

REPUBLIC OF SOUTH AFRICA

**NATIONAL ENVIRONMENTAL
MANAGEMENT LAWS SECOND
AMENDMENT BILL**

*(As presented by the Portfolio Committee on Water and Environmental Affairs
(National Assembly), after consideration of the National Environmental Management Laws
Amendment Bill [B 13—2012])
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 13—2013]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Environmental Management Act, 1998, so as to amend certain definitions; to adjust the timeframes for the preparation of environmental implementation plans and environmental management plans; to provide for the process and procedure for submitting environment outlook reports; to promote or facilitate the mainstreaming of integrated, environmentally sustainable and sound management considerations into business processes, practices, technology and decision-making across the economy; to enable, as appropriate, the use of spatial tools, norms and standards and environmental management instruments in decision-making as an alternative to environmental authorisation procedures; to empower the Minister to restrict or prohibit development in specified geographical areas; to empower the Minister or MEC to develop norms and standards for activities, sectors and geographical areas; to clarify when the Minister is the competent authority; to identify the Minister as the competent authority where the MEC is usually the competent authority and a Cabinet decision stipulates that the Minister must be the competent authority for activities related to a matter declared as a national priority or matters related to such national priority; to empower the Minister to take a decision in the place of the MEC under certain circumstances; to allow for the transfer of rights and obligations relating to an environmental authorisation; to provide legal clarity on the applicability of section 24G to the unlawful commencement, undertaking or conducting of a waste management activity under the National Environmental Management: Waste Act, 2008; to provide legal clarity on the options available to the competent authority in processing a section 24G application, to increase the administrative fine and to provide for criminal investigation and prosecution in certain circumstances; to further provide for exemptions under certain circumstances and to clarify that there will be no exemptions provided from obtaining an environmental authorisation; to provide for the consideration of adopted environmental management instruments when considering an environmental authorisation application; to provide for emergency situations and to distinguish between an “incident” and an “emergency situation”; to provide for the power and the circumstances under which an environmental management inspector may, without a warrant, seize any mechanism of transport; to insert provisions to regulate products which have a detrimental effect on the environment; to provide for all regulations to be tabled in Parliament before promulgation; to add provisions regarding the delivery of documents; to consolidate all offences and penalties under the Act; and to correct or delete certain obsolete provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004, section 60 of Act 39 of 2004, section 3 of Act 44 of 2008, section 1 of Act 62 of 2008 and section 4 of Act 14 of 2009 5

1. Section 1 of the National Environmental Management Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “activities” of the following definition: 10
 “**‘activities’**, when used in Chapter 5, means policies, programmes, processes, plans and projects identified in terms of section 24(2)(a) and (b).”;
- (b) by the substitution for the definition of “commence” of the following definition: 15
 “**‘commence’**, when used in Chapter 5, means the start of any physical implementation in furtherance of a listed activity or specified activity, including site preparation and any other [activity] action on the site [in furtherance of a listed activity or specified activity] or the physical implementation of a plan, policy, programme or process, but does not include any [activity] action required for the purposes of an investigation or feasibility study as long as such investigation or feasibility study does not constitute a listed activity or specified activity.”;
- (c) by the substitution for the definition of “Department” of the following definition: 25
 “**‘Department’** means the Department [**of Environmental Affairs and Tourism**] responsible for environmental affairs.”;
- (d) by the substitution for the definition of “Director-General” of the following definition: 30
 “**‘Director-General’** means the Director-General of [**Environmental Affairs and Tourism**] the Department.”;
- (e) by the substitution for the definition of “environmental assessment practitioner” of the following definition: 35
 “**‘environmental assessment practitioner’**, when used in Chapter 5, means the individual responsible for the planning, management [**and**], coordination or review of environmental impact assessments, strategic environmental assessments, environmental management [**plans**] programmes or any other appropriate environmental instruments introduced through regulations.”; and
- (f) by the substitution for the definition of “specific environmental management Act” of the following definition: 40
 “**‘specific environmental management Act’** means—
 (a) the Environment Conservation Act, 1989 (Act No. 73 of 1989);
 (b) the National Water Act, 1998 (Act No. 36 of 1998);
 (c) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);
 (d) the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); [**or**]
 (e) the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004); 50
 (f) the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);
 (g) the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008); or
 (h) the World Heritage Convention Act, 1999 (Act No. 49 of 1999), and includes any regulation or other subordinate legislation made in terms of any of those Acts.”.

