

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
NATIONAL ENVIRONMENTAL
LAWS AMENDMENT BILL**

[B 14B—2017]

*(As agreed to by the Portfolio Committee on Environmental Affairs
(National Assembly))*

[B 14C—2017]

ISBN 978-1-4850-0537-7

No. of copies printed 400

AMENDMENTS AGREED TO

NATIONAL ENVIRONMENTAL LAWS AMENDMENT BILL

[B 14B—2017]

CLAUSE 3

1. On page 6, in line 31, to omit “(5)”, and to substitute “(5)(bA)”.
2. On page 6, in line 31, to omit “paragraph (bA)”, and to substitute “subparagraph (i)”.

CLAUSE 4

1. On page 7 in line 14, to omit “extractions”, and to substitute “extraction”.

CLAUSE 5

1. Clause rejected.

NEW CLAUSE

Amendment of section 24G of Act 107 of 1998, as substituted by section 6 of Act 62 of 2008 and section 9 of Act 30 of 2013

5. Section 24G of the National Environmental Management Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraphs:

“(b) has commenced, undertaken or conducted a waste management activity without a waste management licence in terms of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)[,];

(c) is in control of, or successor in title to, land on which a person—

(i) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1);

(ii) has commenced with, undertaken or conducted a waste management activity in contravention of, section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008),

the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be[,]

(aa) **[may]** must direct the applicant to—

[(i)](A) immediately cease the activity pending a decision on the application submitted in terms of this subsection, except if there are reasonable grounds to believe the cessation will result in serious harm to the environment;

[(ii)](B) investigate, evaluate and assess the impact of the activity on the environment;

[(iii)](C) remedy any adverse effects of the activity on the environment;

[(iv)](D) cease, modify or control any act, activity, process or omission causing pollution or environmental degradation;

- [(v)](E) contain or prevent the movement of pollution or degradation of the environment;
- [(vi)](F) eliminate any source of pollution or degradation;
- [(vii)](G) compile a report containing—
- [(aa)](AA) a description of the need and desirability of the activity;
 - [(bb)](BB) an assessment of the nature, extent, duration and significance of the consequences for, or impacts on, the environment of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
 - [(cc)](CC) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment of the activity;
 - [(dd)](DD) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed, if applicable; and
 - [(ee)](EE) compile an environmental management programme; [or] and
- (F) undertake public participation as prescribed; and
- [(viii)](bb) may direct the applicant to provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC, as the case may be, may deem necessary.”;
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed **[R5] R10** million and which must be determined by the competent authority, before the Minister, Minister responsible for mineral resources or MEC concerned may act in terms of subsection (2)(a) or (b).”.

CLAUSE 17

1. On page 13, from line 51, to omit paragraph (e) and to substitute the following paragraph:
 - (e) by the substitution for subsection (4) of the following subsection:

“(4) Despite the provisions in subsections (2A) and (3), the Minister may, **[with the concurrence of]** after consultation with the Minister responsible for mineral resources, [if the environmental mineral resource inspectors are unable or not adequately able to fulfil the compliance and enforcement functions,] if it is necessary to address significant harm to the environment caused by prospecting, exploration, mining or production activities, [designate] direct the environmental management

inspectors to implement or support the implementation of these functions in terms of this Act or a specific environmental management Act in respect of which powers have been conferred on the Minister responsible for mineral resources.”.

2. On page 14, from line 5, to omit paragraph (f).
3. On page 14, from line 9, to omit paragraph (g) and to substitute the following paragraph:

“(g) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

“Subsequent to subsection (7), the Minister may, **[in concurrence]** after consultation with the Minister responsible for mineral resources, within a reasonable period of time and where appropriate, direct the environmental management inspectors to—”.

CLAUSE 34

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause.

