

29 August 2016

HONOURABLE MINISTER BOMO EDITH EDNA MOLEWA
THE MINISTER OF ENVIRONMENTAL AFFAIRS

FOR ATTENTION: MR ANBEN PILLAY
DIRECTOR: WASTE POLICY AND INFORMATION MANAGEMENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS

BY E-MAIL

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Dear Honourable Minister,

SECTION 28 NOTICE CALLING FOR INDUSTRY WASTE MANAGEMENT PLANS – REQUEST FOR EXTENSION

I. INTRODUCTION

1. We refer to the Notice to the Paper and Packaging Industry (amongst others) to prepare and submit to the Minister of Environmental Affairs an Industry Waste Management Plan (“IWMP”) for approval, published in Government Notice 915 in *Government Gazette* 40207 dated 12 August 2016 (“the Notice”).
2. On behalf of its members in the packaging industry in South Africa, Packaging SA hereby formally requests that the period of 3 months prescribed in section 3(1) of the Notice, within which IWMPs must be submitted to the Minister for approval, be extended to at the very least 9 months (preferably 12 months), for the reasons set out below.
3. The 9 month period is still less than what Packaging SA considers an adequate timeframe within which to prepare and submit an ideal and cohesive IWMP. However, as set out in Part IV of this letter we have proposed a timetable in an attempt to find a middle ground, which sets out the absolute minimum time within which such an IWMP for a very diverse and complex sector such as ours can be prepared and submitted to the Minister for approval.
4. As you are aware from our previous engagements, Packaging SA is a voluntary industry body originally founded in 1984 under the name Packaging Council of South Africa. Packaging SA has more than 40 members and represents the views of its members on National issues with particular focus on environmental matters including supporting extensive and significant recycling initiatives and programmes. As such, Packaging SA has been requested by its members to prepare an IWMP in response to the Notice. Packaging SA therefore will play an integral role in properly formulating an IWMP for its sector.
5. Packaging SA, however, together with its members consider the timeframe, provided in the Notice for the submission of an IWMP, to be wholly inadequate including for the reasons set out in this letter.

II. INADEQUATE TIMEFRAME FOR THE PREPARATION OF IWMPs

6. The draft of the Notice, which was published in GN 736 in *Government Gazette* 39018 on 24 July 2015 (“**the draft Notice**”), proposed a period of 12 months from the date of registration with the Minister for IWMPs to be submitted; a period of 60 days was allowed for registration, which effectively afforded producers a period of 14 months to submit IWMPs. This is more than 4 times the timeframe provided in the recent final Notice (i.e. three months).
7. The 14 months provided for in the draft is a much more realistic timeframe within which IWMPs should be completed and submitted for approval compared to the 3 months now contained in the final Notice.
8. We have been in discussion with your Department regarding the draft Notice as well as other publications in this sector. As such, in our submission to the Department, to the draft Notice, dated 18 September 2015, we raised a concern that at that stage even the 12 month period was not considered to be sufficient for producers to prepare detailed IWMPs.
9. We have received no formal response to our submission and no reasons why the timeframe for the submission of IWMPs has now been significantly reduced.
10. It is wholly unreasonable for the Notice to now provide for a significantly reduced period and requiring an IWMP to be submitted for approval of 3 months from the date of the Notice.
11. Considering (amongst other things) the nature of the industry we represent; the number of members we have; the proper considerations that are required to have a comprehensive IWMP – 3 months is a wholly inadequate period to require the submission of an appropriate IWMP.

