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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 14

12 JANUARY 2018

**NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008
(ACT NO. 59 OF 2008)****PROPOSED REGULATIONS TO EXCLUDE A WASTE STREAM OR A PORTION OF A WASTE STREAM
FROM THE DEFINITION OF WASTE**

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make regulations to exclude a waste stream or a portion of a waste stream from the definition of waste, under section 69(1)(dd) read with sections 1 and 73 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 days after the publication of the notice in the *Gazette*, written representations on or objections to the following addresses:

By post to: The Director-General: Environmental Affairs
 Attention: Mr Anben Pillay
 Private Bag X447
 PRETORIA
 0001

By hand at: Reception, Environment House, 473 Steve Biko Road, Arcadia, Pretoria, 0083.

By e-mail: apillay@environment.gov.za

Any inquiries in connection with the notice can be directed to Mr Anben Pillay at 012 399 9827.

The draft regulations to exclude any waste stream or a portion of a waste stream from the definition of waste can also be accessed at <http://sawic.environment.gov.za/> under "Draft documents for comment".

Comments received after the closing date may not be considered.



**BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS**

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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: Waste Act, 2008 (Act No. 59 of 2008);

“applicant” means a person or category of persons who has submitted an application for exclusion of any waste stream or a portion of a waste stream from the definition of waste to the Minister;

“the list” means the list of waste streams listed in Schedule 1 of these Regulations.

Purpose

2. The purpose of these Regulations is to—

- (a) prescribe the manner in which a person or a category of persons may apply to the Minister for the exclusion of a waste stream or a portion of a waste stream from the definition of waste;
- (b) exclude a waste stream or a portion of a waste stream from the definition of waste; and
- (c) promote diversion of waste from disposal through its beneficial use.

Application of these Regulations

3. These Regulations do not—

- (a) apply to generators of domestic waste which falls within the jurisdiction of a Municipality; or
- (b) exempt the holder of any waste which has been excluded from complying with any other applicable legislation.

CHAPTER 2**APPLICATION FOR EXCLUSION OF WASTE****Persons who may apply for exclusion of a waste stream or a portion of a waste stream**

4. The following are persons or categories of persons who may apply to the Minister for the exclusion of a waste stream or a portion of a waste stream from the definition of waste:

- (a) a person who generates waste; or
- (b) any group of persons who generate waste, where the waste generated has the same risk of adverse environmental impact when used for a specific purpose may submit a combined application to the Minister for such waste to be excluded from the definition of waste.

Application for exclusion of a waste stream or a portion of a waste stream

5. An application for the exclusion of a waste stream or a portion of a waste stream must be lodged with the Minister, using the form attached in Annexure A.

Consideration of applications for exclusion of a waste stream or a portion of a waste stream

6. (1) The Minister must upon receipt of the application acknowledge receipt, in writing, within 14 days after date of receipt.

(2) The Minister may, after consideration of the application and motivation contemplated in regulation 7 and 8 of these Regulations, in writing—

- (a) grant the application and exclude a waste stream or a portion of a waste stream from the definition of waste;
- (b) require the applicant to amend the application within a specified timeframe;
- (c) require the applicant to submit additional information within a specified timeframe; or
- (d) refuse the application and provide reasons for the decision.

(3) The Minister must, before taking a decision on the application, follow a consultative process contemplated in sections 72 and 73 of the Act.

(4) The Minister must, after granting an application, publish a government notice indicating the exclusion of a waste stream or a portion of a waste stream from the definition of waste, in the *Gazette* for general information.

Criteria for exclusion of a waste stream or portion thereof

7. The Minister may exclude a waste stream or a portion of a waste stream, from the definition of waste for the purposes of beneficial use, provided that—

- (a) the applicant demonstrate that the waste is being used or has been used for a specific purpose either locally or internationally;
- (b) the applicant submit a risk assessment demonstrating that the use of the specific waste can be managed in such a way as to ensure that the use will not result in significant adverse impacts on the environment; and
- (c) a risk management plan responding to the risks identified in the risk assessment undertaken in terms of paragraph (b) above accompanies any delivery of the waste material to the user.

