

NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008

(ACT NO. 59 OF 2008)

GAZETTE No 4270: Notice 1011, 12 SEPTEMBER 2016

**NOTICE OF INTENTION TO REQUIRE THE PAPER AND PACKAGING
INDUSTRY, ELECTRICAL AND ELECTRONIC INDUSTRY AND LIGHTING
INDUSTRY TO PREPARE AND SUBMIT TO THE MINISTER INDUSTRY WASTE
MANAGEMENT FOR APPROVAL**

SUBMISSION BY PET RECYCLING COMPANY NPC (PETCO)

INTRODUCTION

PETCO NPC supports the submissions made by PackagingSA and Business Unity South Africa in this regard. These comments serve to highlight areas of particular relevance to the PET Bottle industry.

As a recognised EPR scheme, currently successfully funding and managing this responsibility for the PET Bottle Industry, and in line with the approach of the Pricing Strategy (Gazette 40200 No 904), we formally request that our sector be exempted from the full extent of the requirements as laid out in Gazette 40200 No 904.

This would be based on contributing towards the Waste Management Bureau (WMB) administrative costs, reporting to the WMB and receiving support from the WMB to deal with free riders in our sector by requiring all parties to belong to a Waste Management Plan. For shared activities such as litter awareness campaigns, we would continue to co-operate with other streams in the packaging sector for maximum impact.

GENERAL

Financial mechanisms

We note the opportunity to submit a financial approach, which seems to have moved away from the emphasis on a purely tax-based finance raising mechanism. We are relieved by this as it will enable us to keep our current financial commitments for recycling projects (our long term contracts). This will enable PETCO to achieve DEA's objective of diverting waste from landfill in a manner which is effective, cost efficient and does not contribute an inflationary effect to the consumer. We would however like to work with the Department to allow for the taxing/penalties for non-compliant obliged companies, as is made provision for in Gazette 40200 No 904 of 11 August 2016, page 32 of 41:

“For certain products, product groups or waste streams, the Department may wish to consider EPR schemes in combination with a product tax, to allow producers and importers to use the voluntary (and paying the associated EPR fee) or mandatorily pay the product tax (See Section 4.2.4).”

Industry-managed model

We have noted in anecdotal evidence and discussions that some individuals with decision-making or advisory powers within the Department of Environmental Affairs (and perhaps other influential bodies) feel that monies cannot be collected by a non-Governmental organisation for running EPR schemes, even though this is a commonly adopted model elsewhere in the world. There appears to be a false equivalency drawn between the Recycling and Economic Development Initiative of South Africa (REDISA) model and the PETCO model. PETCO formally requests that we are afforded the opportunity to present the case for our model to relevant parties without prejudice stemming from the arrangement between DEA and REDISA.

Producer / Category of Persons

We feel that the definition of Producer / Category of Persons should be re-instated and needs clarification.

Penalties

These appear to be excessive particularly in relation to a new system with so many diverse stakeholders both public and private sector.

Response Requested

PETCO requests that the Department of Environmental Affairs provides written response to the queries contained herein.

Definitions	PETCO Comments:
<p>1. In this Notice any word or expression to which a meaning has been assigned in the Act bears that meaning, unless the context otherwise indicates -</p>	<p>Definition of Producer has been removed. A definition of who the obliged companies are is required especially given the severe penalties for non-compliance.</p> <p>PETCO requests that for the PET Sector, the following legal entities are required to comply:</p> <ul style="list-style-type: none"> • Virgin & Recycled PET raw material producers and importers • Importers of preforms, sheets, trays etc. • Converters • Bottlers & Fillers • Retailers • Brand Owners <p>There is no definition for category of persons, the original definition of Producer in Gazette No 40207 did not encompass all the players in the packaging value chain. It excluded fillers and retailers (own products).</p> <p>Europe are leading benchmark for EPR and they suggest “economic operators” in relation to packaging shall mean suppliers of packaging materials, packaging producers and converters, fillers and users (i.e. brand owners), importers, traders and distributors.</p>
<p>"packaging" means any material, container or wrapping, used for or in connection with the containment, transport, handling, protection, promotion, marketing or sale of any product or substance, but excludes-</p> <ul style="list-style-type: none"> • Shipping containers used solely for the transportation of any consumer commodity in bulk to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; • containers or wrapping contaminated with any hazardous material; • packaging made of timber and textile; • Packaging may be primary, containing the actual product or secondary typically containing products already packaged in primary packaging. 	<p>“...hazardous material...” Some containers might contain hazardous materials (household detergents and hygiene products etc.) but are still perfectly recyclable. Europe have encountered problem with this. We need clarification for our products.</p>
<p>"paper" means any substance made from wood pulp, rags, straw, or other fibrous material, used for writing, printing, or as a wrapping material;</p>	
<p>"processing" means the reuse, recycling, recovery, treatment or disposal activities undertaken in the management of waste;</p>	

