ENVIRONMENTAL LAW AND POLICY REFORM SURROUNDING PACKAGING WASTE MANAGEMENT IN SOUTH AFRICA

Godwell Nhamo

Abstract

Scholars from emerging economies are faced with critical shortages of material pertaining to laws and policies on packaging waste management, particularly insights on their successful implementation (or lack of it thereof). This paper deliberates on this subject focusing on South Africa, tracing packaging waste laws and policy reforms since the enactment of the Environmental Conservation Act (73 of 1989) until its subsequent amendment in 2003 in order to permit specific packaging waste streams regulation. What emerges from the study is a 15-year policy making cycle marked by the enactment of a series of framework legislation and accompanying regulations and specifications. The paper also established that inadequate key stakeholder engagement, particularly with organised business and organised labour, as well as piecemeal packaging waste stream regulation (as was the case with the plastic bags) are some of the missing links to successful implementation of such laws and policies.

1 Introduction

Policy makers are now concerned and generally have consensus that packaging, like other solid wastes, presents a priority environmental problem. Packaging waste falls into four broad categories including plastic, paper and board, metal and glass and constitutes the bulk of municipal solid wastes that end up on landfill sites. Environmental impacts from packaging waste are not only associated with its management in the main waste stream,
but also its production, transportation and the use phases of packaging itself.\(^2\) The impacts include air pollutants and greenhouse gasses, use of fresh water and wastewater discharge, depleting of non-renewable natural resources and the damage resulting from extraction and filling up limited landfill space.\(^3\)

This paper has seven sections. Section 1 is the introduction; and Section 2 looks at *apartheid footprints in waste management* in South Africa. Section 3 covers aspects of *dealing with packaging waste management at the international level*; whilst Section 4 captures an *historical account of packaging waste management in South Africa*. Section 5 considers *environmental law and policy reforms around waste management in South Africa*; whilst Section 6 focuses on a case: that of the *Plastic Bags Regulations*. The last section is the conclusion. These sections will now be considered in detail as the paper unfolds.

## 2 Apartheid footprints in waste management

In his book *The Atlas of Changing South Africa*, Christopher\(^4\) sees apartheid as the battle to control space and specific places. He claims that South Africa was partitioned into discrete, legally defined groups. Segregation operated from what he terms ‘petty apartheid’, exemplified by different entrances to buildings and residential areas, to ‘grand apartheid’ that involved separating nation-states. In this regard, three typologies of apartheid are identified: state, urban and personal. The focus of this paper will, for now, restrict the discussion to a more in depth perspective on urban waste management apartheid.

The footprints of apartheid in as far as waste management is concerned are best summarised by Qotole, Xali and Barchiesi’s\(^5\) quote below. They write that:

\[
\text{[t]he collection of household refuse – or the lack of it – is one of the most powerful visual benchmarks of inequality in South Africa. Although the situation has improved somewhat since 1994, formerly whites-only suburbs are still kept immaculately clean with regular door-to-door refuse collection and teams of street sweepers, while most black township and rural area residents are forced to dump their refuse in open spaces or in unsealed communal skips.}
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The work of these authors is based on two case studies on the Billy Hattingh micro-enterprise refuse collection programme in Khayelitsha (Cape Town) and the corporatised refuse collection service ‘Pikitup’ in

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Johannesburg and Cape Town are the largest and second largest metropolitan centres in South Africa respectively. Statistics South Africa,\(^6\) established that, of about 11.2 million households in South Africa, about a million (9\%) did not have any form of refuse disposal facility. About 6.2 million households (55\%) enjoyed a weekly refuse removal service from local authorities. Other services provided (or lack thereof) and their distribution by population groups is shown in table 1.

Table 1: Refuse removal services by household and population group

<table>
<thead>
<tr>
<th>Service</th>
<th>Number of households</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Black African</td>
<td>Coloured</td>
</tr>
<tr>
<td>Weekly from local authority</td>
<td>3 909 787</td>
<td>746 509</td>
</tr>
<tr>
<td>Less often by local authority</td>
<td>147 972</td>
<td>11 984</td>
</tr>
<tr>
<td>Communal refuse dump</td>
<td>167 045</td>
<td>17 354</td>
</tr>
<tr>
<td>Own refuse dump</td>
<td>3 447 516</td>
<td>100 018</td>
</tr>
<tr>
<td>No facility at all</td>
<td>952 730</td>
<td>12 171</td>
</tr>
<tr>
<td>Total</td>
<td>8 625 050</td>
<td>88 036</td>
</tr>
</tbody>
</table>

Source: Compiled from Statistics South Africa (2001, at 106)

Table 1 raises interesting facts about the biased services concerning refuse removal across South Africa. An estimated 90.8\% of white households enjoyed weekly refuse removal services from local authorities as of 2001.\(^7\) This figure is in sharp contrast to only 45.3\% coverage of the same facility in black households. At the other end of the scale, only half a percent of white households did not have any form of refuse removal service compared to 11\% of black households, a figure that reduces slightly to 9\% if all of the previously disadvantaged communities’ households are included in the analysis. This picture presents a big challenge for South Africa’s future environmental and waste management policy.

To address some of the problems associated with waste management in the country, a number of laws and policies were put in place immediately after the democratically elected government of South Africa in 1994. For


\(^7\) Ibid.
example, the following documents were prepared during a three-year period covering 1998 to 2000 alone:

- National Environmental Management Policy.9
- National Waste Management Strategy and Action Plans.10
- White Paper on Integrated Pollution and Waste Management.11
- Draft Plastic Bag Regulations.12

The first four bullets will be discussed further in sub-Sections 5.1 to 5.4.

