

# Compliance blitz on the cards for the agrochemicals sector

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In the wake of the UPL warehouse fire, the agrochemicals sector should take immediate steps to comply with the relevant legislative obligations before a pending crackdown by regulators



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Environmental regulators are ready to challenge the agrochemicals sector in the wake of the recent UPL chemical warehouse fire in Durban, which continues to capture headlines and place this sector firmly under the compliance spotlight.

As a preliminary step in what is expected to be a series of proactive measures aimed at strengthening the regulation of this sector, the Minister of Forestry, Fisheries, and the Environment intends to call for an industry-wide baseline compliance profile, as well as the inclusion of this sector in the annual National Environmental Compliance and Enforcement Report (NECER).

The NECER provides an overview of national environmental compliance activities and generally serves as a deterrent mechanism, due to the reputational and other adverse consequences associated with this publication.

## Regularising non-compliant activities

Operators in the agrochemicals sector are urged to heed this development and take steps to regularise any non-compliant activities, in anticipation of the impending compliance and enforcement blitz. Business activities in this industry typically involve the bulk manufacturing, storage, and handling of dangerous goods, including fertilizers, plant-protection chemicals, pesticides, and plant-growth hormones.

Due to the inherently hazardous nature of these materials, a range of permits may be required for associated facilities, including an environmental authorisation, an atmospheric emissions licence, occupational health, and safety consents, as well as any relevant municipal approvals which are commonly required for storing hazardous substances and conducting scheduled trades.

It has become increasingly apparent that many operators in this sector are not compliant with the applicable regulatory framework, either due to a lack of awareness or genuine oversight, neither of which are defensible in law. In some instances, compliance obligations have been completely overlooked on the basis that agrochemicals operations were established before the relevant legislative instruments which govern this sector.

This approach is untenable and urgent steps should be taken to address the unlawfulness of the relevant business activities. This may include, amongst other aspects, submitting a rectification application in terms of section 24G of the National Environmental Management Act, 1998, which carries its own significant enforcement and criminal prosecution risks.

The agrochemicals sector has been given fair warning and must use this window of opportunity to regularise any unlawful business activities ahead of the commencement of the anticipated compliance and enforcement drive, which will likely involve multiple regulators.

As a starting point, operators must consider undertaking permit gap analyses of any relevant activities, and the outcome should inform the formulation and implementation of any necessary permitting compliance strategies. This pre-emptive approach will not only mitigate the associated compliance risks, but also contribute towards collective emergency preparedness initiatives, which are an integral component of this industry.

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