

COMMENTS ON THE PROPOSED REGULATIONS TO PHASE-OUT THE USE OF PERSISTENT ORGANIC POLLUTANTS

6 August 2018

DRAFT

BACKGROUND

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents South African business on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As a principal representative of business in South Africa, BUSA represents the views of its members in several national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

INTRODUCTION

BUSA welcomes the opportunity to comment on the Proposed Regulations to Phase-out the Use of Persistent Organic Pollutants (POPs) that were published for public comment on 24 July 2018.

GENERAL



DETAILED COMMENTS

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	Definitions		
1.	In these Regulations, unless the context indicates otherwise, any word or expression that is defined in the Act has the same meaning in these Regulations, and in addition-		
	" Act " means the National Environmental Management Act, 1998 (Act No. 107 of 1998); and		
	"listed chemical" means any chemical listed in regulation 2(1)(a) of these Regulations.		
	Purpose and Application of Regulations		
2.(1)	The purpose of these Regulations is to -		
(a)	Prescribe the requirements for the phase-out of the use, production, distribution, import and export of the following chemicals and formulations containing the following chemicals: <ul style="list-style-type: none"> (i) Hexabromobiphenyl; (ii) Pentachlorobenzene; (iii) Perfluorooctane Sulfonic Acids; its salts (PFOS) and Perfluorooctane Sulfonyl Fluoride; (iv) Hexabromophenyl Ether and 		

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	<p>(v) Heptabromodiphenyl Ether; and Tetrabromodiphenyl Ether and Pentabromodiphenyl Ether,</p> <p>In order to ensure that impacts or potential impacts on human health, well-being, safety and environment are prevented, mitigated or minimised; and</p>		
(b)	Set out timeframes during which all chemicals contemplated in regulation 2(1)(a) must have been completely phased-out and all resulting wastes managed.		
2.	These Regulations apply uniformly to any person in possession of a listed chemical		
	General Prohibitions		
3.	Subject to the provisions of Regulation 5 and 6, no person may use, produce, distribute, import or export a listed chemical or listed chemical containing waste.		
	Phase-out Timeframes		
4.	No person may use, produce, distribute, import or export -		
(a)	Hexabromobiphenyl and Hexabromobiphenyl formulations and products, or have Hexabromobiphenyl containing wastes in their possession, after 31 December 2020;		

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(b)	Pentachlorobenzene and Pentachlorobenzene formulations and products, or have Pentachlorobenzene containing wastes in their possession, after 31 December 2019;		
(c)	Peflourooctane Sulfonic Acids, its salts (PFOS) and Perfourooctane Sulfonyl Fluoride; PFOS formulations and products, or have PFOS containing wastes in their possession, after 31 December 2021;		
(d)	Hexabromodiphenyl Ether (Hexa-BDEs) and Heptabromodiphenyl Ether (Hepta-BDEs); Hexa-BDEs and Hepta-BDEs formulaitons and products, or have Hexa-BDEs and Hepta-BDEs in their possession, after 31 December 2020; and		
(e)	Tetrabromodiphenyl Ether (Tetra-BDEs) and Pentabromodiphenyl Ether (Penta-BDEs); Tetra-BDEs and Penta-BDEs forulations and products or have Hexa-BDEs and Hepta-BDEs containing wastes in their possession after 31 December 2020.		
	Notification		
5.(1)	A user, producer, distributor, importer or exporter of a listed chemical must notify the Director-General within 30 calendar days after the promulgation of these Regulations.		
(2)	A person contemplated in sub-regulations (1) must notify the Director-General in a		

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	notification form obtainable from the Department.		
(3)	The Director-General must in writing acknowledge receipt of the notification form and issue the notification number to the person contemplated in sub-regulations (2), within 30 calendar days after receipt of the completed notification form.		
(4)	The Director-General may, after receipt of the notification form contemplated in sub-regulations (2), request incomplete information to be furnished in writing or amendments to be effected on the notification form and the amended notification form to be resubmitted within a specified timeframe.		
(5)	The Director-General must be notified of any changes in the details provided as part of the notification, within 30 days of such change taking place.		
	Phase-out Plans		
6.(1)	A producer, importer or exporter who notified the Department in terms of regulation 5 of these Regulations must develop a phase-out plan for a listed chemical, which must include -		
(a)	Contact details of the company submitting the phase-out plan;		

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(b)	Listed chemical used, produced, imported or exported;		
(c)	Suitable alternatives to the listed chemical;		
(d)	The annual reduction target;		
(e)	Date or year in which the production, importation and exportation of the listed chemical will be completely phased-out; and		
(f)	Communication strategy to inform end-users, workers and others exposed to the listed chemical during the phase out period of the hazards and how to protect themselves, and reduce exposures		
(2)	A person contemplated in sub-regulation (1) must submit a phase-out plan for approval to the Director-General within 12 months after the promulgation of these Regulations.		
(3)	The Director-General must acknowledge receipt of the phase-out plan within 14 days after receipt of the phase-out plan, and may, after consideration of the content of the phase-out plan, in writing -		
(a)	Approve the phase-out plan for implementation and notify the applicant of the approval and outline any applicable conditions or requirement; or		
(b)	Require incomplete information to be furnished or amendments to be effected and a revised phase-out plan to be resubmitted within a specified timeframe.		

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(4)	A person whose phase-out plan has been approved by the Director-General must implement such a plan, and may only deviate from such a plan upon written approval by the Director-General.		
	Reporting		
7.(1)	A person contemplated in regulation 6(1) must, every calendar year after the Director-General approval contemplated in regulation 6(4) has been received, report progress regarding implementation of the phase-out plan to the Director-General.		
(2)	The report contemplated in sub-regulation (1) must include a detailed progress report regarding the implementation of the approved phase-out plan contemplated in regulation 6 of these Regulations.		
	Offences and Penalties		
8.(1)	A person is guilty of an offence if that person -		
(a)	Contravenes regulation 3,4,5(1), 5(5), 6(1), 6(2), 6(4) and 7 of these Regulations; or		
(b)	Furnishes false or misleading information in terms of these Regulations		
(2)	A person convicted of an offence in terms of sub-regulation (1) is liable to a fine not		

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	exceeding R10million or to imprisonment for a period not exceeding 10 years or to both such fine or such imprisonment.		
	Short Title and Commencement		
9.	These Regulations are called the Regulation to Phase-out the use of Persistent Organic Pollutants, 2018, and take effect of the date of publication in the Gazette.		

CONCLUSION