



Responsible Care

SOUTH AFRICAN WEATHER SERVICE AMENDMENT BILL [B 22-2-11]**Published in GG 34648 of 30 September 2011****SUBMISSION BY****CHEMICAL AND ALLIED INDUSTRIES ASSOCIATION****JANUARY 2012****1. INTRODUCTION**

The Chemical and Allied Industries' Association (CAIA) was established in 1994 to promote a wide range of interests pertaining to the chemical industry. These include fostering South Africa's science base; seeking ways to promote growth in the sector; promoting the industry's commitment to a high standard of health, safety and environmental performance; and consulting with government and other role players on a wide variety of issues.

CAIA is the South African custodian of the international Responsible Care initiative, which has been adopted by 53 countries worldwide. Responsible Care is an initiative of the global chemical industry in which companies, through their national associations, commit to work together to continuously improve the health, safety and environmental performance of their products and processes, and so contribute to the sustainable development of local communities and of society as a whole. It encourages companies and associations to inform the public about what they make and do, about their performance including reporting performance data, and about their achievements and challenges. Responsible Care provides the platform for the implementation of the chemical industry's climate change agenda.

The chemical industry has operations that would be impacted by the proposed amendments, given the nature of its activities as governed, amongst other laws, by the National Environmental Management: Air Quality Act (39 of 2004), hereafter referred to as "NEMQA".

CAIA and some of its members individually have over a period of time engaged with the Department and related competent authorities on the implementation of NEMAQA, with specific regard to matters pertaining to air quality monitoring, reporting of emergency incidents as governed by section 30 of the National Environmental Management Act (108 of 1997) ("NEMA") and emergency management and response. Our comments in this regard should be regarded as a continuation of the position adopted throughout these previous and ongoing engagements.

2. GENERAL

It is understood that proposed amendments to the Act are intended provide for the responsibilities of the Weather Services in relation to the management of ambient air quality amongst other changes. This submission is restricted to the additional functions allocated to the Weather Services in relation to atmospheric emissions and air pollution.

CAIA understands that the Act intends to allocate responsibility in terms of the Air Quality Act, which is currently in the hands of the Department of Environmental Affairs and the relevant competent authorities at provincial and local level. From an industry perspective, the allocation of responsibility to a separate entity in terms of legislation is of great concern as it will almost certainly lead to duplication of requirements imposed on industry. CAIA had understood that the statutory role of the Department of Environmental Affairs would not be altered as a result of the Weather Services undertaking the technical task of establishment and management of an air quality information system, as a service to the Department of Environmental Affairs.

The purpose of the Bill as set out in the Memorandum on the Objectives of the Bill refers specifically to the technical requirements of the air quality information system,

whereas the Bill itself goes beyond the technical requirements of the system into policy and compliance and enforcement functions.

The objects of the Act are also restricted to the management of ambient air quality information. This restricted air quality information is supported. The extension of the functions of the Weather Service to render any service other than management of emission information is not supported.

DETAILED COMMENTS

Detailed comments on the Bill are presented in the table below.

CONCLUSIONS

In view of the significant impact that some of the proposed amendments could have on the chemical industry, CAIA requests an opportunity to make a presentation to the Portfolio Committee.

DETAILED COMMENTS

Relevant section of the Bill	Relevant section of the Act	Comment	Proposal
Clause 1	Definitions		
	"advisory services"	The inclusion "air pollution concentrations" and "emissions of pollutants" goes beyond the management of the information system and the scope of ambient air quality referred to in the Objects of the Act, to technical advice which in the view of CAIA should remain the responsibility of the competent authority with which companies are engaging in respect of licensing requirements on an ongoing basis	In order to avoid the kind of responsibility confusion that this approach will cause, it is proposed that additional advisory services be restricted to those related to ambient air quality.
		The inclusion of pollution warnings is equally concerning in that such warnings are normally required as a result of an incident occurring at an industrial plant. Under such circumstances, all chemical plants are required to respond to such incident in terms of the National Environmental Management Act. In addition, under such circumstances, a number of chemical plants are required to implement emergency response measures, which would include air pollution warnings, in terms of the Major Hazard Installation regulations, promulgated in terms of the Occupational Health and Safety Act.	
1(c)	"air quality"		

	information services"		
	(a)	The responsibility of the Weather Services is to establish and manage an information management system for air quality. While advisory services in respect of ambient air quality can be supported, advisory services related to atmospheric emissions form an integral part of the responsibility of the competent authorities in respect of atmospheric emission licenses.	Advisory services should be restricted to ambient air quality
	(b)	The undefined term "instruments" is too broad.	It is proposed to replace "instruments" with "management information systems"
	(c)(ii)	Research with the aim of reducing the impact of air pollution is outside the scope of the objects of the Act	Delete (c)(ii)
	(d)	It is not clear why training should be included here. Training in meteorological skills does not form part of the principal act.	Delete (d)
(e)	"greenhouse gas"	Term is not used in the Bill	Delete
(f)	"ozone depleting substance"	Term is not used in the Bill	Delete
	"pollution"	It is not clear why a definition of "pollution" is included in addition to the proposed inclusion of the definition of "air pollution".	It is suggested to include a definition of "air pollution" only to avoid confusion in the interpretation of the Act. Delete
	"priority area"	Term is not used in the Bill	Delete
Clause 2	Amendment of Section 3 of the Act		
	(a)	The source of "Ambient air quality information" is not defined.	It is proposed that this term is defined for purposes of the

