

Applicable Legislation

NBRBSA NBR	NBRBSA National Building Regulations
NEM:WA Landfill NN&S	NEM:WA National Norms and Standards for Disposal of Waste to Landfill (2013)
NEM:WA WCMR 2013	NEM:WA Waste Classification and Management Regulations, 2013
NEMA	National Environmental Management Act, 107 of 1998
NEM:WA	National Environmental Management: Waste Act
NWA	National Water Act
OHSA: ERW 1987	OHSA: Environmental regulations for workplaces (GNR.2281 of 16 October 1987)
NWA Gen Auth 2004	Revision of General Authorisations in terms of s. 39 of the National Water Act - GN 399 of 26 March 2004 (GG Notice 399)
WC: HCRWM Regs	Western Cape Health Care Risk Waste Management Regulations, 2013
WC:HCWM	Western Cape Health Care Waste Management Act 7 of 2007

Legal Requirements

Water

Water conservation

Any person who engages in a **water use** must not waste the water.

If the water has been taken from a water resource, any seepage, run-off or water containing waste which emanates from the water use must be returned to the water resource from which the water was taken, unless the relevant authority directs otherwise or the relevant authorisation provides otherwise (NWA s.22(2)(d)&(e)).

Legal References

NWA s. 22

Penalties

- Contravention of National Water Act
- NWA s. 151
- NWA s. 152
- NWA s. 153
- NWA s. 154
- NWA s. 155

Applies to:

Plates Area:
Platemaking

All areas of operations:
Use of sprinkler system for fire fighting

Clinic:
Washing up/ basin use

Garden:
Watering garden

Storage of Water

If an organization:

- stores less than 10 000 cubic metres of water on its property it does not require a water use licence because this qualifies as a **permissible use**;
- stores water in accordance with the requirements of the general authorisation **GN 538 of 2 September 2016** it does not need a water use licence;
- stores between 10 000 - 50 000 cubic metres of water on its property it must register its water storage;
- stores more than 50 000 cubic metres of water on its property it will require a **water use licence**.

Generally authorised storage

General authorisation (GN 538 of 2 September 2016) authorises any person to store up to 50 000 cubic metres of water on land or property which that person lawfully owns or occupies, subject to the conditions in Tables 1.3 (a) and (b) of that general authorisation. Those conditions are that:

- the storage of the water does not impact on a water resource or any other person's water use, property or land;
- the storage of the water is not excessive in relation to the capacity of the water resource and the needs of other users;
- the storage of the water is not detrimental to the health and safety of the public in the vicinity of the activity; and
- the water is stored in accordance with the requirements set out in Table 1.3 of the general authorisation (GN 399 of 26 March 2004).

Legal References

NWA s. 21

NWA s. 22

NWA schedule 1

NWA Gen Auth 2004 notice 1

Penalties

- Contravention of National Water Act
- NWA s. 151
- NWA s. 152
- NWA s. 153
- NWA s. 154
- NWA s. 155

Note:

- information regarding the drainage regions referred to in Tables 1.1, 1.2, 1.3 (a) and (b) can be obtained from the Department, upon written request;
- in this context "storage" means storing water not containing waste, in a watercourse or off-channel storage;
- the general authorisation does not apply to:
 - any lawful storage within a government water control area, a government water work, a catchment control area or an irrigation district as defined in the Water Act, 1956 (Act No. 54 of 1956) prior to its repeal;
 - a person who does not have lawful access to any waterwork or water resource;
 - wetlands, the dewatering of mines or storage of water underground;
 - an exclusion zone of 750 metres inland from the high water mark; and
 - an area where the limits of taking and storage of water were reduced in terms of section 9B (1C) of the Water Act, 1956 (Act No. 36 of 1956).

**Applies to:**

Garden:
Watering garden

Registration of water use

If an organization wishes to store more than 10 000 cubic metres of water on a property under the authority of the general authorisation, it must submit a registration form to the responsible authority (obtainable from <http://www.dwaf.gov.za>) and any other further information requested in writing by the responsible authority .

Precautionary practices

The organization:

- must ensure that any dam complies with the requirements of Chapter 12 of the National Water Act;
- must follow acceptable construction, maintenance and operational practices to ensure the consistent, effective and safe performance of the taking and storage of water;
- must take reasonable measures to ensure that the movement of aquatic species is not prevented by the storage of water in a watercourse, including those species that normally migrate through the watercourse;
- must provide outlet pipes at the lowest practical level on all storage structures in order to allow water to be release to maintain the Reserve in the watercourse.

Record-keeping and disclosure of information

The organization :

- must establish a monitoring programmes to measure the quantity of water stored, which includes recording the quantity of water stored as at the last day of each month;
- at the written request of the responsible authority:
 - must establish additional monitoring programmes; and
 - must appoint a competent person to assess the water use measurements made in terms of the authorisation and to submit the findings to the responsible authority for evaluation;
- must, for at least five years, keep a written record of all taking and storage of surface or groundwater and make this information available upon written request to the responsible authority;
- allow a person authorised in terms of section 125 of the National Water Act to inspect any property or land in respect of which a water use has been authorised in terms of this general authorisation.

Water use licence

The organization will require a water use licence to abstract any surface water in circumstances that do not constitute a permissible use or that are not authorised by the general authorisation (for example to abstracts more than 50,000 cubic metres of water).

Resource Use

Conserving fossil fuel energy

Energy conservation involves preventing energy being wasted, using energy more efficiently (e.g. by installing better insulation to prevent heat escaping) and as far as possible using energy from renewable rather than non-renewable sources such as fossil fuels (i.e. coal, oil and gas). Energy conservation usually makes business sense because it reduces costs.

The generation of energy (particularly from fossil fuels) usually involves environmental degradation, pollution, the emission of greenhouse gasses which cause climate change, and generates waste. This means that reducing the consumption of energy from fossil fuels (e.g. the burning of coal, oil, diesel, petrol or gas, or the use of electricity generated from these fuels) prevents or reduces environmental degradation and pollution. Consequently any organization that uses energy generated by burning fossil fuels:

- must take all reasonable measures to reduce the consumption of energy from non-renewable (fossil fuel) sources; and
- must ensure that new building and extensions to new buildings comply with the energy efficiency standards in Part XA of the Building Regulations made under the National Building Regulations and Buildings Standards Act 1977.

The obligation to minimise the use of energy from fossil fuel sources is a consequence of the legal duties to take reasonable measures:

- to avoid and minimise environmental degradation and pollution (NEMA s.28 - duty of care);
- to avoid and minimise air pollution (found in some provincial legislation and municipal bylaws); and
- to take all reasonable measures to avoid the generation of waste (NEM:WA s.16(1) (a)).

Legal References

NEMWA s. 16

NBR Reg. XA1

NBR Reg. XA2

NBR Reg. XA3

Penalties

- Contravention of the National Building Regulations
- Failure to comply with general waste management duty.
 - NEMA s. 34
 - NEMA s. 34C
 - NEMA s. 34D
 - NEMWA s. 67
 - NEMWA s. 68
 - NEMA Schedule 3

Applies to:

All areas of operations:
Use of electrical equipment

Depletion of fossil fuels

The use of fossil fuels such as coal, oil and gas is not unlawful although municipalities may impose restrictions on the burning of such fuels in certain areas. Reasonable measures should be taken to use them as sparingly as possible for various reasons, including:

- the burning of fossil fuels is the major contributor to climate change;
- the extraction of fossil fuels usually causes pollution and degradation of the environment and the NEMA duty of care requires the taking of reasonable measures to avoid and minimise pollution and environmental degradation;
- since fossil fuels are not renewable (except on time-scales of millions of years) depleting fossil fuels is usually to the detriment of future generations;
- the extraction and use of fossil fuels generates waste and the NEM:WA general waste management duty requires the taking of reasonable measures to avoid and minimise the generation of waste.

Legal References

Penalties

- Failure to comply with general waste management duty.
 - NEMA s. 34
 - NEMA s. 34C
 - NEMA s. 34D
 - NEMWA s. 67
 - NEMWA s. 68
 - NEMA Schedule 3

Applies to:

All areas of operations:
Use of electrical equipment

Depletion of natural resources

An organization may use any natural resources that it acquires legally. In some circumstances an authorisation may be required to take resources from the environment lawfully (e.g. a water use licence may be required to take water from a river for certain purposes).

However if the rate at which humans take materials from the environment exceed the rate at which the environment creates those materials then the stock (total amount) of those materials will be depleted. In some cases this may also degrade or destroy the ability of natural systems to produce more materials (e.g. once a forest has been clear-cut it may never grow back).

