be refunded.

**61. Infringement notice not an admission**

Infringement of a penalty should not be regarded as an admission for purposes of any proceedings, whether civil or criminal.

### **Part 3: Judicial Enforcement Provisions**

#### **62. Offences**

- (1) Subject to the provisions of these by-laws, any person—
- (a) who contravenes or fails to comply with any provision of these by-laws, other than the provision relating to payment for municipal waste services;
  - (b) who fails to comply with any notice or order issued or condition imposed in terms of or for the purposes of these by-laws;
  - (c) who fails to comply with any lawful instruction given in terms of or for the purposes of these by-laws; or
  - (d) who obstructs or hinders any authorised representative or employee of the EDM or any relevant local municipality in the execution of his or her duties under these by-laws;

is guilty of an offence and liable on conviction to a fine of R10,000.00 or, in default of payment, to imprisonment for a period not exceeding six (6) months and in the case of any continued offence, for a further fine not exceeding R1,000.00 or, in default of payment, to imprisonment not exceeding one (1) day for every day during the continuation of such offence after written notice has been issued by the EDM or relevant local municipality and served on the person concerned requiring the discontinuance of such an offence.

- (2) Any person committing a breach of the provisions of these by-laws shall be liable to recompense the EDM or relevant local municipality for any loss or damage suffered or sustained by it in consequence of the breach.

### **CHAPTER 12 : GENERAL PROVISIONS**

#### **63. Ownership**

- (1) The person holding a waste management licence for a waste management activity or an accredited permit holder is deemed to be the owner of the waste disposed of at that facility or the owner of the waste transported respectively.
- (2) Domestic waste belongs to the generator of that waste until such time as it is placed in a bin and placed outside of the premises with the intention that the relevant local municipality collect that waste, at which time the waste becomes the property of the relevant local municipality.
- (3) A person who abandons any article is liable for any damages which that article may cause, as well as for the cost of removing that article, notwithstanding the fact that such person may no longer be the owner thereof.

#### **64. Service of documents and process**

For the purposes of the service of any notice, order or other document relating to non-payment for the provision of municipal services as contemplated in CHAPTER 5 will be the address of the owner of the premises on which domestic waste and food waste are generated and in the event of participating local municipalities, their respective principal place of business.

#### **65. Service of notices**

- (1) A notice, instruction, order or other document which has been served for the purposes of these by-laws is regarded to have been properly served or delivered if—
  - (a) it has been served on or delivered to the person concerned personally;
  - (b) it has been sent by registered post or speed post to the person concerned at his or her last known address;
  - (c) it has been served on a person apparently not less than 16 (sixteen) years of age and apparently in charge of the premises at the addressee's last known address; or
  - (d) It has been sent via electronic mail to the known electronic mail address of the person concerned.
- (2) Any legal process is effectively and sufficiently served on the EDM or relevant local municipality when it is delivered to the relevant municipal manager or a person in attendance at the office of the municipal manager.



- (3) Any legal process is effectively and sufficiently served on a service provider when it is delivered to the managing director or a person in attendance at the office of the managing director of the service provider.

**66. Date of commencement**

These by-laws commenced on the date of their publication in the provincial gazette.

**67. Short title**

These by-laws are called the EDM Waste Management By-Laws 2017.

**SCHEDULE 1**

<b>Column A: Offence Section</b>	<b>Column B: Administrative Penalty</b>
Section 38	R1,000.00
Section 31,32,33	R1,000.00
Section 35	R1,000.00
Section 37	R1,000.00
Section 45,46	R400.00





