

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 528

02 JUNE 2017

**NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008
(ACT NO. 59 OF 2008)****PROPOSED REGULATIONS TO EXCLUDE WASTE STREAMS 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 waste streams from the definition of waste, in terms of section 69 (1)(dd) and (ee), read with sections 1, 72 and 73 of the National Environmental Management: Waste Act, 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 comments or inputs 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.govla/> under "Draft documents for comment".

Comments received after the closing date may not be considered.



BOMO EDITH EDNA MOLEWA, MP
MINISTER OF ENVIRONMENTAL AFFAIRS

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

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

“the list” means the list of waste streams listed in regulation 9 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 waste from the definition of waste; and
 - (b) exclude waste streams from the definition of waste.

Application of these Regulations

3. These Regulations do not—
 - (a) apply to generators of domestic waste which falls within the jurisdiction of a Municipal function 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

4. The following are persons who may apply to the Minister for exclusion of waste from the definition of waste:
 - (a) a person who generates waste; or
 - (b) any group of generators, where the waste generated has the same physical, chemical or biological properties may submit a combined application to the Minister for such waste to be excluded from the definition of waste.

Application for exclusion

5. (1) An application for exclusion of waste must be lodged with the Minister, using a form obtainable from the Department.
- (2) An application form contemplated in subregulation (1) must include, as a minimum, contain the following information:
- (a) details of the person or persons who compiled the application as well as his or her curriculum vitae;
 - (b) the proposed use of the waste stream to be excluded;
 - (c) a motivation which demonstrates that the use of such waste including the associated handling and storage, can be implemented and conducted consistently and repeatedly in a controlled manner without unacceptable impact on, or risk to the environment or health;
 - (d) a needs and desirability analysis which must include social, economic and environmental considerations;
 - (e) the benefits of the proposed use of waste, relating to achieving waste minimisation or diversion of waste from landfill;
 - (f) the description of the waste to be excluded including estimated quantities of the sector, classification, physical characteristics, chemical composition, sources of the waste, and current management thereof;
 - (g) description of the process for recovery of such waste including the required infrastructure, pre-treatment activities, and other inputs or raw materials required;
 - (h) information on the successful implementation of the proposed use, or similar activities, locally and internationally;
 - (i) details of local and international specifications or standards relating to the waste and the proposed waste management activity, where available;
 - (j) reference to legislation and policy applicable to the proposed activity, including relevant waste minimisation or waste management plans;
 - (k) description of how the physical, biological, social, economic and cultural aspects of the environment may be adversely affected by the proposed activity, and how these would be mitigated or managed;
 - (l) identification of aspects that may constrain the wide or general implementation of the proposed activity, and how these can be managed;
 - (m) an assessment of the potential environmental and health impacts and risks that could result from the proposed activity, which would test the general implementation of the proposed activity at several sites with different characteristics;

- (n) roles and responsibilities of the waste generator and persons who will use waste for beneficial waste;
- (o) management, monitoring and reporting procedures;
- (p) quality assurance and control measures, including sampling and analyses, as well as chemical concentration limits for specific components in the waste, or other characteristics of the waste, which may render it unsuitable for the proposed use;
- (q) any other limitations to the use or prohibited uses of the waste;
- (r) locality or geographical area where the proposed activity may or may not take place;
- (s) standard operating procedures;
- (t) environmental management plan;
- (u) details of the public participation process followed, registers of interested and affected parties who participated as well as comments and responses;
- (v) description of the socio-economic benefits which will emanate from the proposed use;
- (w) details of how the use of waste will benefit the historically disadvantaged individuals;
- (y) a description of any assumptions made and any uncertainties or gaps in knowledge;
- (z) discussion on the practicality of, and ability to effectively implement, the requirements or standards that the activity may be subjected to; and
- (aa) proof of payment of the processing fee of R10 000.