III. CONSIDERATION IN THE PAPER AND PACKAGING WASTE SECTOR - REASONS FOR EXTENSION

12. The paper and packaging waste Sector, whilst less than 2% of the overall amount of solid waste being generated, is an important part of the South African waste economy. It adds billions of Rands to our economy and is responsible for tens of thousands of jobs.
 13. We have a collective responsibility to the Country, its citizens and all stakeholders to not only preserve our very significant investments in waste infrastructure, and the notable successes that we have achieved, but to also clean up the environment, create jobs, develop new markets for recyclables and to ultimately grow the Sector for the benefit of all.
 14. A well thought-out and carefully constructed IWMP is crucial to reaching these ideals and goals and those contemplated in the National Environmental Management Waste Act 59 of 2008 (“**the Waste Act**”). The Waste Act provides that when considering an IWMP the Minister must consider the manner in which an IWMP would contribute to the avoidance or minimisation of the generation of waste.
 15. Accepting and approving an IWMP that does not adequately provide for this will fly in the face of, amongst others, the Waste Act.
 16. In order to ensure that the objects of the Waste Act are met we require an appropriate and adequate opportunity to gather, assess and provide for the appropriate provisions and measures to be contained in an IWMP which would be properly representative of the paper and packaging industry.
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17. Although Packaging SA submitted a draft IWMP to the Department in 2011 and then updated it again in 2014, that draft IWMP has to be reconsidered and revised in many respects, including to address:
- (i) The changes in the waste regulatory environment; there have been a number of changes in the waste legislation since 2014. This includes giving proper consideration to the requirements as set out in part 4 of the Notice, a number of which were not dealt with in the draft IWMP. Part 4 contains a list of at least 24 requirements that need to be properly assessed and considered in order that they be comprehensively included in an IWMP;
 - (ii) We are required to properly consult and engage with our members to ensure, amongst other things, that the IWMP is sufficiently representative of their processes, waste streams and how waste is managed; and
 - (iii) The IWMP should reflect changed economic circumstances in South Africa, including consideration of specialist studies such as the Economic Value Study mentioned below.
18. Furthermore, part 5 of the Notice requires that stakeholders must be given an opportunity to submit written representations or objections to the IWMPs within a period of 30 days after publication of these plans in at least two newspapers nationally; thereafter the person responsible for preparing the IWMP must give due consideration to all representations or objections and a copy of comments and responses must be submitted to the Minister together with the final draft of the IWMP for approval.
19. A period of approximately 7 weeks, at an absolute minimum, will be required to undertake and complete that process, which will allow only five weeks for the drafting of the detailed plan. The 7 weeks mentioned includes the 30 days' notice and comment, which means Packaging SA will have to give due consideration to such comments, respond thereto and submit a comment and response report to the Minister within three weeks thereafter.
20. The timeframe provided in the Notice does not provide for an adequate public consultation process. This is amongst other things an unreasonable exercise of administrative power and on this basis the Notice is fatally flawed and could be subject to challenge.
21. Our courts have on many occasions recognised and given effect to the importance of proper public consultation and have set aside administrative decisions that don't recognise this.
22. We respectfully submit that the time period provided for in the Notice is completely inadequate.
23. We therefore request that, in light of the information set out in this letter, the Minister afford Packaging SA an extension to submit its IWMP within the proposed appropriate timeframe as set out below.

IV. PROPOSED ALTERNATIVE TIMETABLE

24. Below is our proposed timetable for the drafting, publication and submission of the plan, which shows clearly why a minimum period of no less than 9 months is required for that process.

24.1. 13 August to 13 November 2016: Months 1 to 3

- 24.1.1. Whilst the metal packaging industry in South Africa has, over the past 23 years, made huge investments into various voluntary initiatives it still does not have a recognised Product Responsibility Organisation (PRO). Metal packaging is an integral, important and significant part
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of our Sector which, despite having achieved excellent recycling rates of approximately 70%, now requires a proper focussed approach. The process to draw the various stakeholders together, establish the PRO and to find a suitable CEO is underway but it is very unlikely that this will be up and running before the end of October / early November 2016.

24.1.2. The collection rate (diversion from landfill) of paper and packaging in South Africa now stands at 57% which compares favourably with many first world countries. Packaging SA has tasked the CSIR to establish, through an Economic Value Study, what the Sector can practically achieve, what the incremental tonnages are, what the value add to the economy will be and most importantly how many resultant jobs can be created. The results of this study are integral to our compiling a credible plan. The CSIR have advised that they will not be in a position to publish the findings before the middle of October. The data provided will then still have to be analysed and interpreted.