In addition to depleting natural stocks of natural resources, the wasteful use of natural resources typically also:

- causes environmental degradation;
- makes it necessary to harvest/ mine more resources which uses energy and often causes environmental harm;
- generates waste and pollution; and
- depletes landfill space.

Legal References

Penalties

- Failure to comply with general waste management duty.
- NEMA s. 34
- NEMA s. 34C
- NEMA s. 34D
- NEMWA s. 67
- NEMWA s. 68
- NEMA Schedule 3
- Offence of creating a risk of, or causing, significant pollution/ degradation of the environment
- NEMA s. 49A
- NEMA s. 49B

Applies to:

Admin offices:
Administration: deliveries

Admin offices:
Administrative
correspondence

Production offices:
Administrative
correspondence

Waste Management

Waste: duty to classify waste

Different legal obligations apply to different kinds of waste. Consequently an organization (as a holder of waste) cannot comply with its general waste management duties unless it has determined what kind of waste is under its control. For example an organization should determine whether each type of waste is:

- recoverable
- re-usable
- recyclable
- hazardous waste (and whether or not it contains hazardous substances or hazardous chemical substances).

The holder of waste must also identify the risks that each type of waste may pose to the environment and to human health. A failure to do so would contravene the general management duties in NEMWA s.16.

Waste Classification

The general rule is that all waste generators must ensure that the waste they generate is classified in accordance with SANS 10234 within 180 days of it being generated (Waste Classification and Management Regulations, 2013, Reg 4).

Generators of hazardous waste must ensure that a safety data sheet for the hazardous waste is prepared in accordance with SANS 10234 (Reg 5).

However certain wastes (listed in Annexure 1 to the Waste Classification and Management Regulations, 2013) do not need to be classified in this way.

Wastes that do not require classification

The obligation to classify waste in accordance with SANS 10234 does not apply to the following types of waste:

General waste

- Domestic waste;
- Business waste not containing hazardous waste or hazardous chemicals;
- Non-infectious animal carcasses;
- Garden waste;
- Waste packaging;
- Waste tyres;
- Building and demolition waste not containing hazardous waste or hazardous chemicals; and
- Excavated earth material not containing hazardous waste or hazardous chemicals.

Hazardous waste

- Waste Products:
- Asbestos Waste;
- PCB waste or PCB containing waste (> 50 mg/kg or 50 ppm); and
- Expired, spoilt or unusable hazardous products.

Mixed Waste:

- General waste, excluding domestic waste, which contains hazardous waste or hazardous chemicals; and
- Mixed, hazardous chemical wastes from analytical laboratories and laboratories from academic institutions in containers less than 100 litres.

Other

- Health Care Risk Waste (HCRW).

Record Keeping and Waste Manifest System

Waste generators must keep accurate and up to date records of the management of the waste they generate. (Reg 10)

Every holder of waste must be in possession of a waste manifest document containing

Legal References

NEMWA s. 16

NEM:WA WCM Reg 6(1)

NEMA: WA Waste Classification and Management Regulations, 2013 s. 1

NEMA: WA Waste Classification and Management Regulations, 2013 s. 4

NEMA: WA Waste Classification and Management Regulations, 2013 s. 5

NEMA: WA Waste Classification and Management Regulations, 2013 s. 10

NEMA: WA Waste Classification and Management Regulations, 2013 s. 11

NEMA: WA Waste Classification and Management Regulations, 2013 Annexure 1

NEMA: WA Waste Classification and Management Regulations, 2013 Annexure 2

Penalties

- Failure to comply with the General Safety Regulations
 - GSR Reg. 14
-



Applies to:

Admin offices:
Administration: deliveries

Admin offices:
Administrative
correspondence

Admin offices:
Drinking water

Kitchen/Canteen:
Meal preparation

Clinic:
Operation of clinic

Production area:
Printing

Admin offices:
Use of computers and it
equipment

Production area:
Wrapping products

How to determine if waste is "general waste"

Why it is important to distinguish between general waste and hazardous waste

Once you have established that a substance, material or object is a waste (as defined) you must determine whether it is defined as a "general waste" or a "hazardous waste" because the obligations that apply to hazardous waste are stricter than those that apply to general waste.

What is general waste?

General waste is defined in Category B of Schedule 3 of NEM:WA as follows:

"general waste" means waste that does not pose an immediate hazard or threat to health or to the environment, and includes—

1. domestic waste;
2. building and demolition waste;
3. business waste;
4. inert waste; or
5. any waste classified as non-hazardous waste in terms of the regulations made under section 69,

and includes non-hazardous substances, materials or objects within business, domestic, inert, building and demolition wastes as outlined below:

Category B of Schedule 3 then defines and sets out various types of business waste, building and demolition waste, domestic waste, and inert waste that are considered to be general wastes (NEM:WA, Schedule 3, Category B).

The Waste Classification and Management Regulations (GNR 634 of 23 August 2013) were made under section 69 of NEM:WA and consequently "general waste" includes any waste which has been classified as non-hazardous waste in terms of those regulations.

The Waste Classification and Management Regulations provide that all waste other than wastes listed in Annexure 1 of the regulations must be classified using the methodology in SANS 10234 with effect from prescribed dates. Although this creates the possibility that a type of waste that is listed in Category A of Schedule 3 as a hazardous waste could be classified in terms of SANS 10234 as non-hazardous, according to the Department's Implementation Guideline, the WCM Regulations "cannot be used to re-classify the waste from a source which is listed in only one category". Under those circumstances it should be regulated as general waste but the Department of Environmental Affairs may require the holder to apply for that specific waste stream to be exempted from Category A (hazardous waste). See **Classification of waste** for more information regarding the classification of waste.

Steps to determine whether or not a particular substance / effluent/ object is defined as "general waste"

1. Decide whether or not the substance, material or object in question falls within the definition of "waste" in the National Environmental Management: Waste Act 59 of 2008 (NEM:WA). If you are unsure see "What is defined as "waste"". (If it does not fall within the definition of "waste" it is not "general waste".)
2. Check if it is listed in Category B of Schedule 3 of NEM:WA as general waste. (If it is listed it is general waste).



Legal References

NEMWA Schedule 3

NEM:WA WCM Regs
Annexure 1



Penalties

- Not Applicable



Applies to:

Admin offices:
Administration: deliveries

Admin offices:
Administrative
correspondence

Admin offices:
Drinking water

Kitchen/Canteen:
Meal preparation

Production area:
Printing

Production area:
Wrapping products

Schedule 3, category B states that:

"general waste" means waste that does not pose an immediate hazard or threat to health or to the environment, and includes—

(a) domestic waste;

(b) building and demolition waste;

(c) business waste;

(d) inert waste; or

(e) any waste classified as non-hazardous waste in terms of the regulations made under section 69, and includes non-hazardous substances, materials or objects within business, domestic, inert, building and demolition wastes as outlined below: ..."

Category B of Schedule 3 then defines and list various types of:

- business waste
- building and demolition waste
- domestic waste, and
- inert waste (for more detail see separate discussions of these types of waste).

In order to determine whether waste falls under paragraph (e) of the above definition, it is necessary to check Annexure 1 of the Waste Classification and Management Regulations (GNR 634 of 23 August 2013) made under section 69 of NEM:WA. Annexure 1 lists the following as "general waste" that does need to be specifically classified and assessed:

(i) domestic waste;

(ii) business waste not containing hazardous waste or hazardous chemicals;

(iii) non-infectious animal carcasses;

(iv) garden waste;

(v) waste packaging;

(vi) waste tyres;

(vii) building and demolition waste not containing hazardous waste or hazardous chemicals; and

(viii) excavated earth material not containing hazardous waste or hazardous chemicals.

Hazardous waste - meaning

What is hazardous waste?

Hazardous waste is defined in Category A of Schedule 3 of NEM:WA as follows:

"hazardous waste" means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment and includes hazardous substances, materials or objects within business waste, residue deposits and residue stockpiles as outlined below:

Category A of Schedule 3 also defines and sets out types of business waste, residue deposits and residue stockpiles which are considered to be hazardous waste.

Note:

(1) the definitions of residue deposits and residue stockpiles were inserted into section 1 of NEM:WA by Act 25 of 2014, with effect from 2 September 2014. However, with effect from 2 June 2014, Act 26 of 2014 deleted those definitions (i.e. before they had been inserted) and inserted new versions of these definitions into Schedule 3.

(2) The National Environmental Management Act 107 of 1998 (NEMA) contains slightly different definitions of residue deposits and residue stockpiles.



Legal References

NEMWA Schedule 3



Penalties

- Not Applicable



Applies to:

Admin offices:
Use of computers and it
equipment

Duties of holders of waste

Holder of waste must take reasonable measures

A person who generates or accumulates waste is a "holder of waste" and must take all reasonable measures necessary to comply with:

- the **general waste management duty** (NEM:WA s.16);
- the **NEMA duty of care** (NEMA s.28), and
- the **NWA duty of care** (NWA s.19).



