



Dear Mr Curry

I refer to our meeting on the 18th of March 2005 in Modimolle, Limpopo Province with regard the new proposed Environmental Impact Assessment (EIA) regulations in terms of the National Environmental Management Act, 1998 (Act No. 107, 1998) (NEMA).

This document serves as a summary of our discussion as well as those regulations that might have an impact on the wood preservative industry.

I would firstly like to emphasise a few definitions and general comments in the proposed EIA regulations, which will have bearing on your industry.

Chapter 1

1. Definitions and interpretations

(n) **“dangerous goods”** means goods that are capable of posing a significant risk to the health and safety of people or the environment and that are listed in Annex B2 or Annex C of South African National Standard: The identification and classification of dangerous goods for transport, SANS 10228 as amended from time to time.

(vv) **“upgrade”** means extending the capacity or output of infrastructure or of a facility.

I have as yet been unable to find a copy of SANS 10228 but am sure that arsenic will be listed as hazardous substances, however using this definition for “upgrade” none of the current changes made to existing plants to comply with the SABS standards will qualify as listed activities.

Chapter 2

3. General responsibilities and obligations

(1) An applicant –

(a) must, where the applicant is not the owner of the land on which it is proposed to undertake the activity, obtain the consent of the landowner to undertake the proposed activity in a form agreed to, or indicated by, the competent authority

(b) must appoint an independent environmental assessment practitioner where required in terms of these regulations

(d) is responsible for all cost incurred in complying with these regulations, including but not limited to –

(v) the provision of security to ensure compliance with conditions attached to an environmental authorisation, should it be required by the competent authority;

Chapter 3: Authorisation of activities

7. Applications

(5) Any person who intends undertaking two or more activities on the same property or as part of one development proposal must submit one application form in respect of such activities for the purposes of complying with these regulations.

(6) Any person who intends undertaking more than one of the same type of activity may request the competent authority, in writing, for permission to submit an application form in respect of those activities and to undertake a consolidated process in respect of those activities.

Also note that the competent authority is also proposing timeframes to respond to applications e.g. Chapter 3 section 8 Assessment of applications (1) on receipt of an application, the competent authority must within 14 days and in writing

In section 10 Consideration of screening reports, 30 days are allowed and under section 12 point (1) 30 days are allowed for a response, and 45 days for responding after receiving an Environmental impact assessment report.

With regard to our discussions around regulating of the total industry I would like to highlight the following points and encourage the industry to contact the Department of Environment and Tourism as soon as possible to discuss the possibility to enter into an agreement, which will benefit the industry and the environment.

Chapter 8 of NEMA deals with environmental management co-operation agreements. Conclusion of agreements Section 35 point (1) states that the Minister and every MEC and municipality, may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act.

(2) Environmental management co-operation agreements must -

(a) only be entered into with the agreement of -

- (i) every organ of state which has jurisdiction over any activity to which such environmental management co-operation agreement relates;
- (ii) the Minister and the MEC concerned;

(b) only be entered into after compliance with such procedures for public participation as may be prescribed by the Minister; and

(3) Environmental management co-operation agreements may contain -

(a) an undertaking by the person or community concerned to improve on the standards laid down by law for the protection of the environment which are applicable to the subject matter of the agreement;

(b) a set of measurable targets for fulfilling the undertaking in (a), including dates for the achievement of such targets; and

(c) provision for -

- (i) periodic monitoring and reporting of performance against targets;
- (ii) independent verification of reports;
- (iii) regular independent monitoring and inspections;
- (iv) verifiable indicators of compliance with any targets, norms and standards laid down in the agreement as well as any obligations laid down by law;

(d) the measures to be taken in the event of non-compliance with commitment in the agreement, including where appropriate penalties for non-compliance and the provision of incentives to the person or community.

Point (3) of Section 6 of Chapter 2 of the proposed regulations: General powers, responsibilities and obligations of the competent authority states that the Minister or MEC may develop and publish guidelines or policies in the relevant Gazette in respect of an activity, group of activities or the process contemplated in these regulations with the aim of ensuring efficiency and the protection of the environment.

Chapter 4 section 22 point (28) states that in accordance with the provisions of section 24(2)(c) of the Act, an MEC may exclude activities (15), (25), (26), (27) where -

- (a) an area that is managed by any authority for which an environmental management framework that makes provision for this proper management of the activities to be managed in terms of the environmental management framework had been approved by the competent authority; or
- (b) an area is not sensitive to certain activities due to its nature or zoning as identified by the competent authority.

Chapter 8: General Matters Section 34 Exemptions

(1) Any person may apply, in writing, to the competent authority for exemption from the application of any provision of these regulations other than a public participation process, in respect of a specific activity.

Thus although activities related to the wood preservative industry are listed as activities which need EIA approval before it commence the Department allows for exemptions based on good motivations. This is basically what has been done up until now, and it should be possible to continue should the industry commit itself to sound environmental practices and self regulation.

Categories

The department has tried to streamline the process by making the distinction of which process should be followed by what type of projects more clear with these regulations. Chapter 4 deals with the identification of activities and geographical areas. Two categories of activities are identified. Category I: Identified activities that require screening and Category II: Identified activities that require environmental impact assessment.

These categories will hopefully also ensure more uniform treatment of plants in different provinces.

Section 22 looks at Category I activities and include the following points, which will have bearing on the wood preservative industry.

Point (15) refers to the planting of tree plantations or the expansion of existing plantations, but excluding community woodlots smaller than 3 hectares.

Point (20) The development of a new facility or the transformation of an existing facility for the conduction of manufacturing processes, warehousing, bottling, packaging, or storage, which occupies an area in excess of 1000 square meters outside an existing area zoned for industrial purposes.

Point (25) The decommissioning of existing facilities or infrastructure, other than facilities or infrastructure that commenced under an environmental authorisation issued in terms of these regulations, for –

- (c) industrial activities where the facility or the land on which it is located is contaminated or has the potential to be contaminated by any material which may place a restriction on the potential to re-use the site for a different purpose;

Point (26) The re-commissioning or use of facilities or infrastructure, after a period of two years from closure, or temporary closure, excluding facilities or infrastructure that commenced under an environmental authorisation issued in terms of these regulations, for –

- (c) facilities for any industrial process or activity, which requires a new permit or license in terms of legislation governing the release of emission, pollution, effluent or waste to air, water or soil;

Point (27) the expansion or upgrading of existing facilities for any industrial process or activity, which requires an amendment of an existing permit or license or a new permit or license in terms of legislation governing the release of emissions, pollution, effluent or waste to air, water or soil.

Section 23 deals with Category II and includes the following points:

Point (1) The construction of new facilities or infrastructure, including associated structures or infrastructure, for –

- (c) any industrial process or activity, which requires a permit or license in terms of legislation governing the release of emissions pollution, effluent or waste to air, water or soil,
- (d) the use, recycling, handling, treatment, storage or final disposal of hazardous wastes.
- (n) the incineration, burning, evaporation, thermal treatment, roasting or heat sterilisation of waste or effluent;

Section 24 The identification of geographical areas in which specified activities require environmental authorisation

Point (1) Geographical areas that may be identified by an MEC in terms of section 24(2) of the Act in which specified activities may not commence without any environmental authorisation.

The rest of the document mainly describes the processes, which should be followed and what should be contained in the different types of documents. Since this is still a draft document and since the independent consultant will have to be familiar with these I am not going to discuss these any further.

Should you need any more information or assistance in this regard do not hesitate to contact me.

Yours sincerely

Retha van der Walt

Date: 11/04/05