34. Section 43 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the insertion after subsection (1B) of the following subsection—

“(1C) Any person may appeal against a decision made by the licensing authority contemplated in section 36(1) or 47A of the National Environmental Management: Air Quality Act, 1998 (Act No. 39 of 2004), in the case of municipalities, to the municipal council.”; and

- (b) by the substitution for subsections (7), (8) and (9) of the following subsections, respectively:

“(7) An appeal under this section suspends an environmental authorisation, exemption~~[, directive,]~~ or any other decision made in terms of this Act or any other specific environmental Act, or any provision or condition attached thereto, except for a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act.

(8) A person who receives a directive in terms of section 28(4) may lodge an appeal against the decision made by the Director-General or any person acting under his or her delegated authority, the Director-General of the department responsible for mineral resources or any person acting under his or her delegated authority, [or] the provincial head of department or any person acting under his or her delegated authority or the municipal manager of a municipality or any person acting under his or her delegated authority, to the Minister, the Minister responsible for mineral resources **[or]**, the MEC or the municipal council, as the case may be, within thirty days of receipt of the directive, or within such longer period as the Minister, the Minister responsible for mineral resources **[or]**, MEC or municipal council may determine.

(9) **[Notwithstanding]** Despite subsection (7) **[and]**, pending the finalisation of the appeal, the Minister, Minister responsible for mineral resources **[or]**, the MEC or municipal council, as the case may be, may, on application and on good cause shown, direct that **[any part or provision of the directive not be suspended, but only strictly in exceptional circumstances and where there is an imminent threat to human health or the environment.]—**

- (a) the environmental authorisation, exemption or any other decision made in terms of this Act or any other specific environmental management Act, or any provision or condition attached thereto may wholly or in part, not be suspended; or
- (b) the directive or any administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act or part thereof, be suspended.”.

CLAUSE 38

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 48 of Act 57 of 2003, as substituted by section 18 of Act 31 of 2004 and section 21 of 2014

38. Section 48 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended—

- (a) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
 “Despite other legislation, no person may conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) in a protected environment without the written permission of the Minister **[and the Cabinet member responsible for mineral and energy affairs]**; or”;
- (c) by the substitution for subsections (2), (3) and (4) of the following subsections:
 “(2) The Minister, after consultation with the Cabinet member responsible for mineral resources **[and energy affairs]**, must review all mining activities which were lawfully conducted in areas indicated in subsection (1) (a), (b) and (c) immediately before this section took effect.
 (3) The Minister, after consultation with the Cabinet member responsible for mineral resources **[and energy affairs]**, may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of

those activities on the environment or for the environmental protection of the area concerned.

(d) by the substitution for subsection (4) of the following subsection:

(4) A person who wishes to apply for permission under subsection (1)(b) to conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production, must immediately on receipt of an environmental authorisation in terms of the National Environmental Management Act, submit his or her application in the prescribed manner to the Minister, together with—

(a) any information, reports, studies conducted or consultation done for the environmental impact assessments process in respect of the activities under consideration in terms of Chapter 5 of the National Environmental Management Act; and

(b) any appeal lodged in respect of the environmental authorisation.

(e) by the addition of the following subsections:

(5) The Minister, when exercising his or her power in terms of subsection (1)(b)—

(a) must take into account—

(i) the principles contained in section 2 of the National Environmental Management Act;

(ii) any information, reports, studies conducted or consultation done for the environmental impact assessments process in respect of the activities under consideration in terms of chapter 5 of the National Environmental Management Act;

(iii) any appeal contemplated in subsection (4)(b);

(iv) the ecological integrity of the protected environment;

(b) may, amongst others, take into account—

(i) the potential impact on ecological functioning and ecosystem services provided by the protected environment to society;

(ii) whether the protected environment is a biodiversity priority area for species; and

(iii) whether the protected environment is a strategic water resource area;

(6) Despite subsection (4), the Minister may require the person who applies for the permission under subsection (1)(b), to provide any further information as he or she may deem necessary before making a decision.”.