There was also a series of starter documents that accompanied the White Paper on Integrated Pollution and Waste Management that include:

- Starter document for general waste collection: Guideline document for waste collection in high density unserviced areas.13
- Starter Document for Waste Recycling: Legal Framework Document for recycling.18

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9 Department of Environmental Affairs and Tourism (1999a).
17 Ibid (2000g).
19 Ibid (2000i).
3 Dealing with packaging waste: an international perspective

The European Union (EU) put packaging on the policy agenda as far back as the short-lived *Beverage Containers Directive* of the mid-1980s.\(^{20}\) This was followed by the *Regulation on the Transboundary Shipment of Waste of 1993*,\(^{21}\) which aimed at supervising and controlling waste shipments within, into and out of the EU. In 1994 the *European Packaging and Packaging Waste Directive* was passed\(^ {22}\) with two main objectives: to harmonise national measures concerning the management of packaging and packaging waste and to ensure the functioning of the internal market and avoid obstacles in trade. The Directive required that by, July 2001, at least 50% and no more than 65% of packaging waste by weight be recovered from the waste streams; and that a minimum of 25% and a maximum of 45% by weight of the total waste be recycled. In line with the need to recover and recycle packaging waste, a number of EU national schemes were established. In 1997 there was the *EU Communique on Packaging and Other Taxes*,\(^ {23}\) This was drawn to help standardise the use of economic instruments, especially for packaging. Lastly, there was a *1997 EU study on Eco-Balances for Policy-making in the Domain of Packaging and Packaging Waste*\(^ {24}\) that looked at the implications of incorporating life cycle assessment in packaging waste management.

Proposals to revise targets for the EU 1994 Directive have already been made and at the time of finalising this paper write-up consultations were at advanced stages to have the new Directive approved by member states. The proposed Directive sets no overall recovery target but a recycling target. The overall recycling target has been set at 60% by 2006 from between 25-45%. Minimum recycling targets for the four major sectors were set at 15%. These have now been revised upwards to 70% for glass, 60% for paper and board, 50% for metal and 20% for plastic.\(^ {25}\) McGlade,\(^ {26}\) notes that data provided by 15 EU member states indicated that on average packaging waste increased by 7% between 1997 and 2001. If the trend continues, packaging waste in the EU is predicted to rise again to 18.5% by 2008. This represents an increase from about 65 million tonnes in 2000 to 77 million tonnes in 2008.

\(^{23}\) Levy (n20).
\(^{24}\) Ibid.
\(^{25}\) Ibid.
\(^{26}\) McGlade (n2).
\(^{27}\) The 15 countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland (which had the highest increase in 2001), Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.
McGlade's paper also indicates that, regardless of increasing quantities, many EU member countries met their obligations of 50% and 25% minimum recovery and recycling targets respectively as per the 1994 Directive. Germany, followed by Belgium, led the group with recycling rates of 76% and 71% respectively. On the other end of the scale, Ireland, followed by Greece, recorded the lowest figures of 27% and 33% respectively. This probably explains why Ireland promulgated stringent laws regarding packaging waste recycling during the period 2000-2002 including regulating plastic shopping bags waste. With such statistics, McGlade challenges the EU to re-think a way forward as the original approach seems narrow. For her, the issue should not be merely meeting whatever targets are set; but rather building a culture of responsibility in managing packaging waste.

Packaging has attracted a cocktail of regulations aimed at encouraging source reduction and increased recycling. The German Green Dot (Dual System) of managing packaging waste has been cited as one of the oldest success stories globally. The system, which utilises a private company to manage and recycle packaging waste on behalf of converters and retailers who identify themselves with the Green Dot was instituted after the German Ordinance on the Avoidance of Packaging Waste in 1991. The Ordinance requires industry to re-use and/or recycle packaging materials and set deadlines in three identified packaging sectors: transport packaging - manufacturers and distributors were supposed to ‘take back’ all transportation packaging waste by December 1991; secondary packaging - retailers were to install marked bins for recycling so as to allow customers to leave secondary packaging in the stores by April 1992; and primary packaging - customers could return packaging to retailers by January 1993. Industries were to be exempted if they provided an alternative that met specified goals (The Dual System) run by a private company System Deutschland GmbH (DSD) – popularly known as the Green Dot.

In the UK, the Packaging (Export) Recovery Note system is used. The system requires industry to join a quasi-voluntary network that recovers and recycles packaging waste on an accreditation system. Since its inception in 1997, the system helped the UK recover 48% of her packaging waste in 2001 up from 27% in 1997. In New Zealand the Zero Waste New Zealand Trust

28 McGlade (n2).
30 Pearce (n1).
32 Levy (n20).
Packaging waste management in South Africa has already initiated lobbying for the regulation of shopping plastic bags. Other countries and states that have preoccupied themselves with addressing plastics and plastic shopping bags in particular include Canada, China, Hong Kong, India, Jordan, Singapore, Taiwan – and Bangladesh, which instituted a complete ban on shopping plastic bag use in 2002. The move in Bangladesh followed heavy floods in 1998/99 that killed many people due to blocked storm water drains.

4 A historical account of packaging waste regulation in South Africa

The Environment Conservation Act 73 of 1989 provides the historical legal framework for controlling environmental pollution. In terms of this Act waste is described as:

any substance that could be gaseous, liquid or solid or any mixture thereof that may be designated by the Minister of Environmental Affairs and Tourism as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity.

No specific mention of packaging waste is made; rather, it is implied under the solid waste category.

Details regarding the control of environmental pollution are outlined under Part IV of the Act with Sections 19, 19A and 20 making provision for the prohibition and removal of litter as well as the management of waste. Any kind of littering is prohibited and local authorities or other appointed bodies are given the mandate to remove or cause the removal of such litter. The management of waste under Section 20 is restricted to its disposal; particularly in relation to potential risks associated with water resources contamination. Hence the powers for issuing permits to operate disposal sites are vested in the Minister of Water Affairs; as opposed to the Minister of Environmental Affairs and Tourism.