Elements of the Risk Assessment

8. Any risk assessment undertaken in terms of regulation 7(b) must include the following elements:

- (a) description and source of the waste;
- (b) intended uses of the waste;
- (c) description of the methodology used to assess the hazard characteristics of the waste that is to be excluded;

- (d) identification of any potential risks relating to all the activities associated with the intended use of the waste; and
- (e) identification of mitigation measures that can be used to manage the risks identified in paragraph (d) above.

Risk Management Plan

9. The results of the risk assessment must be used as the basis of a risk management plan.

Contents of the Risk Management Plan

10. A risk management plan must include the following:

- (a) where the material is classified as hazardous, a Safety Data Sheet which complies with the requirements of SANS 10234;
- (b) list of activities for which the waste material may be used; and
- (c) mechanism to record the amount of waste distributed to specific users for a permitted use; including the number of enterprises established or supported and the extent to which previously disadvantaged individuals have been supported.

Reporting

11. The report arising from regulation (10)(c) must be submitted to the Department on an annual basis and must be made available to the Department on request.

Review, withdrawal and amendment of exclusion of a waste stream or a portion of a waste stream

12. (1) The Minister, where on reasonable grounds believes that a waste stream or a portion of a waste stream excluded from the definition of waste poses a threat to health, wellbeing, and environment, may—

- (a) review any exclusion of a waste stream or a portion of a waste stream from the definition of waste granted in terms of these Regulations; or
- (b) withdraw such exclusion of a waste stream or a portion of a waste stream or amend the exclusion of a waste stream or a portion of a waste stream.

(2) Before reviewing, withdrawing or amending any exclusion of a waste stream or a portion of a waste stream, the Minister must give the person contemplated in regulation 4 of these Regulations an opportunity to comment, in writing, on the reasons for the review, withdrawal or amendment.

(3) The Minister must, before taking a decision to review, withdraw or amend the exclusion of a waste stream or a portion of a waste stream from the definition of waste, follow a consultative process as contemplated in sections 72 and 73 of the Act.

(4) The Minister must, after taking a decision to review, withdraw or amend the exclusion of a waste stream or a portion of a waste stream from the definition of waste, publish such a decision in the *Government Gazette* for general information.

Scope of application

13. (1) The exclusion of a waste stream or a portion of a waste stream listed in Schedule 1 of these Regulations are restricted to the identified permitted uses in Schedule 1.

(2) Where a waste stream or portion of a waste stream has been excluded from the definition of waste in terms of these Regulations, such a waste stream or a portion of a waste stream must be managed in terms of the risk management plan developed in terms of regulation 9 and 10 of these Regulations.

CHAPTER 3

LIST OF WASTE STREAM OR PORTION OF WASTE STREAM EXCLUDED FROM THE DEFINITION OF WASTE

List of waste stream or portion of waste stream excluded from the definition of waste

14. The waste streams set out in Schedule 1 are excluded from the definition of waste as provided for in the Act.

Amendment of the list of waste stream or portion of waste stream excluded from the definition of waste

15. (1) The Minister may, where on reasonable grounds believes that the waste stream or portion of waste stream or one or more of the associated permitted use listed in Schedule 1 poses a threat to health, wellbeing and the environment, amend Schedule 1 by removing such waste stream or portion of waste or permitted use from the list.

(2) Before exercising the powers contemplated in subregulation (1), the Minister must follow a consultative process as contemplated in sections 72 and 73 of the Act.

CHAPTER 4

GENERAL MATTERS

Transitional arrangements

16. (1) A person who lawfully commenced, any permitted use or provided any waste listed in Schedule 1 for permitted use prior to the promulgation of these Regulations must notify the Minister, in writing, of his or her intention to continue such use.

(2) A person who unlawfully commenced any permitted use, or provided any waste or use not listed in Schedule 1 prior to the promulgation of these Regulations, must apply to the Minister for rectification to continue such use lawfully.

(3) Any person contemplated in subregulation (2) above may apply to the Minister for regularisation of that use without penalty, provided that the application is submitted within 6 months after the promulgation of these Regulations.

Offences and penalties

17. (1) A person commits an offence if that person—

(a) intentionally provide or submit misleading information to the Minister in respect of an application for the exclusion of a waste stream or a portion of a waste stream contemplated in regulation 5, 7, 8, 9, 10 or 11; or

(b) contravenes or fails to comply with any permitted use of waste contemplated in Schedule 1.

