

**Revision of Model By-Law on Waste
Management**

Review Report

April 2022

by

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Management**

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Report prepared for:

United Nations Environmental
Programme (UNEP) and
Department of Forestry, Fisheries
and the Environment (DFFE)

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Date:

9 May 2023

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1. Introduction

South African municipalities face various challenges in providing waste management services due to financial, operational and legal hinderance (Polasi et al. 2020). As a result, municipalities are struggling to provide basic waste management services. Access to waste collection services is estimated to an average of 70% across the country (PMG, 2022). Compounding the issue of waste management is the lack of airspace at authorised landfills. Lack of airspace at landfills indicates that there is currently insufficient waste minimization and recycling initiatives to divert waste away from the landfill. The State of Waste Report indicates that South Africa generates approximately 107,7 million tonnes of waste annually, with only 21% of waste being diverted from landfill (DFFE, 2022). Transitioning towards circular waste economy and implementing Extended Producer Responsibility presents an opportunity to divert waste away from the landfill and extend the lifespan of the landfills.

Legislation is widely recognized as an important measure to provide efficient waste management services. South Africa has introduced a range of legislative measures aimed at ensuring effective waste management and the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA) being the main legislation regulating waste management. While the national government develops waste management policies and legislation, implementation of these policies and legislation is done at the local government. The South African Constitution (RSA, 1996) stipulates that a municipality may make and administer by-law for the effective administration of the matters which it has the right to administer Section 156(2). By-law are laws developed and managed by municipalities. These laws are aligned with the national legislation. Oosthuizen and Armstrong (2007) report that national legislation and policy provides direction and guidelines as to what municipalities should be responsible for and also what should be in their By-law.

The Department of Forestry, Fisheries and the Environment developed a model by-law on waste management to guide municipalities on what they should consider including in their by-laws.

The objectives of these by-laws are to:

- (a) give effect to section 24 of the Constitution
- (b) provide an effective legal framework that can be used to control waste management activities
- (c) ensure that waste is avoided, or where it cannot be altogether avoided, minimized, re-used, recycled, recovered, and disposed-of in an environmental sound manner; and

(d) promote and ensure an effective delivery of waste services

This report therefore reviews the existing model by-law and provides recommendations for revision. The report starts by identifying if the model by-law are aligned with the existing legislation. Limitations of the model by-laws including conflicting by-laws and/or by-laws that conflict with the national legislation are also identified. Finally, recommendations on the revision of the model by-law are provided.

2. Circular waste economy and Extended Producer Responsibility (EPR)

The existing legislation on waste management is helping South Africa transition from a linear towards circular economy. For example, the National Waste Management Strategy 2020 focuses on the circular economy, and specifically on “closing the loop’ between resource extraction and waste disposal by the application of waste avoidance, re-use, repair, recycling, and recovery throughout the economic cycle to minimize waste and reduce demand for virgin materials as production inputs” (DEFF, 2020). Circular systems can help reduce rising levels of municipal waste while increasing socio-economic growth and environmental protection.

2.1 Possible clauses on circular waste economy to consider adding may include:

- a) The Municipality may require any person or owner of premises to separate their waste and use different receptacles provided by the Municipality or service provider;
- b) The Municipality may require any person or owner of premises to participate in Take-back schemes;
- c) Manufacturers operating in the municipality may be required to design products for prolonged use, reuse and recycling;

Extended Producer Responsibility (EPR) is an important policy tool to drive the transition to a circular waste economy. The main aim of EPR is to shift responsibility for managing end-of-life products from municipalities to producers. The model by-law should therefore reflect the change from end-of-pipe waste management to upstream measures as envisaged in the EPR regulations. Possible clauses on EPR to consider adding may include:

2.2 Service providers engaging in activities linked to EPR schemes must:

- a) within 30 days of starting to engage in such activities, inform the municipality in writing;

- b) share relevant information with the municipality to communicate such with the affected communities;
- c) encourage residents to participate in the EPR scheme activities as appropriate; and
- d) submit annual progress reports on EPR related activities to the municipality.