<p>"the Act" means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).</p>	
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Registration of producers	PETCO Comments:
<p>2. (1) A category of person or industry contemplated in section 28(1) of the Act operating on the date of commencement of this Notice must register with the Minister within 12 months after the date of commencement of this Notice.</p>	<p>2.1) We request that only Head Office entities register as obliged companies. This presents many administrative efficiency savings and makes implementation of point 2.5 more practical in monitoring compliance.</p>
<p>(2) A category of person or industry contemplated in section 28(1) of the Act commencing business after the date of commencement of this Notice must register with the Minister prior to commencing business.</p>	
<p>(3) The registration contemplated in subsections (1) and (2) above must contain the following information as a minimum:</p>	
<p>(a) the name and where applicable, company registration number in terms of the Companies Act, 2008 (Act No. 71 of 2008) of the category of person or industry;</p>	
<p>(b) the registered business address of the category of person or industry;</p>	
<p>(c) the physical address where the business of the producer business is conducted or is to be conducted;</p>	
<p>(d) contact details; and</p>	
<p>(e) details of the category of person or industry responsible for submitting the industry waste management plan as contemplated in section 3 below</p>	
<p>(4) The Minister will issue the category of person or industry with a registration number after the registration in terms of subsections (1) and (2) above within 60 days from the date of receipt of the registration form or registration.</p>	
<p>(5) A category of person or industry must display the registration number on all trading documentation.</p>	

Preparation and submission of industry waste management plans for approval	PETCO Comments:
<p>3. (1) A category of person or industry contemplated in section 28(1) of the Act must-</p>	<p>3.1) The issue of registration requires some clarification - if a Product Responsibility Organisation (PRO) assumes responsibility for the development of a plan, will registration by the individual companies represented by that PRO need to take place before or after approval is granted for this plan? Can registration be</p>

	(explicitly or implicitly) included as an element of membership of the PRO - where it is assumed that such membership will be required to demonstrate compliance with the criteria of 70% representation within the sector?
(a) prepare and submit to the Minister for approval, an industry waste management plan, within 12 months after registering in terms of section 2 above;	3.1a) Register or submit a plan? Clarification required.
(b) ensure that the industry waste management plan submitted to the Minister for approval is representative of at least 70% of the category of person or industry registered with the Department; and	3.1b) PETCO is unable to comment on the 70% threshold until there is further clarity on such things as the definitions of Category of Persons, registration and submission requirements as well as what alternative actions there are if there are no Industry Plans are able to achieve at least 70% support.
(c) comply with the industry waste management plan after approval by the Minister.	
(2) A category of person or industry contemplated in section 28(1) of the Act must belong to an industry waste management plan.	

Content of an industry waste management plan	PETCO Comments:
4. An industry waste management plan, contemplated in section 3 must-	
(a) include all information set out in section 30(2) of the Act;	
(b) identify and list the category of person or industry contemplated in section 28(1) of the Act responsible for drafting the IWMP;	4.b) Does this mean that PETCO as PRO can register on behalf of our members as a Category of Persons?
(c) list all other stakeholders that have registered with the industry waste management plan;	4.c) What other “stakeholders” are referred to here? The only registration required above is for a categories of persons to register with the Minister.
(d) provide the annual projections over a five year period of the-	
(i) quantities and types of waste generated or imported that will become waste and will be managed through the industry waste management plan;	4.d) i) Language not clear. Presumably reference to “imports” means products that will become waste. In this regard reference must be to the three categories of goods defined in this notice.
(ii) quantities of waste that will be reused, recycled or recovered;	
(iii) quantities of waste that will be disposed of;	
(e) indicate how the waste hierarchy is going to be given effect to in the implementation of the industry waste management plan prioritizing reduce, re-use and recycling, then recovery;	
(f) provide measures to be implemented to give effect to best environmental management practice in respect of the waste management;	
(g) identify regulatory requirements that are applicable to waste transporters, storage facilities and processors;	