Amendment of section 11 of Act 107 of 1998, as amended by section 7 of Act 14 of 2009

2. Section 11 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Every national department listed in Schedule 1 as exercising functions which may affect the environment and every [province] provincial department responsible for environmental affairs must prepare an environmental implementation plan within [one year of the promulgation] five years of the coming into operation of this Act, and at [least every four] intervals of not more than five years thereafter.”

(2) Every national department listed in Schedule 2 as exercising functions involving the management of the environment must prepare an environmental management plan within [one year of the promulgation] five years of the coming into operation of this Act, and at [least every four] intervals of not more than five years thereafter.”.

Insertion of section 16A in Act 107 of 1998

3. The following section is hereby inserted in the principal Act after section 16:

“Environment outlook report

16A. (1) The Minister must within four years of the coming into operation of the National Environmental Management Laws Second Amendment Act, 2013 prepare and publish a national environment outlook report for the Republic and at intervals of not more than four years thereafter.

(2) An MEC must—

- (a) prepare and publish a provincial environment outlook report which must contain the information determined by the Minister in terms of subsection (4); and
- (b) within four years of the coming into operation of the National Environmental Management Laws Second Amendment Act, 2013, submit the report to the Minister and at intervals of not more than four years thereafter.

(3) A metropolitan or a district municipality may prepare and publish a municipal environment outlook report which must—

- (a) contain the information determined by the Minister in terms of subsection (4); and
- (b) be submitted to the Minister and MEC within four years of the coming into operation of the National Environmental Management Laws Second Amendment Act, 2013 and at intervals of not more than four years thereafter.

(4) The Minister must, for the purposes of the environment outlook reports contemplated in subsection (2) and (3), by notice in the *Gazette*, determine—

- (a) the procedure for compiling the report;
- (b) the format; and
- (c) the content of the report.

(5) The Minister must prescribe the process for the submission, evaluation and adoption of the environment outlook report.

(6) The relevant organs of state must co-operate with the Minister or MEC by furnishing the Minister or MEC with information required for inclusion in a national or a provincial environment outlook report.

(7) The Minister may, at the request of a province, assist with the preparation of a provincial environment outlook report.

(8) The MEC may, at the request of a municipality, assist with the preparation of a municipality’s environment outlook report.”.

Insertion of section 23A in Act 107 of 1998

4. The following section is hereby inserted in the principal Act after section 23:

“Mainstreaming environmental management

- 23A.** (1) The Minister may, with a view to promote or facilitate integrated, environmentally sustainable and sound management, provide for—
- (a) the guidelines on the development, content and use of voluntary organisation or sector based instruments; and
 - (b) the circumstances under which such instruments may be submitted to and considered by the Minister.
- (2) Such instruments must, at least—
- (a) integrate environmental considerations into decision-making;
 - (b) provide for the implementation of best environmental practice;
 - (c) promote the progressive adoption of environmentally sound technology; or
 - (d) promote sustainable consumption and production, including, where appropriate, eco-endorsement or labelling.
- (3) In his or her consideration of such instruments, the Minister may—
- (a) as appropriate, engage with the organisation or sector concerned, as the case may be, on the content and use of its instrument if the organisation or sector concerned, as the case may be, requires the Minister to endorse or approve such instrument; or
 - (b) endorse or approve such instrument.”

Amendment of section 24 of Act 107 of 1998, as substituted by section 2 of Act 62 of 2008

5. Section 24 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraphs (b), (c) and (d) of the following paragraphs, respectively:
 - “(b) geographical areas based on environmental attributes, and as specified in spatial development tools adopted in the prescribed manner by the **[environmental authority]** Minister or an MEC, with the concurrence of the Minister, in which specified activities may **[not commence without]** be excluded from the requirement to obtain an environmental authorisation **[by]** from the competent authority;
 - (c) geographical areas based on environmental attributes, and specified in spatial **[development]** tools or environmental management instruments, adopted in the prescribed manner by the **[environmental authority]** Minister or an MEC, with the concurrence of the Minister, in which specified activities may be excluded from the requirement to obtain an environmental authorisation from the competent authority; **[or]**
 - (d) activities contemplated in paragraphs (a) and (b) that may **[commence without]** be excluded from the requirement to obtain an environmental authorisation from the competent authority, but that must comply with prescribed norms or standards[:]; or”;
- (b) by the addition to subsection (2) of the following subparagraph:
 - “(e) activities contemplated in paragraphs (a) and (b) that, based on an environmental management instrument adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, may be excluded from the requirement to obtain an environmental authorisation from the competent authority:”;
- (c) by the insertion after subsection (2) of the following subsection:
 - “(2A) (a) In accordance with the risk averse and cautious approach contemplated in section 2(4)(a)(vii) and subject to paragraphs (e) and (f), the Minister may by notice in the *Gazette* prohibit or restrict the granting of an environmental authorisation by the competent authority for a listed or a specified activity in a specified geographical area for such period and