Part VI of the ECA makes provision for the formulation of waste management regulations. Section 24(d) stipulates that regulations may be issued so as to reduce waste through: (i) modifications in the design and marketing of products, (ii) modifications to manufacturing processes, and (iii) the use of alternative products. Similarly, Section 24(e) permits regulations to be made concerning the utilisation of waste by way of recovery, reuse or processing of waste. Regulations regarding littering (Section 24A) are formulated, especially for the purposes of cleaning up and removal.

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35 Ibid.
36 Act 73 of 1989.
37 Section 1.
38 Under Sections 24 and 24A of the ECA, the Minister of Environmental Affairs and Tourism is given the jurisdiction to make regulations with regard to waste management and littering.
The ECA also makes provision for dealing with offences (Part VII). Those contravening the provisions of litter abatement and waste management are guilty of an offence and are liable on conviction to a fine or imprisonment or both. Section 29(3) mentions an unspecified fine and a maximum period of three months imprisonment or both for those found guilty of littering. However, under section 29(5), persons convicted of any offence to which a penalty is not stipulated, like in the litter case, should be fined up to R2 000 and jailed for a period not exceeding six months.\(^{39}\)

Part VIII of the ECA deals with General Provisions, amongst them procedures for publishing draft regulations.\(^{40}\) Both the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs, as well as local authorities, are obliged to publicise a draft notice in a gazette stipulating the text of the proposed regulations and a request that interested and/or affected parties submit comments within a minimum period of 30 days. However, once the comments have been received and the notice period has expired, amendments may be made and responsible authorities are not obliged to place another notice in the gazette until the final notice is issued.

5 Environmental law and policy reforms around waste management

The foundation for environmental law and policy reform in South Africa was established through the Constitution of South Africa.\(^{41}\) Virtually most (if not all) environmental and waste management laws and policy documents make reference to the Constitution. The Constitution enshrines two key fundamentals regarding waste management in the country: the Bill of Rights and the legal basis for distributing powers to different spheres of government\(^{42}\).

As per Schedule 4(a) of the Constitution, the national and provincial governments are given powers to make and execute laws about among other things: the environment, health services, trade and tourism, nature conservation and pollution control.\(^{43}\) Schedules 4(b) and 5(b) of the Constitution also specify aspects with which the local governments have concurrent responsibilities. In terms of waste management, such responsibilities include cleansing; refuse removal, landfills and dumps, and

\(^{39}\) Under Section 29(4) of the ECA those found guilty in terms of waste disposal provisions in Section 20 are supposed to be fined up to R100 000 or imprisoned for up to 10 years or both.

\(^{40}\) See Section 32.

\(^{41}\) Act 108 of 1996.

\(^{42}\) Section 24 stipulates that ‘Everyone has the right (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations through reasonable legislative and other measures that (i) prevent pollution and ecological degradation, (ii) promote conservation, and (iii) secure ecological sustainable development and the use of natural resources; while promoting justifiable economic and social development’.

\(^{43}\) DEAT (n9).

solid waste disposal. Public administration is challenged to be accountable, transparent, respond to people's needs and encourage participation in government. The Constitution gives the Provincial Premiers powers to appoint members of an Executive Council (MEC) and allocate responsibility, some of which may be environmental. The role of MECs for Environment is also re-emphasised in the National Environmental Management Act of 1998 discussed next.

5.1 National Environmental Management Act

The National Environmental Management Act (NEMA) serves as the general legal framework within which environmental management and implementation plans are formulated. It governs the implementation of any other laws and policies concerned with the protection or management of the environment in South Africa, including waste. Butter and Hallowes maintain that NEMA was put in place after a serious process of multi-sectoral consultation, i.e., through the Consultative National Environmental Policy Process (CONNEPP). Environmental management must place people and their needs first and must serve their interests equitably within the biophysical, developmental, cultural and social dimensions. Other principles harnessed include that development must be socially, environmentally and economically sustainable.

Development is considered sustainable if: it prevents, minimises and/or remedies the disturbance of ecosystems, loss of biodiversity, pollution and degradation of the environment; waste is avoided, minimised, reused or recycled and ultimately disposed of in a responsible way; negative impacts on the environment and on people's rights are anticipated and prevented, minimised and remedied; environmental justice is pursued so that negative impacts are not unfairly distributed in a manner that discriminates against vulnerable and disadvantaged persons; and if participation of all interested and affected parties in environmental governance is promoted. The need to avoid, minimise and treat waste is characteristic of the government's intention to shift South Africa's waste management systems. This also complements the fundamental reason for the promulgation of the Plastic Bags Regulations. Under Section 28(1) anyone who causes significant pollution or degradation of the environment must take responsibility to prevent such from happening, a move aligned to the polluter pays principle.

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44 Section 195(1) of the Constitution of the Republic of South Africa, 1996.
47 Section 2(2).
48 Section 2(3).
49 Sections 2(4)(a), (c) and (f).
Chapter Two establishes two core institutions responsible for environmental management: the National Environmental Advisory Forum (the Forum) and the Committee for Environmental Co-ordination, which in turn can establish various sub-committees. It also recognises the Members of the Executive Council responsible for the environment established by Provincial Premiers as per the provisions of the Constitution.

The Forum informs the Minister of Environmental Affairs and Tourism (the Minister) of the views of stakeholders regarding the application of NEMA principles as well as any other environmental management and governance aspects. The Forum may also consult with the Director-General of the Department of Environmental Affairs and Tourism (DEAT) and draw to the attention of the Minister any other matters needing to be addressed in relation to good environmental stewardship. The Forum is made up of between 12-15 people appointed by the Minister, who must deliberately make sure that women, youth and other disadvantaged persons are represented.