			<p>interpretation of section 3 as well as for the proper interpretation of the Act.</p> <p>It is further proposed that this term is defined to include ambient air quality data generated by the competent authorities in terms of the National Environmental Air Quality Act (NEMAQA) and the Weather Services Act; information disclosed by private entities to the competent authorities in terms of a memorandum of understanding.</p>
Clause 3	Amendment of Section 4 – Functions of the Weather Service		
	(d)	<p>The purpose and objectives of the issuing of an air pollution warning is not explained and is hence not clear. Further, criteria for the exercise of the discretionary power are not explained, which opens it to a high level of subjectivity in the absence of a stated objective. It is a concern that such communications, in the absence of a clear objective, may lead to unjustified and emotional public reactions, with subsequent unintended consequences.</p> <p>In addition this provision could cause conflict with other requirements for air pollution warnings. Warnings are required in response to an emergency situation and cannot be developed on the basis of historical emission information, which is what will be submitted by</p>	<p>It is proposed that the objective for the issuing of such a warning is clearly explained and that related criteria for determining “necessity” in the application of the discretionary power is also included. It is suggested that the following is specifically considered for purposes of providing the recommended clarification:</p> <ul style="list-style-type: none"> • the impact on ambient air quality should be the key focus; • incrimination of any emitting entities should be avoided; • naming of and reference to any entities should be avoided; • Conclusions on or inferences to

		licensees.	consequential health impacts should be avoided, since this could subject emitters to significant reputational damage and vulnerability to civil litigation.
		It is also important to note the reference above to circumstances under which pollution incidents are required to be managed.	
Clause 4	Amendment of section 5 of the Act		
(iA)		Insertion should be restricted to ambient air quality	Should read: "ambient air quality management"
Clause 7	Section 14 – Staff and Conditions of Service		
		The principle of secondment of staff from the Department, meaning the Department of Environmental Affairs is supported; however, reference to the appropriate skills is required to ensure that the right expertise and competencies are obtained.	It is recommended to include reference to the appropriate skills in ambient air quality management
Clause 10	Section 27 – Limitation of Liability		
27A		The inclusion of such a limitation of liability clause is unreasonable. The objective and functions of the Weather Services is to provide services in the public interest. In providing such a public service, they have accountability to ensure that actions undertaken in terms of statutory provisions and obligations are conducted with due care by competent and skilled employees and agents. It would be unreasonable to exonerate them from negligence, gross negligence and intentional actions causing harm. Further, the inclusion of	Exclude the proposed section 27A.

		such a provision is inconsistent with statutory provisions administered by Department of Environmental Affairs, including NEMAQA, and other statutes.	
Clause 12	Section 30 – Offences and penalties		
		<p>As referred to above industrial operations that experience an incident that may result in an unusual atmospheric emission may require an “air pollution related warning” to be given in terms of other legislation as described above.</p> <p>Under such circumstances there is no time to wait for written permission from the Weather Service.</p>	<p>It is proposed that the scope of this provision exclude air pollution related warnings or if this is not considered appropriate then the following circumstances should be excluded from the requirement to obtain written permission:</p> <ul style="list-style-type: none"> • where there is a requirement to report incidents in terms of section 30 of NEMA or to give effect to other statutory reporting requirements with specified limited time frames; • where there are requirements for reporting or public communication as per the provisions of environmental licenses, as defined under the NEMA; • for purposes of managing emergency incidents, as defined in NEMA and specifically for purposes of ensuring that its effects its obligations under section 30 of NEMA, read with section 20 of the National Water

			<p>Act</p> <ul style="list-style-type: none"> • emergency response measures in terms of the Major Hazard Installation Regulations in terms of the Occupational Health and Safety Act.
Clause 13	Amendment of Schedule 1 13(b)		
	14	<p>The sources of data on ambient air quality data and atmospheric emission data which will be collected in terms of this provision needs to be clearly defined.</p> <p>Paragraphs 5.2.1.3 and 5.2.14 of the National Framework refer to SAAQUIS as the repository of information for access by the public. The intention is clearly not for the policy relating to the requirements for providing the information by licensees remains the responsibility of the Department.</p>	<p>It is proposed that these terms are defined for purposes of the proper interpretation Schedule 1, consistent with the use of these terms elsewhere in the Act.</p> <p>It is further proposed that this term is defined to include ambient air quality data generated by the competent authorities in terms of the National Environmental Air Quality Act (NEMAQA) and the Weather Services Act; and air quality data generated by private entities obliged to disclose this information in accordance with the provisions of the Promotion of Access to Information Act (PAIA) and information voluntarily disclosed by private entities to the competent authorities in terms of a memorandum of understanding and any such information in the public domain.</p>

			It is proposed that the intent of the proposed inclusion of "air pollution forecasting and warning services" for the general benefit of the population's health and well-being be clarified with regard to the comments made above on the proposed amendments to section 4.
	15	The warning services referred to here, requires further consideration to ensure that there is coherence with existing provisions in this regard.	It is proposed that language be introduced to ensure that policy and regulatory coherence is achieved.
14	Amendment of Schedule 2		
	15	It is not at all clear what is envisaged here. The information provided by industry in terms of licensing requirements is done so to provide a policy basis for the Department and to monitor compliance with requirements. It cannot be used as the basis of a consultancy service to the regulated industry. The term consultancy service implies a cost, which is not made clear. It is CAIA's view that any consultancy services on licensing requirements must be provided by the Department or the relevant competent authority.	It is proposed that the inclusion of this service be reviewed.
	Section 26 – Intellectual property rights		
		It is of concern that this section of the Act has not been amended to provide similar protection in respect of intellectual property considerations which may be relevant in respect of the additional information which will be managed by SAAQUIS, particularly in respect of information	It is proposed that an appropriate amendment here be considered.

		submitted in compliance with regulatory requirements.	
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