



SOLID WASTE MANAGEMENT AND WASTE WATER MANAGEMENT

NECESSARY CONTENT
OF ENFORCEABLE BY –
LAWS

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THE GOOD SIDE OF HUMAN BEHAVIOUR IN WASTE MANAGEMENT

ENVIRONMENTAL AWARENESS / GOOD WASTE MANAGEMENT PRACTICE



.....AND THE BAD SIDE

DISREGARD FOR THE ENVIRONMENT AND
CONTRAVENTIONS OF NEMA AND WASTE
MANAGEMENT BY-LAWS – DUMPING,
LITTERING AND WORSE



THESE TWO OPPOSING FORMS OF BEHAVIOUR WARRANT DIFFERENT REGULATORY PRACTICES

INCENTIVISE THE GOOD

- RECOGNITION SCHEMES
- BUY-BACK SCHEMES
- EDUCATION & AWARENESS
- REINFORCE NEM:WA REQUIREMENTS IN BY-LAW

CRACK DOWN ON THE BAD

- DIRECTIVES
- CRIMINAL SPOT FINES
- CRIMINAL PROSECUTIONS
- PUNITARY MEASURES
- SPECIAL ENFORCEMENT MEASURES



The focus of this presentation is on cracking down on the bad.....

What should an effective waste or wastewater by-law contain ?

In the first instance, the governance powers of municipalities with regard to waste and wastewater management must be considered and understood.

Governance powers of municipalities with regard to waste and wastewater management – Schedules to the Constitution

- Schedule 4B: Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems
- Schedule 5B: Refuse removal, refuse dumps and solid waste disposal

Although these powers are restrictively worded, they must be understood in conjunction with Section 3 of NEM:WA which imposes a general duty on the state (including municipalities) to uphold and implement the principles of the waste hierarchy and Section 24 of the Constitution. Also consider that municipalities have broad governance powers over local government affairs (Constitution Section 151(3)) and that they have legislative and executive authority over the matters stated in 4B and 5B). Thus there is wide scope with regard to regulation of waste and wastewater matter.

ESSENTIAL ENFORCEMENT TOOLS

COMPLIANCE NOTICES / DIRECTIVE

A by-law should **establish authority for the issuance by the municipality of directives. Non-compliance with a directive must be declared to be an offence.*** Thus when the directive is disregarded, there can be two criminal charges:

- 1 the act/omission itself;
- 2 non-compliance with the directive.

*This must be explicitly stated in the by-law.

NOTICES AND DIRECTIVES CONTINUED

Pre- and final directives

A final directive should be issued when there is already harm being done to the environment, or the risk of such harm is real and imminent. If there is a by-law contravention, but no risk to the environment as yet, then a pre-directive must be issued. (This is required in terms of fair administrative practice, to give the respondent an opportunity of making representations.)

NOTICES AND DIRECTIVES CONTINUED

Service of notices and directives

It is advisable to establish a wide variety of service options in a by-law. In addition to the conventional methods of posting, faxing and emailing, create mechanisms to serve at the site of the transgression even if the perpetrator is not present, ie on any adult person who is present, or by placing the notice in a conspicuous place on the property.

CRIMINAL SANCTIONS

Consider what offences must be created in the by-law. Criminalising all transgressions may seem ideal but will only be meaningful if there are resources to investigate and prosecute.

Suggestion : criminalise the more environmentally harmful acts, and impose administrative fines for the others (an example of the latter is a requirement that waste service providers register with the municipality).

CRIMINAL SANCTIONS CONTINUED

Try to align offences to those in NEM:WA and NEMA. Thus it is easier to escalate to the provincial regulatory authorities and DEA if necessary.

Admission of guilt fines: some offences are adequately regulated by admission of guilt fines – this is arranged in consultation with the Magistrate (ie not stated specifically in the by-law)

ADMINISTRATIVE PENALTIES

Administrative penalties are paid to the municipality as regulator, and may assist with the costs of clean up. A by-law can have a general empowering section for the establishment of administrative penalties and these can be created and revised by way of proclamation from time to time.

(This is more meaningful to a municipality than criminal penalties which are paid to the state.)

PUNITIVE MEASURES

South Africa has strong national environmental legislation with substantial criminal sanctions – fines and imprisonment (NEMA: R10million/10years). This regulatory power is however not often carried through into municipal legislation dealing with environmental crimes. Municipalities should consider increasing their fines in by-laws for this purpose. (There is no jurisdictional limit imposed on municipalities – in the courts a district court can impose a fine of up to R120000 and a regional court R600000.)

SPECIAL ENFORCEMENT MEASURES

...taking the lead from NEMA – municipalities can introduce special enforcement measures for offences relating to waste and wastewater Some examples:

- private prosecution (by municipalities?)
- remediation orders with the effect of civil judgments
- personal liability of managers, owners and directors
- rewards to informants
- cancellation of permits and authorisations
- mechanisms to encourage whistleblowers

Having established mechanisms to crack down on transgressors....

Consider mechanisms to encourage and incentivise best practice, some of which can be regulated in a by-law, for example waste minimisation groups can be given a rebate on collection charges. Where recyclables have a clear commercial value, consideration can be given to paying for delivery to material recovery facility or buy-back centre.

SEWERSnot for waste disposal!

Material cleared from a sewer in Philippi, Cape Town (other more gruesome types of waste found in sewers not shown, ie dead animals and human foetuses, and endless disposable nappies)..... There is often no way to track down the perpetrators unless they are caught in the act.



WASTEWATER REGULATION

- Prohibit the dumping of any solid matter into the system.
- Important to prohibit the feeding of stormwater into the system (overloads treatment works)
- Distinguish private and public sewers (the former must be unblocked by the property owner) – as a general proposition, the sewer becomes public at the point at which it joins the public sewer line)
- Regulate certain substances specifically (eg fat and food waste from restaurants)
- Prevention – limit points of access.



USE OF TREATED EFFLUENT

This needs to be regulated where the off-take of municipal treated effluent by the public is allowed.

- An agreement is necessary to make the permitted uses clear, and to indemnify the municipality.
- The agreement must disavow any warranty regarding quality.
- It is essential to have the effluent supply system entirely separate from the municipal water system. Standards for pipes and fittings should be prescribed.
- The user must take measures (eg signage) to ensure that effluent is not mistaken for potable water.

TREATMENT AND USE OF GREY WATER ON SITE

- This can be empowered by a by-law, subject to technical standards and similar conditions as for treated effluent – a formal authorisation is necessary with a disclaimer and indemnity.
- As the authority governing wastewater, the municipality must have the power to withdraw authority for greywater treatment on site if health hazards eventuate from its use.

NORMS & STANDARDS/GUIDELINES

– a useful tool

Norms and standards can be published as guidelines for conscious citizens to use, or can be incorporated by reference into a by-law and given legislative force, and changed from time to time without the need to amend a by-law.

Guidelines are less prescriptive but can also serve as 'soft law' instruments to encourage good practice.



Thank you.

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