(2) A person convicted of an offence in terms of subregulation (1) is liable on conviction to—

(a) imprisonment for a period not exceeding 15 years;

- (b) an appropriate fine; or
- (c) both a fine and imprisonment.

Short title and commencement

18. These Regulations are called the Waste Exclusion Regulations, 2017 and take effect on the date of publication in the *Government Gazette*.

SCHEDULE 1**List of waste stream or portion of waste stream excluded from the definition of waste****(1) Description of Waste: Slag from Metallurgical Processes**

Permitted use of waste
(a) Use as aggregates
(b) Concrete aggregates
(c) Road base and covering and road stabilisation
(d) Asphaltic concrete and other bituminous mixtures
(e) Construction fill
(f) Concrete products
(g) Plaster and gunite sands
(h) Railroad ballast
(i) Roofing granules
(j) Filtration media
(k) Pipe filling material
(l) Backfilling
(m) Dam construction and stabilisation material
(n) Construction of drainage systems
(o) Hydroponic filling material
(p) Production of cement

(2) Description of Waste: Ash from Combustion and Gasification Processes

Permitted use of waste
(a) Brickmaking
(b) Block making
(c) Production of cement
(d) Landfill capping
(e) Backfill in old mine workings
(f) Inorganic fertilizer
(g) Soil ameliorant and conditioner
(h) Asphalt and other bituminous mixtures
(i) Road construction
(j) Foundations
(k) Bulking agent for composting

(3) **Description of Waste: Gypsum from Pulp, Paper and Cardboard Production and Processing, and Combustion and Gasification Processes**

Permitted use of waste
(a) Soil conditioner
(b) Inert products (such as board manufacturing)

(4) **Description of Waste: Biomass** (defined as a non-fossilised and biodegradable organic material originating from plants, animals and micro-organisms excluding: (a) sewage; (b) sewage sludge; and (c) treated or coated wood waste which may contain halogenated organic compounds or heavy metals.)

Permitted use of waste
(a) Composting
(b) Soil conditioner in forest or agricultural plantations
(c) Animal bedding



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

ANNEXURE A

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

APPLICATION FORM FOR THE EXCLUSION OF A WASTE STREAM OR PORTION OF A WASTE STREAM FROM THE DEFINITION OF WASTE

Applicant /Agent of			
Applicant:			
Contact person:			
Postal Address:			
Telephone:		Cell:	
Email:		Fax:	

Please confirm that the following documents and/or information is attached: (mark yes/no with X)

- 1 Information that the waste stream or portion thereof is being used or has been used for a specific purpose either locally or internationally; YES NO
- 2 A risk assessment demonstrating that the use of the specific waste can be managed in such a way as to ensure that the use will not result in significant adverse impacts to the environment; YES NO
- 3 A risk management plan responding to the risks identified in the risk assessment; YES NO
- 4 Photographs of the accumulated waste from different vantage points; YES NO
- 5 Information about the estimated capital investment for use of the waste stream. Please indicate if this information is confidential. YES NO
- 6 A site plan clearly indicating the location of the storage area of the accumulated waste YES NO
- 7 Details of how the use of waste will benefit the historically disadvantaged individuals. YES NO

Declaration :

I hereby declare that the information provided above is true and correct and that all persons listed above have been consulted prior to this application submitted to the DEA and that failure to comply with the requirements may constitute an offence in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008):

Applicant (Full names) _____

Date: _____ **Place:** _____

Signature _____ (duly authorised to sign on behalf of Applicant)

Witness Full names) _____

Date: _____ **Place:** _____

Signature _____

DEPARTMENTAL DETAILS***Pretoria******Department of Environmental Affairs***

Attention: Directorate: Licencing

Private Bag X 447, PRETORIA, 0001

Website: <http://sawic.environment.gov.za/>

Registry Office**Environment House**

473 Steve Biko Street, Arcadia, PRETORIA, 0083

Queries should be directed to the Directorate: Licencing at:

Tel: (012) 399 9778, Fax (012) 399 9777

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To confirm the legitimacy of purchase orders, please contact:

Renny Chetty (012) 748-6375 (Renny.Chetty@gpw.gov.za),

Anna-Marie du Toit (012) 748-6292 (Anna-Marie.DuToit@gpw.gov.za) and

Siraj Rizvi (012) 748-6380 (Siraj.Rizvi@gpw.gov.za)

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