The Committee for Environmental Co-ordination (the Committee) has an objective to promote the integration and co-ordination of environmental functions by the relevant organs of the government. As such, the Committee is made up of Director-Generals from key departments like Water Affairs and Forestry, Minerals and Energy, Land Affairs, Constitutional Development, Housing, Agriculture, Health and any other Director-General that may be appointed by the Minister. Other persons that may have the required expertise as well as sub-committees may be co-opted and/or created as and when necessary.

Chapter Eight deals with 'Environmental Management Co-operation Agreements'. The Minister, MECs and local authorities are allowed to conclude environmental management agreements with persons or communities for the purposes of promoting compliance with the principles laid down in NEMA. The provision of such co-operation agreements may be further solidified by regulations that stipulate targets and periods of monitoring and review as agreed by the parties, of which failure to comply becomes an offence. As part of efforts to implement the environmental management framework presented by NEMA, the Environmental Management Policy was put in place in 1999 and issues pertaining to waste management were addressed.

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50 Section 35.
51 DEAT (1999a).
5.2 The Environmental Management Policy of 1999

The policy reported that waste generation and pollution levels in South Africa were relatively high and this has negative impacts on land and water resources. At the time (1999) waste disposal practices were considered unsatisfactory with waste producers being allowed to pass on the costs of poor waste management to the environment and society. This was due to the fact that there were no proper regulations in place at that time. As such, the government took a position to regulate waste management as the preferred future for South Africa. Another aspect raised in the policy document concerns the relationship between the poor and associated bad practices of waste management within their vicinity. Within the South African context (whose apartheid past cannot be ignored), poor communities are victims of unsustainable practices of waste management as many of them live within and/or near industrial zones and waste disposal sites. Aggravating the situation is the fact that there were no incentives to encourage waste producers to consider cleaner production processes and thereby minimise waste generation. Although noticeable public and commercial recycling initiatives existed for most packaging material and oil, DEAT noted that government policy did not systematically encourage minimisation, reuse and recycling of such. Local authorities too, were not doing enough to promote household recycling, particularly, separation at source.

The issue of participation remains central to waste management. Apartheid excluded many citizens from environmental decision-making. To this effect, there has been very little formal public participation in waste governance. As such the process leading to the production of the Environmental Management Policy, CONNEPP, may be hailed as a true reflection of stakeholder participation in policy development. Participation in waste management policy processes in a typical South African context pays special attention to involving those formerly disadvantaged (including women), youth, religious and environmental organisations, civics, unions and service NGOs. Given this position, participation should create democratic space allowing partnerships in development, the prioritisation of the right to know, accountability as well as the freedom of debate and association within waste management policy subsystems.

When considering issues around environmental (in)justice, the Environment Management Policy makes it clear that the government must address the needs and rights of all communities, sectors and individuals. This is a principle adapted from the NEMA. This implies that policy and institutional framing should redress past and present irregularities concerning...
waste management practices. It also implies that all citizens, especially those marginalised, get a fair representation and participate in waste governance.

The Environmental Management Policy spells out 23 fundamental principles for good environmental stewardship that are also repeatedly cited in policies that followed it, including the National Waste Management Strategy and Action Plans\(^5^4\) and the White Paper on Integrated Pollution and Waste Management.\(^5^5\) Principles of importance to this study include: capacity building and education, cradle to grave, environmental justice, good governance, participation (as discussed), prevention, polluter pays and waste avoidance and minimisation.\(^5^6\) Some of these principles are briefly explained in the following paragraph and those explained elsewhere are left out.

Capacity is described as the ability to do something and is deemed a close function of education. When educated, one is said to have acquired knowledge, developed skills and understanding. This should, however, be complemented by having adequate access to resources. To this end, the government is charged with the responsibility to create opportunities that develop citizens’ understanding and skills needed to address waste management aspects. This empowers citizens to participate in achieving sustainable waste management practices. The cradle to grave (product life cycle) principle stipulates that those responsible for producing products should also be responsible for the negative environmental, health and safety impacts caused by generated wastes.

5.3 The National Waste Management Strategy

The first attempt to create direct policy aimed at waste management was the establishment of the National Waste Management Strategy and Action Plans (NWMS) in 1999. The NWMS ended up being integrated into the White Paper on Integrated Pollution and Waste Management\(^5^7\) whose first draft was published in 1998. The NWMS document comes in two parts that present first, the Strategy and second, the action plans aimed at achieving the government’s 2010 vision for integrated waste management in South Africa.\(^5^8\) The document emerged following the CONNEPP that involved many stakeholders including the local, provincial and national governments (through the Ministerial Technical Workgroup for Pollution and Waste), NGOs, community-based organisations (CBOs), labour, industry, business and the mining sector.

The NWMS establishes a four tier institutional framework: the National Government (with DEAT as lead agent), Provincial Government, Local

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\(^5^4\) DEAT (n10).
\(^5^5\) DEAT (n11).
\(^5^6\) Ibid.
\(^5^7\) DEAT (n10).
\(^5^8\) DEAT (n11).
Government and Civil Society. Some of the roles assigned to the National Government through DEAT include:\(^59\)

- Central organisation and planning,
- Prioritising waste streams requiring minimisation/recycling and set targets,
- Introducing relevant legislation and economic instruments,
- Ensuring appropriate inter-ministerial, departmental and provincial coordination,
- Ensuring appropriate monitoring and enforcements, and
- Budgeting for training and awareness programmes around waste management.

Furthermore, DEAT is supposed to take advice from the National Environmental Advisory Forum established under the NEMA.

