

Extended producer responsibility

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Environmental Duty of Care and Liability: Setting the Scene

- Section 2(4)(e) of NEMA provides that companies are responsible for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity throughout its life cycle.
- This is known as the “**cradle to grave**” principle.
- Section 28 of NEMA - “**environmental duty of care**”.
- Liability:
 - fines and imprisonment
 - Director and potential shareholder liability
 - Reputational risk



EPR: Context and Background

- Recognizing waste and management practices relating to waste are matters that require national legislation and in order to promote and give effect to the right to an environment that is not harmful to health and wellbeing the National Environmental Management: Waste Act (“**NEMWA**”) was promulgated.
- NEMWA defines “**extended producer responsibility measures**” as measures that extend a person's financial or physical responsibility for a product to the postconsumer stage of the product..;



EPR: Context and Background

- Section 18 of NEMWA
- Section 69 of NEMWA

EPR Regulations:

- GN 1184 of 5 November 2020: Extended Producer Responsibility Regulations (Government Gazette No. 43879) as amended on 15 January 2021 and 5 May 2021.
 - GN 1185 Extended producer responsibility scheme for the electrical & electronic equipment sector of 5 November 2020;
 - GN 1187 Extended producer responsibility scheme for paper, packaging and some single use products of 5 November 2020.
 - GN 1005 Draft Packaging Guideline: Recyclability by design for packaging and paper in South Africa of 6 October 2021.



EPR Regulations: Relevant Definitions

- "**brand owner**" means a person, category of persons or company who makes and/or sells any identified product under a brand label;
- "**extended producer responsibility**" means that a producer's responsibility for an identified product is extended to the postconsumer stage of an identified product's life cycle;
- "**identified products**" means products that are identified in terms of section 18 (1) (a) of the Act and published in the Government Gazette by the Minister;
- "**importer**" means a person or category of persons who brings identified products or items that contain identified products into the country from abroad and including but not limited to the one that first places them into the market for sale;



EPR Regulations: Relevant Definitions

- "**producer**" means any person or category of persons, including a brand owner, who is engaged in the commercial manufacture, conversion, refurbishment (where applicable) or import of new or used identified products as identified by the Minister by Notice in the Government Gazette in terms of section 18 (1) of the Act, and a producer includes, where relevant, the same as defined in the specific section 18 Notice for each of the identified products as gazetted by the Minister in terms of section 18 (1) and (2) of the Act;
- "**producer responsibility organisation**" means a not for profit organisation established by producers or any person operating in any of the industrial sectors covered in the Notices published in terms of the Act to support the implementation of their extended producer responsibility scheme and may represent either individual or collective producers;



Step 1: Determine if the EPR Regulations apply?

These Regulations apply to

- (1) the identified products in terms of section 18 (1) (a) of the Act and to the producers of those identified products published in the Government Gazette by the Minister;
- (2) the identified products in terms of section 18 (1) (a) of the Act and to the producers of those identified products published in the Government Gazette by the Minister, that were placed on the market prior to these Regulations coming into effect; and
- (3) do not apply to the identified products in terms of section 18 (1) (a) of the Act and to the producers of those identified products published in the Government Gazette by the Minister, to that portion which is exported only or that produce the identified products for export purposes only.



Step 2: Registration of Producers

- (1) All existing producers of identified products, at the time these Regulations come into effect, must register with the department within 6 months (**5 November 2021**) by completing the on line registration process (www.sawic.environment.gov.za).
- (2) All new producers of identified products, who commence producing after these Regulations come into effect, must register with the department within 3 months of being established via the South African Waste Information Centre Website (www.sawic.environment.gov.za).
- (3) The department must consider all producer registration application forms and issue a registration number for each producer that has submitted such form, within 30 days of receipt of a form in which all sections are correctly completed.
- <http://sawic.environment.gov.za/epr/>



Step 3: Extended Producer Responsibility Scheme

- The producer of a product or class of products, as identified by the Minister in terms of section 18 (1) of the Act, must
 - (i) establish and implement an extended producer responsibility scheme (see obligations in sections 5B, 6, 7A, 8, 9).
 - PRO complete form and register with the Department; or
 - (ii) join another extended producer responsibility scheme (see section 5A (obligations), 6 (requirements), 7 (finances), 8 (reporting), 9 (review)).
 - PRO complete form and register with the Department.
- a) PRO must be: autonomous body and follow due process;
- b) registered not for profit company;
- c) managed by a board of directors (representatives from producers); and
- d) Comply with Companies Act 2008 (Act No. 71 of 2008): good corporate governance and management of conflicts of interest.



Step 4: Understand on-going obligations

- implement environmental labels and declaration for the identified products in accordance with SANS 14021 and SANS 14024 within a period of 3 years;
- where specified, implement mandatory take back of their identified products at the end of their lives;
- collaborate as producers of an identified product to develop a broadbased black economic empowerment transformation charter within two years of the publishing of the Notice;
- conduct a life cycle assessment, in relation to the identified product, within 5 years of implementation of their extended producer responsibility scheme;
- through the life cycle assessment focus on the (i) minimisation of material used in the identified product; (ii) design of the product to facilitate reuse, recycling or recovery, without compromising the functionality of the product; and (iii) reduction of environmental toxicity of the resulting postconsumer waste stream;
- Among others...



Penalties

A person convicted of an offence under these Regulations is liable to (a) imprisonment for a period not exceeding 15 years; (b) an appropriate fine; or (c) both a fine and imprisonment.

A registered producer who does not comply with these Regulations may have their registration as contemplated in these Regulations revoked and/or be compelled to join another extended producer responsibility scheme.

A registered producer responsibility organisation that does not comply with the requirements as contemplated in these Regulations may have their registration revoked.



To establish or join?

South Africa is an example of a voluntary, industry-led Extended Producer Responsibility (EPR) scheme for packaging. Multiple EPR schemes for different packaging waste streams have emerged since the early 2000s (<https://prevent-waste.net/wp-content/uploads/2020/09/South-Africa.pdf>)

EU EPR: 1990's; Waste Framework Directive 2008;

- minimum requirements for member states;
- member states implement local legislation and EPR schemes;
- varying application of EPR regulations: govnt; producers; independent; one/multiple PROs (single = Belgium, Czech Republic, Ireland, Italy, France, Netherlands, Norway, Portugal and Spain);
- many of the learnings from EU implemented in SA EPR regulations.



Concerns/Questions

- Duty to separate at source;
- Regulation of PRO's – concerns regarding different rules and fees; reporting obligations; compliance;
- What to expect.



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QUESTIONS?

