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NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

REGULATIONS TO PHASE-OUT THE USE OF PERSISTENT ORGANIC POLLUTANTS, 2019

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I, Barbara Dallas Creecy, Minister of Environment, Forestry and Fisheries, hereby under section 44(1)(aA) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) make regulations to phase-out the use, production, distribution, sale, import and export of persistent organic pollutants, set out the Schedule hereto.

Signed

BARBARA DALLAS CREECY

MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES

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CHAPTER 1

DEFINITIONS, PURPOSE AND APPLICATION OF THE REGULATIONS

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned the Act has that meaning, and unless the context indicates otherwise-

"listed substance" means any chemical listed in regulation 2(1)(a) of these Regulations, as well as formulations and products containing any of these chemicals and their wastes;

"the Act" means the National Environmental Managemet Act, 1998 (Act No. 107 of 1998); and

"waste disposal facility" means any site or pemise used for the accumulation of waste with the purpose of disposing of that waste at that site or on that premise.

2. Purpose and application of the Regulations

(1) The purpose of these Regulations is to-

(a) prescribe the requirements for the phase-out of the use, production, distribution, import and export of the following listed substances:

(i) Hexabromobiphenyl;

(ii) Pentachlorobenzene;

(iii) Perfluorooctane Sulfonic Acids; its salts (PFOS) and Perfluorooctane Sulfonyl Fluoride;

(iv) Hexabromodiphenyl Ether and heptabromodiphenyl Ether; and

(v) Tetrabromodiphenyl Ether and pentabromodiphenyl Ether,

in order to ensure that impacts on environment are prevented, mitigated or minimised; and

(b) set out timeframe during which all listed substances listed in subregulation (1)(a) must have been completely phased-out and all resulting wastes managed.

(2) These Regulations apply uniformly to any person that uses, produces, distributes, sells, imports or exports a listed substance.

CHAPTER 2

GENERAL PROHIBITIONS, PHASE-OUT TIME FRAMES, NOTIFICATIONS AND PHASE-OUT PLANS

3. General prohibitions

Subject to the provisions of regulation 4, 5 and 6, where applicable, no person may use, produce, distribute, import or export a listed substance.

4. Phase-out time frames

(1) No person may use, produce, distribute, sell, import or export-

(a) Hexabromobiphenyl and Hexabromobiphenyl formulations and products after 31 December 2020;

(b) Pentachlorobenzene and Pentachlorobenzene formulations and products after 31 December 2020;

(c) Perfluorooctane Sulfonic Acids; its salts (PFOS) and Perfluorooctane Sulfonyl Fluoride; PFOS formulations and products after 31 December 2021;

(d) Hexabromodiphenyl Ether (Hexa-BDEs) and Heptabromodiphenyl Ether (Hepta-BDEs); Hexa-BDEs and Hepta-BDEs formulations and products after 31 December 2020; or

(e) Tetrabromodiphenyl Ether (Tetra-BDEs) and Pentabromodiphenyl Ether (Penta-BDEs); Tetra-BDEs and Penta-BDEs formulations and products after 31 December 2020.

(2) Waste resulting from the phase-out of listed substances should be managed accordance National Environmental Management: Waste Act, 2008 (Act no 59 of 2008).

5. Notification

(1) A user, producer, distributor, seller, importer or exporter of a listed substance must notify the Director-General of the Department within 30 days after the promulgation of these Regulations.

(2) A person contemplated in subregulation (1) must notify the Director-General of the Department in a notification form obtainable from the Department.

(3) The Director-General of the Department must, in writing, acknowledge receipt of the notification form, and issue the notification number to the person contemplated in sub-regulation (1), within 30 days after receipt of the notification form completed to the satisfaction of the Department.

(4) The Director-General of the Department may, after receipt of the notification form contemplated in sub-regulation (2), request additional information to supplement an incomplete notification to be furnished in writing or amendments to be effected on the notification form and the amended notification form to be resubmitted within a specific time frame.

(5) The Director-General of the Department must be notified of any changes in the details provided as part of the notification, within 30 days of such change taking place.

6. Phase-out plans

(1) A producer, importer or exporter of a listed substance must develop a phase-out plan for that listed substance, which must include-

(a) contact details of the person submitting the phase-out plan;

(b) listed substance used, produced, distributed, imported or exported;

(c) suitable alternatives to the listed substance;

(d) the annual reduction target in relation to each listed substance;

(e) date or year in which the production, importation and exportation of the listed substances will be completely phased-out; and

(f) communication strategy to inform end-users, workers and others potentially exposed to the listed substance during the phase-out period of the hazards and how to reduce risk of exposure, and reduce exposures.

(2) A person contemplated in subregulation (1) must submit a phase-out plan for approval to the Director-General of the Department within 12 months after the promulgation of these Regulations.

(3) The Director-General of the Department must acknowledge receipt of the phase-out plan within 14 days after receipt, and may, after consideration of the content of the phase-out plan, in writing-

(a) approve the phase-out plan for implementation and notify the applicant of the approval and outline any applicable conditions or requirements; or

(b) require incomplete information to be furnished or amendments to be effected and revised phase-out plan to be resubmitted within a specified time frame.

(4) A person whose phase-out plan has been approved by the Director-General of the Department must implement such a plan, and may only deviate from such a plan upon written approval by the Director-General of the Department.

CHAPTER 3

REPORTING

7.

(1) A person contemplated regulation 6(1) must, every calendar year after the Director-General approval contemplated in regulation 6(4) has been received, report progress regarding implementation of the phase-out plan to the Director-General of the Department.

(2) The report contemplated in subregulation (1) must include a detailed progress report regarding the implementation of the approved phase-out plan contemplated in regulation 6 and copies of safe disposal certificates issued by an authorised waste disposal facility.

CHAPTER 4

GENERAL MATTERS

8. Offences and penalties

(1) A person is guilty of an offence if that person-

(a) contravenes regulation 3, 4, 5(1), 5(5), 6(1), 6(2), 6(4) and 7 of these Regulations; or

(b) furnishes false or misleading information in terms of these Regulations

(2) A person convicted of an offence in terms of sub-regulation (1) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine or such imprisonment

9. Short title and commencement

These Regulations are called the Regulations to Phase-out the Use of Persitent Organic Pollutants, 2019 and take effect on the date of publication in the Gazette.