Furthermore, the preamble should be amended as follows:

Replace the last statement with: AND WHEREAS the “municipality” promote the waste hierarchy approach in support of a circular economy as outlined in the National Waste Management Strategy, 2020.

It is further recommended to add the following clause to Section 2 of the model By-law:

2(1)(e) promote transitioning to a circular waste economy

2 Development of Integrated Waste Management Plans (IWMPs)

The National Environmental Management: Waste Act, 2008 (Act 59 of 2008) requires municipalities to develop Integrated Waste Management Plans (IWMPs). IWMPs are important planning and management tool for local municipalities to provide adequate and efficient waste management services. Waste management plans submitted by business and industry could be powerful tools to inform the development of municipal IWMPs, especially the setting of waste minimization, recycling and circular economy targets appropriate for a particular municipality. The by-law could therefore obligate business and industry to prepare and submit waste management plans relating to business waste collected by the municipality to the designated waste management officer in the municipality. The purpose of these plans would be to assist the designated waste management officer with the coordination of matters pertaining to waste management in the municipality (refer to Section 10 (5) of NEMWA). The by-law could prescribe the format and minimum information requirements to be included in waste management plans as follows:

Waste management plans

The contents of waste management plans prepared by business and industry could include:

- Defining the geographical location of the business or industry
- Situation Analysis
- Waste types and quantities generated

- Estimating future waste generation rates and quantities
- Waste minimization, recycling, treatment and disposal targets
- Circular economy opportunities
- Desired end state
- Reporting on implementation, monitoring and review

3 Waste picker integration

Both the National Waste Management Strategy and the EPR regulations recognize the important role played by waste pickers in the waste management value chain. These tools call for the integration of waste pickers in order for them to fully participate in the waste management value chain and contribute towards circular economy. Revision of the model by-laws to include waste picker integration is important to ensure that municipalities create a good working environment for waste pickers.

It is therefore recommended that the Preamble of the model by-law be revised to include reference to Waste picker integration as follows:

Add the following statement after the third statement in the preamble:

AND WHEREAS the “Municipality” is committed to safeguard waste picker livelihoods through their integration into waste management activities

In addition, it is recommended that the following clause be added to the Objectives:

2(1)(f) ensure that waste picker activities are integrated with municipal waste management systems where possible and feasible to secure their livelihoods.

It is recommended that a section be added to the model By-laws specifically on waste picker integration containing clauses such as:

- (a) Waste pickers must be registered in the National Waste Picker Registration System;
- (b) Waste pickers must cooperate with the municipality to facilitate waste picker integration in line with the Waste Picker Integration Guidelines prepared by DFFE and DSI, 2020¹
- (c) Waste pickers may recover recyclables in line with the agreed waste picker integration model of the municipality
- (d) Waste picker activities must be performed without causing environmental pollution and/or littering

¹ DFFE and DSI (2020) Waste Picker integration guideline for South Africa: Building the recycling economy and improving livelihoods through integration of the informal sector <https://wasteroadmap.co.za/wp-content/uploads/2021/02/Waste-Picker-Integration-Guidelines.pdf>

- (e) Waste picking shall be undertaken with the use of correct PPE
- (f) Service providers must provide evidence of waste picker integration in their business plans

4 The definition of waste

The model by-law does not provide a definition for waste. Defining what waste means in the model by-law is important as it may help in identifying proper legislation to control waste materials. The official legal definition of waste in South Africa found in NEM:WA defines waste as:

(a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to NEM:WA; or

(b) any other substance, material or object that is not included in Schedule 3 that may be defined as waste by the Minister by notice in the Gazette, but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste—

(i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;

(ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered;

(iii) where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or

(iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.

The legally accepted definition has been criticized as it subjects waste re-use and recycling facilities to additional regulation (Oelofse and Godfrey, 2008). Because the waste definition encompasses all the materials that are unwanted, the waste re-use and recycling industry is required to obtain a permit to undertake the activities. According to Oelofse and Godfrey (2008) this hampers successful implementation of the waste hierarchy as obtaining a permit for a waste re-use or recycling facility can be a lengthy and bureaucratic process. Oelofse

and Godfrey (2008) therefore recommend redefinition of waste to promote waste re-use and recycling to increase diversion of waste away from the landfill.

