

STATE PRESIDENT' S OFFICE

No. 1237.
6 May 1992

It is hereby notified that the State President has assented to the following Act which is hereby published for general information: -

NO. 53 OF 1992: HAZARDOUS SUBSTANCES AMENDMENT
ACT, 1992

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Hazardous Substances Act, 1973, so as to insert, amend or delete certain definitions; to provide for the exclusion of certain substances, and the exemption of certain persons, from the provisions of the said Act; to further regulate the issue, suspension and withdrawal of licences and authorizations in connection with hazardous substances; to further regulate vicarious liability; to provide for the placing of an embargo on, and the seizure of, certain objects; to increase penalties; and to further provide for the making of regulations; to amend the Nuclear Energy Act, 1982, so as to further regulate the powers of the corporation in respect of radio-active nuclides; and to provide for matters in connection therewith.

(Afrikaans text signed by the State President.)
(Assented to 26 April 1992.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:

Amendment of section 1 of Act 15 of 1973, as amended by section 1 of Act 16 of 1976 and section 1 of Act 31 of 1981

1. Section 1 of the Hazardous Substances Act, 1973 (hereinafter referred to as the principal Act), is hereby amended

(a) by the substitution for the definition of "Director-General" of the following definition:

" 'Director-General' means the Director-General: *National Health Welfare and Pensions and Population Development*;"

(b) by the substitution for the definition of "electronic product" of the following definition:

" 'electronic product' means-

(a) any manufactured product which, when in operation, (i) contains or acts as part of an electronic circuit, and ii

(i) emits (or in the absence of effective shielding or other controls would emit) electronic product radiation; or

(ii) would, as a result of the failure or breakdown of an built-in safety measure or shielding, pose an electrical, mechanical, chemical, biological, ergonomic or other hazard, or cause excessive temperature, excessive pressure or ignition of flammable material, which may cause injury, ill-health or death to human beings; or

(b) any manufactured article which is intended for use as a component, part or accessory of a product described in paragraph (a) and which, when in operation-

(i) emits (or in the absence of effective shielding or other controls would emit) such radiation; or

(ii) would, as a result of the failure or breakdown of an built-in safety measures or shielding, pose an electrical, mechanical, chemical, biological, ergonomic or other hazard, or cause excessive temperature, excessive pressure or ignition of flammable material, which may cause injury, ill-health or death to human beings;";

(c) by the substitution for the definition of "grouped hazardous substance" of the following definition:

" 'grouped hazardous substance' means *any Group IV hazardous substance and any substance, mixture of substances, product or material declared in terms of section 2(1) to be a hazardous substance of any kind;*";

(d) by the substitution for the definition of "Group I, Group II, Group III or Group IV hazardous substance" of the following definition:

"`Group I, Group II or Group III or Group IV hazardous substance' means a substance, mixture of substances, product or material declared in terms of section 2(1) to be a Group I, Group II or Group III or Group IV hazardous substance, respectively; "

(e) by the insertion after the definition of "Group 1, Group II, Group III or Group IV hazardous substance" of the following definition:

" `Group IV hazardous substance' means *fabricated radio-isotopes contemplated in the definition of 'nuclear-hazard material' in section 1 of the Nuclear Energy Act; 1982 (Act No. 92 of 1982), which are outside a nuclear installation as defined in the said Act and-*

(a) have an activity concentration of more than 100 becquerels per gram; or

(b) have an activity concentration of 100 becquerels or less per gram and which the Minister has by notice in the Gazette declared to be a Group IV hazardous substance, and which are used or intended to be used for medical, scientific, agricultural, commercial or industrial purposes;";

(f) by the insertion after the definition of "label" of the following definition:

" `licence' means *any licence issued in terms of section 4;*";

(g) by the substitution for the definition of "local authority" of the following definition:

" `local authority' means *a municipal institution and includes an institution or body with functions similar to those of a municipal institution contemplated in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961)*"; (h) by the substitution for the definition of "manufacture" of the following definition:

" `manufacture', when used as a noun, includes assembly, production, preparation, processing, *repair* or any other manufacturing *or maintenance* process and, when used as a verb, has a corresponding meaning;"

(i) by the substitution for the definition of "Minister" of the following definition:

" `Minister' means the Minister of *National Health Welfare and Pensions*"; and

(j) by the deletion of the definition of "radio-active material".