Legal References

NWA s. 19

NEMA s. 28

NEMWA s. 16

Characterizing waste

A organization cannot comply with its general waste management duties unless it has identified the characteristics of the waste on site, including the risks the waste may pose to the environment and to human health. For example an organization should determine whether each type of waste is:

1. recoverable;
2. re-usable;
3. recyclable;
4. general waste; or
5. hazardous waste; and
6. whether or not it contains hazardous substances or hazardous chemical substances.

A failure to do so would contravene the general waste management duties in NEM:WA s. 16.

Classifying waste

Holders of waste must also classify their waste - see **Waste: duty to classify waste**.

Penalties

- Contravention of National Water Act
 - NWA s. 151
 - NWA s. 152
 - NWA s. 153
 - NWA s. 154
 - NWA s. 155
- Failure to comply with general waste management duty.
 - NEMA s. 34
 - NEMA s. 34C
 - NEMA s. 34D
 - NEMWA s. 67
 - NEMWA s. 68
 - NEMA Schedule 3
- Offence of creating a risk of, or causing, significant pollution/ degradation of the environment
 - NEMA s. 49A
 - NEMA s. 49B

Applies to:

Admin offices:
Administration: deliveries

Admin offices:
Administrative
correspondence

Admin offices:
Drinking water

Kitchen/Canteen:
Meal preparation

Production area:
Printing

Production area:
Wrapping products

General waste management duty

Every **holder of waste** has a general duty to take all reasonable measures within its powers:

- to avoid the generation of waste;
- to minimise the toxicity of waste generated;
- to reduce, reuse, recycle and recover waste;
- to ensure that the waste disposed of is treated and disposed of in an environmentally sound manner;
- to manage the waste in such a manner that it does not endanger the environment or cause a nuisance through noise, odour or visual impacts;
- to prevent any employee or person under its supervision from contravening NEM:WA; and
- to prevent the waste from being used for an unauthorised purpose.

Legal References

NEMWA s. 16

Penalties

- Failure to comply with general waste management duty.
 - NEMA s. 34
 - NEMA s. 34C
 - NEMA s. 34D
 - NEMWA s. 67
 - NEMWA s. 68
 - NEMA Schedule 3



Applies to:

Admin offices:
Administration: deliveries

Admin offices:
Administrative
correspondence

Admin offices:
Drinking water

Admin offices:
Managing waste
contractors

Kitchen/Canteen:
Meal preparation

Production area:
Printing

Production area:
Wrapping products

Waste: life cycle responsibility

Principle of life-cycle responsibility

One of the national environmental management principles is that responsibility for the environmental health and safety consequences of a policy, program, project, product, process, service or activity exists throughout its life cycle [*National Environmental Management Act* ("NEMA") s. 2]. This principle of life-cycle or "cradle-to-grave" responsibility is applied in several different ways, and producers and traders of goods have both direct and indirect obligations relating to goods at the end of their useful lifespan.

Products that generate hazardous waste

First, any person who sells a product that may be used by the public, and that is likely to result in the generation of hazardous waste, is required to take reasonable steps to inform the public of the impact of that waste on health and the environment.

Industry Waste Management Plans

The Environment Minister may compel commercial or industrial sectors to produce waste management plans.

Extended Producer Responsibility

The *National Environmental Management: Waste Act* ("NEM:WA") makes provision for the Environment Minister to identify a product or class of products to which extended producer responsibility will apply. Extended producer responsibility ("EPR") refers to the producer's responsibility for a product after it has been sold to a consumer.

Consumer Protection Act

"Take-back mechanisms are provided for in section 59 of the Consumer Protection Act 68 of 2008 ("CPA"). The Act imposes take-back obligations on producers and traders in respect of goods, or any components, remnants, or packaging of any goods, which may not be disposed or deposited into a common waste collection system.

Any person who, in the ordinary course of business, supplies any of these goods to consumers is obliged to accept the return of any goods, components, remnants, or packaging without charging the consumer, and irrespective of whether that person supplied that particular object to that particular consumer. For example, a business that sells batteries or light bulbs must accept any of those batteries or light bulbs for disposal.

Any person who in the ordinary course of business produces, imports or distributes these goods as part of the supply chain is also obliged to accept the returns of the goods, components, remnants or packaging from the supplier. For example, any person in the supply chain that enables batteries or light bulbs to reach the retailing outlets must accept the return of those goods, or their components or packaging.

The CPA also provides that where any regulation or waste management plan has been approved under NEM:WA, the consumer may also choose to dispose of that good, or its components, remnants or packaging to a collection facility provided for in the regulation or industry waste management plan (GNR 149 of 13 February 2009 Government Gazette 31901).



Legal References



Penalties



Applies to:

Production area:
Manufacture of packaging

Hazardous waste : generation

A person who generates **hazardous waste** must comply with the general obligations that apply to all generators of waste (see General Waste Management Duty). In order to identify all relevant legal requirements the hazardous **waste generator** must determine whether or not the hazardous waste is:

1. a Group I, II, or III hazardous substance; and/or

2. a hazardous chemical substance.

As a **waste generator**, the organization must:

- keep accurate and up to date records of the management of the waste that they generate showing the waste classification for each waste, the quantity of each waste that is generated, re-used, recycled, recovered, treated or disposed of each month, and by whom the waste was managed;
- keep those records for at least 5 years and make them available to the Department of Environmental Affairs on request;
- prepare a safety data sheet (SDS) for any hazardous waste that it generates (other than health care risk waste);
- complete a waste manifest document for each consignment of waste that is transported to a **waste manager**;
- ensure that the waste manifest document contains the information specified in Annexure 2, item 2(a) of the Waste Classification and Management Regulations (WCMR); and
- ensure that their waste is assessed in accordance with the Norms and Standards for Assessment of Waste for Landfill Disposal prior to the disposal of the waste to landfill;
- ensure that any disposal of that waste to landfill is done in accordance with the Norms and Standards for Disposal of Waste to Landfill.

Preparation of Safety Data Sheets

- Every SDS must be prepared in accordance with **SANS 10234**.
- In the case of asbestos waste, waste containing more than 50mg/kg or 50 ppm of PCBs, or expired, spoilt or unusable hazardous products, the SDS must be generated for the product that the waste originates from.
- In the case of certain mixed wastes the SDS must reflect the details of the specific hazardous wastes or chemicals in the waste. These mixed wastes are: general waste (excluding domestic waste) which contains hazardous waste or hazardous chemicals; and mixed hazardous chemical wastes from analytical laboratories and laboratories from academic institutions, in containers less than 100 litres.

Legal References

NEMA: WA Waste Classification and Management Regulations, 2013 s. 5

NEMA: WA Waste Classification and Management Regulations, 2013 s. 8

NEMA: WA Waste Classification and Management Regulations, 2013 s. 10

NEMA: WA Waste Classification and Management Regulations, 2013 s. 11

NEMA: WA Waste Classification and Management Regulations, 2013 Annexure 1

NEMA: WA Waste Classification and Management Regulations, 2013 Annexure 2

Penalties

- Contravention of the Waste Classification and Management Regulations
- Failure to comply with general waste management duty.
 - NEMA s. 34
 - NEMA s. 34C
 - NEMA s. 34D
 - NEMWA s. 67
 - NEMWA s. 68
 - NEMA Schedule 3
- Failure to comply with NEM:WA (Priority Waste)
 - NEMWA s. 67
 - NEMWA s. 68

Applies to:

Admin offices:
Use of computers and it equipment

Hazardous waste : waste manifests

Tracking hazardous waste

The Waste Classification and Management Regulations (GNR 634 of 23 August 2013)(WCM Regulations), published in terms of the National Environmental Management: Waste Act 59 of 2008 (NEM:WA) establishes a management system for hazardous waste consisting of:

- waste manifests;
- safety data sheets;
- container labeling; and
- detailed storage records.

The WCM Regulations provide that:

- all generators of hazardous wastes must complete a waste manifest document that accompanies the waste until a manager at the point of disposal issues a receipt for the waste on the manifest;
- a safety data sheet (in accordance with SANS 10234) must accompany all hazardous wastes, including contaminated general waste; and
- containers that store hazardous wastes must be labelled and storage facilities must keep detailed records.

Provincial legislation in Gauteng and the Western Cape impose additional requirements apply in respect of the transport and storage of hazardous health care waste/ health care risk waste in those provinces.

