

The Impact of the Section 24G Process on Small Recycling Businesses

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ABSTRACT

This paper aims to assess the impact of the NEMA and the NEM:WA on small recycling businesses that start off below the legal thresholds and in the time develop to larger business that trigger listed activities, thus requiring a Section 24G Process to rectify their unlawful commencement. This will include the dynamic of small waste management businesses preferring to initially rent premises and the lack of time frames set for a Section 24G application.

1. INTRODUCTION

Historically, waste management in South Africa mainly focused on end of pipe technologies such as landfilling and incineration. With the promulgation of the National Environmental Management Act (No. 107 of 1998) (NEMA) and the National Environment: Waste Act (No. 59 of 2008) (NEM:WA) that ultimately aims to give effect to Section 24 of the Constitution, “*to secure an environment that is not harmful to health and well-being of the people of South Africa*”, waste management in South Africa has evolved to include additional requirements, such as waste minimisation and recycling. As a result of these additional legislated requirements, new markets/businesses have formed.

The Recycling Market that includes Material Recovery Facilities (MRF) and e-waste dismantling/recovery facilities has become a growing business in South Africa. Entrepreneurs realise that additional waste management services are required (that municipalities are not mandated to provide) and establish businesses to address these needs. Many of these waste management businesses start off small, below the NEM:WA thresholds that would require a Waste Management Licence to operate. However, these businesses soon grow and begin to manage a larger volume of waste. The increase in the volume of waste received at these facilities ultimately results in exceeding the NEM:WA thresholds.

1.1 South African Legislation Framework

With the promulgation of the National Environmental Management: Waste Act (Act No. 59 of 2008) (NEM:WA) in 2008 all organs of states within South Africa were bound to achieve the objectives of the Waste Management Hierarchy. The Waste Management Hierarchy is an internationally understood concept that aims to protect the environment and conserve resources through prioritising the reduction in resource consumption, recovering the waste generated and ensuring the safe treatment and disposal of waste (Hansen, Christopher, & Verbuecheln, 2002).

Based on the Waste Management Hierarchy, the NEM:WA sets out to achieve the following, inter alia, objectives:

- (i) Minimise the consumption of natural resources;
- (ii) Avoid and minimise the generation of waste;
- (iii) Reduce, re-use, recycle and recover waste; and
- (iv) Treat and safely dispose of waste as a last resort

Committed to achieve the objectives of the Act, the South African Government was obligated, by the NEM:WA, to develop a National Waste Management Strategy (NWMS).

To ensure that NEM:WA objectives are achieved without negatively impacting the environment, the list of waste management activities that may have a detrimental effect on the environment (Government Notice 718 of 2009 and recently amended by 921 of 2013) was promulgated. This government notice provides a list of activities that will require a Waste Management Licence to be issued prior to undertaking the activity.

The NEMA and the NEM:WA are guided by Integrated Environmental Management Principles that aim to ensure negative environmental impacts are prevented, mitigated and regulated by providing a range of tool/measures to monitor and manage activities that generate environmental impacts. One such tool is the Section 24 G process that aims to rectify the commencement of unlawful activities.

2. WASTE MANAGEMENT AS BUSINESS

In 2011, South Africa generated approximately 108 million tons of waste of this only 10% is recycled, whilst the remaining 90% is landfilled (Department of Environmental Affairs, 2012a). This illustrates that South Africa is still heavily focusing on addressing the causes of waste management and not the problem, this is a long way off from achieving the objectives of the NEM:WA. Thus, South Africa will require a suitable strategy that sets out the framework to achieve the NEM:WA objectives.

In 2012, the NWMS was officially promulgated. The NWMS acknowledges that waste management in South Africa faces numerous challenges and set out 8 goals and targets to address the challenges and achieve the objectives of the NEM:WA.

The first goal of the NWMS is to promote waste minimisation, re-use and recycling and the recovery of waste. The strategy sets the target to divert 25% of recyclables from being landfills by 2016. Furthermore, to ensure that all metropolitan municipalities, secondary cities and large towns have initiated separation at source programmes, also by 2016 (Department of Environmental Affairs, 2012b).

