

Draft regulations place greater responsibility on producers of lighting, electronic, paper and packaging products

By [Francois Joubert](#) and [Julia Rushton](#)

21 Jul 2020

It is estimated that South Africa generates approximately 108 million tonnes of waste per year. As much as 90% of this waste (with an estimated value of more than R25.2 billion) is dumped or disposed of in landfill sites across the country, which are rapidly filling up and approaching closure.



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The State has a duty, in terms of the National Environmental Management: Waste Act 59 of 2008 (NEMWA), to put measures in place to minimise the amount of waste that is generated and to ensure that waste is re-used, recycled and recovered in an environmentally sound manner before being safely treated and disposed of. In accordance with this duty, on 26 June 2020, the Department of Environment, Forestry and Fisheries (the Department) published the draft Extended Producer Responsibility (EPR) Regulations, as well the proposed EPR schemes for the lighting, electronic equipment, paper and packaging sectors for public comment.

Far-reaching measures

The publication of these notices by the Minister of Environment, Forestry and Fisheries (the Minister) illustrates the Department's intention to put measures in place that address the way in which waste is handled at the post-consumer stage of a product's life cycle.

The notices have been published in terms of section 18 of NEMWA which provides that the Minister may, in consultation with the Minister of Trade and Industry, identify a product or class of products in respect of which EPR applies. This means

that the producers of those particular products are responsible for the products until the post-consumer stage of a product's life cycle and may be required to take certain waste-related measures in respect of that product or class of products.

EPR measures are far-reaching and may include requiring producers to collect, re-use, recycle and responsibly dispose of their products in the post-consumer stage. This has the potential to significantly reduce the amount of waste that ends up in landfill sites.

EPR scheme registration

The draft EPR Regulations set out the proposed framework for the development, implementation, monitoring and evaluation of EPR schemes by producers and will apply to the waste streams that are identified by the Minister in separate notices.

The draft EPR Regulations seek to encourage and to enable the implementation of a circular economy initiative by extracting as much value from resources as possible through re-use and recycling in order to eliminate waste. Producers of the products identified by the Minister will be required to register with the Department and establish, implement and finance an EPR scheme or join an existing EPR scheme.

Responsible disposal

So far, the Minister has published the proposed EPR schemes for the lighting, electronic equipment, paper and packaging sectors. The notices include a list of the types of items within each of these sectors that are subject to the EPR scheme requirements. The producers of the items listed in those notices will be responsible for developing and implementing an EPR scheme.

The sectors that have been identified by the Minister are responsible for much of the waste that ends up being dumped or disposed of in landfill sites. If the producers of lighting products, electronic equipment, paper and packaging implement effective EPR schemes, as proposed in the notices, it should drastically reduce the amount of waste that enters our landfill sites each day.

Electronic waste alone accounts for roughly 350,000 tonnes of the waste generated in South Africa each year and only about 35,000 tonnes are recycled. Many of the chemicals that are released from electronic waste are harmful to human health and the environment and so it is essential that electronic waste is disposed of in a responsible manner.

Plastic waste

South Africa also generates a vast amount of plastic waste and it is almost impossible to buy anything from a grocery store that is not packaged in plastic. The definition of "packaging" in the proposed EPR scheme for the paper and packaging sector is particularly wide and includes

“ any material, container or wrapping, 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, typically containing products already packaged in primary packaging. ”

At this stage,

- packaging made out of timber and textile,
- plastic pallets and industrial bulk containers (with a capacity exceeding 1000 litres), and
- shipping containers used solely for the transportation of any consumer commodity in bulk to manufacturers, packers, or processors, or to wholesale or retail distributors

are not included in the definition but may always be added by the Minister in a subsequent notice.

Notice periods

According to the proposed EPR schemes for the lighting and electronic equipment sectors, existing producers of those products will be required to prepare and submit an EPR scheme to the Minister within six months of the publication of the notice.

Lighting and electronic equipment producers that start operations after publication of the notice, on the other hand, will be required to either (i) prepare and submit an EPR scheme to the Minister within six months of commencing operations, or (ii) subscribe to an existing EPR scheme within three months of commencing operations.

At this stage, the notice in respect of the proposed EPR scheme for the paper and packaging sector does not provide the time period by which the producers of products listed in that notice will need to submit their EPR scheme to the Minister. It is anticipated that the Department will determine these timeframes prior to the final publication of the notice.

EPR scheme fees

In addition to the submission of an EPR scheme, the draft EPR Regulations provide that producers must determine the fee that they will pay to fund the EPR schemes. The appropriate fee payable by producers must be determined in consultation with the Minister of Finance and the Minister of Trade, Industry and Competition and be based on the weight and recyclability of each item. This essentially gives effect to the “producer pays” principle of environmental law.

If the draft EPR Regulations come into effect, they will be very far-reaching as producers will also be required to:

- develop and maintain a system to collect the EPR fees;
- tender and contract for the collection, recycling and recovery of waste;
- implement mandatory take-back of products that have reached the end of product life;
- document collection, sorting, recycling and recovery of waste;
- develop and manage the data collection system;
- submit data to the South African Waste Information System regarding the amount of waste that is generated, collected, diverted away from landfill (through re-use, recycling, recovery or refurbishment), exported and disposed;
- conduct internal audits and make these audit reports available to the Department upon request;
- utilise new and existing infrastructure across schemes in a collaborative manner where feasible;
- promote small businesses; and
- develop a broad-based black economic empowerment (BBBEE) transformation charter within the waste sector of the products identified in the notices published by the Minister in terms of section 18(1) of NEMWA.

Life cycle assessments

In an attempt to minimise the amount of waste that is generated, the draft EPR Regulations also require producers to conduct a life cycle assessment in relation to their products, in accordance with the relevant South African Bureau of Standards or International Organisation for Standardisation standards.

Producers will then be required to factor the results of the life cycle assessment into the design, composition or production process of a product. This should result in a reduction in the consumption of natural resources, increased production of more environmentally-friendly products and a reduction in the amount of post-consumer waste.

If producers are required to collect, re-use and recycle their products after use, they are likely to be more inclined to ensure that their products last longer and are less toxic and easier to recycle.

Economic and employment opportunities

It is important that South Africa recognises the employment opportunities and economic potential that the collection, re-use and recycling of waste holds - not to mention the positive impacts on the environment. The draft EPR Regulations and proposed schemes introduced by the Minister, if properly implemented, will have wide-ranging impacts on a number of categories of waste in South Africa, reduce the burden on landfill sites and will help South Africans to appreciate the value of “waste”.

Public comment

Members of the public may submit written comments on the draft EPR Regulations and proposed schemes by 27 July 2020 to the Director-General of the Department of Environment, Forestry and Fisheries to:

Attention: Mr Anben Pillay
Private Bag X447
Pretoria
0001

or by email to: apillay@environment.gov.za

ABOUT THE AUTHOR

Francois Joubert is a partner and Julia Rushton, an associate, at Fasken.

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