The Provincial and Local Governments are given mandates to make and execute waste management laws and by-laws that enhance the National Government's position to promote minimisation and recycling initiatives. Provincial Governments are supposed to set provincial norms and standards regarding waste management and assist local governments in effecting such. In addition, both the Provincial and Local Governments are supposed actively to promote the conclusion of voluntary partnerships for recycling with industry, especially the introduction of clubs. Other duties include the setting up and generation of data for the national waste information system, which is not yet in place to date. Local governments are also given jurisdiction over cleansing as well as refuse removal and disposal. Civil society is recognised and this group is made up of the private sector (industry and business organisations), non-governmental organisations (NGOs), community-based organisations (CBOs), trade unions, universities and research institutions as well as individuals from the public. The NWMS also makes it mandatory that representatives from civic society groups sit on the National Environmental Advisory Forum.

The NWMS document identifies the need to apply economic instruments so as to generate funding for waste management purposes. Two instruments were proposed: a tax for raising revenue and user charges from the implementation of the polluter pays principle. The polluter pays principle aspect is evident in the current system where a plastic shopping bag levy is charged directly to consumers at the point of purchase. The NWMS leaves further investigations into the application of such economic instruments in the hands of DEAT in collaboration with the Department of Finance and the Department of Trade and Industry.

The DEAT is also tasked to continue embarking on the waste policy reform process to facilitate the smooth implementation of the NWMS. To a large extent this has been achieved as a number of key statutes with

\(^{59}\) DEAT (n10).
influence on waste management and, particularly, plastic shopping bags, have been amended. These include the 1989 Environment Conservation Act that had to be amended to harmonise the powers of the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry. The Environment Conservation Amendment Act of 2003 now gives the Minister of Environmental Affairs and Tourism the power to pronounce green levies on waste products such as plastic bags and other waste products. Another Act that was amended is the NEMA itself. The National Environmental Management Amendment Act 2004 now includes a chapter establishing an inspectorate. Compliance and enforcement problems were singled out by the NWMS as requiring urgent attention.

The major goal of the NWMS is to reduce the generation and associated negative environmental and health impacts of wastes, giving effect to the Bill of Rights enshrined in the Constitution. The NWMS translated into action government policy on waste that was outlined in the Draft White Paper on Integrated Pollution and Waste Management published in 1998. Integrated pollution and waste management aimed at promoting coordinated waste management was singled out as one of the core drawbacks of good waste management practices in South Africa. This implied that waste management approaches were viewed as cutting across the whole spectrum of a waste product life cycle with concerted efforts to move towards minimal waste generation in South Africa. To this end, the NWMS marked the birth of a new orientation to waste management that moved away from waste management through impact management and remediation to an orientation based on promoting avoidance (prevention), minimisation (re-use) and recycling. It then sets a formal waste management hierarchy that prioritises cleaner production followed by recycling, treatment and disposal as outlined in chapter one. However, given the inadequately developed waste management system in the country, short-term remedial measures that promoted improved collection, treatment and acceptable disposal methods were also put in place.

Concerning recycling initiatives, the NWMS’s preferred future is set as separation at source as this is believed to enhance the quality of recyclable material. However, priority recycling initiatives and targets are ranked as: tyres; oils, batteries and organic solvents; feasibility study of methods of recycling general wastes (including plastics) and appropriate legislation; feasibility study of the application of economic and regulatory incentives; and investigation into recycling mine and power station wastes. From the foregoing priority list, it is implied that plastic waste comes third.

To achieve the long-term goal of the NWMS, more than 50 major integrated pollution and waste management initiatives were to be initiated.

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60 Act 50 of 2003.
61 Act 8 of 2004.
Packaging Waste Management in South Africa

and implemented throughout the country. The document also calls for institutional changes and new legislation that would promote proper waste management mechanisms. As such, the NWMS established seven major areas (predominantly from earlier legislation) upon which strategies were to be developed for implementation. The areas include: capacity-building; education; awareness and communication; general waste collection; implementing instruments; integrated waste management planning; waste treatment and disposal; waste information system; and waste minimisation and recycling.

Borrowing from the provisions of the Environmental Conservation Act, the NWMS came up with an expanded definition of waste. The document goes further to classify waste into either general or hazardous. From the two groups, waste is further divided according to its source of origin into: domestic, commercial or industrial. General waste, which is of relevance to this study, is further sub-divided into paper, metals, glass and plastic as well as organic and inert materials such as builders’ rubble.

The need to initiate the recycling of general waste is evident from the NWMS. The DEAT is supposed to identify and coordinate ongoing recycling initiatives and in consultation with stakeholders investigate the most appropriate way for promoting and implementing recycling including soliciting proposals from the private sector. The NWMS also sets performance evaluation criteria to measure achievements in terms of recycling. For example, recycling of general wastes would be deemed successful if: such waste was prevented and minimised as well as having direct and visible reduction in the impact of waste on public health and the environment. It would also be deemed a success if it improves the quality of life of all South Africans with an emphasis on previously disadvantaged communities.

As advocated by the National Waste Management Strategy, the Guidelines on Recycling of Solid Waste (the Guidelines) were finally put in place in 2002 after receiving donor funding from the Danish Cooperation for Environment and Development (DANCED). Additional funding was supplied by local associations that included Sappi War on Waste, Mainline Solid Waste Handling Equipment Supplies, The Glass Recycling Association, Nampak Paper Recycling, EnvironServ Waste Management,

References:

62 DEAT (n10) at 10 defines waste as “[a]n undesirable or superfluous by-product, emission or residue of any process or activity that has been discarded, accumulated or been stored for the purpose of discarding or processing. Waste products may be gaseous, liquid or solid or any combination thereof and may originate from domestic, commercial or industrial activities, and include sewage sludge, radioactive waste, building rubble, as well as mining, metallurgical and power generation”.