Consideration of applications for exclusion

6. (1) The Minister must upon receipt of the application acknowledge receipt, in writing, of the application within 14 days after date of receipt, and may—
- (2) The Minister may after consideration of the application and motivation contemplated in regulation 5 of these Regulations, in writing—
 - (a) grant approval and exclude the waste or
 - (b) require the applicant to make an amendment or amendments to the application, and specify the timeframe within which the application must be resubmitted; or
 - (c) require additional information, and specify the timeframe within which the information must be submitted; or
 - (d) refuse the application and provide reasons for the decision.
- (3) The Minister may, where he or she reasonably believes that there are significant flaws on the information provided in the application, subject the application to independent expert review at the cost of the applicant.

- (4) The Minister must, before taking a decision on the application, follow a consultative process contemplated in sections 72 and 73 of the Act.
- (5) The Minister must, after approving an application for exclusion of waste from the definition of waste, publish a notice indicating the exclusion of any waste in the *Gazette* for general information.

Review, withdrawal, and amendment of exclusions

7. (1) The Minister, where he or she reasonably believes that waste excluded from the definition of waste poses a threat to health, wellbeing, and environment, may—
 - (a) review any exclusion of waste from the definition of waste approved in terms of these Regulations; or
 - (b) withdraw such exclusion of waste or amend the exclusion of waste, or any part thereof.
- (2) Before withdrawing or amending any exclusion of waste, the Minister must give the person contemplated in regulation 4 of these Regulations an opportunity to comment, in writing, on the reasons for the withdrawal, review or amendment.
- (3) The Minister must, before taking to review, withdraw or amend the exclusion of any waste from the definition of waste, follow a consultative process 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 any waste from the definition of waste, publish such a decision in the *Gazette* for general information.

CHAPTER 3

LIST OF WASTE EXCLUDED FROM THE DEFINITION OF WASTE

Scope of application

8. (1) The waste streams listed in regulation 9 of these Regulations is restricted to the identified prescribed uses in these Regulations.
- (2) Where a waste stream has been excluded from the definition of waste in terms of these Regulations, such waste stream may be recovered or treated prior to use without a waste management licence.

List of waste streams excluded from the definition of waste

9. The following waste streams are excluded from the definition of waste as provided for in the Act:

(1) Description of Waste: Waste Slag from Ferrochrome Metallurgy

Prescribed use of waste	Intermediate processes required to make waste available for use	Potential negative or positive environmental impacts of use	Mitigation of negative impacts
(a) Use as aggregates	Recovery from disposal site	Negative: Potential dust emission associated with handling of aggregate material.	Manage and mitigate dust emissions within occupational health standards and comply with the requirements of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) and any other relevant legislation.
(b) Concrete aggregates	Crushing and screening	Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(c) Road base and covering and road stabilisation		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(d) Asphaltic concrete and other bituminous mixtures		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(e) Construction fill		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(f) Concrete products		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(g) Plaster and gunite sands		Positive: Eliminate the need for virgin aggregate material to be mined with	

		its associated environmental impact.	
(h) Railroad ballast		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(i) Roofing granules		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(j) Filtration media		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(k) Pipe filling material		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(l) Backfilling		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(m) Dam construction and stabilisation material		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(n) Construction of drainage systems		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(o) Hydroponic filling material		Positive: Eliminate the need for virgin aggregate material to be mined with its associated environmental impact.	
(p) Production of cement		Positive: Eliminate the need for virgin material to be mined with its	

		associated environmental impact.	
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(2) Description of Waste: Ash from Combustion Plants

Prescribed use of waste	Intermediate processes required to make waste available for use	Potential negative or positive environmental impacts of use	Mitigation of negative impacts
(a) Brickmaking		Positive: Reduced landfill waste. Ash bound in cement / clay therefore dust and potential leachate impacts are minimised	
		Negative: Handling	Duty of care principles provided for in the National Environmental Management Act, 1998 (Act No. 107 of 1998) to be followed by supplier which includes ensuring correct storage facility on user site (Norms & Standards for Storage of Waste, 2013 to be adhered to); dust control; stormwater management
(b) Block making	None	Positive: Reduced landfill waste. Ash bound in cement therefore dust and potential leachate impacts are minimised	
		Negative: Handling	Duty of care principles provided for in the National Environmental Management Act, 1998 (Act No. 107 of 1998) to be followed by supplier which includes ensuring correct storage facility on user site (Norms & Standards for Storage of Waste, 2013 to be