Although not significant by international standards, to achieve a 15% increase in waste diverted from landfill will require additional services to be provided. Services such as waste transporters, Material Recovery Facilities (MRF), e-waste dismantlers and recycling are not typically provided by Municipalities and will require, as it already does, the assistance of the private sector.

The NWMS has recognised the need for additional services and has set the goal to grow the contribution of the waste sector in developing the green economy.

3. SMME'S AND WASTE MANAGEMENT

With South Africa's focus slowly moving away from waste disposal (that requires large capital investments) and encouraging waste minimisation and diversion, this moves away from only needing the services from big companies and opens the door for small and medium sized enterprises to enter the waste business, as operating a MRF (sorting recyclables) requires substantially less capital investment than, for example operating a landfill.

Understanding this, the NWMS has set a 2016 target to create 69 000 new jobs in the waste sector and promote the participation of 2 600 additional SMMEs and cooperatives in waste service delivery and recycling.

Although the capital investment may be lower, like any other business it will still require that initial investment to establish the business. It is estimated that a small facility that provides basic services of collecting and storing of pre-sorted wastes (either recyclables or e-waste, etc.) and further sorting the waste into their resalable categories will have a capital cost to initiate the business of R 289 481.93 and an expected operational cost (for 1 year) of R 324 563.16. Table 1 provides a breakdown of the expected costs, please note this is only an estimate and only include the basic requirements.

An SMME is more likely to rent suitable premises than purchase. This proves to be more cost effective in the short term and allows for more freedom to move premises if a more cost effective or more suitably located premises becomes available.

However, a Waste Management Licence (WML) and the associated Basic Assessment process is undertaken for the property and not the activity. To undertake the waste management licencing process it could cost R92 000 and upward. To obtain a WML will be the onus of the SMME and not the landowner. Thus the SMME would place itself at risk should it obtain a WML and then decide to move after a year, or if the landowner does not decide to renew the lease agreement after the agreed time.

Thus many SMME will attempt to delay the capital costs of obtaining a WML until the business has proved to be viable. This, however, does place the SMME at further risk in terms legal requirements.

A waste management business is allowed to operate without a WML as long as it stays outside of the legislated thresholds, thus not triggering the listed activities in terms for GN. 921 of 2013. To illustrate this an actual case is used as an example.

Table 1: Waste Facility Costs

Initial capital expenditure to operate for one year	
Company Registration	R 210.00
Facility	
Warehouse in industrial area (450m ² @ R35/m ²) two months' rent as deposit	R 31 500.00
Vehicle (2nd hand basic LDV)	R 145 950.00
Trailer	R 5 900.00
Employ staff ¹	
Administrative Clerk	R 3 689.12
General Assistant	R 2 474.36
General Assistant	R 2 474.36
General Assistant	R 2 474.36
Driver	R 2 809.73
Waste Management Licence to legally Operate	
Application fee	R 2 000.00
Consultation fee (Basic Assessment)	R 90 000.00
Total	R 289 481.93
Expenditure to operate for one year	
Facility	
Warehouse in industrial area (450m ² @ R35/m ²)	R 157 500.00
Employ staff	
Administrative Clerk	R 44 269.44
General Assistant	R 29 692.32
General Assistant	R 29 692.32
General Assistant	R 29 692.32
Driver	R 33 716.76
Total	R 324 563.16

4. CASE STUDY

In 2011, a waste management company that provided the services of collecting storing and dismantling electronic waste (e-waste), operated legally without a WML as the following listed activities (in terms of GN 718 of 2009) were not triggered, due to the activities being under the listed thresholds:

2. The reuse or recycling of hazardous waste in excess of 1 ton per day, excluding reuse or recycling that takes place as an integral part of an internal manufacturing process within the same premises.
4. The recycling of hazardous waste in excess of 500kg but less than 1 ton per day calculated as a monthly average, excluding recycling that takes place as an integral part of an internal manufacturing process within the same premises.
5. The recovery of waste including the refining, utilisation, or co-processing of waste in excess of 10 tons but less than 100 tons of general waste per day or in excess of 500kg but less than 1 ton of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.
7. The treatment of hazardous waste using any form of treatment at a facility that has the capacity to process in excess of 500kg but less than one ton per day excluding the treatment of effluent, wastewater or sewage.