63 Ibid.

64 Department of Environmental Affairs and Tourism Guideline on recycling solid waste (2002a) at 10-25.
Institute of Waste Management South Africa and the Plastic Federation of South Africa. The reason for mentioning these sponsors is deliberate as some of them, like Nampak and the Plastic Federation of South Africa, featured prominently during the formulation and implementation of the Plastic Bags Regulations. Lombard and Associates Environment Protection and Waste Management Consultants (formerly June Lombard, Mtshali Sipamla and Associates) and the Association of Clean Communities Trust were subcontracted by DEAT to develop the Guidelines. DEAT also had eight officials (three from the Environmental Capacity Building Unit and five from the Waste Management and Community Programme Directorate) involved. Lombard and Associates Environment Protection and Waste Management Consultants and DEAT were heavily consulted during this study to get their perceptions concerning insights surrounding the actors, actants and actor/actant-networks around the Plastic Bags Regulations.

The Guidelines mention the need to achieve the goals for zero waste and targets the involvement of local authorities. Zero waste is a hypothetical state whereby the country emits no waste. Waste is defined and the relevance of recycling to South Africa elaborated upon as well. Further information is provided on what type of solid wastes (can)not be recycled including plastics. Section 6 details recycling options including the involvement of: charities, community groups and schools; kerbside collection; sorting from mixed waste streams and salvaging from landfill sites.

5.4 White Paper on Integrated Pollution and Waste Management

Aspects pertaining to integrated pollution and waste management are dealt with in the White Paper on Integrated Pollution and Waste Management (the White Paper) of 2000.65 Since most of the provisions of the White Paper were covered under the NWMS, this section concentrates on additional issues only. The White Paper is subsidiary to the Environmental Management Policy reviewed earlier. It currently stands out as the key reference document for integrated pollution and waste management in South Africa.

The White Paper makes reference to the provisions of the Earth Summit66 and Agenda 21. In fact, DEAT claims it is part of South Africa’s efforts to meet the goals of Agenda 21.67 The document spells out that the reintegration of South Africa into the global economy, and into international and sub-regional political fora, makes it vital for the country to improve its pollution control and waste management systems. As such, the White Paper integrates

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65 DEAT (n11).
67 Ibid.
26 multilateral environmental agreements, of which the South African Government had acceded to or ratified 19. Some of the agreements of direct relevance to this study include: the Convention on the International Maritime Organisation (1948) that deals with matters around marine pollution; the Convention on the Conservation of the Living Resources of the Southeast Atlantic (1969); the Convention on Wetlands of International Importance (Ramsar Convention) of 1971; the Convention for the Prevention of Marine Pollution from Land-based sources (1974); the Multilateral Agreement on the Control of Pollution of Water Resources in the Southern African Region (1985); the Vienna Convention for the Protection of the Ozone Layer of 1985; the Montreal Protocol on Substances that Deplete the Ozone Layer (1987); the Framework Convention on Climate Change (1992); and the Convention on Biological Diversity (1992).

Key issues are framed around water, air and land as well as pollution and waste. Poor location and/or inadequate management of waste disposal sites are once more singled out as the major drawbacks in terms of land pollution. Other concerns are shaped around risks associated with illegal dumping and poor town planning. The White Paper also identifies waste management as a neglected (low priority) area by the government with insufficient resources, especially finance and expertise being allocated towards addressing the problem. This has resulted in many of the problems highlighted earlier such as fragmented legislation, ineffective enforcement and insufficient empowerment of citizens. The document then outlines seven strategic goals and objectives aiming at: effective institutional framework and legislation; pollution prevention, waste minimisation, impact management and remediation; holistic and integrated planning; participation and partnerships in integrated pollution and waste management governance; empowerment and education in integrated pollution and waste management; information management; and international cooperation.

One of the short-term deliverables outlined is the need to develop a means of promoting waste minimisation and recycling. In terms of governance, the document locates itself within South Africa’s Constitution, Environmental Management Policy and the Environment Management Act. The White Paper then proceeds to relate the roles of the National Government, Provincial Governments, Local Governments and Civil Society. It also stipulates the need for regulatory instruments, capacity building, research and development as well as business, industry and the general public in waste management. The White Paper reiterates government's new thinking in relation to pollution and waste management that prioritises waste prevention. The policy also highlights the need to do away with fragmentation, duplication and lack of co-ordination in waste management. Another aspect that comes out clearly in the document is the acknowledgement of the roles of the private sector and civil society in waste
management partnerships. Partnerships between government and the private sector are recognised as prerequisites for sustainable and effective pollution and waste management.

As per the provisions of NEMA, the White Paper also identifies several sub-committees. These sub-committees include among them: Integrated Pollution and Waste Management, Biodiversity and Climate Change. These committees feed into the Committee for Environmental Co-ordination that is directly below the National Environmental Advisory Forum and the Minister of Environmental Affairs and Tourism. The White Paper also establishes similar sub-committees to advise Members of the Executive Council responsible for the environment at Provincial levels.

Given that members of society contribute to waste generation and should be part of the solution to the problem of waste and pollution, the roles of civil society are spelt out. Those sections of civil society identified as significant include business and industry, organised labour, CBOs, NGOs, and the general public. Business and industry is expected to work with DEAT to achieve locally and internationally acceptable levels of waste management. Since workers are usually in direct contact with waste related problems, the White Paper makes provision for the full recognition of organised labour as stakeholders. The DEAT is therefore supposed to facilitate full access to information that would allow informed participation from organised labour, including ‘whistle-blowing’. The same roles are accorded to CBOs. NGOs are also recognised as having roles as long-term partners, particularly in financing initiatives for driving environmental awareness and capacity building at grassroots level. The public is supposed to participate in waste policy processes with consensus-based approaches and negotiated rule-making. As such, DEAT is tasked to build their capacity and raise awareness regarding integrated pollution and waste management initiatives.