Inclusion of a definition of waste that does not classify material collected for re-use or collected as part of a separation at source system as waste is recommended. Waste should be defined as any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, except for, material or object that is collected for can be re-use or recycling

5 Assigning ownership of waste to a municipality

Assigning ownership of waste to a municipality is another clause included in by-laws that hampers re-use and recycling activities (Oelofse and Mouton, 2014). According to the model by-laws waste may only be collected by the municipality or an authorised service provider. Assigning ownership of waste to a municipality in by-laws is considered problematic as the waste then becomes a municipal asset which may trigger municipal asset transfer regulations for the release of the waste to the recycling industry. This may not only subject the recycling industry to transfer regulations but may also have implications on waste picking as waste picking depends on access to recyclable waste. This by-law conflicts with the National Waste Management Strategy and the EPR regulations which call for waste picker integration.

It is therefore recommended that the model by-law include a specific condition that allow for source separated recyclables to be collected by formal or informal collectors that are registered with the municipality or on the National Waste Picker registration system and recognized as part of the integrated waste management system of the municipality.

6 Accreditation, registration, and licensing of service providers

The model by-law require accreditation, registration, and licensing of service providers (refer to clause 12 and 13). However, there are no standard templates or information requirements between the different municipalities. This situation is counterproductive if a service provider operates in more than one municipality. Development of a standard template and information requirements is recommended for registration and licensing of service providers. The standard templates and information requirements could be included in the portal. Such standardisation between municipalities will reduce red tape and frustration of service providers operating in more than one municipality.

7 Other clauses requiring revision

Clause 11(4) states that in cases where the Municipality, service provider or industry has provided separate receptacles for recyclable material, no person may use other receptacles for recyclable material. This clause is problematic in its current form as it prohibits the use of other receptacles for recyclable materials which is counterproductive to maximizing waste diversion from landfill. It is recommended to change this clause to:

11(4) receptacles provided for source separation of recyclables may not be used for any purpose other than sorting of recyclables

Table 1 below shows a summary of limitations of the model by-laws and recommendations provided to address the limitations.

Table 1: A summary of limitations and recommendations for revision of model by-laws

Key area for revision	Limitations of the model by-laws	Recommendation
EPR regulations	Model by-law are not aligned with the EPR regulations	Shift from end of pipe solutions towards more sustainable solution through implementation of EPR
Waste picker integration	Model by-law does not have provisions on waste picker integration	Inclusion of a section devoted to waste picker integration
Circular Waste Economy	Model by-law are not aligned with the circular economy	Shift from end of pipe solutions towards circular waste economy by including by-law on circular economy
Definition of waste	The model by-law does not have a definition of waste	Inclusion of a waste definition that does not classify material separated for re-use and recycling as waste or making special provision for collection of recyclables by service providers not in service of the municipality
Ownership of waste	Assigning ownership of waste to a municipality subjects	Amend by-law to allow use of recyclable waste by the

	the recycling industry to transfer regulations. It also has implication on waste picking	recycling industry and the waste pickers without adding unnecessary red tape.
Registration and Licensing of waste service providers	There are no standard templates or information requirements for registration and licensing of waste service providers	Development of standard templates or information requirements for registration and licensing of waste service providers

8 Conclusion

The Department of Forestry, Fisheries, and the Environment developed a model by-law on waste management to guide municipalities when developing their by-law. By-law are important for municipalities to manage and regulate waste management activities within their areas of jurisdiction to ensure effective waste service delivery. Revision of the model by-law is necessary to ensure alignment with the existing waste management policies and legislation, to empower municipalities to take control of waste management in their areas of jurisdiction and to assist with the development and implementation of the municipal IWMP in line with national government imperatives such as transitioning to a circular waste economy, waste picker integration and implementing EPR. Inclusion of clauses that support transition to a circular waste economy, waste picker integration and EPR is therefore important to empower municipalities to take control of waste management. Clauses that may act as a barrier towards collection of recyclables including assigning ownership of waste to the municipality also need to be revised.

9 References

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