

GOVERNMENT NOTICE

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. R..... 2005

PROPOSED REGULATIONS IN TERMS OF SECTION 24B OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT NO. 73 OF 1989) AS AMENDED

The Minister of Environmental Affairs and Tourism intends making the regulations set out in the schedule hereto in terms of section 24B of the Environment Conservation Act, 1989 (Act 73 of 1989) as amended.

Interested and affected parties are invited to submit comments on the proposed regulations to the Director-General, Environmental Affairs and Tourism, Private Bag X447, Pretoria, 0001 within thirty days of the date of publication of this notice.

SCHEDULE

ASBESTOS REGULATIONS

1. Definitions and interpretation

In these regulations any word or expression which has not been defined in this regulation and to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise –

- (a) **“activity”** means the importing, exporting, mining, processing, manufacturing or distribution of asbestos or asbestos containing material;
- (b) **“asbestos”** means amosite, chrysotile, crocidolite, fibrous actinolite, fibrous anthophyllite, fibrous tremolite or any mixture containing any of these materials;
- (c) **“asbestos containing material”** means any mixture, product, component or material to which asbestos has been added in a concentration of one percent or more by weight or area;
- (d) **“Asbestos Phase-out Plan”** means a plan referred to in regulation 4;
- (e) **“category A identified product”** means a products used for roofing, internal partitioning or water or sewage pipes which contain asbestos in a concentration of one percent or more by weight or area;
- (f) **“category B identified product”** means friction materials, including brake disk pads, brake linings and clutch plates which contain asbestos in a concentration of one percent or more by weight or area;

- (g) **“category C identified product”** means heat and arc resistant electrical insulation boards, acetylene gas cylinders, gaskets, seals and insulation materials which contain asbestos in a concentration of one percent or more by weight or area;
 - (h) **“identified product”** means a category A, B or C identified product;
 - (i) **“Minimum Requirements Series”** means the document titled *“Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste, 2nd edition”*, published by the Department of Water Affairs and Forestry and as may be amended from time to time;
 - (j) **“SANS 10228”** means the Code of Practise for the Identification and Classification of Dangerous Substances and Goods, SANS 10228, published by the South African National Standards Authority;
 - (k) **“the Act”** means the Environment Conservation Act, 1989 (Act No. 73 of 1989) as amended;
 - (l) **“the Republic”** means the Republic of South Africa.
- (2) Where a term is not defined in this section, the term shall have its ordinary dictionary meaning, unless the context indicates otherwise.

2. Prohibitions

- (1) No person may import asbestos or asbestos containing materials to the Republic, or export asbestos or asbestos containing materials from the Republic, unless the purpose of such import or export is solely for use in analysis or research which is not intended to develop a new use for asbestos or asbestos containing material.
- (2) For the purposes of subregulation (1), importation shall not include the importation of asbestos or asbestos containing material which is in transit from a State outside the Republic to another State outside of the Republic, unless further repackaging or processing of the asbestos or asbestos containing material is performed in the Republic.
- (3) No person may mine, acquire or process asbestos, manufacture asbestos containing materials or distribute asbestos or asbestos containing material, where such distribution is for gain.
- (4) In the case of a person who was lawfully undertaking an activity contemplated in this regulation immediately prior to the date of commencement of these regulations, that person may carry on that activity for a period of 120 days after the date of commencement of these regulations.
- (5) The provisions of this regulation shall not apply to a person importing an identified product or asbestos or asbestos containing material solely for use in the manufacture of an identified product, nor to any person manufacturing or distributing an identified product, until a date determined by the Minister by notice in the *Gazette* in terms of regulation 3(5).

3. Identified products

- (1) Every person who imports asbestos or asbestos containing material for use in the manufacture of an identified product and every person who manufactures or distributes an identified product must notify the Minister, in writing, and within six months of the commencement of these regulations of –
 - (a) the nature of the business in which he is involved;
 - (b) the address where the business is undertaken;
 - (c) the approximate amount of asbestos or asbestos containing material that is kept on the property over a period of a year; and
 - (d) any other information required by the Minister for the purpose of administering this regulation.
- (2) A person manufacturing an identified product must submit an Asbestos Phase-out Plan to the Minister within one year of the commencement of these regulations: Provided that a group of people manufacturing the same or substantially similar products may submit a joint Asbestos Phase-out Plan for the purposes of complying with these regulations.
- (3) An Asbestos Phase-out Plan must at least contain information on –
 - (a) alternatives to the use of asbestos or asbestos containing materials in the manufacture of the product;
 - (b) or where such alternatives do not exist, reasons why such alternatives do not exist and the steps that will be taken to develop such alternatives; and
 - (c) the time periods within which the manufacturer intends replacing the use of asbestos with alternatives to asbestos or asbestos containing materials.
- (4) The Minister may require a person who has submitted an Asbestos Phase-out Plan to provide additional information and to submit a revised Asbestos Phase-out Plan within a time period indicated by the Minister or to furnish the Minister with a written review of the Asbestos Phase-out Plan by an independent person within a time period indicated by the Minister.
- (5) After considering any Asbestos Phase-out Plans that have been submitted in terms of these regulations, the Minister may, by notice in the *Gazette*, indicate that the provisions of regulation 2 apply to an identified product: provided that where the date for the submission of an Asbestos Phase-out Plan, revised Asbestos Phase-out Plan or independent review has passed and any person responsible for submitting the Asbestos Phase-out Plan, revised Asbestos Phase-out Plan or independent review has not submitted the relevant document, the Minister may exercise this power on the basis of other information at his disposal.
- (6) The Minister may on written application by a person who is required to submit an Asbestos Phase-out Plan grant an extension in respect of the period within which the plan must be submitted.

4. Disposal of asbestos or asbestos containing material

Any person who has any asbestos or asbestos containing material in his possession which has been acquired through or for an activity contemplated in regulation 2, must dispose of that asbestos or asbestos containing material in accordance with the requirements of Class 6 of SANS 10228 and item 2.7 of the Minimum Requirements Series within 90 days of the date on which regulation 2 becomes applicable to that person.

5. Offences

- (1) Any person who contravenes regulation 2 or 4 shall be guilty of an offence and liable on conviction to a fine not exceeding an amount prescribed in terms of legislation regulating fines for criminal offences, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment, and to a fine not exceeding three times the commercial value of anything in respect of which the offence was committed.
- (2) Any person convicted of a fine in terms of these regulations, and who after such conviction persists in the act or omission, which constituted such offence, shall be guilty of a continuing offence and liable on conviction to a fine not exceeding R250 or to imprisonment not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which such offence continues.

6. Short title

These regulations may be cited as the Asbestos Regulations, 2005.