5.5 The Polokwane Declaration (on zero waste)

As one of the steps towards realising the provisions of the White Paper on IP&WM, in 2001 Government, industry and labour ratified the Polokwane Declaration, according to which South Africa has to achieve zero waste in all sectors by 2022. The Declaration calls for engagement in many action areas such as prioritisation of waste management; implementation of the National Waste Management Strategy; development and implementation of legislative and regulatory frameworks to promote waste avoidance, prevention, reduction, re-use and recycling; provision and establishment of effective

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68 The Polokwane Declaration was a tripartite agreement; signed by government, organized industry and organized labour in the city of Polokwane, 26-28 September 2001; see http://www.environment.gov.za/ProjProg/WasteMgmt/Polokwane_declar.htm.
collection and disposal facilities; introduction of mandatory waste audit processes; development and provision of the public education resources necessary to allow participation in the waste elimination process on an informed basis; and the promotion of cleaner production.

6 The case of the Plastic Bags Regulations

The Minister of Environmental Affairs and Tourism, through the DEAT, promulgated the Plastic Bags Regulations in May 2000. The regulations were gazetted for public comment on 19 May 2000 and 90 days were given for written public submissions to have reached the DEAT. The draft regulations proposed to prohibit the manufacture and distribution of plastic shopping bags of less than 30 microns wall thickness by the first of January 2001 and 80 microns wall thickness by the first of June 2001. The regulations also proposed a R100 000 (US$ / ZAR exchange rate was on average 1:6 in February 2006) fine on those convicted under the regulations. Overall, an estimated 8 billion plastic shopping bags measuring 14 microns of 5.5 g/bag were circulated each year in South Africa as of 2001 from the formal production sector alone.

The proposed regulations were not well received by, especially, organised business (led by the Plastics Federation of South Africa), which pulled resources and started lobbying government to have the regulations reversed, including submissions to government and during the public hearings undertaken by the Parliamentary Portfolio Committee for Environmental Affairs and Tourism in October 2000. In its submission, organised business indicated that public education and awareness raising were the most important and critical aspects in addressing environmental problems related to plastic shopping bags litter and waste in South Africa. Organised business further indicated that a comprehensive legislation dealing with all packaging waste was necessary and that there would be massive job and capital investment losses. After hearing the views from organised business and other submissions in October 2000, the Parliamentary Portfolio Committee declared a deadlock and referred the issue to the National Economic Development and Labour Council (Nedlac).

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69 These were promulgated in terms of ss (1)(a) and (k) of the Environment Conservation Act 73 of 1989.
72 Nedlac is South Africa’s national organisation that discusses and tries to reach consensus between government, organised labour, organised business and organised communities on issues affecting social and economic policy through social dialogue.
The draft regulations and the comments from the public were tabled by Nedlac for discussion on 23 November 2000 and affected parties, including organised government (led by the Department of Environmental Affairs and Tourism) agreed that a joint research project into the regulations be urgently undertaken. The hope was that this would assist parties to develop a shared understanding of the potential socio-economic impacts of the proposed regulations. The Nedlac report of 2001 revealed that the plastic shopping bag manufacturing industry consisted of six large companies that shared between 70-75% of the local market, which entirely depended on plastic bag business. Nedlac recommended that it was not feasible to change existing equipment to manufacture, firstly, the required 30 microns plastic bag and, later, an 80 microns plastic bag and proposed regulations.

Debates surrounding the proposed regulations continued and, in May 2002, government finalised the regulations that would have been effected a year later on 8 May 2003. The revised set of regulations was rejected completely by organised business, which included retailers (led by retailer Pick 'n Pay), raw material suppliers and producers (represented by the Plastics Federation of South Africa) as well as organised labour (represented by the Congress of South African Trade Unions, or ‘Cosatu’). As such, these organisations sought further dialogue with the Minister of Environmental Affairs and Tourism, including lobbying the Minister of Trade and Industry to intervene on their behalf.

Two informal submissions in the form of letters directed to the then Minister of Environmental Affairs and Tourism were retrieved; from the retail chains Pick 'n Pay and Woolworths. The letters, dated 16 and 22 May 2002 respectively, raised issues related to the finalised May 2002 Plastic Bag Regulations. From the letters, it was clear that both retail outlets had engaged government to push for favourable amendments to the original regulations but with limited success as reflected in the finalised regulations of May 2002.

Commenting on the issue of the thickness of plastic shopping bags, the Pick 'n Pay letter proposed that this be increased to a maximum of 24 microns and disputed the fact raised by the regulations to have them between 30 microns and 80 microns as any increase above '24 to 30 microns' would be problematic and resulted in rendering the ‘bulk of the current modern equipment for bag manufacturing redundant’. The Minister was also attacked in the Woolworths letter. The group noted that the new regulations remained ‘highly inflationary’ and would still result in major job losses. The letter also pointed to the same issue regarding the thickness of plastic shopping bags.

With regard to the plastic shopping bag charge, Pick 'n Pay indicated that they were discussing the issue and hinted that, in their original discussion with the Minister, he had ‘clearly’ indicated that the government’s position was that ‘consumers should pay for packaging in order to motivate re-use’.
Pick 'n Pay indicated that their preferred future was to have a partial recovery of the increased cost on the plastic shopping bag, an aspect that was not covered by the revised regulations. Once more, tension emerged here due to the fact that government failed to address the 'expectations' of retailers. Almost exactly the same sentiments were raised by the letter from Woolworths, which emphasised that the Minister indeed indicated that 'customers SHOULD pay for their packaging ...'.