			adhered to); dust control; stormwater management
(c) Production of cement	None	Positive: Improved material use / resource efficiency Reduced landfill waste	
		Negative: None	
(d) Landfill capping	Mixing	Positive: Ash mixed with fibre sludge has proven effective as alternative to soil being used for capping purposes	Mixing to be done on a licenced landfill site
		Negative: Dust generation	
(e) Backfill in old mine workings	None	Negative: Spillages	
		Positive: Beneficial use of material	
(f) Inorganic fertilizer		Positive: Return nutrients and micro elements to soil (minimise the need for chemical fertilizers to be applied). Soil conditioning	
(g) Soil ameliorant		Positive: Return nutrients and micro elements to soil (minimise the need for chemical fertilizers to be applied). Soil conditioning	
(h) Asphalt and other bituminous mixtures		Positive: Improved material use / resource efficiency. Reduced waste to landfill.	

(i) Road construction		Negative: Dust generation	Manage and mitigate dust emissions within occupational health standards and comply with the requirements of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) and any other relevant legislation
(j) Foundations			
(k) Bulking agent for compositing		Negative: Dust generation	Manage and mitigate dust emissions within occupational health standards and comply with the requirements of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) and any other relevant legislation

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

Prescribed use of waste	Intermediate processes required to make waste available for use	Potential negative or positive environmental impacts of use	Mitigation of negative impacts
(a) Soil conditioner	None	Positive: Reduced landfill waste. Positive impact on sodium absorption ratio in soil	
(b) Inert products (such as board manufacturing)	None	Positive: Improved material use / resource efficiency Reduced landfill waste	

(4) Description of Waste: Biomass (Bark, Offcuts, Sawdust) from Pulp, Paper and Cardboard Production and Processing

Prescribed use of waste	Intermediate processes required to make waste available for use	Potential negative or positive environmental impacts of use	Mitigation of negative impacts
(a) Composting	Composting in windrows	Positive: Enhanced soil fertility. Reduced landfill waste Job creation	
		Negative: Possible leachate	
(b) Soil conditioner in plantations	Direct to field	Positive: Improved soil properties Reduced landfill waste Job creation	
		Negative: Possible concentration of contaminants	Assessment of correct application volumes based on soil properties prior to application
(c) Animal bedding	Bagged	Positive: Reduced landfill waste	

Amendment of the list of waste excluded from the definition of waste

10. The Minister may, where he or she reasonably believes that the waste stream listed in regulation 9 poses a threat to health, wellbeing and environment, amend the list by—
- adding other waste streams to the list;
 - removing waste streams from the list; or
 - making other changes to particulars of the list.

CHAPTER 4

GENERAL MATTERS

Transitional arrangements

11. (1) A person who lawfully commenced, undertook, or conducted a waste management activity prior to and on the date of coming into operation of these Regulations may continue with the activity for the duration, as stipulated in the waste management licence, and after the expiry of the waste management licence, comply with these Regulations.

- (2) A person who was required to comply with the norms and standards or other requirements in terms of this Act when conducting the listed waste management activity prior to and on the date of coming into operation of these Regulations may continue with the activity for the duration of six months from the date of coming into operation of these Regulations, and after the expiry of six months, comply with these Regulations.
- (3) A person who submitted an application for a waste management licence in respect of any use of waste excluded from the definition of waste in terms of these Regulations and is awaiting a decision by the licensing authority at the date of coming into operation of these Regulations, must from the date of coming into operation of these Regulations, consider the application for a waste management licence withdrawn.

Offences and penalties

12. (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 waste contemplated in regulation 6; or
 - (b) contravenes or fails to comply with any prescribed uses of waste contemplated in regulation 9.
- (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

13. These Regulations are called the Waste Exclusion Regulations, 2016 and take effect on the date of publication in the *Gazette*.