Amendment of section 2 of Act 15 of 1973, as amended by section 2 of Act 31 of 1981

2. Section 2 of the principal Act is hereby amended-

(a) by the deletion in subsection (1) of the word "and" at the end of paragraph (b), and paragraph (c); and

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) If the Minister intends to declare any substance or mixture of substances to be a Group I or Group II hazardous substance or any electronic product to be a Group III hazardous substance or **any radio-active material** *any substance referred to in paragraph (b) of the definition of `Group IV hazardous substance'* to be a Group IV hazardous substance, he shall cause to be published in the Gazette a notice of his intention to do so and in such notice invite interested persons to submit to the Director-General any comments and representations they may wish to make in connection therewith."

Amendment of section 3 of Act 15 of 1973, as substituted by section 2 of Act 16 of 1976

3. Section 3 of the principal Act is hereby amended

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Subject to the provisions of **subsection subsections (1A) and (2)** no person shall -"; and (b) by the insertion after subsection (1) of the following subsection: "*(1A) The Minister may by notice in the Gazette from time to time-*

(a) determine that any provision of subsection (1) shall not apply to any Group I or Group III hazardous substance mentioned in the notice; or

(b) exempt any person or category of persons from any provision of subsection (1), and may in like manner at any time amend or withdraw any such notice. "

Insertion of section 3A in Act 15 of 1973

4. The following section is hereby inserted in the principal Act after section 3:

"Production, acquisition, disposal, and importation and exportation, of Group IV hazardous substances

3A. (1) Subject to the provisions of this section, no person shall produce or otherwise acquire, or dispose of, or import into the Republic or export from there, or be in possession of, or use, or convey or cause to be conveyed, any Group IV hazardous substance, except in terms of a written authority under subsection (2) and in accordance with-

(a) the prescribed conditions; and

(b) such further conditions (if any) as the Director-General may in each case determine.

(2) The Director-General may on application by any person in the prescribed manner and on payment of the prescribed fee, and on such conditions as he may in each case determine, in writing authorize the performance of any of or all the activities mentioned in subsection (1) in respect of any Group IV hazardous substance.

(3) Any employee of a holder of a written authority referred to in subsection (2) may in the course of his employment in respect of the IV hazardous substance concerned perform any of the activities in respect of which authority has been so granted in accordance with the conditions of the authorization in question.

(4) A written authority under section 50 of the Nuclear Energy Act,

1982 (Act No. 92 of 1982), shall remain valid, but shall lapse-

(a) if application for a written authority under section 4 of the Hazardous Substances Amendment Act, 1992, is not made within 60 days after the date of commencement of the said section; or

(b) if an application mentioned in paragraph (a) is made within the said period of 60 days, when such application is granted or refused.

(5) The Minister may from time to time by notice in the Gazette-

(a) determine that any provision of subsection (1) shall not apply in respect of any Group IV hazardous substance mentioned in the notice; or

(b) exempt any person or category of persons from any provision of subsection (1), and may in like manner at any time amend or withdraw such notice.

(6) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition imposed there under shall be guilty of an offence.

(7) The provisions of sections 4, 5 and 7 shall, in so far as they can be applied, apply, to a written authority under subsection (2). "

Substitution of section 4 of Act 15 of 1973, as substituted by section 3 of Act 16 of 1976

5. The following section is hereby substituted for section 4 of the principal Act:

"Licensing

4. (1) Subject to the provisions of this section, the Director-General may on application in the prescribed manner and on payment of the prescribed fee (if any) and subject to the prescribed conditions and such further conditions as the Director-General may in each case determine, issue to any person a licence-

(a) issue to any person a licence to carry on business as a supplier of Group I hazardous substances;

(b) issue a licence in respect of to sell, let, use, operate or apply any Group III hazardous substance for the purposes of this Act ;

(c) issue a licence in respect of any premises on which to install a Group III hazardous substance on any premises mentioned in such licence may be installed.

(2) The Director-General may require an applicant contemplated in subsection (1) to furnish him with such information, in addition to any information furnished by the applicant in terms of the said subsection, as the Director-General may deem necessary.

(3) In considering an application under subsection (1) the Director-General may conduct any investigation in respect of the applicant concerned.

