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LEGAL NOTICE 30 OF 2014

THE ENVIRONMENT MANAGEMENT ACT, 2002  
(Act No. 5 of 2002)

THE OZONE DEPLETING SUBSTANCE (AMENDMENT)  
REGULATIONS, 2014  
(Under Section 37)

In exercise of the powers conferred by Section 37 of the Environment Management Act, 2002, The Minister for Tourism and Environmental Affairs issues the following Regulations-

***Citation and Commencement***

1. (1) These Regulations may be cited as the Ozone Depleting substance (Amendment) Regulations, 2014 and shall be read as one with legal notice No. 14 of 2003 hereinafter referred to as the Principal Regulations.

(2) These Regulations shall come into force on the date of publication in the gazette.

***Amendment of Regulation 2***

2. Regulation 2 of the Principal Regulations is amended by-

- (a) deleting the meaning of the word "Authority" and providing a new meaning as follows "Authority" means the Swaziland Environmental Authority as established under section 9 of the Environment Management Act, 2002;"
- (b) deleting the following words "and as amended in London, Copenhagen, Vienna, Montreal and Beijing" in the interpretation of the word "Protocol";
- (c) inserting the words "prohibition date" means the date specified in the second schedule; and
- (d) inserting the word "permit" means the permit issued in regulation;

***Amendment of Regulation 4***

3. Regulation 4 of the Principal Regulations is amended by deleting it and providing a new one as follows -

***Manufacture, production and trade on controlled substances and products***

" 4. (1) A person shall not produce, manufacture or trade on any controlled substance or product containing any substance on or after the prohibition date specified in the Second Schedule.

(2) A person shall not import, export, store or deal in any manner with a controlled substance or product listed in the First Schedule, except in accordance with these Regulations.

(3) A person shall not import or export a controlled substance or product from or to a country that is not party to the Protocol.

***Amendment of Regulation 5***

4. Regulation 5 is amended by deleting it and providing a new one as follows -

***Mandatory registration of importers and exporters of controlled substances or controlled products***

“5. (1) A person who intends to import or export a controlled substance or controlled product shall register with the Authority.

(2) Only a person registered with the Authority may be eligible to apply for a licence under these Regulations.

(3) The Authority shall not register a person unless it is satisfied that the person has fulfilled the conditions for registration as set out by the Authority.

(4) A person who engages in the business of importing and exporting controlled substances or products without being registered with the Authority commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand Emalangeni or to a term of imprisonment not exceeding five years or both.

***Amendment of Regulation 6***

5. Regulation 6 of the Principal Regulation is amended by deleting it and providing a new one as follows -

***“removal from the register***

“6. (1) The Authority may upon good cause shown remove the registration of a person as an importer or exporter.

(2) The Authority may, before removal of registration, allow the person to be affected by such removal to make any representation as to why the removal may not be effected.

(3) A person affected by the removal mentioned in sub regulation (1) may lodge an appeal to the Minister within a period of twenty one days from the date of notification of removal.

(4) A person who has been removed from the register of importers and exporters shall surrender to the Authority the licence or permit issued under these Regulations.

***Amendment of Regulation 7***

6. Regulation 7 of the Principal Regulation is amended by deleting it and providing a new one as follows -

***licensing***

“7 (1) A person registered with the Authority in terms of these Regulations may be granted a licence to import, export or store a controlled substance or product containing a substance not prohibited in these Regulations.

(2) A person who intends to import, export or store a controlled substance or product shall apply to the Authority for a licence in the manner prescribed in Form A, B, or O respectively.

(3) A licence shall only be issued to a person where-

- (a) the Authority is satisfied that the applicant has adequate and appropriate facilities and equipment to handle the controlled substance or product without causing damage to the environment.
- (b) the Authority is satisfied that the grant of the licence shall not cause the production, importation, exportation, storage or consumption of the ozone depleting substances prohibited under these regulations.

(4) An application for a licence under regulation (1) shall be signed -

- (a) In the case of a Corporation by an officer of the Corporation authorised to do so.
- (b) In any other case by the person making the application or by a person authorised to act on behalf of that person.

(5) A person who imports, exports or stores a controlled substance or product without a licence commits an offence.

(6) This Regulation does not apply to import, export or storage of controlled substance or products which are intended for essential medical purposes as the Authority may prescribe.

(7) The Authority may revoke a licence issued under this Regulation where a person issued with the licence -

- (a) violates any provision of these Regulations;
- (b) emits into the air any controlled substance;
- (c) is deregistered.

(8) The following conditions shall apply to a licence-

- (a) it is not transferable;
- (b) it shall be valid up to 31<sup>st</sup> December of the year in which it was issued;
- (c) the Authority may vary or revoke any condition attached to the licence; and
- (d) the Authority shall keep a register of all persons granted with a licence under these Regulations.

