

Environmental & Clean Energy Law Department

April 2014

CONTAMINATED LAND TO BE REGULATED AS OF 2 MAY 2014

On 2 May 2014, the contaminated land provisions of the National Environmental Management: Waste Act 59 of 2008 ("the Act") will come into force. With the commencement of this long anticipated regulatory regime, it is worth considering some of its significant aspects. Importantly, the contaminated land provisions will apply retrospectively, and therefore apply to all land which was contaminated prior to 2 May.

Contaminated land will be dealt with in three stages. Firstly, "investigation areas" are to be identified. This is land identified by the Minister or the MEC ("the Authority") as a result of high-risk activities having taken place or which are taking place that are likely to result in land contamination, or land that the Authority on reasonable grounds believes to be contaminated. Land owners and persons who undertook high-risk activities are also under an obligation to inform the authority should their land be significantly contaminated. A register of investigation areas must be maintained by the Minister for Environmental Affairs, and may be available for public inspection.

Secondly, the Authority may require that an independent assessor undertake a site assessment and compile an assessment report of the investigation area. Depending on the level of pollution identified in the report, the authority may determine the land to be contaminated and require remediation. In such circumstance the land must be declared to be a remediation site. In the third stage a remediation order is issued by the authority to neutralise the risk.

The Act also regulates the transfer of contaminated land by prohibiting it without prior disclosure of the contamination, and in the case of a remediation site, without prior notification to the authority.

The Act gives wide-ranging discretionary powers to the Authority and it is likely that further tools such as norms and standards and regulations will still be finalised to assist in the implementation of these provisions. In particular, there are currently no remediation standards which makes the practical implementation of these provisions problematic.

Various offences for contravening the contaminated land provisions are prescribed, which may attract penalties of fines of up to R10 million and periods of imprisonment of up to 10 years. Therefore, understanding what is required to comply with these provisions is crucial.

This update is intended for information purposes only and should not be considered as exhaustive nor constituting legal advice. Further information is available by contacting -

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