on such terms and conditions as the Minister may determine, if it is necessary to ensure the protection of the environment, the conservation of resources or sustainable development.

(b) Where the Minister has exercised his or her powers in terms of paragraph (a), the competent authority must—

- (i) not accept any further application for an environmental authorisation for the identified listed or specified activity in the identified geographical area until such time that the prohibition has been lifted; and
- (ii) deem all pending applications to have been withdrawn.

(c) The exercise of the Minister's powers in terms of paragraph (a) does not affect the undertaking of activities authorised by means of an environmental authorisation prior to the prohibition or restriction becoming effective.

(d) Where the prohibition or restriction affects the exercise of a power that an MEC has in terms of this Act, the prohibition or restriction contemplated in paragraph (a) may be published in the *Gazette* after consulting the MEC concerned.

(e) The Minister may by notice in the *Gazette*—

- (i) lift a prohibition or restriction made in terms of paragraph (a) if the circumstances which caused the Minister exercise his or her powers in terms of paragraph (a) no longer exist; or
- (ii) amend any period, term or condition applicable to a prohibition or restriction if the circumstances which caused the Minister to exercise his or her powers in terms of paragraph (a) have changed.

(f) Before the exercise of his or her powers in terms of paragraph (a), the Minister must—

- (i) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;
- (ii) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult an MEC who will be affected by the exercise of the power; and
- (iii) publish a notice in the *Gazette* inviting members of the public to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written representations on the proposed prohibition or restriction.”;

(d) by the insertion in subsection (5) after paragraph (bA) of the following paragraph:

“(bB) laying down the procedure for the preparation, evaluation and adoption of the instruments referred to in subsection (2)(c), (d) and (e), including criteria or conditions to be included in such instruments;”;

(e) by the substitution in subsection (10)(a) for subparagraph (i) of the following subparagraph:

- “(i) develop or adopt norms or standards for—
 - (aa) a listed activity or specified activity contemplated in subsection (2)(a) and (b);
 - (bb) any part of the listed or specified activity referred to in item (aa);
 - (cc) any sector relating to item (aa);
 - (dd) any geographical area relating to item (aa); or
 - (ee) any combination of the activities, sectors, geographical areas, listed activities or specified activities referred to in items (aa), (bb), (cc) and (dd);”.

Amendment of section 24C of Act 107 of 1998, as substituted by section 3 of Act 62 of 2008