(9) The Authority may issue another licence upon application by a person upon such varied terms and conditions as it may determine.

***Amendment of Regulation 9***

8. Regulation 9 of the Principal Regulation is amended by deleting it and providing a new one as follows -

***“Appeal***

9. A person aggrieved by the decision of the Authority shall follow the procedure as provided for in the Environment Management Act, 2002.”

***Amendment of Regulation 10***

9. Regulation 10 of the principal regulations is amended by-

(a) deleting the words “Third Schedule” and replacing them with the words “Fifth Schedule.”

(b) Providing a new sub regulation 2 and renumbering accordingly as follows -

“The Authority may on a written application by the license holder allow special reporting procedures.”

***Amendment of Regulation 11***

10. Regulation 11 of the principal regulation is amended by deleting the words “fifth Schedule” and replacing them with the words “Third Schedule.”

***Amendment of Regulation 12***

11. Regulation 12 of the Principal Regulations is amended by-

(a) deleting the words “fourth Schedule” and replacing them with the words “Fifth Schedule”

(b) deleting the word “Director” and replacing it with the word “ Authority”

***Amendment of Regulation 16***

12. Regulation 16 of the Principal Regulations is amended by adding sub regulation (3), (4), (5) as follows-

(3) An inspector shall before destroying any products stored contrary to these regulations issue an enforcement notice.

(4) The enforcement notice shall -

(a) state the nature of the contravention or likely contravention of the licence or permit.

(b) stipulate the remedial procedures to avoid contravention.

(c) Specify the effective date of notice and period within which remedial procedures are to be undertaken.

(5) (1) Where a person fails to comply with the enforcement notice, the inspector may recommend to the Authority that it suspends or cancel the licence issued to the licensee.

(2) The inspector shall clearly state why he recommends such suspension or cancellation of the licence.

***Amendment of Regulation 18***

13. Regulation 18 of the Principal Regulation is amended in sub section 2 by deleting it and providing a new one as follows-

“(2) A person who contravenes any provision not expressly mentioned in sub regulation (1) commits an offence and shall, on conviction be liable to a fine not exceeding fifteen thousand Emalangení.

**NEW AMENDMENTS TO BE INCORPORATED INTO THESE REGULATIONS**

***Cancellation of Registration***

1. (1) The Authority may upon good cause shown cancel the registration of an importer.

(2) The Authority may before cancellation of registration allow the importer to make any representation as to why the cancellation may not be effected.

***Prohibition of trade on specified controlled substances***

2. A person shall not import or export a controlled substance or product on or after the date specified in the second schedule.

***Service workshops***

3. (1) An owner or person in charge of a service workshop shall register such workshop with the Authority.

(2) On registration of the workshops referred to in sub regulation (1), the Authority may require any additional information as may be deemed necessary by the Authority.

(3) A person other than a certified technician or a service workshop issued with a certificate by the Authority shall not service or repair a product that contains a controlled substance.

(4) A certified technician or service workshop issued with a certificate under these Regulations shall not release or vent into the atmosphere any ozone depleting substance.

(5) A person or service workshop which-

(a) services or repairs any product that contains or uses a controlled substance without certification;

(b) releases or vents into the atmosphere an ozone depleting substance

Commits an offence and shall be liable, on conviction, to a fine not exceeding twenty five thousand Emalangení or to a term of imprisonment not exceeding three years.

***Duty of care***

4. (1) A person who deals in or stores any controlled substance or controlled product shall ensure that the substance or controlled product is stored in secure premises approved by the Authority in a manner that shall not be harmful to the environment.

(2) A person who contravenes sub regulation (1) commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand Emalangeni or to a term of imprisonment not exceeding six years or both.

***Quota allocation***

5. (1) The Authority shall when granting a licence in terms of these Regulations determine the amount of controlled substance or product to be imported or exported by the licensee.

(2) A person who contravenes sub regulation (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand Emalangeni or to a term of imprisonment not exceeding three years or both.

***Amendments to the first schedule***

6. Amending the first schedule by deleting the word "substances" and replacing it with the word "Products"

***Amendment to the second schedule***

7. Amending the second schedule by deleting the words "of import/export"

8. Amending the second schedule in number seven by deleting the number "2040" and replacing it with the number "2030"

***Amending form C***

9. Amending Form C to include storage of controlled substance or product.

***Offences and penalties***

10. (1) A person who deals with a controlled substance or product shall ensure that the controlled substance or product does not in any way harm the environment.

(2) A person who contravenes sub regulation (1) commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand Emalangeni or to a term of imprisonment not exceeding five years or both.

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*MINISTER FOR TOURISM AND ENVIRONMENTAL AFFAIRS*