Duties of holders of waste with regard to waste manifests

All holders of hazardous waste (whether pre-classified or classified as hazardous in terms of SANS 10234) must be in possession of a waste manifest document containing the information specified in Annexure 2 of the WCM Regulations. The waste manifest document must accompany the hazardous waste while it is in transit.

Duties of generators / consignors of waste with regard to waste manifests

Waste generators (meaning persons whose actions, production processes or activities, including waste management activities, results in the generation of waste):

- must fill in the prescribed information to be provided by generators/ consignors of hazardous waste in the waste manifest document (see *Waste Manifest Checklist*);
- must ensure that the waste transporter fill in the name, address and telephone number of the transporter and signs the declaration acknowledging receipt of the waste before the waste leaves the generator's premises;
- must retain copies, or be able to access copies/records of the waste manifest documentation for at least 5 years; and
- must make waste manifest documentation available to the Department of Environmental Affairs (DEA) upon request.

Duties of transporters of waste with regard to waste manifests

Waste transporters (meaning persons who convey or transfer waste between waste generators and waste management facilities, or between waste management facilities):

- must not accept waste without the waste manifest document;
- must fill in their name, address and telephone number of the transporter and sign the declaration acknowledging receipt of the waste before the waste leaves the generator's premises;
- must provide the information to the generator before the waste is transported from the premises of the generator;
- must provide the information to the waste manager at the time of delivery of the waste to the facility for the waste management activity (for example, the facility where it will be recycled or treated);
- must retain copies, or be able to access copies/records of the waste manifest documentation for at least 5 years; and
- must make waste manifest documentation available to the DEA upon request.

Duties of managers/ consignees of waste with regard to waste manifests

Waste managers or consignees of hazardous waste (meaning persons who reuse, recycle, recover, treat or dispose of waste):

- must not accept the waste unless the waste manifest document accompanies the waste;
- must fill in the information to be supplied by the waste manager or consignee in the waste manifest (see *Waste Manifest Checklist*) and confirm that the waste load has been accepted for final management;
- must retain copies, or be able to access copies/records, of the waste manifest documentation for at least 5 years; and
- must make waste manifest documentation available to the DEA upon request.

Where generators of waste classified or pre-classified as hazardous are also the managers of the waste, they need not hold waste manifest documentation for that waste. In other words, where the generator of the waste also reuses, recycles, recovers, treats or disposes of waste, a waste manifest document need not be held in respect of that waste. If a portion of waste is, for example, recycled by the generator, and a portion is treated and disposed of by a waste service provider, a waste manifest document must be held in respect of the waste that is managed by the waste service provider.



Legal References

NEM:WA WCM Reg 11(1)
NEM:WA WCM Reg 11(2)
NEM:WA WCM Reg 11(3)
NEM:WA WCM Reg 11(4)
NEM:WA WCM Reg 11(5)
NEM:WA WCM Reg 11(6)
NEM:WA WCM Reg 11(7)
NEM:WA WCM Reg 11(8)



Penalties

- Contravention of the Waste Classification and Management Regulations



Applies to:

Clinic:
Operation of clinic

Disposal of waste to landfill

Duty to minimise disposal of waste to landfill

An organisation or person must take all reasonable measures within its power:

- to avoid the generation of waste;
- to reduce the amount and toxicity of any waste that is generated; and

- to avoid disposing of waste to landfill by re-using, recycling or recovering as much waste as possible (NEM:WA s.16).

If there is no reasonable alternative to disposing of waste to landfill, the generator must ensure that the waste is disposed of at a landfill that is authorised to accept that type of waste (i.e. is the correct class of landfill). The disposal of certain types of waste to landfill is being phased out so it is important to check if the disposal of the waste to landfill is prohibited.

How to determine where waste may be disposed of

According to the waste management hierarchy, treating and disposing of waste is a last resort that must only be used if the waste cannot be re-used, or recycled. Waste generators and waste managers need to know which class of landfill they can use for the disposal of their waste.

The treatment and disposal of waste is governed by:

- the Waste classification and management regulations (WCM Regulations) published in terms of the National Environmental Management: Waste Act 59 of 2008 (NEM:WA);
- the Norms and standards for the assessment of waste for landfill disposal (the Waste Assessment Standards); and
- the Norms and standards for the disposal of waste to landfill (the Landfill Standards).

The basic steps for determining what landfill may accept a specific waste are as follows:

- **classify the waste** in accordance with the methodology prescribed in the WCM Regulations unless the class of waste is obvious and it falls within one of the "pre-classified" types of waste listed in Annexure 1 to the WCM Regulation;
- **assess the waste** in accordance with the Waste Assessment Standards;
- use the tables set out in the Landfill Standards (which are summarised in tables 1 to 4) to **determine the appropriate class of landfill** for that type of waste;
- **check that the disposal of the particular waste to landfill is not prohibited** by consulting the table of prohibitions and restrictions in regulation 5 of the National Norms and Standards for the disposal of waste to landfill.

Note: the Environment Minister has the power to direct that a different course be followed to ensure a better environmental outcome, or in response to an emergency so as to protect human health, property or the environment.

Legal References

NEMWA s. 16

NEM:WA WCM Reg 6(1)

NEMA: WA Waste Classification and Management Regulations, 2013 s. 8

NEMA: WA Waste Classification and Management Regulations, 2013 Annexure 1

Penalties

- Contravention of the Waste Classification and Management Regulations
- Waste: unauthorised disposal (NEM:WA)
- NEMWA s. 67
- NEMWA s. 68

Applies to:

Production area:
Illumination of work area

Clinic:
Operation of clinic

Admin offices:
Use of computers and it equipment

Wastes that may not be disposed of to landfill

The National norms and standards for disposal of waste to landfill (GNR.636 of 23 August 2013) prohibit the disposal of various types of waste to landfill, either with effect from the date on which those norms and standards ("the Landfill NN&S") came into force, or on the anniversary of that date (i.e. a certain number of years from the date of commencement of the Landfill NN&S).

Waste that may not be disposed of to landfill after 23 August 2013

- Waste which, in the conditions of a landfill, is explosive, corrosive, oxidizing (according to SANS 10234 or SANS 10228). [s.5(1)(a)]
- Waste with a pH value of <6 or >12. [s.5(1)(b)]
- Flammable waste with a closed cup flashpoint lower than 61° Celsius. [s.5(1)(c)]
- Reactive waste that may react with water, air, acids or components of the waste, or that could generate unacceptable amounts of toxic gases within the landfill. [s.5(1)(d)]
- Waste compressed gases (according to SANS 10234 or SANS 10228). [s.5(1)(e)]
- Untreated Healthcare Risk Waste (HCRW). [s. 5(1)(f)]
- Lead acid batteries. [s.5(1)(h)]
- Waste tyres: Whole. [s.5(1)(o)]
- infectious animal carcasses and animal waste [s.5(1)(u)]

Waste that may not be disposed of to landfill after 23 August 2016 (i.e. 3 years after commencement of Landfill NN&S))

- Hazardous Waste Electric and Electronic Equipment (WEEE) – Lamps. [s. 5(1)(m)]

Waste that may not be disposed of to landfill after 23 August 2017 (i.e. 4 years)

Legal References

NEMA: WA National Norms & Standards for Disposal of Waste to Landfill Reg. 5

Penalties

- Waste: unauthorised disposal (NEM:WA)
- NEMWA s. 67
- NEMWA s. 68

Applies to:

Admin offices:
Use of computers and it equipment

- waste pesticides not listed under the Stockholm Convention [s.5(1)(g)(iii)]
- Reusable, recoverable or recyclable used lubricating mineral oils, as well as oil filters, but excluding other oil containing wastes [s.5(1)(j)]
- Reusable, recoverable or recyclable used lubricating mineral oils, as well as oil filters, but excluding other oil containing wastes [s.5(1)(f)]
- Hazardous waste with a calorific value of >25 MJ/kg. [s. 5(1)(r)(i)]

Waste that may not be disposed of to landfill after 23 August 2018 (i.e. 5 years)

- Reusable, recoverable or recyclable used or spent solvents [s.5(1)(k)]
- PCB containing wastes (>50 mg/kg or 50 ppm) [s.5(1)(l)]
- Waste tyres: Quartered [s.5(1)(p)]
- disposal of Type 1 Waste that has been treated, with waste listed in paragraph (2)(a) of Annexure 1 to the Waste Classification and Management Regulations, 2013 [s.5(2)(a)(i)];
- disposal of waste classified as hazardous in terms of regulation 4(1), or waste listed in paragraph (2)(b) Annexure 1 to the Waste Classification and Management Regulations, 2013 with waste listed in paragraph (2) (a) of Annexure 1 to those Regulations; [s.5(2)(a)(iii)]
- disposal of Type 4 Waste with any waste other than Type 4, unless part of treatment. [s.5(2)(a)(iii)].