6. Section 24C of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

- “The Minister must be identified as the competent authority in terms of subsection (1), unless otherwise agreed to in terms of section 24C(3), if the activity—”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 5
- “(a) has implications for international environmental commitments or relations, and where—
- (i) it is identified by the Minister by notice in the *Gazette*; or
 - (ii) it is an activity that takes place in an area protected by means of an international environmental instrument, other than— 10
 - (aa) a conservancy;
 - (bb) a protected natural environment;
 - (cc) a proclaimed private nature reserve;
 - (dd) a natural heritage site;
 - (ee) the buffer zone or transitional area of a biosphere reserve; 15
 - or
 - (ff) the buffer zone or transitional area of a world heritage site;”;
- (c) by the deletion in subsection (2) of paragraph (b);
- (d) by the insertion after subsection (2A) of the following subsection: 20
- “(2B) (a) Notwithstanding the other provisions of this section, and in the event of the Minister not being the competent authority, the Minister must be identified as the competent authority where a Cabinet decision stipulates that the Minister must be the competent authority for activities related to a matter declared as a national priority or matters related to such national priority. 25
- (b) Notice must be given by the Minister in the *Gazette* approximately 90 days prior to the Cabinet decision referred to in paragraph (a).
- (c) The notice referred to in paragraph (b) must as a minimum contain the following information: 30
- (i) The proposed decision to be considered by Cabinet and its rationale;
 - (ii) the approximate date of the consideration of the proposed decision by Cabinet;
 - (iii) the proposed date on which the decision will come into effect;
 - (iv) the proposed time-frame for which the Minister will be the competent authority, where appropriate; 35
 - (v) the activities contemplated in section 24(2)(a) or geographical areas contemplated in section 24(2)(b); and
 - (vi) any transitional arrangements that may be applicable to applications for environmental authorisations that already have been or are being processed. 40
- (d) Once Cabinet has made the decision referred to in paragraph (a), the Minister must publish the decision by notice in the *Gazette*.”;
- (e) by the addition of the following subsections: 45
- “(4) In accordance with section 125(2)(b) of the Constitution, whenever an MEC fails to take a decision on an application for an environmental authorisation within the time periods prescribed by this Act, the applicant may apply to the Minister to take the decision.
- (5) The applicant must notify the MEC in writing of the intention to exercise the option in subsection (4) at least 30 days prior to the exercising of such option. 50
- (6) The application contemplated in subsection (4) must, at least, contain all the documents submitted to the MEC in order to enable the Minister to take a decision.
- (7) Before taking a decision contemplated in subsection (4), the Minister must request the MEC to provide him or her with a report within a specified time period on the status and causes of delay in the application. 55
- (8) After having received the report referred to in subsection (7) or in the event that no response or no satisfactory response or cooperation is received from the MEC within the specified time period the Minister must, where appropriate— 60

- (a) inform the applicant in the event that the MEC had complied with the relevant prescripts;
- (b) assist the MEC in accordance with section 125(3) of the Constitution to fulfil his or her obligations under this Act; or
- (c) direct the MEC to take the decision and such other steps as the Minister may deem necessary within a specified time period.

(9) In the event that the MEC fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in subsection (8)(c), the Minister must take the decision within a reasonable period of time.

(10) The Minister must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament setting out the details regarding the exercise of the power referred to in subsection (8) during the previous financial year.”.

Amendment of section 24E of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004

7. Section 24E of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) provision is made for the transfer of rights and obligations [**when there is a change of ownership in the property**].”.

Amendment of section 24F of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004 and amended by section 5 of Act 62 of 2008

8. Section 24F of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 - “**[Offences] Prohibitions relating to commencement or continuation of listed activities**”; and
- (b) by the deletion of subsections (2), (3) and (4).

Substitution of section 24G of Act 107 of 1998, as substituted by section 6 of Act 62 of 2008

9. The following section is hereby substituted for section 24G of the principal Act:

“Consequences of unlawful commencement of activity

24G. (1) On application by a person who—

- (a) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1);
 - (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),
- the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, may direct the applicant to—
- (i) immediately cease the activity pending a decision on the application submitted in terms of this subsection;
 - (ii) investigate, evaluate and assess the impact of the activity on the environment;
 - (iii) remedy any adverse effects of the activity on the environment;
 - (iv) cease, modify or control any act, activity, process or omission causing pollution or environmental degradation;
 - (v) contain or prevent the movement of pollution or degradation of the environment;
 - (vi) eliminate any source of pollution or degradation;
 - (vii) compile a report containing—
 - (aa) a description of the need and desirability of the activity;
 - (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) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity; 5
- (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; 10
- (ee) an environmental management programme; or
- (viii) 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. 15
- (2) The Minister, Minister responsible for mineral resources or MEC concerned must consider any report or information submitted in terms of subsection (1) and thereafter may—
- (a) refuse to issue an environmental authorisation; or
- (b) issue an environmental authorisation to such person to continue, conduct or undertake the activity subject to such conditions as the Minister, Minister responsible for mineral resources or MEC may deem necessary, which environmental authorisation shall only take effect from the date on which it has been issued; or 20
- (c) direct the applicant to provide further information or take further steps prior to making a decision provided for in paragraph (a) or (b). 25
- (3) The Minister, Minister responsible for mineral resources or MEC may as part of his or her decision contemplated in subsection (2)(a), (b) or (c) direct a person to—
- (a) rehabilitate the environment within such time and subject to such conditions as the Minister, Minister responsible for mineral resources or MEC may deem necessary; or 30
- (b) take any other steps necessary under the circumstances.
- (4) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R5 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). 35
- (5) In considering a decision contemplated in subsection (2), the Minister, Minister responsible for mineral resources or MEC may take into account whether or not the applicant complied with any directive issued in terms of subsection (1) or (2). 40
- (6) The submission of an application in terms of subsection (1) or the granting of an environmental authorisation in terms of subsection (2)(b) shall in no way derogate from— 45
- (a) the environmental management inspector's or the South African Police Services' authority to investigate any transgression in terms of this Act or any special environmental management Act;
- (b) the National Prosecuting Authority's legal authority to institute any criminal prosecution. 50
- (7) If, at any stage after the submission of an application in terms of subsection (1), it comes to the attention of the Minister, Minister for mineral resources or MEC, that the applicant is under criminal investigation for the contravention of or failure to comply with section 24F(1) or 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 may defer a decision to issue an environmental authorisation until such time that the investigation is concluded and— 55
- (a) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure; 60
- (b) the applicant concerned is acquitted or found not guilty after prosecution in respect of such contravention or failure has been instituted; or