The facility was located in a serviced warehouse in an industrial area. The property was zoned industrial, which allowed waste management activities to be undertaken on the property.

¹ Basic staff employment wages was obtained from the MyWage website.

In 2012, the waste management company intended to apply for a WML as business was growing and proving to be mildly successful. However, it was realised that the business was beginning to exceed the thresholds. The facility had two options, stop or limit operations whilst applying for a WML or continue illegally.

The facility employed 12 full-time employees and intended to employ 10 additional staff to accommodate the additional incoming waste, so stopping was not an option. The facility's existing customers were providing more waste to be collected, so limiting the business was also not an option. It was decided that the facility would continue to operate illegally.

As a result, instead of applying to the Department of Environmental Affairs for a WML, a NEMA Section 24G application was submitted instead. Section 24G of NEMA which makes provision for *ex-post facto* authorisation by allowing an offender in terms of Section 24F (i.e. a person who started a listed activity without authorisation) to apply for rectification (September, 2012).

Undergoing a Section 24G is a major risk, as it does not guarantee an authorisation, and the applicant will be fined (or may face prosecution). But, the Section 24G process does allow the applicant to continue operating *legally* until a decision is made and the opportunity to rectify the illegal activity given.

Prior to the submission of the Section 24G Application, the Competent Authority was contacted, to confirm the process to be followed. The following process was confirmed:

1. Compile and submit the Section 24G application form. The application required:
 - o Details on the activity undertaken
 - o The need and desirability of the activity
 - o A description of the receiving environment and socio economic context, and
 - o A preliminary environmental impact assessment
2. The Competent Authority will assess the information in the application form and schedule a site visit,
3. An administrative fine will be issued (based on the information provided and site visit)
4. Only once the fine has been paid will the Competent Authority recommend what process should be undertaken. This could be:
 - o The process to obtain authorisation and rectification, or
 - o The applicant would be instructed to close the facility and reinstate the area.

It should be noted that unlike a normal WML and Basic Assessment application, a Section 24G application does not have legislated time frames.

The application was submitted in March 2012 and concluded that due to the facility's location (in an existing warehouse in an industrial area), the environmental impacts on the receiving environment was negligible and had a low negative impact to human health (staff exposed to dust) which was easily mitigated. However, due to the needs and desirability of the activity, the facility had a high positive impact for employment and ensuring that recyclable materials are recovered (which has many associated positive impacts).

The turn-around time for the Competent Authority to process the application was slow. The site visit was only undertaken three months later in June 2012, with the administrative fine only being issued a year later in May 2013, for R 50 000. The applicant appealed the fine at the end of May 2013 and requested clarification on the fines calculation.

The competent authority clarified the fine, in September 2013, stating that all the impacts of the activity was considered and that the fine was already reduced from R 217 000 to R 50 000.

Due to the promulgation of GN. 921 of 2013 in November 2013, the Section 24G application was withdrawn due the listed activities changing. To date, no response from the competent authority was received confirming the withdrawal.

From the initial application to the withdrawal letter, the Section 24G Process has taken 1 year and 8 months and the process has not been formally closed yet. During the Section 24G application the applicant's business grew, the lease on the warehouse had ended and is now considering moving to another location. Should the competent authority choose not to accept the withdrawal, the applicant would be hindered; apart

from paying the fine, the applicant may still be requested to rectify the transgressed activity and therefore tied to a warehouse that he no longer wants to lease.

This begs the question is the Section 24G process a viable option for a SMME recycler?

5. CONCLUSION

In this section we attempt to answer the above question. The short answer, in this instance is, no.

To ensure that South Africa achieves its goal to reduce waste to landfill by 25% and to promote the participation of 2 600 SMMEs, there has to be a better way to ensure these facilities operate within the law and when they do transgress they are not severely punished.

Starting a business is a risk and takes a lot of work to ensure that it does not fail. Therefore, government must address how to better assist these SMMEs as without them we will not achieve our waste minimisation goals.

6. REFERENCES

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