(4) The Director-General may not grant an application under subsection (1) unless he is satisfied that

(a) if the applicant is a natural person, he, or, if the applicant is a company, a director of the company, or, if the applicant is a close corporation, a member of the corporation, is a suitable person to carry on, or be involved in, the activities authorized by the licence;

(b) an interest which any person has in the applicant concerned, is reconcilable with the provisions of this Act;

(c) the applicant will be able to exercise sufficient control over the activities authorized by the licence;

(d) the licence concerned has not been issued to a sufficient number of persons; and

(e) the issue of the licence will be in the public interest.

(5) When the Director-General grants or refuses an application for a licence, he shall give written notice of that fact to the applicant concerned.

(6) If the Director-General refuses an application for a licence, he shall in writing

(a) furnish the applicant concerned with the reasons for such refusal;

and

(b) notify such applicant that he may in accordance with the provisions of section 6 appeal to the Minister against such refusal.

(7) The Director-General may by written notice to the person concerned at any time

(a) cancel or vary any condition to which a licence is subject; or

(b) impose any condition or any further condition in respect of a licence. "

Substitution of section 5 of Act 15 of 1973, as substituted by section 4 of Act 16 of 1976

6. The following section is hereby substituted for section 5 of the principal Act:

"Period of validity and renewal of licences

5. A licence under section 4 shall be valid for an indefinite or the prescribed period, but may on application in the prescribed manner and before the prescribed time or such later time as the Director-General may allow and on payment of the prescribed fee (if any) be renewed. "

Substitution of section 6 of Act 15 of 1973

7. The following section is hereby substituted for section 6 of the principal Act:

"Appeals to Minister against decisions of, and conditions imposed by, Director-General

6. (1) An person aggrieved by decision of the Director-General under this Act or any condition imposed thereunder, may in the prescribed manner and within the prescribed period appeal to the Minister, who may in his discretion confirm, set aside, amend or replace such refusal or condition.

(2) The operation of a decision of the Director-General, or a condition imposed by him, in terms of this Act shall not be suspended pending the outcome of an appeal under subsection (1). "

Substitution of section 7 of Act 15 of 1973, as substituted by section 5 of Act 16 of 1976 8. The following section is hereby substituted for section 7 of the principal Act:

"Suspension and cancellation of licences

7. (1) If the holder of a licence under section 4-

(a) has in or in connection with an application for a licence or renewal of a licence furnished the Director-

General with any information which to the knowledge of such holder is untrue or misleading in any material respect;

(b) has contravened or failed to comply with a condition subject to which the licence was issued;

(c) has contravened or failed to comply with a provision of this Act;

(d) has at any time been convicted of any offence which is of such a nature that in the opinion of the Director-General it renders him or if such person is for any other reason in the opinion of the Director-General not a suitable person to carry on the authorized by the licence, or to be involved in such activities; or

(e) has ceased to carry on the activities authorized by the licence, the Director-General may by way of a notice in writing call upon him to show cause within the period specified in the notice, which period shall not be less than 20 days as from the date of the notice, why the licence in question should not be suspended or cancelled.

(2) The Director-General may, after considering the reasons furnished to him in terms of subsection (1), in his discretion

(a) suspend the licence in question for such period as he may determine; or

(b) withdraw such licence.

(3) While a licence is suspended under subsection (2)(a), the licence concerned shall be deemed never to have been issued.

(4) The Director-General shall withdraw the licence of a licensee if requested to do so by the licensee.

(5) The holder of a licence under section 4(1)(a) may, if such licence is withdrawn under subsection (2) (b) of this section, continue on such conditions as the Director-General may determine to carry on business as a supplier of Group I hazardous substances, for a period of 30 days or such longer period as the Director-General may determine.

(6) No person shall be entitled to repayment of any prescribed fees in respect of any application for the granting or renewal of a licence if such application has been refused or if the licence has been suspended or withdrawn. "

Insertion of sections 9A and 9B in Act 15 of 1973

9. The following sections are hereby inserted in the principal Act after section 9:

Embargo

9A. (1) An inspector may at any time place an embargo for an indefinite or prescribed period on any grouped hazardous substance, appliance, vehicle or other object which is concerned in or is on reasonable grounds believed by him to be concerned in a contravention or suspected contravention of any provision of this Act, irrespective of where or in whose possession he finds such substance, appliance, vehicle or object. (2) For the purposes of this Act 'embargo', in relation to any hazardous substance, appliance, vehicle or other object, means a prohibition on the export, sale, dumping, lease, use, operation, application, or installation on any premises, thereof.