At least 25% of garden waste must be diverted from landfill (calculated from the baseline at a particular landfill of separated garden waste). [s.5(1)(t)(i)]

Waste that may not be disposed of to landfill after 23 August 2019 (i.e. 6 years)

- Liquid waste— i.e. waste
 - which has an angle of repose of less than 5 degrees, or becomes free flowing at or below 60°C or when it is transported, or is not generally capable of being picked up by a spade or shovel; [s. 5(1)(q)(i)] or
 - with a moisture content of >40% or that liberates moisture under pressure in landfill conditions, and which has not been stabilised by treatment. [s.5(1)(q)(iii)]
- Hazardous waste with a calorific value of >20 MJ/kg. [s. 5(1)(r)(iii)]

Waste that may not be disposed of to landfill after 23 August 2021 (8 years)

- Persistent Organic Pollutant (POPs) pesticides listed under the Stockholm Convention. [s.5(1)(g)(i)]
- batteries other than lead acid batteries [s. 5(1)(i)]
- Hazardous Waste Electric and Electronic Equipment (WEEE) – Other. [s.5(1)(n)]
- Brine or waste with a high salt content (TDS > 5%), and a leachable concentration for TDS of more than 100 000 mg/l. [s.(1)(s)]
- Macro-encapsulation of waste, meaning the isolation (or long-term storage) of waste through containment in containers within a sealed or reinforced cell in a specifically prepared and engineered area within permitted hazardous waste landfill, [s.5(2)(b)]

Waste that may not be disposed of to landfill after 23 August 2023 (10 years)

At least 50% of garden waste must be diverted from landfill (calculated from the baseline at a particular landfill of separated garden waste). [s.5(1)(t)(iii)]

Waste that may not be disposed of to landfill after 23 August 2025 (12 years)

- Hazardous waste with a calorific value of >10 MJ/kg [s.5(1)(r)(iii)]

Waste that may not be disposed of to landfill after 23 August 2028 (15 years)

- Hazardous waste with a calorific value of >6% TOC. [s. 5(1)(r)(iv)]

Waste: Prescribed content of a Waste Manifest Document

Information to be included in Waste Manifests

Waste manifest documents for hazardous waste (including health care risk waste) must comply with the requirements prescribed in Annexure 2 of the NEMA:WA Waste Classification and Management Regulations, 2013. The waste manifests for each consignment of hazardous waste must include the following information.

Information to be supplied by the Waste Generator (Consignor)

- Unique consignment identification number;
- SAWIS Registration number in terms of the National Waste Information Regulations, 2012;
- Contact details (contact person, physical & postal address, phone, fax, email);

Legal References

NEMA: WA Waste Classification and Management Regulations, 2013 Annexure 2

Penalties

- Contact number in case of an incident or after hours;
- Physical address of the site where the waste was generated (if different from (iii));
- Origin/source of the waste (process or activity);
- Classification of the waste and Safety Data Sheet;
- Quantity of waste by volume (m3) or weight (tons);
- Date of collection/dispatch;
- Intended receiver (waste manager); and
- A declaration to the effect that the "content of the consignment is fully and accurately described, classified, packed, marked and labelled, and in all respects in proper condition for transportation in accordance with the applicable laws and regulations".



Applies to:

Clinic:
Operation of clinic

Admin offices:
Use of computers and it
equipment

Information to be supplied by the Waste Transporter

- Name of transporter;
- Address and telephone number of transporter; and
- Declaration acknowledging receipt of the waste.

Information to be supplied by the Waste Manager (Consignee)

- Name, address and contact details;
- Receiving waste management facility name, address and contact details (where different);
- Waste management facility licence number;
- Date of receipt;
- Quantity of waste received by weight (tons), and volume (m3) if applicable;
- Type of waste management applied (re-use, recycling, recovery, treatment, disposal);
- Any discrepancies in information between the different holders of the waste (related to waste quantity, type, classification, physical and chemical properties);
- Waste management reporting description and code in terms of the National Waste Information Regulations, 2012;
- Details on any waste diverted to another waste management facility (including details of the facility); and
- Certification and declaration of receipt and final management of the waste.

Overview of the regulation of health care waste

Health care waste is regulated by national, provincial and municipal legislation

The regulation of health care waste is complex because it is regulated simultaneously by a variety of national, provincial and municipal legislation and policies. For example health care waste is regulated:

- under the National Environmental Management: Waste Act 59 of 2008 (NEM:WA);
- under the Regulations for the General control of human bodies, tissue, blood, blood products and gametes (GN R180 of 2 March 2012) made under the National Health Act 61 of 2003 which provides that human bodies and tissue must be buried once no longer required, and each burial must be entered into a register (Regulation 15(b));
- in Gauteng and the Western Cape by provincial legislation dealing with health care risk waste (namely the Gauteng Health Care Waste Management Regulations 2004 and the Western Cape Health Care Waste Management Act 7 of 2007); and
- at local level by municipal by-laws which may specifically regulate the generation, storage and collection of hazardous and health care risk waste, and the registration of transporters of health care waste, as well as risks to public health and public nuisances.



Legal References

NEM:WA WCM Reg 4

NEM:WA WCM Reg 5

NEM:WA WCM Reg 11(1)



Penalties



Applies to:

Clinic:
Operation of clinic

Meaning of "health care waste"

NEM:WA does not define health care waste, or health care risk waste. Health care waste is the general term used to describe waste that is generated by facilities that provide health care to humans or animals (or conduct related research) and includes both non-hazardous waste (health care general waste) and hazardous waste (usually referred to as either health care risk waste or hazardous medical waste).

Meaning of "health care risk waste"

NEM:WA does not define health care risk waste but the hazardous wastes listed in Schedule 3 of NEM:WA include:

"wastes from human or animal health care and or related research (except kitchen and restaurant wastes not arising from immediate health care)"

This includes wastes from:

- natal care, diagnosis, treatment or prevention of disease in human; and
- research, diagnosis, treatment or prevention of disease involving animals (see Schedule 3, Category A, item 16).

The Gauteng and Western Cape provincial legislation and the draft health care waste regulations under NEM:WA define health care risk waste differently. However in each case the term refers to health care waste that is hazardous and health care risk waste is generally considered to include:

- (a) laboratory waste;
- (b) pathological waste;
- (c) isolation waste;
- (d) genotoxic waste;
- (e) infectious liquids and infectious waste;
- (f) sharps waste;
- (g) chemical waste; and
- (h) pharmaceutical waste.

Regulation of health care waste (Western Cape)

Western Cape Health Care Waste Management Act

The WC:HCWMA, together with its Regulations (WC:HCWMA Regulations) (PN 73 of 15 March 2013), provides for the effective management (handling, storage, collection, transportation, treatment and disposal) of health care waste by all persons in the Western Cape. These regulations apply to both general health care waste and hazardous health care waste (which is referred to as "health care risk waste").

Duties of generators of health care waste

Generators of health care waste have a duty of care to implement reasonable measures to ensure that all health care risk waste is minimised, separated at source, packaged, and stored, in a safe manner that poses no threat to human health or the environment (section 6 of the WC:HCWMA).

The WC:HCWMA provides in section 6 that a generator of health care waste:

- must ensure that the generation of health care waste is as far as possible minimised at source;
- must segregate different categories of health care waste at the point of generation and put reasonable measures in place to maintain this segregation at all times thereafter;
- may only store health care risk waste if it has been registered in terms of section 6 (2)(n) of the WC:HCWMA and must at all times store health care risk waste in appropriate, clearly labelled containers;
- must prevent public access to health care risk waste containers and storage facilities;
- must ensure that his or her storage area for health care risk waste is clearly demarcated and includes appropriate signage;
- must ensure that all health care waste is disposed of at a disposal site;
- must ensure that radioactive waste for which he or she is responsible is managed in terms of the provisions of the Hazardous Substances Act 15 of 1973;
- must maintain and keep up-to-date written or electronic records of the health care risk waste that he, she or it generated;
- must make these records available to the public, if requested, in terms of the Promotion of Access to Information Act 2 of 2000;
- must submit all the information contemplated in subsection (2)(j) to the Provincial Department responsible for the environment, and the Environment MEC may stipulate the format and the specific dates for submission of such information;
- must register with the Provincial Department responsible for the environment by submitting to the Provincial Department a duly completed registration form that is available from the Provincial Department; and
- must perform and record internal audits and must make them available to inspectors on request.

Health care waste management plans

The regulations made under the WC:HCWMA provides that anyone who generates 20 kg or more of health care risk waste per day (calculated monthly as a daily average) must prepare a health care waste management plan, which must include the information set out in Annexure 4 to the WC:HCWMA Regulations (regulation 15). The plan must be reviewed and updated annually, and must be made available to DEADP's inspectors on request. New generators must submit this plan within six months after commencing to operate as a generator.