CLAUSE 54

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Insertion of section 47A in Act 39 of 2004

54. The following section is hereby inserted in the National Environmental Management: Air Quality Act, 2004, after section 47:

Revocation or suspension of atmospheric emission licences

“47A. (1) The licensing authority may, by written notice to the holder of an atmospheric emission licence, revoke or suspend that licence if the licensing authority has evidence that the licence holder has contravened a provision of this Act or a condition of the licence and such contravention may have, or is having, a significant detrimental effect on the environment, including health impacts.

(2) The licensing authority must before exercising the power in terms of subsection (1), in writing—

- (a) consult organs of state whose areas of responsibility may be affected by the exercise of the power; and
- (b) afford the holder of the atmospheric emission licence an opportunity to make a submission in respect of the intended revocation or suspension, which submission must be accompanied by an atmospheric impact report as contemplated in section 30 of this Act.

(3) The licencing authority, when consulting in terms of subsection (2), must indicate the time period within which—

- (a) the organs of state must submit comments; and
- (b) the holder or the atmospheric emission licence must make his or her submission to the licencing authority.”.

LONG TITLE

1. On page 2, to omit the long title and to substitute the following:

“To amend the—

- **National Environmental Management Act, 1998, so as to correct the citation to the definition of “Constitution”; to add new definitions of “audit”, “black”, “environmental management instrument”, “latent environmental impacts”, “municipal council”, “municipality”, “municipal manager”, “mitigate”, “rehabilitate”, “remediate”, “residual environmental impacts”; to correct the definition of “environmental mineral resources inspector”; to provide clarity to the definition of “financial provision”; to add a new environmental management principle promoting diversity in the sector; to provide clarity on what an environmental management instrument is; to use the term environmental management instrument consistently in the Act, to remove a duplicated provision for making regulations for laying down the procedures for the adoption of environmental management instruments; to provide for a register and making available the register, of all environmental management instruments adopted in terms of the Act; to provide clarity that the Minister responsible for mineral resources is responsible for activities constituting prospecting, exploration, mining and production as well as those directly related to prospecting, exploration, extraction, primary processing of a mineral or petroleum resource; to clarify that the MEC can be regarded as the competent authority for providing environmental authorisation in the event that Cabinet identifies that the Minister should be the competent authority, when there is agreement between the Minister and the relevant MEC; to provide for simultaneous submission of the National Environmental Management Act and the specific Environment Management Act applications for purposes of the one environmental system, in order to enable integrated environmental authorisation; to provide for a trigger for the simultaneous submission of a National**

Environmental Management Act or specific environmental management Act applications after acceptance of mining right; to provide clarity that a successor in title or person who controls the land may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to empower the Minister to prescribe the information that must be contained in an environmental management programme; to enable an environmental assessment practitioner to undertake the consultation to be undertaken with a State Department on application for environmental authorisation; to provide clarity on what is to be audited in relation to financial provisioning; to provide the Minister with the power to prescribe instances for which financial provisioning is required; to provide clarity that an applicant or holder of an environmental authorization, holder, holder of an old order right relating to mining activities must set aside financial provision for progressive rehabilitation, mitigation, mine closure and the management of post closure environmental impacts; to identify the vehicles which must be used when providing the financial provision; to allow the Minister responsible for water affairs access to the financial provision to undertake rehabilitation and remediation if the holder of an environmental authorisation, holder, holder of an old order right fails to do so; to make it clear that the financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure and post—closure activities as prescribed; to allow for a three year review of the financial provision and to require that the review decision be published within five days; to make it a requirement for the rehabilitation which can be undertaken annually to be undertaken; to provide for the Minister responsible for mineral resources in consultation with the Minister and the Minister responsible for Water Affairs to allow an annual drawdown of funds as prescribed within a certain timeframe before decommissioning and closure; to require the transfer of funds provided for latent or residual environmental impacts to the Minister responsible for mineral resources on the issuing of a closure certificate; to require the Minister responsible for mineral resources to access funds provided for latent and residual impacts upon the issuing of a closure certificate; to include the holder of an environmental authorisation for a listed and specified activity for, or directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, holder, holder of an old order right, under the provisions related to environmental liability and the requirement to plan, manage and implement mine closure procedures; to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to empower Director-General of the Department responsible for mineral resources and municipal manager to issue section 28(4) directives; to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from an organ of state that executes regulatory function; to empower the Member of Executive Council to designate environmental management inspectors to undertake compliance and enforce in respect of provincial environmental legislation; to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors; to provide clarity that an environmen-

