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## GOVERNMENT NOTICE

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. R. 341

28 March 2008

#### ENVIRONMENT CONSERVATION ACT, 1989

#### REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS AND ASBESTOS CONTAINING MATERIALS

I, Marthinus Van Schalkwyk, the Minister for Environmental Affairs and Tourism hereby make the Regulations for the Prohibition of the Use, Manufacturing, Import and Export of Asbestos and Asbestos Containing Materials under section 24B of the Environment Conservation Act, 1989 (Act No. 73 of 1989) contained in the schedule hereto.

**MARTHINUS VAN SCHALKWYK**

**MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM**

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**SCHEDULE****DEFINITIONS**

1. In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates –

**“asbestos”** means any of the following minerals:

- (a) Amosite;
- (b) chrysotile;
- (c) crocidolite;
- (d) fibrous actinolite;
- (e) fibrous anthophyllite; and
- (f) fibrous tremolite,

or any mixture containing any of these minerals;

**“asbestos containing material”** means any mixture, product, component or material to which asbestos has been added;

**“Asbestos Phase-out Plan”** means the plan referred to in regulation 5 of these regulations;

**“Asbestos Regulations, 2001”** means the regulations published under Government Notice R.155 in *Government Gazette* 23108 of 10 February 2002;

**“asbestos waste”** means any asbestos containing material that:

- (a) is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (b) the generator has no further use of, for the purposes of production or consumption; and
- (c) must be disposed of;

**“Identified product”** means heat and arc resistant electrical insulation boards, acetylene gas cylinders, gaskets, seals and insulation materials which contain asbestos;

**“SANS 10228”** means the identification and classification of dangerous goods for transport, SANS 10228, published by the South African Bureau of Standards (SABS);

**“SANS 10229”** means the Transport of dangerous goods – Packaging and large packaging for road and rail transport, SANS 10229, published by the South African Bureau of Standards(SABS);

**“the Act”** means the Environment Conservation Act, 1989 (Act No. 73 of 1989), as amended.

**PROHIBITIONS**

2. (1) No person shall acquire, process, package or repackage asbestos; manufacture asbestos containing materials, or distribute asbestos or asbestos containing materials.
- (2) No person shall import asbestos or asbestos containing material into the Republic, or export asbestos or asbestos containing materials from the Republic.
- (3) No person shall import asbestos containing waste into the Republic.
- (4) The provisions of sub-regulation (2) and (3) shall not apply to a person –
  - (a) importing 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; or
  - (b) importing asbestos which is solely for use in analysis or research and which is not intended to develop a new use for asbestos or asbestos containing material; or
  - (c) importing asbestos or asbestos waste from a State, which is a member of the Southern African Development Community, for safe disposal at a disposal site for which a permit has been issued in terms of section 20 of the Environment Conservation Act, 1989;provided that persons conducting the activities in paragraphs (a), (b) and (c) register the activity with the Minister as contemplated in regulation 4 of these regulations.
- (5) The provisions of sub-regulation (1) and (2) shall not apply to a person who, on the date of the commencement of these regulations, is lawfully importing an identified product or asbestos for use in the manufacture of an identified product, nor to any person manufacturing or distributing an identified product for local use, provided that the person conducting the activity registers the activity with the Minister as contemplated in regulation 4 and acts in accordance with an approved Asbestos Phase-out Plan as referred to in regulation 5 of these regulations.

**TRANSITIONAL PROVISIONS**

3. (1) A person importing an identified product or asbestos for use in the manufacture of an identified product, or any person manufacturing or distributing an identified product for local use immediately prior to the date of commencement of these regulations and intends to continue with the activity, may carry on with that activity for a period of one year after the date of commencement of these regulations: provided that he or she has registered the activity with the Minister as contemplated in regulation 4 and follows the procedure as set out in regulation 5 of these regulations.
- (2) A person referred to in regulation 2(1), 2(2) and 2(3) who does not intend to continue with the activity in terms of regulation 2(4) and 2(5) must stop the activity 120 days after the date of commencement of these regulations.

**REGISTRATION AND REPORTING**

4. (1) A person who undertakes or intends to undertake an activity as contemplated in regulation 2(4) or 2(5) must within 120 days of the commencement of these regulations register the activity with the Minister on the form contained in Annexure A to these regulations.
- (2) After registration in terms of sub-regulation (1) the Minister will issue the applicant with a registration number.
- (3) The registered person must be display the registration number on all trading documentation.
- (4) If any of the information provided to the Minister in terms of this regulation changes, the Minister must be notified within 14 days after the date that the information provided changed.

- (5) A person referred to in sub-regulation (1) of regulation 4 above must, before 31 March of each and every year, submit an annual report from an external auditor commissioned at own expense to audit at least the following:
- (a) The correctness of the information supplied on the registration form;
  - (b) In the case of identified products, progress made in terms of the Asbestos Phase-out Plan provided in terms of these regulations;
  - (c) The person's compliance with the relevant legislation;
  - (d) In the case of the transport of asbestos, the amount of asbestos transported through the country; and
  - (e) In the case of a research project, how much asbestos or asbestos containing materials were used in the research project and the outcome of the research.