Duty to register with Department

Anyone who generates, transports, treats or disposes of health care risk waste in the Western Cape must register with the Western Cape Department of Local Government, Environmental Affairs and Development Planning ("DEADP") (WC:HCWMA Regulations, regulation 11). For new operators, registration must take place within 60 days of commencing to operate. The duly

Legal References

WC HCWM s. 5

WC HCWM s. 6

Penalties

Applies to:

Clinic:
Operation of clinic

completed form may be submitted in hard copy or electronically. See Form 2. of Annexure 5 for the registration application form. If any detail of a registered person changes, the DEADP must be informed within 30 days after that change.

Specific requirements when dealing with health care waste in the Western Cape

Any persons dealing with health care risk waste should also take note of specific requirements in the WC:HCWMA and WC:HCWMA Regulations for the following:

- packaging (regulation 2);
- storage (regulation 3);
- internal and external transport (regulation 4 and regulation 5);
- vehicles and drivers (regulation 6 and regulation 7);
- treatment (regulation 8);
- disposal (regulation 9);
- safety and training of employees (section 8 of the WC:HCWMA, and regulation 10); and
- reporting, auditing and record keeping (regulation 12, regulation 13 and regulation 14).

Municipalities in the Western Cape should also take note of their duties set out in section 12 of the WC:HCWMA.

Disposal to landfill

The Western Cape Health Care Risk Waste Regulations make provision for the disposal to landfill of health care risk waste which is rendered unrecognisable as of its medical origin and is unfit for re-use, but specifically exclude human tissue from this allowance. Despite this, the conditions in waste management licences for landfill sites and treatment facilities, usually stipulate that anatomical waste must be incinerated. This perpetuates the manner in which health care waste was previously regulated in terms of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (Department of Water Affairs & Forestry, 2005). The policy document prohibits the disposal to landfill of anatomical waste, even if it were pre-treated until sterile.

Registration of persons dealing with health care risk waste (Western Cape)

When dealing with health care risk waste in the Western Cape it is necessary to comply both with national legislation and with the provincial legislation dealing with HCRW (i.e. the Western Cape Health Care Waste Management Act, 2007 and the Western Cape Health Care Risk Waste Management Regulations, 2013).

The provincial legislation imposes requirements in relation to registration (see below), and the transportation and storage of HCRW in the Western Cape (see **Transportation of HCRW in Western Cape** and **Storage of HCRW in Western Cape**).

Registration

Anyone who generates, transports, treats or disposes of health care risk waste in the Western Cape must register with the Western Cape Department of Local Government, Environmental Affairs and Development Planning ("DEADP") (WC:HCWMA Regulations, regulation 11).

For new operators, registration must take place within 60 days of commencing to operate. The duly completed form may be submitted in hard copy or electronically. (See Form 2. of Annexure 5 for the registration application form.) If any detail of a registered person changes, the DEADP must be informed within 30 days after that change.

Legal References

WC HCWM s. 5
WC HCWM s. 6
WC: HCRWM Reg 5
WC: HCRWM Reg 6
WC: HCRWM Reg 7

Penalties

- Failure to comply with the Western Cape Health Care Waste Management Act (WC)

Applies to:

Clinic:
Operation of clinic

Waste: extended producer responsibility (EPR)

What is 'Extended Producer Responsibility'?

EPR involves requiring "producers" of certain products that result in the generation of waste to take responsibility for that waste after the products have been sold (i.e. during the "post-consumer phase") and to establish schemes to collect, reuse, recycle, recover energy from, and /or dispose of this waste. The intention is to promote a "cradle-to-grave" approach that incentivises producers to design and package products in ways that minimise the generation of waste and promotes efficient resource use, and to achieve greater levels of collection, re-use and recycling.

The National Environmental Management: Waste Act No. 59 of 2008 ('NEM:WA') defines EPR measures as follows:

Legal References

Penalties

Applies to:

Production area:
Manufacture of packaging

“extended producer responsibility measures” means measures that extend a person’s financial or physical responsibility for a product to the postconsumer stage of the product, and includes— (a) waste minimisation programmes; (b) financial arrangements for any fund that has been established to promote the reduction, reuse, recycling and recovery of waste; (c) awareness programmes to inform the public of the impacts of waste emanating from the product on health and the environment; and (d) any other measures to reduce the potential impact of the product on health and the environment;

Who is affected?

The EPR Regulations define **producer** as any person or category of persons or brand owner who is engaged in the commercial manufacture, conversion, refurbishment or import of new and / or used products, that fall within the EPR Scheme established by the Environment Minister under section 18(1) of NEM:WA, and **“brand owner”** as any person, category of persons or company who makes and/or sells any product under a brand label (reg. 1).

This means that all manufacturers and importers of finished goods or individual components of products that fall within the EPR scheme and refurbishers of EPR products, will be affected by these Regulations.

EPR Products

The products to which these EPR schemes apply include certain types of electrical and electronic equipment, lighting equipment, and packaging and single-use plastics.

Producer Responsibility Organizations (“PROs”)

It would be extremely onerous for a single organization to meet all the requirements of the EPR Regulations but the EPR Regulations allow producers to comply with their EPR obligations by joining a non-profit “product responsibility organization” which is responsible for the management and implementation of the EPR scheme on behalf of its members. We anticipated that almost all producers will join such organizations (many of which already exist) in order to comply.

Sanctions

A person convicted of contravening the EPR Regulation would be liable to a fine, imprisonment for a period not exceeding 15 years, or both. A producer who does not comply with the Regulations may also have their registration revoked and/or be compelled to join another scheme.

Waste: EPR Producer Responsibility Organisations

A **producer responsibility organisation** (“PRO”) is a not-for-profit organisation established by producers or any person operating in an industrial sector for which an extended producer responsibility (“EPR”) has been established by the Environment Minister under the National Environmental Management Waste Act (“NEMWA”).

The *Extended Producer Responsibility Regulations, 2020* (“EPR Regs, 2020”) stipulate that a PRO:

- must be an autonomous body established by producers through a due process;
- must be a registered not-for-profit organisation;
- must be managed by a board of directors comprised of representatives from the entire value chain of their products; and
- must not have members or immediate family members that have any vested interest in the particular waste stream (reg. 11(2)).

A PRO has been established before or on 5 May 2021 must register with the DEA by 5 November 2021 and any PRO that is established after that date must register within 3 months of being established.

Becoming a member of a PRO

The EPR Regs, 2020 impose very significant obligations on “producers” of products to which an EPR scheme applies (“EPR Products”), including a duty to establish and operate an EPR scheme that includes the entire value chain for the EPR Products. Since few organizations would want to take on those onerous responsibilities, most if not all, will become members of a PRO that can undertake most of these duties on behalf of its members.

The EPR Regulations, 2020 impose a significant number of obligations on producers without providing clarity on which of these may be performed by a PRO on behalf of individual producers. For example, many of the monitoring, reporting and evaluation obligations in regulation 8 would be best performed by the PRO administering the ERP scheme (e.g. providing interim and annual reports to the DEA on the performance of the scheme), while others appear to be aimed at individual producers (e.g. the duty on all producers to record and report to the South African Waste Information System (“SAWIS”) the tonnages of waste from the affected products that are generated, collected, diverted from landfill, exported and disposed of). Further clarification from the Department of Environmental Affairs will be required in this regard.

Duties of PROs

A PROs must:

- establish, implement, finance, audit and manage the data of the EPR Scheme;
- collect EPR fees;
- submit reports every six months,
- collate and submit data to the South African Waste Information System (“SAWIS”);
- conduct life cycle assessments of EPR products and use the result to design more environmentally friendly products,

Legal References

Penalties

Applies to:

Production area:
Manufacture of packaging

and reduce waste;

- promote small businesses;
- develop and implement a broad-based black economic empowerment (BBBEE) transformation charter;
- develop and establish secondary markets for recyclable materials;
- implement mandatory take back of all EPR products at the end of its life; and
- implement environmental labels and declaration for EPR products.

Waste: EPR scheme for paper, packaging and single use products

An organization that was a producer of paper, packaging or single-use plastics on 5 May 2021, must, on or before 5 November 2021:

- register with the national Department of Environmental Affairs ("DEA") which must issue a registration number to that producer within 30 days [EPR Regulations, 2020 reg. 4];
- either develop and submit an extended producer responsibility ("EPR") scheme to the Environment Minister or establish a producer responsibility organization ("PRO") which must prepare and submit an EPR scheme to the Minister; [GN R. 1187, para.6(1)]; and
- indicate the extended producer responsibility fee that applies to any product to which the scheme applies as a separate line item on every invoice and cash sale receipt for each purchase [EPR Regulations, 2020 reg. 7(4)]* .

