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GOVERNMENT NOTICE

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

No. R. 549

10 July 2014

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

REGULATIONS TO PHASE-OUT THE USE OF POLYCHLORINATED BIPHENYLS (PCBs) MATERIALS AND POLYCHLORINATED BIPHENYL (PCBs) CONTAMINATED MATERIALS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby publish Regulations to phase-out the use of Polychlorinated Biphenyls materials and Polychlorinated Biphenyls contaminated materials under section 44(1)(aA) and (aB) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

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CHAPTER 1**DEFINITIONS, PURPOSE AND APPLICATION OF THE REGULATIONS****Definitions**

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning and unless the context indicates otherwise –

“Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“articles” means dielectric fluid, dielectric fluid containers, electrical equipment or other equipment or materials that contain PCBs or came into contact with materials that contain PCBs;

“auditor” means a suitably qualified person with the ability to apply knowledge and skills to conduct a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which the set of policies, procedures or requirements are fulfilled;

“contamination” means the transfer of PCBs to an article previously free of PCBs, which results in an article having a PCB concentration of more than 50 mg/kg;

“equipment” includes capacitors, transformers, electrical motors, circuit breakers, voltage regulators, reclosers, switchgears, switches, electromagnets, rectifier or other equipment that contain a dielectric fluid that contain PCBs;

“non PCB material” means oil or articles with PCB concentration less than 50mg/kg;

“PCB (Polychlorinated biphenyl)” means one of 209 congeners containing one to ten chlorine atoms attached to the biphenyl group;

“PCB contaminated material” means oil or articles with PCB concentration greater than 51mg/kg but less than 500mg/kg;

“PCB material” means oil or articles with PCB concentration greater than 500mg/kg;

“PCB holder” means a person who uses or stores PCB materials or PCB contaminated materials;

“PCB waste” means waste as defined in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), which contains PCB materials or PCB contaminated materials; and

“SANS 290” means the latest edition of the South African National Standards for Mineral insulating oils – Management of polychlorinated biphenyls (PCBs).

Purpose and application of regulations

2. (1) The purpose of these Regulations is to—
- (a) prescribe requirements for the phase-out of the use of PCB materials and PCB contaminated materials to ensure that impacts or potential impacts on health, well-being, safety and the environment are prevented or minimised; and
 - (b) set timeframes in which PCB holders must have completely phased-out the use of PCB materials and PCB contaminated materials and disposed of all PCB waste in their possession.
- (2) These Regulations apply uniformly to all PCB holders in the Republic of South Africa.

CHAPTER 2

GENERAL PROHIBITIONS, PHASE-OUT TIME FRAMES, REGISTRATION, PHASE-OUT PLANS AND INVENTORIES

General prohibitions

3. (1) Subject to the provisions of these Regulations and unless a person complies with regulation 5 and 6 of these Regulations, no person may —
- (a) use, process, or produce PCB materials or PCB contaminated materials;
 - (b) import PCB materials or PCB contaminated materials into the Republic of South Africa, or export PCB materials or PCB contaminated materials from South Africa; or
 - (c) sell PCB materials or PCB contaminated materials in South Africa.
- (2) The provisions of sub-regulation (1) do not apply to persons who import PCB waste from a State which is a member of South African Development Community, for the purpose of treatment or safe disposal at a facility authorised in terms of section 20 of Environmental Conservation Act, 1989 (Act No. 73 of 1989) or section 49 of National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

Phase-out time frames

4. No person may—
- (1) use any PCB materials or PCB contaminated materials after the year 2023.
 - (2) have any PCB materials, PCB contaminated materials or PCB waste in their possession after the year 2026, excluding disposed PCB waste.

Registration

5. (1) Any person who possesses articles must register with the Director-General within 90 days of promulgation of these Regulations.
- (2) A person contemplated in sub regulation (1) must register in a form obtainable from the Department.
- (3) The Director-General must acknowledge receipt and issue the registration number within 30 days of receipt.
- (4) The Director-General may on receipt of the registration form, request incomplete information to be furnished in writing or amendments to be effected on the registration form and the amended registration form to be resubmitted within a specified time frame.
- (5) A person who is registered in accordance with sub-regulation (1) must notify the Director-General of any changes in any material detail which has been provided as part of the registration within 30 days of such change taking place.