#### **ASBESTOS PHASE-OUT PLAN**

5. (1) A person contemplated in regulation 2 (5) must submit an Asbestos Phase-out Plan to the Minister for approval within one year of the commencement of these Regulations: Provided that a group of people importing, manufacturing or distributing the same or substantially similar identified products may submit a joint Asbestos Phase-out Plan for the purposes of complying with these Regulations.
- (2) An Asbestos Phase-out Plan must at least contain information on –
- (a) proposed alternatives to the use of asbestos or asbestos containing materials in the manufacture of the identified product;
  - (b) 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.
- (3) 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 expert within a time period indicated by the Minister.

- (4) 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, on good cause shown, with or without conditions attached to such an extension.
- (5) After considering any Asbestos Phase-out Plan that has been submitted in terms of these regulations, the Minister may accept such a plan and may set conditions for the implementation of such a plan or reject such a plan with reasons provided: Provided that where the date for the submission of an Asbestos Phase-out Plan, revised Asbestos Phase-out Plan or an independent review of the Asbestos Phase-out Plan has passed and such a plan has not been submitted, the Minister may exercise this power on the basis of other information at his disposal.

#### **DISPOSAL OF ASBESTOS OR ASBESTOS CONTAINING MATERIAL**

6. Any person who wishes to dispose of any asbestos or asbestos containing material in his or her possession must dispose of that asbestos or asbestos containing material in accordance with section 20 of the Act and regulation 20 of the Asbestos Regulations, 2001.

#### **PACKAGING AND TRANSPORT OF ASBESTOS**

7. A person who transports or packages asbestos must comply with the standards set for transport and packaging in SANS 10228 and SANS 10229.

#### **OFFENCES**

8. (1) Any person who contravenes any provision of these regulations shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 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 in terms of these Regulations who, after such conviction, persists in the act or omission, which constituted such offence, shall be guilty of a continuing offence and be 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.

#### **SHORT TITLE**

9. These Regulations shall be called Regulations for the Prohibition of the Use, Manufacturing, Import and Export of Asbestos and Asbestos Containing Materials, 2007.

## ANNEXURE A



## APPLICATION FORM

APPLICATION FOR REGISTRATION IN TERMS OF REGULATION 4 OF THE - *Regulations for the Prohibition of the Use, Manufacturing, Import and Export of Asbestos and Asbestos Containing Materials, 2007.*

## A. APPLICANT DETAILS:

|  |                   |
|--|-------------------|
| NAME OF APPLICANT:   |                   |
| IDENTITY OR PASSPORT NO IN THE CASE OF AN INDIVIDUAL:                            |                   |
| REGISTRATION NUMBER IN THE CASE OF A SOUTH AFRICAN COMPANY OR CLOSE CORPORATION: |                   |
| COMPANY REGISTRATION IN CASE OF AN INTERNATIONAL COMPANY:                        |                   |
| TEL NO:  |                   |
| FAX NO:  |                   |
| E-MAIL:  |                   |
| POSTAL ADDRESS:  | PHYSICAL ADDRESS: |
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**B. TYPE OF REGISTRATION APPLIED FOR (Tick off):**

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| Import, manufacture or distribution of an identified product                             | Import of asbestos or asbestos waste for the purpose safe disposal |  |
| Import, storage or use of asbestos or asbestos containing material for research purposes | Transport of asbestos or asbestos containing materials             |  |

**PLEASE PROVIDE THE FOLLOWING INFORMATION THAT RELATES TO THE ACTIVITY FOR WHICH REGISTRATION IS APPLIED FOR**

**C. IMPORT, MANUFACTURE OR DISTRIBUTE AN IDENTIFIED PRODUCT**

- The nature of the business involved in.

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- The address where the business is carried on.

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- The quantity of identified products that is manufactured, stored or distributed.

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- The quantity of identified products that is manufactured, stored, distributed, or imported/exported for transit through South Africa.

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**D. IMPORT, STORAGE OR USE OF ASBESTOS OR ASBESTOS CONTAINING MATERIAL FOR RESEARCH PURPOSES**

- The name and domicile of the person responsible for the research to be conducted.

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- The nature and purpose of the research.

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- The quantity and type of asbestos or asbestos containing materials to be used in the research per annum.

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**E. IMPORT OF ASBESTOS OR ASBESTOS WASTE FOR THE PURPOSE SAFE DISPOSAL**

- The name and domicile address of the importer.

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- the disposer.

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- the quantity of asbestos or asbestos waste that is imported.

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- the country from which it is imported.

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- the conditions and period of the contract under which the asbestos or asbestos waste is accepted.

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- the type and composition of the asbestos or asbestos waste.

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- the location of the disposal site where the asbestos is being disposed of and the permit number issue to the site.

**F. TRANSPORT OF ASBESTOS OR ASBESTOS CONTAINING MATERIALS**

- The name and domicile address of the transporter.

- the port of entrance and exit.

- the type and quantity of asbestos usually transported in an average month.

- the physical address where the identified product is stored during transit.