- (c) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.”.

Amendment of section 24M of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008 5

10. Section 24M of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Minister or MEC, as the case may be, may grant an exemption from any provision of this Act, except from the provision of section 24(4)(a) or the requirement to obtain an environmental authorisation contemplated in section 24(2)(a) or (b).”; and 10
- (b) by the deletion in subsection (4) of the word “or” at the end of paragraph (b), the insertion of the expression “; or” after the word “parties” at the end of paragraph (c) and the addition to that subsection of the following paragraph: 15
 “(d) the activity is of national or provincial importance and is aimed at preventing or mitigating serious harm to the environment or property.”.

Amendment of section 24O of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008 20

11. Section 24O of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (viii) of the following subparagraph:

- “(viii) any guidelines, departmental policies, and [**decision making**] environmental management instruments that have been [**developed or**] adopted in the prescribed manner by the Minister or MEC, with the concurrence of the Minister, and any other information in the possession of the competent authority that are relevant to the application; and” 25

Amendment of section 28 of Act 107 of 1998, as amended by section 12 of Act 14 of 2009

12. Section 28 of the principal Act is hereby amended— 30

- (a) by the substitution for subsection (4) of the following subsection:
 “(4) The Director-General or a provincial head of department may, [**after consultation with any other organ of state concerned and**] after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who [**fails to take the measures required under subsection (1)**] is causing, has caused or may cause significant pollution or degradation of the environment to— 35
- (a) [**investigate, evaluate and assess the impact of specific activities and report thereon**] cease any activity, operation or undertaking; 40
- (b) [**commence taking specific reasonable measures before a given date**] investigate, evaluate and assess the impact of specific activities and report thereon;
- (c) [**diligently continue with those measures; and**] commence taking specific measures before a given date;
- (d) [**complete them before a specified reasonable date**] diligently continue with those measures; and 45
- (e) complete those measures before a specified reasonable date:
 Provided that the Director-General or a provincial head of department may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable.”; 50
- (b) by the substitution in subsection (5) for paragraph (e) of the following paragraph:
 “(e) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people; and”; 55

- (c) by the substitution for subsection (7) of the following subsection:
 “(7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General or a provincial head of department [**responsible for environmental affairs**] may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.”; and 5
- (d) by the deletion of subsections (14) and (15).

Amendment of section 30 of Act 107 of 1998, as amended by section 13 of Act 14 of 2009

13. Section 30 of the principal Act is hereby amended— 10
- (a) by the substitution for the heading of the following heading:
 “**Control of [emergency] incidents**”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) **‘incident’** means an unexpected, sudden and uncontrolled release of a hazardous substance, including from a major emission, fire or explosion, that causes, has caused or may cause significant harm to the environment, human life or property.”; and 15
- (c) by the deletion of subsection (11).

