



**Mr Marthinus Van Schalkwyk**  
**Minister of Environmental Affairs and Tourism**

**c/o Ms. Noluzuko Gwayi:**

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Dear Minister Van Schalkwyk

**ENVIRONMENT CONSERVATION ACT, 1989**  
**REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND**  
**EXPORT OF ASBESTOS AND ASBESTOS CONTAINING MATERIALS**

Please find herewith comments on these draft regulations that the Asbestos and Kgalagadi Relief Trusts wish to make. These Trusts compensate ex-asbestos miners for asbestos related diseases. Please consult our website at [www.asbestostrust.co.za](http://www.asbestostrust.co.za) for our bona fides.

In summary, the Asbestos and Kgalagadi Relief Trusts support the new regulations, but wish to make comments in 3 areas, on the following 3 pages:

- 1. Comments clarifying the regulations**
- 2. Comments amending or adding to the regulations**
- 3. Comments for future regulations**

We would welcome the opportunity of making oral representations to the Department.

Sincerely

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## 1. Comments clarifying the regulations

### 1a

#### Regarding the definitions:

*"SANS 10228 means the Code of Practise for the Identification and Classification of Dangerous Substances and Goods, SANS 10228, published by the South African National Standards Authority;*

*SANS 10229 means the Transport of dangerous goods Packaging and large packaging for road and rail transport, SANS 10229, published by the South African National Standards Authority;"*

It would be helpful if these were published along with the Regulations, or details were published as to where these regulations may easily be found, e.g. on the Department's website.

### 1b

#### Regarding 2(3)(a):

*"2(3)(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"*

We believe that South Africa should demand the establishment of a fund set up by asbestos mining companies requiring transit facilities that will carry the cost of road spills or any other incidents or accidents during transit. The South African Roads Agency is currently stuck with the clean up costs which are very substantial and not recoverable from the small cartage contractors used by the mining companies.

We are concerned that duty free areas at ports that can be considered to be outside South Africa (and hence where such repacking can occur) may constitute a legal loophole for companies to exploit.

### 1c

#### Regarding 2(3)(b):

*"2(3)(b) importing or exporting 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"*

It is unclear how will research be conducted namely procurement of asbestos and use of it in the laboratories. In addition, this should be limited to a particular maximum amount per annum.

### 1d

#### Regarding 2(3)(c):

*"2(3)(c) importing asbestos or asbestos containing 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;"*

We have residual doubts that this will not become an exploitable loophole, where asbestos is disguised as waste destined for a disposal site, which then actually becomes an asbestos factory.

At these South African disposal sites, we are concerned that inadequate controls operate to protect the legal workers and the "pickers" who would operate at such sites.

We recommend a finite timeline on importation of asbestos of any kind, be it 'waste' or not. We are unaware of credible evidence that shows that asbestos waste is any less dangerous than asbestos that is not characterised as waste.

**1e**

**Regarding 5:**

*"(5) A person referred to in subregulation (1) and (2) 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 the following:"*

There is very little detail about how the application and adjudication of the phase-out plans will take place. The Minister's powers appear very broad due to this vagueness and this could present a loophole for the indefinite continued use of asbestos, asbestos containing materials and identified products.

**1f**

**Regarding 8(2):**

*"8(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."*

The penalties in 8(2) are out of keeping with the penalties in 8(1). They seem to be too low or incorrectly stated. These need to be re-checked for correctness.

Noting that both asbestos exposure and cigarette smoking are carcinogenic, it would seem sensible to bring the penalties in these asbestos regulations in line with the penalties in the latest smoking regulations.

## **2. Comments Amending or Adding to the Regulations**

**2a**

**Addition to the Definitions**

"asbestos containing waste" used in 2(3)(c) is not defined. It will be useful to define it in the same manner as the Department of Labour's 2001 Asbestos Regulations did, namely:

*"asbestos waste" means an undesirable or superfluous asbestos-containing by-product, emission or residue of any process or activity that has been—*

- (a) discarded by any person;*
- (b) accumulated and stored by any person with the purpose of eventually discarding it with or without prior treatment connected with the discarding thereof; or*
- (c) stored by any person with the purpose of recycling, re-using or extracting a usable product from such matter.*

**2b**

**Register of asbestos in transit, for research purposes and for waste disposal**

A register should be kept that documents the ingress and egress of all asbestos materials, be they in transit, for research or for waste disposal. An annual published audit should ensure that the ingress equals the egress. Such a register would be the forerunner of the register suggested in our comments under Future Regulations

**2c**

**Warning labels**

The Department should require that all companies that are still using asbestos and asbestos containing material warn their workers, customers and the general public about this and educate

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them about the properties and effects of asbestos. Even if this is contained in other legislation, it should still be expressed in these regulations. We understand that the current labelling under the Department of Labour's Asbestos Regulations is very poorly applied and policed. The warning should not consist of a tiny label stuck on a part of the product that no one will ever think to look at, but be in line with the warnings contained in the latest smoking regulations.

### **3. Comments for Future Regulations**

These regulations do not address the issue of existing asbestos in South Africa. The Department of Environmental Affairs and Tourism should have a policy which addresses this. As encouragement of future policy, the Trusts have viewed the progression in the banning of asbestos in South Africa in 5 phases as below, and would ask the Department to adopt a similar approach.

#### **Phase 1**

The first restrictions were put in place in the mines, when dust levels were regulated in 1970, when a very dusty limit of 45 fibres per milliliter of air was set. This was gradually improved until 1981, when the limit was set 20 times lower, at 2 fibres/ml. Although the levels to which miners were exposed did come down over the years, these limits were neither enforced by government nor adhered to by the companies.

#### **Phase 2**

The second phase of restrictions started in 1987 when the first Asbestos Regulations were put in place, which applied to all workplaces. This signaled to all in South Africa that asbestos was dangerous. The occupational limit at that time was unchanged at 2 fibres/ml for the mines and 1 fibre/ml for all other workplaces.

#### **Phase 3**

The third phase of asbestos restriction occurred around the National Asbestos Summit of 1998, where it was comprehended that asbestos was unacceptable. By this time all blue and brown mining had ceased, and mining operations for white asbestos were being curtailed. This process produced the 2001 Asbestos Regulations, where the workplace limit was set at 0.2 fibres/ml.

#### **Phase 4**

The fourth phase of banning was initiated in 2004 when the environmental aspects began to be addressed, and manufacturing and new use of asbestos was banned. Importation of asbestos was however still allowed. In line with international trends, the latest regulations that were published for public comment by October 2007, have disallowed almost all activities related to new asbestos - the import, export, distribution, manufacture, processing, and repackaging of asbestos are all banned.

#### **Phase 5**

The final phase in banning, where existing asbestos is addressed, will still need to be enabled. Here the public and workers need to be educated and trained about the dangers of asbestos, a register of all hazardous asbestos in our country needs to be created and maintained, and credible research needs to be done on human exposure to asbestos and the occurrence of asbestos related disease.

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