(3) If an inspector deems it expedient, he may at any time

(a) remove any grouped hazardous substance, appliance, vehicle or other object under an embargo in terms of subsection (1) to any place he may determine;

(b) lift such embargo.

(4) Except with the permission of an inspector, no person shall remove, aid and abet to remove, or cause or permit to be removed, any substance, appliance, vehicle or other object under an embargo out of the possession or control of an inspector, or in any other way deal therewith.

(5) Any person who contravenes any provision of subsection (4), shall be guilty of an offence.

Seizure

9B. (1) An inspector or police official as defined in section 1(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), may, at any time and in such manner as he may deem fit and without prior notice to any person, seize any grouped hazardous substance, appliance, vehicle or other object

(a) which is concerned in or is on reasonable grounds believed by him to be concerned in the commission or suspected commission of an offence in terms of this Act;

(b) which in his opinion may afford evidence of the commission or suspected commission of such offence; or

(c) which is intended to be used or is on reasonable grounds believed by him to be intended to be used in the commission of such offence.

(2) Any grouped hazardous substance, appliance, vehicle or other object seized in terms of subsection (1), shall be disposed of in accordance with the applicable provisions of the Criminal Procedure Act, 1977, regarding seizure of objects by the State. (3) Any substance, appliance, vehicle or other object seized in terms of subsection (1) by an inspector or police official may be

(a) kept in custody at the place where it has been found; or

(b) removed to any place where in his opinion it can be kept in safe custody, and he may in respect thereof conduct such investigation or perform such functions as he may deem necessary.

(4) If-

(a) an inspector is satisfied that the custody of an object is no

longer required for the purposes of this Act;

(b) no criminal proceedings are instituted in connection with such object; or

(c) it appears that such object is not required at a trial for the purposes of an order of court, the object concerned shall be returned to the person from whom it was seized, if such person may lawfully possess such object, or, if such person may not lawfully possess such object, to the person who may lawfully possess it.

(5) The Director-General may recover from the owner of an object seized under subsection (1) the reasonable expenses incurred by an inspector in connection with any action in terms of this section in respect of such object: Provided that such expenses shall not be recovered from such owner if no criminal proceedings have been instituted in respect of the object concerned.

(6) Any person who-

(a) damages or destroys any grouped hazardous substance, appliance, vehicle or other object referred to in subsection (1) with a view to obstructing the seizure or custody thereof; or

(b) without the written permission of an inspector or police official referred to in subsection (1), removes

it from the custody or control of such inspector or police official, shall be guilty of an offence."

Amendment of section 16 of Act 15 of 1973

10. Section 16 of the principal Act is hereby amended

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

*"An act or omission of an employee, **manager** mandatory or agent which constitutes an offence under this Act shall be deemed to be the act or omission of his employer, mandator or principal, and the said employer, mandator or principal may be convicted and sentenced in respect of it unless he proves-";*

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

*"(c) that an act or omission, whether legal or illegal, of the nature in question did not under any conditions or in any circumstances fall within the course of the employment or the performance of the mandate or the scope of the authority of the employee, **manager** mandatory or agent concerned."; and*

(c) by the addition of the following subsection:

"(4) Whenever an employee, mandatory or agent does anything or fails to do anything which would have been an offence in terms of this Act if the employer, mandator or principal concerned had done it or had failed to do it, such employee, mandatory or agent shall be guilty of such offence."