PCB phase-out plans and inventories

6. (1) A PCB Holder who is registered in accordance with regulation 5 of these Regulations; must develop a phase-out plan and submit it to the Director-General within one year of the coming into effect of these Regulations.
- (2) The phase-out plan contemplated in sub regulation (1) must, as a minimum include—
- (a) name and contact details of the person submitting the plan;
 - (b) registration number issued by the Director-General in terms of regulation 5(3) of these Regulations;

- (c) a comprehensive inventory of non PCB materials, PCB materials and PCB contaminated materials in use or stored; specifying—
 - (i) the type of equipment;
 - (ii) serial number;
 - (iii) specific location;
 - (iv) name of the manufacturer;
 - (v) date of manufacture;
 - (vi) type of dielectric fluid contained;
 - (vii) KVA rating;
 - (viii) fluid weight in (kg) or fluid volume in (L); and
 - (ix) PCB concentration in (mg/kg).
 - (d) the time period within which the person plans to have completely phased-out all PCB materials or PCB contaminated materials which must not exceed the time frames set in regulation 4 of these Regulations; and
 - (e) the strategy outlining the annual reduction targets.
- (3) The Director-General must acknowledge receipt of the phase-out plan within 14 days of receipt, and may, after consideration of the plan, in writing—
- (a) approve the phase out plan for implementation and notify the applicant of the approval and outline any applicable conditions or requirements; or
 - (b) require incomplete information to be furnished or amendments to be effected and a revised phase out plan to be resubmitted within a specified time frame; or
- (4) A person whose phase-out plan has been approved by the Director-General must implement such a plan and may only deviate from such a plan upon written approval to do so by the Director-General.

CHAPTER 3**TESTING, LABELLING, CLASSIFICATION, RETRO-FILLING AND RECLASSIFICATION OF EQUIPMENT****Testing and labelling**

7. (1) Any person who possesses articles must draw samples from all their articles, excluding sealed units and have them tested for PCB content by an Accredited Laboratory the results of which must be kept until the year 2023.
- (2) A person contemplated in sub-regulation (1) must conduct the sampling and testing of the articles in accordance with SANS 290.
- (3) PCB Holders must label their articles in accordance with SANS 290.
- (4) The PCB equipment identified in the PCB inventory submitted in terms of regulation 6(2) of these Regulations that are still in the registered owner's possession, must after the completion of the phase-out plan be tested for PCBs by an Accredited Laboratory and the results must be submitted to the Director-General as part of the audit report.

Classification, retro-filling and reclassification of equipment

8. (1) A PCB Holder who classify, retro-fill or reclassify their equipment must do so in accordance with SANS: 290.
- (2) Any PCB holder must put measures in place to ensure that contamination is prevented.

CHAPTER 4**REPORTING****Reporting**

9. (1) A PCB holder must at own cost, submit to the Director-General a biennial audit report prepared by an auditor, on or before the anniversary of the date of approval of the phase-out plan.
- (2) The audit report contemplated in sub-regulation (1) must include, as a minimum—

- (a) an undertaking by the auditor of their independence;
 - (b) the profile of the auditor;
 - (c) name and details of the PCB holder or person submitting the report and confirmation of correctness of information supplied in the audit report;
 - (d) copies of PCB waste safe disposal certificates issued by a licensed or permitted waste disposal facility;
 - (e) laboratory results of equipments that have been decontaminated in terms of these Regulations and returned to service.
- (3) The audit report must include a detailed progress report regarding the implementation of the approved Phase-out Plan contemplated in regulation 6 of these Regulations.

CHAPTER 5

GENERAL MATTERS

Offences and penalties

10. (1) A person is guilty of an offence if that person contravenes regulation 3, 4, 5(1), 5(5), 6(1), 6(2), 6(4), 7, 8 or 9 of these Regulations.
- (2) A person convicted of an offence in terms sub-regulation (1) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

Short Title and Commencement

11. These Regulations are called the Regulations to phase-out the use of PCB materials and PCB contaminated materials, 2014, and take effect on the date of publication thereof in the *Gazette*.

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