Insertion of section 30A in Act 107 of 1998 20

14. The following section is hereby inserted in the principal Act after section 30:

“Emergency situations

- 30A.** (1) The competent authority may on its own initiative or on written or oral request from a person, direct a person verbally or in writing to carry out a listed or specified activity, without obtaining an environmental authorisation contemplated in section 24(2)(a) or (b), in order to prevent or contain an emergency situation or to prevent, contain or mitigate the effects of the emergency situation. 25
- (2) The request from the person referred to in subsection (1) must at least include, where known— 30
- (a) the nature, scope and possible impact of the emergency situation;
- (b) the listed or specified activities that will be commenced with in response to the emergency situation;
- (c) the cause of the emergency situation; and
- (d) the proposed measures to prevent or to contain the emergency situation or to prevent, contain or mitigate the effects of the emergency situation. 35
- (3) The competent authority may direct the person to undertake specific measures within a specific time period in order to prevent or contain an emergency situation or to prevent, contain or mitigate the effects of the emergency situation. 40
- (4) The verbal directive referred to in subsection (1) must be confirmed in writing at the earliest opportunity, which must be within seven days.
- (5) Before making a decision contemplated in subsection (3), the competent authority must at least, where information is available, consider— 45
- (a) the nature of the emergency situation;
- (b) the information contained in the request referred to in subsection (2);
- (c) whether the emergency situation was caused by or the fault of the person; 50
- (d) the principles in section 2;
- (e) the risk of the impact on the environment as a result of the emergency and the costs of the measures considered; and
- (f) the risk of the impact on the environment of the emergency situation, prevention, control or mitigation measures and the post-event mitigation or rehabilitation measures that may be required. 55

(6) If the competent authority decides not to issue a directive provided for in subsection (1), the activity cannot commence or continue in the absence of an environmental authorisation.

(7) In this section ‘emergency situation’ means a situation that has arisen suddenly that poses an imminent and serious threat to the environment, human life or property, including a ‘disaster’ as defined in section 1 of the Disaster Management Act, 2002 (Act No. 57 of 2002), but does not include an incident referred to in section 30 of this Act.”

Amendment of section 31J of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

15. Section 31J 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 environmental management inspector, within his or her mandate in terms of section 31D, may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal or any other mechanism of transport, on reasonable suspicion that that vehicle, vessel, aircraft [or], pack animal or other mechanism of transport—;”;

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

“(2) An environmental management inspector may, without a warrant, seize a vehicle, vessel, aircraft, pack-animal or any other mechanism of transport or anything contained in or on any vehicle, vessel, aircraft [or], pack-animal [that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act] or other mechanism of transport—

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission of an offence;

(b) which may afford evidence of the commission or suspected commission of an offence;

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence; or

(d) which, on reasonable grounds, is being utilised in a manner that is likely to cause significant pollution, impact or degradation of the environment,

in terms of this Act or a specific environmental management Act.”.

Amendment of section 31N of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 and amended by section 7 of Act 44 of 2008 and section 20 of Act 14 of 2009

16. Section 31N of the principal Act is hereby amended by the deletion of subsections (1) and (3).

Amendment of section 31Q of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

17. Section 31Q of the principal Act is hereby amended by the deletion of subsection (2).

Repeal of section 34A of Act 107 of 1998

18. Section 34A of the principal Act is hereby repealed.

Amendment of section 34H of Act 107 of 1998, as inserted by Act 14 of 2009

19. Section 34H of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) Where a competent authority is of the view that a more severe penalty could be considered than those penalties referred to in section 49B, the competent authority may request the National Prosecuting Authority to institute the criminal proceedings in the High Court.”.

Insertion of section 39A in Act 107 of 1998

20. The following section is hereby inserted in the principal Act after section 39:

“Prohibition of certain products

39A. The Minister may from time to time regulate, prohibit or control the production, sale, distribution, import or export of products that may have a substantial detrimental effect on the environment.” 5

Amendment of section 44 of Act 107 of 1998, as amended by section 2 of Act 56 of 2002

21. Section 44 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph (aA) and the insertion after that paragraph of the following paragraphs: 10

“(aB) dealing with the production, prohibition, control, sale, distribution, import or export of products that may have a substantial detrimental effect on the environment;

(aC) relating to the procedure and criteria to be followed in the determination of an administrative fine in terms of section 24G; 15

(aD) relating to the procedure to be followed when oral requests are made in terms of section 30A; and”;

(b) by the insertion after subsection (1) of the following subsections:

“(1A) Any regulation made under subsection (1) must be made after consultation with all Cabinet members whose areas of responsibility will be affected. 20

(1B) Until such time that the regulations made under subsection (1) have come into effect, the existing standard operating procedure, adopted by the Minister for determining administrative fines in terms of section 24G, applies.”. 25

Amendment of section 47 of Act 107 of 1998, as amended by section 5 of Act 8 of 2004 and section 11 of Act 62 of 2008

22. Section 47 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection: 30

“(2) The Minister must, **[within] 30 days [after promulgation and publishing] before the final publication of any regulations made under this Act, table the regulations in [the National Assembly and the National Council of Provinces, and an MEC must so table the regulations in the relevant provincial legislature or, if Parliament or the provincial legislature is then not in session, within 30 days after the beginning of the next ensuing session of Parliament or the provincial legislature] Parliament.**”;

(b) by the insertion after subsection (2) of the following subsection: 35

“(2A) An MEC must, 30 days before the final publication of any regulations made under this Act, table the regulations in the relevant provincial legislature.”; and 40

(c) by the deletion of subsection (3).