Amendment of section 19 of Act 15 of 1973

11. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person convicted of an offence under this Act, shall, subject to the provisions of subsection (2), be liable-

*(a) on a **first conviction** in the case of an offence referred to in section 3A or 18(g), to a fine **not exceeding five hundred rand** or to imprisonment for a period not exceeding **six months** 10 years or to both **such a fine and such imprisonment;***

(b) in the case of an offence referred to in section 3(1)(b) or (c), to a fine or to imprisonment for a

period not exceeding six years or to both a fine and such imprisonment;

(b)(c) on a second conviction in the case of an offence referred to in sections 3(1)(a), 15(2), 17(2), 9A, 9B or 18(c), (d), (e) or (f), to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months two years or to both such a fine and such imprisonment; and

(c)(d) on a third or subsequent conviction in the case of an offence referred to in section 18(a) or (b), to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding twenty-four 12 months or to both such a fine and such imprisonment; and

(e) in the case of an offence referred to in section 29(8), to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment, and to a further fine not exceeding R10 or to further imprisonment not exceeding one day for every day on which he so contravened the provision concerned or failed to comply therewith: Provided that the period of such further imprisonment shall not exceed 90 days. "

Amendment of section 29 of Act 15 of 1973, as amended by section 6 of Act 16 of 1976

12. *Section 29 of the principal Act is hereby amended*

(a) by the substitution for paragraph (q) of subsection (1) of the following paragraph:

"(q) providing for the appointment of such committees as he may consider necessary, for the purpose of advising the Director-General on any matter concerning any Group III or Group IV hazardous substance, the calling of meetings of any such committee, the quorum for and procedure at such meetings and the remuneration and allowances, conditions of service and tenure of office of members of any such committee who are not in the full-time employment of the State; "

(b) by the substitution for paragraph (r) of subsection (1) of the following paragraph:

"(r) prescribing the fees payable in respect of the issuing or renewal of any licence or any written authority under this Act, and the basis on which such fees shall be determined; "

(c) by the addition to subsection (1) of the following paragraph:

"(v) regarding safety standards in connection with the importation into and exportation from the Republic, manufacture, packing, disposal, dumping, sale, serving, applying, administering or use of hazardous substances, and the manner in which such standards shall be brought to the notice of persons concerned in any of the said activities in respect thereof.";

(d) by the substitution for subsection (2) of the following subsection:

"(2) Regulations made under-

(a) subsection (1)(a) may make provision for the issuing of registration certificates or licences under this Act in respect of the performance of any actions mentioned in the said subsection, and the payment of any registration or licence fee in connection therewith; and

(b) subsection (1)(t) may prescribe any method for the analysis or examination of a sample set out in any publication which in the opinion of the Minister is generally recognized as authoritative.";

(e) by the deletion of subsection (5);

(f) by the substitution for subsection (6) of the following subsection:

"(6) No regulation under subsection (1)(e) relating to persons employed in the manufacture or use of any grouped hazardous substance in a factory as defined in section 3 of the Factories, Machinery and Building Works Act, 1941 (Act No. 22 of 1941) shall be made except after consultation with the Minister of Manpower Utilization."; and

(g) by the substitution for subsection (8) of the following subsection:

"(8) Any regulation made under subsection (1) may determine that any person who contravenes or fails to comply with any provision thereof, shall be guilty of an offence.".

Substitution of section 50 of Act 92 of 1982, as amended by section 11 of Act 43 of 1987

13. The following section is hereby substituted for section 50 of the Nuclear Energy Act, 1982:

"Production, acquisition, disposal, and importation and exportation, of radio-active nuclides by corporation

50. Notwithstanding the provisions of an law to the contrary, the corporation or a subsidiary company may produce or otherwise acquire, or dispose of, or import into or export from the Republic, or be in possession of, or use on the premises of the corporation or a subsidiary company, or convey or cause to be conveyed, any radio-active nuclide."

Amendment of section 81 of Act 92 of 1982, as amended by sections 14 and 33 of Act 56 of 1988

14. Section 81 of the Nuclear Energy Act, 1982, is hereby amended by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

"(i) contravenes, or fails to comply with, any provision of section 42(1), 47(1), 49(1) or (5)(a) **50(1)** or 66(1), or of any condition imposed upon him under section 49(2) or (5)(b) or **50(1)**;"

Short title and commencement

15. (1) This Act shall be called the Hazardous Substances Amendment Act, 1992.

(2) The provisions of this Act relating to Group I, Group II and Group III hazardous substances shall come into operation upon the publication of this Act in the Gazette, and sections 13 and 14 of this Act and the provisions of the principal Act (including any amendment thereof by this Act) relating to Group IV hazardous substances shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(3) Proclamation R87 of 1990 shall be deemed to have come into operation on 21 December 1984.