(h) identify the manner in which the waste transporters, storage facilities and processors who will receive the waste through the industry waste management plan will be identified and registered;	
(i) identify any incentives, that will be applied in order to encourage the end user to practice good waste management;	
(j) identify measures that will be applied to ensure compliance with the industry waste management plan;	
(k) set out the process to be followed in the procurement of the waste management companies to perform collection, transport, storage or processing;	
(l) identify the potential number of storage facilities that will be required and the manner of registration;	
(m) indicate the manner in which the waste collected and processed will be recorded;	
(n) indicate how legacy waste stockpiles, where applicable, will be managed;	
(o) provide estimations of the costs of implementing the industry waste management plan for the first five years and the manner in which the activities of the industry waste management plan will be financed.	4.o) This requirement should have a more definitive link to Gazette 40200 No 904 of 11 August 2016 (the Pricing Strategy) and also the provisions therein for conducting evidence-based assessment, Social Impact Studies, forming of Product steering committees etc.
(p) indicate how the industry waste management plan will raise national awareness regarding the management of the particular waste stream;	
(q) provide details on how the industry waste management plan will address issues of social responsibility in the industry;	
(r) provide details of the manner in which the previously disadvantaged individuals will be integrated in the implementation of the industry waste management plan;	
(s) provide details of the manner in which the informal sector will be integrated in the implementation of the industry waste management plan;	
(t) indicate how job creation, training and development will be integrated in the implementation of the industry waste management plan;	
(u) provide estimates of the number of jobs and businesses to be created along the value chain;	
(v) indicate the mechanisms that will be used to identify non-compliance by a category of person or industry to the industry waste management plan;	
(w) indicate the extent of auditing and reporting on the industry waste management plan envisaged;	
(y) identify key stakeholders and determine their roles and responsibilities in the implementation of the industry waste management plan;	
(z) provide an implementation plan for the implementation of the industry waste management plan for the first five years and outer years thereafter.	

Consultation process	PETCO Comments:
5. (1) A category of person or industry contemplated in section 28(1) of the Act must bring the contents of the proposed industry waste management plan to the attention of relevant organ of state, interested and affected persons and public by-	5.1) PETCO requests clarity and consultation on how the Industry Waste Management Plans will be adjudicated and approved. This has bearing on the consultation process. Without an understanding on what basis Plans will or won't be approved, organisations such as PETCO will be placed in the position of having to release information and details of our Plan which potential competitors may use to their advantage – in effect creating a situation where there is unfair competition. A competitor may also be able to copy some or all of our Plan and have their Plan accepted by DEA.
(a) publishing a notice in at least two newspapers distributed nationally stating the following:	
(i) details of the category of person or industry the industry waste management plan;	
(ii) details where copies of the industry waste management plan can be obtained;	
(iii) invitation to stakeholders to submit written representations on or objections within 30 days after publication of the newspaper advert;	
(iv) details where written representations or objections must be sent to;	
(b) distributing the draft industry waste management plan to all known stakeholders and invite the stakeholders to submit written representations on or objections to the category of person or industry responsible for preparing the industry waste management plan; and	
(c) using any other reasonable means to enable the persons (especially the existing informal sector) to submit written representations on or objections on the industry waste management plan.	
(2) The category of person or industry contemplated in section 28(1) of the Act responsible for preparing the industry waste management plan must give due consideration to all written representations on or objections received, and a copy of all comments and responses must be submitted to the Minister, together with the final draft of the industry waste management plan for approval.	

Consideration of industry waste management plan	PETCO Comments:
6. The Minister must comply with sections 32 and 33 of the Act when considering an industry waste management plan submitted to the Minister for approval in terms of section 3 above,	6) See notes above on adjudication of Industry Waste Management Plans.

Review of industry waste management plan	
7. The provisions of section 34 of the Act are applicable to the review of an industry waste management plan approved by the Minister in terms of this Notice.	

Offences	PETCO Comments:
8. A category of person or industry contemplated in section 28(1) of the Act commits an offence if that category of person or industry-	
<ul style="list-style-type: none"> (a) fails to register with the Department in terms of section 2; (b) fails to prepare and submit an industry waste management plan in terms of section 3; (c) contravenes or fails to comply with an industry waste plan approved by the Minister; (d) fails to belong to an industry waste management plan approved by the Minister; 	

Penalties	PETCO Comments:
9. A category of person or industry convicted of an offence in terms of section 8 above is liable to-	9) These penalties appear unreasonably severe in light of the lack of information on who is legally responsible. This appears to be excessive, especially as this is a new requirement.
(a) imprisonment for a period not exceeding 15 years; or	
(b) an appropriate fine; or	
(c) to both a fine and imprisonment.	