However, what is of critical importance in terms of stakeholder engagement is the request made in both letters for further dialogue with the Minister. The Chief Executive Officers concluded by requesting continued dialogue with government. The concluding remarks from the Pick 'n Pay letter read:

... we appeal to you for further dialogue in weeks ahead, as we certainly believe that with some significant, but minor, modification to the proposed legislation, that a win-win situation could be created for all, as judging by the public response, the legislation is indeed not a popular one and ultimately, we are there to serve the interests of all of our stakeholders.

The Woolworths letter portrayed almost the same message, reading:

... [w]e do believe, Minister, that further dialogue is required between yourself and ourselves. We equally believe that whilst small gains may be made, still bigger ones could be achieved – to the benefit of all stakeholders. We would therefore appeal to you to not overlook our proposals, but to engage with us to achieve the same objectives together. After all, the very aspect of engagement and consultation is the very cornerstone of our young democracy.

Along the same lobbying lines, organised business felt that there were not significant changes to the May 2002 regulation compared to the original 2000 version; and this prompted organised business to come up with an alternative self-regulating plan. The business plan was popularised as the e-Bag Initiative.73

The e-Bag Initiative aimed at reducing the number of plastic shopping bags that ended up in the waste stream. A levy was proposed at the point of sale of the plastic bag from the manufacturer to the retailer, with the retailer in turn charging consumers for the bag at the point of sale. The retailer would also refund consumers for any bags that are returned to the point of sale. This arrangement was confirmed as having the ability to reduce the number of plastic shopping bags in circulation, with the levy being used to stimulate the collection and recycling of plastic shopping bags. Industry would increase the thickness of plastic shopping bags to a minimum of 22 microns through regulation, and would further enhance the recycling content by developing a standard that would specify the characteristics of both shopping and refuse plastic bags. Such a standard would include specifying a

minimum thickness; ink to be used and its spread on the plastic shopping bag surface; the area of the bag that may be printed on; and optimum size of bags.74

The e-Bag Initiative resulted in the Plastic Bag Agreement of September 2002.75 The Government and its partners adopted the e-Bag Initiative and agreed upon the following concerning the amendments to the 2002 Plastic Bag Regulations: minimum thickness was set at 30 microns, disclosure and transparency of cost at checkout points, printing on plastic bags (to include a safety or environment related message, name of converter, e-mark, polymer identification grade, product purchase bar code and country of origin), creation of recycling market, creation of a non-profit company (Buyisa-e-Bag South Africa) and promotion of job creation, mandatory levy and prevention of illegal imports as well as the enforcement date set for 9 May 2003.77

The Plastic Bag Agreement resulted in the May 2002 regulations77 being replaced by the watered-down May 2003 regulations. The Agreement also resulted in the June 2003 Compulsory Specifications (standards) for the plastic shopping bags. Buyisa-e-Bag became operational in May 2004. The events outlined here clearly show how the failure (on government’s side) to involve other key stakeholders resulted in the total rejection of the proposed regulations.

To facilitate the collection of the levy, the Revenue Laws Amendment Act of 200378 makes provision for the imposition of environmental levies. This followed implementation problems, as the levy established by the Plastic Bag Agreement of 2002 did not have any legal foundation. As such, the South African Revenue Services could not collect the levy. The Environment Conservation Amendment Act enables the Minister of Environmental Affairs and Tourism to make regulations regarding financial matters relating to specific waste types and regarding product control for waste management. Section 24 of the 1989 Act was amended by adding paragraph 24(1). The paragraph stipulates that compulsory charging as well as deposits or related financial measures on waste types or specified items in waste types shall be imposed with the concurrence of the Minister of Finance.

74 Ibid.
76 Buyisa means bring in the local isiZulu language.
77 These regulations appeared in Gazette No. 7548 in Government Gazette No. 23393 of 9 May 2002.
7 Conclusion

A distinctive environmental policy reform cycle around packaging waste management in South Africa emerged. The cycle is built around interwoven policy sub-cycles that can be summarised around policy legal frameworks and policy regulation (instruments) as follows:

Sub-cycle 1: Legal framework for general litter and waste management
- 1999 Minister’s statement of intent to ban plastic shopping bags.
- 2001 Polokwane Declaration (on zero waste).

Sub-cycle 2: Policy regulation (instruments)
- 2002 Plastic Bag Agreement.
- 2003 Plastic Carrier Bags and Plastics Flat Bags Regulations.
- 2003 Compulsory Specifications for Plastic Carrier Bags and Plastics Flat Bags Regulations.

Sub-cycle 3: Legal framework for Plastic Bags Regulations
- 2003 Revenue Laws Amendment Act.
- 2003 Amendment of Schedule 1 of the 1964 Customs and Excise Act.

Sub-cycle 4: Policy regulation (instruments)
- 2003 Environmental Levy (charge).
- 2004 Buyisa-e-Bag South Africa Section 21 Company.

From the summary of policy sub-cycles provided above, a 15-year environmental policy cycle around the Plastic Bags Regulations emerged. The cycle started with the 1989 Environmental Conservation Act and for analysis purposes, this ended in 2004 with the establishment of the Buyisa-e-Bag South Africa Section 21 Company.

Overall, this paper traced environmental law and policy reform surrounding the management of packaging waste in South Africa. The paper revealed that the foundation for environmental law and policy was provided by the 1996 Constitution. In addition, an intensive programme to regulate waste was initiated between 1998 and 2000, with the Environmental Management Act of 1998 and the 2000 White Paper on Integrated Pollution and Waste Management being key legislative frameworks. As for managing specific packaging waste products, the May 2003 Plastic Bag Regulations paved the way as a prototype environmental regulation.