Legal References

Penalties

Applies to:

Production area:
Manufacture of packaging

If the organization only became a producer of paper, packaging or single-use plastics after 5 November 2020, it must either subscribe to an existing EPR scheme within 3 months of commencing operations or develop and submit an EPR scheme within 6 months of commencing operations.

The EPR Regulations impose a significant number of obligations on producers without providing clarity on which of these may be performed by a PRO on behalf of individual producers. For example, many of the monitoring, reporting and evaluation obligations in regulation 8 would be best performed by the PRO administering the ERP scheme (e.g. providing interim and annual reports to the DEA on the performance of the scheme), while others appear to be aimed at individual producers (e.g. the duty on all producers to record and report to the South African Waste Information System ("SAWIS") the tonnages of waste from the affected products that are generated, collected, diverted from landfill, exported and disposed of). Further clarification from the DEA will be required in this regard.

Producers of paper, packaging and single-use plastics

The *Extended Producer Responsibility Regulations, 2020* define 'producer' as any person category of persons who is engaged in the commercial manufacture, conversion, refurbishment or import of any new or used products, that fall within the EPR Scheme. A "brand owner" (meaning a person, category of persons or company who makes and/or sells any product under a brand label) is also a producer.

Paper, Packaging and some Single Use Products to which EPR Scheme applies

This EPR Scheme applies to the following products or class of products:

- paper and packaging material such as; liquid board packaging, paper packaging and labels;
- plastic packaging (both printed and unprinted) such as; type 2,4,5 Polyolefin (rigid and flexible);
- biodegradable and compostable packaging;
- single-use plastic products such as; injection moulded products (cups and tubs) and blow moulded products (bottles and jars), and
- glass and metal packaging.

The following definitions are relevant to understanding these categories:

- **"compostable plastic"** means plastic that undergoes degradation by biological processes during composting to yield Carbon dioxide, water, inorganic compounds and biomass at a rate consistent with other known compostable materials and leave no visible, distinguishable or toxic residue (ISO 14088);
- **"paper"** means any substance made from wood pulp, rags, straw, or other fibrous material used for writing, printing, or as a wrapping material;
- ***packaging** means any material, container or wrapping or corrugated cases, used for the containment, transport, handling, protection, promotion, marketing or sale of any product or substance, which may be primary packaging, containing the actual product or secondary packaging or tertiary packaging, typically containing products already packaged in primary packaging,* and
- ***single use plastics** means disposable plastics (petrochemicals, compostable and biodegradable), that are commonly

used for plastic packaging and include items intended to be used only once before they are thrown away or recycled including but not limited to food packaging, bottles, straws, containers, tubs, cups and cutlery.*

Product design, reuse, collection and recycling targets

This scheme establishes specific targets for each product or product class, including product design targets that are expressed as the percentage of recyclable content (recyclate content %) targets. For example, for glass packaging the following targets apply:

- **product design:** year 1- **20%**, year 2- **25%**, year 3- **35%**, year 4- **40%** and year 5- **50%**
- **reuse:** year 1- **10%**, year 2- **20%**, year 3- **25%**, year 4- **30%** and year 5- **40%**
- **collection:** year 1- **46,4%**, year 2- **52,5%**, year 3- **58,4%**, year 4- **64,6%** and year 5- **65,4%**
- **recycling:** year 1- **46,4%**, year 2- **52,5%**, year 3- **58,4%**, year 4- **64,6%** and year 5- **65,4%**.

Fluorescent and other lights containing mercury

Many light bulbs and tubes contain mercury vapour and must be handled with care. Mercury is highly carcinogenic and even small amounts can cause serious and permanent nerve and kidney damage. Consequently the used light bulbs/tubes are classified as hazardous e-waste.

Lights/ lamps which include mercury or other dangerous vapours include: compact fluorescent lights (CFLs), bulbs; linear, U-tube and circline fluorescent tubes; insect "zappers"; tanning bulbs black lights; germicidal bulbs; high output bulbs, cold-cathode fluorescent bulbs and high intensity discharge bulbs (e.g. metal halide; ceramic metal halide and high pressure sodium, and mercury vapor bulbs).

Duties of users of lights which contain mercury

Any organisation that uses light bulbs or tubes containing mercury:

- must store them safely prior to disposal in a manner that ensures that the mercury vapour in them does not escape (many e-waste collection companies will provide safe storage receptacles);
- must take all reasonable measures to recycle them (for example many large supermarkets accept light bulbs and batteries for recycling, many municipalities provide information about how to recycle the e-waste and local e-waste recyclers can usually be identified by internet searches;
- must not crush them except in a specially constructed sealed crusher that prevents the mercury vapour from escaping; and
- must ensure that they are collected for disposal by an authorised transporter of hazardous waste who completes a hazardous waste manifest;
- must ensure that they receive a safe disposal certificate confirming that the consignment has been received by a recycling facility or waste disposal facility that is authorised to dispose of hazardous e-waste of this nature.

Transporting crushed lamps for disposal to landfill

An organization that transports used bulbs containing mercury for disposal at a hazardous waste landfill site:

- must crush lamps before disposal (to reduce the volume) in a specially designed crusher that prevents mercury vapour escaping and does not expose the operator to the vapour;
- must treat the crushed lamps with Sodium Sulphide/Sulphur Solution to make sure the mercury is immobile,
- must place the crushed lamps in a drum or similar container which is labelled in accordance with hazardous waste requirements, and sealed with a tag with a unique number which is recorded in the hazardous waste register;
- must complete a hazardous waste manifest when collecting, transporting and offloading the waste;
- must transport the waste in an enclosed and lockable truck that is properly labelled, in a container that is properly secured (e.g. tied down) in a storage compartment secured and tied down to the storage compartment;
- must deliver the crushed lamps to a licensed hazardous waste site and issue a safe disposal certificate to the generator of the waste showing the waste type, volume and hazardous waste site at which it was disposed of.

Legal References

Penalties

Applies to:

Production area:
Illumination of work area

Regulation of HCRW as a hazardous waste

The regulation of HCRW as hazardous waste

Health care risk waste (HCRW) is considered to be "pre-classified" as hazardous waste (NEM:WA WCMR reg. 4(1)) because it is listed as item 2(b)(iii) in Annexure 1 of the Waste Classification and Management Regulations (GNR.634 of 23 August 2013). Consequently HCRW does not have to be classified in accordance with the latest edition of the South African National Standard Globally Harmonized System of Classification and Labeling of Chemicals (GHS) (SANS 10234). This means that health care waste, including both health care risk waste and health care general waste, must be treated as hazardous waste unless the competent authorities have accepted its reclassification as

Legal References

Penalties


general waste (see **Health care general waste**).

Since health care risk waste is defined in Schedule 3 of NEM:WA to be a hazardous waste and is a pre-classified hazardous waste, all the obligations under NEM:WA that apply to hazardous waste apply to health care risk waste unless otherwise specified. In particular a waste management licence will be required for any waste management activities that involve health care risk waste and every holder of HCRW must be in possession of a waste manifest document (NEM:WA WCMR reg. 11(1)).

Generators of HCRW do not require a safety data sheet for that waste (NEM:WA WCMR reg. 5(4)).

A person who undertakes the treatment of "health care risk waste" regardless of size or capacity of the facility they must register on the South African Waste Information System (SAWIS).

The National Norms and Standards for the Disposal of Waste to Landfill, prohibit the disposal to landfill of all untreated health care risk waste but does not prohibit the disposal to landfill of treated health care risk waste, including treated anatomical waste.

 **Applies to:**
Clinic:
Operation of clinic

Waste management contracts

Importance of waste management contracts

Generators of waste may be liable for harm caused by their waste or for the unlawful disposal of their waste even after it has left their possession and both waste generators and parties that manage, collect, transport or dispose of waste ("waste contractors") must comply with a range of legal duties. Consequently it is advisable for waste generators and waste contractors to enter into waste management contracts that clearly specify the responsibilities of each party.


Elements of a typical waste management contract

A waste management contract typically requires:

- the waste contractor to warrant and provide proof that it is authorised by the municipality to collect and transport waste (if required by the by-laws);
- the waste contractor to handle and dispose of the waste in compliance with environmental laws;
- both parties (i.e. the waste generator on the one hand and the waste contractor who will transport and manage the waste on the other hand) to comply with the system for tracking and labelling waste established by the Waste Classification and Management Regulations ("WCM Regulations");
- the waste contractor to warrant and provide proof that any waste that is disposed of to landfill is done in accordance with the *Norms and Standards for the Assessment of Waste for Landfill Disposal* (the Waste Assessment Standards) and the *Norms and Standards for the Disposal of Waste to Landfill* ("Landfill Standards");
- the waste contractor to take responsibility for undertaking any clean-up that may be required as a consequence of an incident involving the waste (e.g. a spill) involving the waste; and
- the waste management contractor to provide the waste generator with information before, during and after the period of the contract and give the waste generator the right to audit or inspect the manner in which the waste management contractor is performing its obligations under the contract.

