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CONSTRUCTION & ENGINEERING

The Construction Climate Forecast: Stormy Seas Ahead

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First introduced to Parliament in February 2022, the Climate Change Bill was passed by the National Assembly in October 2023 and by the National Council of Provinces in April 2024 without amendments and has today been assented to by President Ramaphosa and promulgated into law (the Climate Change Act).

The Climate Change Act is South Africa's response to its signature and ratification of the Paris Agreement whose main objective is to develop an international climate change regime under the United Nations Framework Convention on climate change by setting out a comprehensive framework to guide efforts to limit greenhouse gases (GHGs) and to meet the associated challenges posed by climate change by ensuring a just transition towards a low carbon global economy and society.

Since the early 1990's South Africa's national average temperature has increased at a rate which is more than twice that of the global temperature.

This comes as no surprise as South Africa's economy and power generation system is largely dependent on the production and sale of coal.

South Africa also has a carbon-intense energy infrastructure mainly due to the materials utilised for the construction of infrastructure (eg, bricks, cement, steel and other manufactured components which are high in carbon). Coal and carbon are high emitters of GHGs which contribute directly to the increases in the Earth's temperature.

Given that the construction sector contributes to as much as 37% of global GHGs, this legislation will inevitably have a direct impact on the construction sector going forward.

Within one year of the Climate Change Act coming into operation, the Minister of Forestry, Fisheries and the Environment is required to publish a list of GHGs which the Minister reasonably believes cause or could be the potential cause of climate change.

We outline some of the more important provisions of the Climate Change Act below which we believe will impact on the construction sector:

Sectoral emissions

The Climate Change Act seeks to meet its objectives by regulating the emission of certain GHGs by imposing, amongst others, sectoral emission targets in section 22, carbon budgets in section 24 and sanctions for persons who fail to comply with the aforementioned targets and budgets which can be found in section 32.

Carbon Budgets and Mitigation Plans

Section 24 of the Climate Change Act provides for the allocation, by the Minister, of a carbon budget to all persons who engage in activities which emit or have the potential to emit GHGs (designated emitters), which will be published within a year of enactment.

The carbon budget allocated to designated emitters will remain the same for three successive five year periods, and a limit will be set for the GHG which may be emitted in the first five year period.

A designated emitter can make a request to the Minister for same to be reviewed. Alternatively, under certain circumstances to be prescribed by the Minister, a designated emitter may apply for the revision or cancellation of a carbon budget.

Designated emitters must submit a GHG mitigation plan which the Minister must consider and approve. The mitigation plan must contain the mitigation measures the designated emitter will take to ensure that it does not exceed its carbon budget.

The designated emitter must also ensure the proper implementation of the mitigation plan once it has been approved by the Minister.

Where it appears that a designated emitter is failing or will fail to stay within the allocated carbon budget, the designated emitter must provide the Minister with further measures it intends to take to ensure that it remains within the allocated budget.

The implications of this layer of regulatory management and reporting will inevitably mean that the costs of doing business where emissions are involved, will increase to include the costs of third parties, probably independent, and probably in due course accredited, with appropriate skills to assess emissions budgets, to generate emission mitigation plans, and to review and report on performance relative to budget.

Failure to comply

Not only will there be a cost implication for compliance, there will also be significant cost implications for non-compliance.

Section 32 of the Climate Change Act makes it clear that failure to submit a GHG mitigation plan to the Minister for approval is categorised as an offence which renders a party liable to a fine not exceeding R5 million or to imprisonment not exceeding 5 years for a first conviction and R10 million fine or imprisonment of 10 years in a subsequent conviction. The matter is evidently one which is to be taken seriously.

Taxation

In addition to the consequences visited upon businesses under the Climate Change Act it is apposite to note that the Carbon Tax Act 15 of 2019, another one of South Africa's responses to the climate change objectives under the Paris Agreement, must also not be forgotten.

Section 3 of the Carbon Tax Act states that a person is subject to carbon tax "*if that person conducts an activity in the Republic resulting in greenhouse gas emissions equal to or above the threshold determined by matching the activity listed in the column "Activity/Sector" in Schedule 2 with the number in the corresponding line in the Schedule*". Construction is listed on that schedule with a threshold of 10MW (th).

Conclusion

It is crucial for industry players to seriously consider and map out their strategies to manage the implications of GHGs and to prepare for the future. One way in which this can be done is to properly consider the impact of the lifecycle of the infrastructure from inception (i.e. design process) to the end of life phase (repurposing and recyclability of the materials used).

Whilst passing some responsibility on to one's supply chain is one strategy to manage emissions targets, and choosing more sustainable building materials is another, given the rigours of the Climate Change Act and the Carbon Tax Act, it will not be a case of simply passing on the buck – there are changes in behaviour required at every level in sustainable supply chains.



Jennifer Smit

Head of Construction & Engineering

View Profile



Natalie Scott

Head of Sustainability

View Profile