tal mineral and petroleum inspector must also undergo approved training before designation; to provide clarity on functions and general powers of environmental management inspectors when conducting investigations; to provide clarity that the conducting of a “search” is not the primary purpose of an environmental management inspector undertaking a routine inspection; to provide clarity that an environmental management inspector may detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide clarity that the Minister’s power to develop regulations on admission of guilt fines contextualizes the related provisions of the Criminal Procedure Act, 1977; to empower the Minister responsible for Mineral Resources, Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act; to provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority; to empower the Minister of Environmental Affairs to act in circumstances necessary to address significant harm to the environment caused by prospecting and mining activities; to provide for appeal against a decision made by a licensing authority in terms of the National Environmental Management: Air Quality Act; to provide clarity on circumstances where an appeal against a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment does not automatically suspend it; to provide clarity that an appeal against a directive must be lodged with the appropriate appeal authority; to correct references and cross references to offences and penalties, to make failure to comply with certain sections of the financial provisioning an offence and to update the list of offences and penalties;

- National Environmental Management: Protected Areas Act, 2003 so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the Board; to provide for the process of application and the criteria under which a section 48 permission may be issued or rejected; to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences;
- National Environmental Management: Biodiversity Act, 2004, so as to provide clarity on definition of “control” and to insert definitions of “eradicate” and “well-being”; to ensure that indigenous biological resources are used in an ecologically sustainable manner; to ensure that certain species remain in State custody despite their escape from land under the State’s control; to empower the Minister to prohibit certain activities that may negatively impact on the well-being of faunal biological resources; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the board; to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species; to ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act;
- National Environmental Management: Air Quality Act, 2004, so as to provide the Minister with discretion to establish the National Air Quality Advisory Committee; to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial department responsible for environmental affairs is the licensing authority

where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality; to provide for textual amendment to section 36(5)(d); to provide for revocation or suspension of atmospheric emission licence;

- **National Environmental Management: Integrated Coastal Management Act, 2008**, so as to allow for the removal of structures erected prior to commencement of the Act; to repeal Chapter 9 in order to align appeals with section 43 of the National Environmental Management Act, 1998;
- **National Environmental Management: Waste Act, 2008**, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of “residue deposits” and “residue stockpiles” and “waste”; to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act; to provide for the Waste Management Bureau to be established as a public entity; to provide for the simultaneous submission of the site assessment report and remediation plan relating to contaminated land; to provide clarity that the Minister must keep a national register of all contaminated land; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is directly related to prospecting, exploration, primary processing of a mineral or petroleum resource; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of a processing fee for the variation of a waste management licence; to increase the fines that could be imposed in terms of regulations made under the Act; to provide clarity that there will be no exemptions provided from obtaining a waste management licence; to repeal Schedule 3;
- **National Environmental Management Amendment Act, 2008**, so as to clarify that an environmental management programme or plan approved in terms of the Mineral and Petroleum Resources Development Act on or before and after 8 December 2014 is valid under the National Environmental Management Act; to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act;
- To provide for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the National Environmental Management: Waste Act, 2008; to provide for transitional provisions regarding the continuation of the Waste Management Bureau; and to provide for matters connected therewith.

MEMORANDUM ON THE OBJECTS

On page 42, to substitute the memorandum on objects.

Printed by Creda Communications

ISBN 978-1-4850-0537-7