Legal References


Penalties

 **Applies to:**
Admin offices:
Managing waste
contractors

Depletion of landfill capacity

The organization must take all reasonable measures within its power:

1. to avoid the generation of waste;
2. to reduce the amount and toxicity of any waste that is generated; and
3. to avoid disposing of waste to landfill by re-using, recycling or recovering as much waste as possible.

 **Legal References**
NEMWA s. 16

Penalties

- Failure to comply with general waste management duty.
- NEMA s. 34
- NEMA s. 34C
- NEMA s. 34D
- NEMWA s. 67
- NEMWA s. 68
- NEMA Schedule 3



Applies to:

Production area:
Illumination of work area

Clinic:
Operation of clinic

Admin offices:
Use of computers and it
equipment

Generation of general waste.

A person who generates general waste must comply with the **general waste management duties** and with municipal Bylaws that govern the management of general waste.

See **General waste management duty**



Legal References

NEMWA s. 16



Penalties

- Failure to comply with general waste management duty.
- NEMA s. 34
- NEMA s. 34C
- NEMA s. 34D
- NEMWA s. 67
- NEMWA s. 68
- NEMA Schedule 3



Applies to:

Admin offices:
Administration: deliveries

Admin offices:
Administrative
correspondence

Admin offices:
Drinking water

Kitchen/Canteen:
Meal preparation

Production area:
Printing

Production area:
Wrapping products

Generation of e-waste

E-waste (electronic and electrical waste) is waste from anything that runs on electricity and includes unwanted or discarded:

- computers,
- entertainment electronics,
- mobile phones,
- household appliances and
- items such as spent fluorescent tubes, batteries and battery-operated toys.

E-waste is classed as hazardous waste because it usually contains potentially hazardous and toxic substances.



Legal References

NEMWA s. 16

Penalties

- Failure to comply with general waste management duty.
- NEMA s. 34
- NEMA s. 34C
- NEMA s. 34D
- NEMWA s. 67
- NEMWA s. 68
- NEMA Schedule 3

Applies to:

Admin offices:
Use of computers and it
equipment

Refuse storage areas

The firm must ensure that:

- any building (excluding a dwelling house) that the firm occupies or controls and in which refuse is or will be generated is provided with an adequate storage area for refuse containers (NBR Reg. U1);
- the access from the street to the storage area is adequate (as determined by the municipality) (NBR Reg. U2); and
- any chutes that are used to direct refuse into a refuse container are designed and erected so as to ensure safe operation (NBR Reg. U3).

Legal References

NBR Reg. U1
NBR Reg. U2
NBR Reg. U3

Penalties

- Contravention of the National Building Regulations

Applies to:

Admin offices:
Administrative
correspondence

Admin offices:
Drinking water

Kitchen/Canteen:
Meal preparation

Production area:
Printing

Production area:
Wrapping products

Storage of general waste for collection by municipality.

A person that generates general waste that is to be collected by a municipality must place the waste in a container that has been approved, designated or provided by the municipality unless the waste is to be reused, recycled or recovered (NEM:WA s.22). The generator of waste must also comply with the general obligations when storing waste, the general waste management duty and with any other specific waste storage requirements prescribed by the municipality.

Waste that is reusable, recyclable or recoverable and that is intended to be reduced, re-used, recycled or recovered in accordance with the NEM:WA or any applicable by-laws need not be placed in a container approved or provided by the municipality

Legal References

NBR Reg. U1
NBR Reg. U2
NBR Reg. U3
NEMWA s. 22

Penalties

- Contravention of the National Building Regulations
- Failure to comply with general waste management duty.
- NEMA s. 34
- NEMA s. 34C
- NEMA s. 34D
- NEMWA s. 67
- NEMWA s. 68
- NEMA Schedule 3
- Offence (non-compliance with general requirements for storage of waste)
- NEMWA s. 67
- NEMWA s. 68

Applies to:

Admin offices:
Administration: deliveries

Admin offices:
Administrative correspondence

Admin offices:
Drinking water

Kitchen/Canteen:
Meal preparation

Production area:
Printing

Production area:
Wrapping products

Littering.

The firm:

- must provide must provide sufficient containers for litter to be put into on any land owned by the firm which the public has access to;
- must ensure that the litter is disposed of before it creates a nuisance or negative impact on the environment; and
- must ensure that its employees do not litter (both on and off-site).

It is advisable for the firm to retain records showing that it has trained its employees not to litter.

Note: It is an offence to drop, deposit, spill or discard any litter into or onto any public place, vacant erf, body of water, street or road except into a designated container.

Legal References

NEMWA s. 27

Penalties

- Littering (NEM:WA)
- NEMWA s. 67
- NEMWA s. 68

Applies to:

Production offices:
Administrative correspondence

Spillage and dumping of health care risk waste (WC)

A person who spills health care risk waste and a person who is in control of health care risk waste at the time that it is spilt, other than health care risk waste spilt on the premises of hospitals, clinics and surgeries, must—

- (a) immediately notify the municipality concerned that such waste has been spilled;
- (b) immediately take steps to make the area safe for the public;
- (c) rehabilitate the place at which the spillage has occurred;
- (d) ensure that the health care risk waste spilt is treated, transported and disposed of in accordance with this Act; and
- (e) take measures to avoid the recurrence of a spill.



Legal References

WC HCWM s. 7



Penalties

- Failure to comply with the Western Cape Health Care Waste Management Act (WC)



Applies to:

Clinic:
Operation of clinic

Health and safety: buildings and installations

Emergency lighting

Employers must provide emergency lighting where employees regularly work at night and to allow the emergency evacuation of indoor workplaces that do not have natural lighting (ERW Reg 3(4))

Emergency lighting must have a luminance of not less than:

- 0,3 lux at floor level under normal circumstances to enable employees to evacuate such workplaces; or
- 20 lux where it is necessary to stop machinery or shut down plant or processes before evacuating the workplace, or where dangerous materials are present or dangerous processes are carried out;

Emergency lighting must:

- be capable of being activated within 15 seconds of the failure of the lighting;
- last long enough to ensure the safe evacuation of all indoor workplaces;
- be kept in good working order and tested for efficient operation at intervals of not more than three months; and
- where directional luminaires are installed, these are mounted at a height of not less than two metres above floor level and are not aimed between 10 degrees above and 45 degrees below the horizontal line on which they are installed.



Legal References

ERW Reg. 3



Penalties

- Failure to comply with the Environmental Regulations for Workplaces



Applies to:

Production area:
Illumination of work area

Health and Safety: workplace conditions

Work place conditions: natural light

Employer obligations

The firm must ensure that every **habitable room** is provided with a means of lighting and ventilation which will enable such room to be used, without detriment to health or safety or causing any nuisance, for the purpose for which it is designed - see Regulation 01 of the National Building Regulations GNR.2378 of 12 October 1990.

The firm is not required to provide an opening for natural light if doing so would be detrimental to health or safety or cause any nuisance. (ERW reg. 4)

Note that **habitable room** means a room used or designed, erected, adapted or intended to be used by persons for sleeping in, living in, the preparation or consumption of food or drink, the transaction of business, the rendering of professional services, the manufacture, processing or sale of goods, the performance of work, the gathering together of persons or for recreational purposes (NBR section 1).

Legal References

ERW Reg. 4

NBR Reg. O1

Penalties

- Contravention of the National Building Regulations
- Failure to comply with the Environmental Regulations for Workplaces

Applies to:

Production area:
Illumination of work area

Work place conditions: lighting

Employer obligations

An employer must ensure that a competent person assesses the lighting in the work place to ensure that it is adequate to ensure a safe and healthy working environment for all employees. Work areas must have sufficient lighting relative to the size of the area (provided that windows will not have an adverse effect on the work, health and safety, or security of employees). (ERW reg 3, 4)

Employers are exempt from complying with the standards pertaining to the provision of windows if their operations have any one of the features specified. See Lighting Compliance Checklist.

Legal References

ERW Reg. 3

ERW Reg. 4

NBR Reg. O1

Penalties

- Contravention of the National Building Regulations
- Failure to comply with the Environmental Regulations for Workplaces

Applies to:

Production area:
Illumination of work area