24.1.3. We have been engaging with a number of different local and international waste management consultants regarding how best to uplift the informal waste sector, a salient element that needs to be addressed within the IWMP that we consider critical. These interactions are still in the preliminary stages and the proposed time period provided unfortunately also does not allow for this to be progressed accordingly. We estimate that a period of approximately 3 months will be required to understand and progress such a study.

24.2. 14 November to 28 February 2017: Months 4 to 6

24.2.1. A period of approximately 15 weeks, at an absolute minimum, is required to prepare a first draft of the IWMP. This period also spans the end of year vacation period in which it will be difficult to consult with all the relevant stakeholders.

24.2.2. As mentioned above, Packaging SA represents more than 40 sector institutions and organisations. As such, Packaging SA requires sufficient time to formulate the IWMP to provide for the current programmes as well as giving considerations to the (at least) 24 lengthy requirements in the Notice as well as the requirement of the Waste Act.

24.2.3. In addition to the Packaging SA members, there are a few hundred paper and packaging producers in South Africa that are not members of Packaging SA, but whose input will have to be sought in preparing the IWMP. This will also be done during the 15 week period covered in this paragraph.

24.3. 28 February to 28 March 2017: Month 7

24.3.1. Approximately a month, at an absolute minimum, will be required to circulate the IWMP to all our existing members and other stakeholders for consideration and comment and a further period of at least one month will be required to prepare a revised IWMP for publication.

24.3.2. This is critical for these members and other interested stakeholders to properly consider the IWMP, comment thereon and for the comments to be incorporated into the final draft IWMP.

24.4. 29 March to 29 May 2017: Months 8 to 9

24.4.1. In terms of part 5 of the Notice, one month is required for publication of the IWMP for comment and objections by stakeholders and interested and affected parties.

24.4.2. As mentioned above, this timeframe in itself is wholly inadequate for proper consultation to ensure procedural fairness. As such, we propose that this process at least takes place over a period of 2 months.

24.4.3. Adequate time is required to give due consideration to any comments that may be received from interested and affected parties; to respond to all the comments and objections; and prepare a comments and responses report for submission to the Minister with the final IWMP (as contemplated in part 5(2) of the Notice).

V. REQUEST FOR REASONS

25. As advised in paragraph 9 above we have received no response to our submissions on the draft Notice and no reasons for the Minister's decision to not incorporate some of our proposals.
26. We therefore request the Minister to provide reasons for the significant reduced timeframe provided for in the Notice, as well as the Minister's reasons for not incorporating our submissions in the final Notice.

VI. REQUEST FOR EXTENSION / EXEMPTION

27. Furthermore, we request that the Minister grant an extension of the timeframe within which Packaging SA can submit its IWMP, to the effect that its IWMP can be submitted within 9 months from 13 August 2016 and as such grant an exemption from the requirement to submit it within 3 months.
28. The Notice itself does not provide for an appropriate mechanism in terms of which necessary deviations could be allowed, such as contemplated in the Waste Act and on this further basis could be subject to challenge. The Minister has wide powers under the Waste Act to grant exemptions and as such we request an exemption from the abovementioned timeframe in the Notice.
29. We trust that our request for an extension of time will receive favourable consideration and we shall be grateful if the Minister could provide us with a response by no later than Monday 5 September 2016. As you are aware parts 8 and 9 of the Notice provide that a person who fails to prepare and submit an IWMP is liable to imprisonment for a period not exceeding 15 years, or an appropriate fine, or to both the fine and imprisonment.
30. In the light of these very severe penalties, should the requested extension of time not be approved by you, Packaging SA and its members reserve the right to take such action as may be considered necessary to protect their interests.
31. Our rights, and the rights of our members, in this regard remain reserved.

Yours sincerely



CHARLES MULLER
EXECUTIVE DIRECTOR