Amendment of section 47D of Act 107 of 1998, as inserted by section 11 of Act 46 of 2003

23. Section 47D of the principal Act is hereby amended—

(a) by the deletion in subsection (1)(b) of the word “or” at the end of subparagraph (ii) and the insertion in subsection (1) after paragraph (b) of the following paragraphs: 50

“(bA) by faxing a copy of the notice or other document to the person, if the person has a fax number;

(bB) by e-mailing a copy of the notice or other document to the person, if the person has an e-mail address; or

- (bC) by posting a copy of the notice or other document to the person by ordinary mail, if the person has a postal address;” and
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) A notice or other document issued in terms of subsection (1)(b)₂ (bA), (bB), (bC) or (c) must be regarded as having come to the notice of the person, unless the contrary is proved.”.

Repeal of section 48 of Act 107 of 1998

24. Section 48 of the principal Act is hereby repealed.

Insertion of sections 49A and 49B in Act 107 of 1998

25. The following sections are hereby inserted in the principal Act after section 49: 10

“Offences

49A. (1) A person is guilty of an offence if that person—

- | | | |
|-----|---|----|
| (a) | commences with an activity in contravention of section 24F(1); | |
| (b) | fails to comply with any applicable norm or standard contemplated in section 24(2)(d); | 15 |
| (c) | fails to comply with or contravenes a condition of an environmental authorisation granted for a listed activity or specified activity or an approved environmental management programme; | |
| (d) | commences or continues with an activity in terms of section 24(2)(c), (d) or (e) unless he or she complies with the procedures, criteria or conditions specified by the Minister or MEC in any regulation made under section 24(5)(bB); | 20 |
| (e) | unlawfully and intentionally or negligently commits any act or omission which causes significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment; | 25 |
| (f) | unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the environment; | |
| (g) | fails to comply with a directive issued in terms of this Act; | 30 |
| (h) | fails to comply with or contravenes any condition applicable to an exemption granted in terms of section 24M; | |
| (i) | fails to comply with section 30(3), (4), (5) or (6); | |
| (j) | contravenes section 31(7) or (8); | |
| (k) | fails to comply with or contravenes a compliance notice issued in terms of section 31L; | 35 |
| (l) | discloses information about any other person if that information was acquired while exercising or performing any power or duty in terms of section 31Q(1); | |
| (m) | hinders or interferes with an environmental management inspector in the execution of that inspector’s official duties; | 40 |
| (n) | pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector; | |
| (o) | furnishes false or misleading information when complying with a request of an environmental management inspector; | 45 |
| (p) | fails to comply with a request of an environmental management inspector. | |
- (2) It is a defence to a charge in terms of subsection (1)(a) to show that the activity was commenced or continued with in response to an incident or emergency situation contemplated in section 30 or section 30A, as the case may be, so as to protect human life, property or environment: Provided that—
- (a) in the case of an incident, the response is in compliance with the obligations contemplated in section 30(4) and was necessary and proportionate in relation to the threat to human life, property or environment; and 55

- (b) in the case of an emergency situation contemplated in section 30A, the response is in compliance with a directive issued in terms of section 30A.

Penalties

49B. (1) A person convicted of an offence in terms of section 49A(1)(a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment. 5

(2) A person convicted of an offence in terms of section 49A(1)(i), (j) or (k) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment. 10

(3) A person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.”. 15

Substitution of certain expressions in Act 107 of 1998

26. The principal Act is hereby amended—

- (a) by the substitution for the expression “Minister of Minerals and Energy”, wherever it occurs, of the expression “Minister responsible for mineral resources”; 20
- (b) by the substitution for the expression “Minister of Water Affairs and Forestry”, wherever it occurs, of the expression “Minister responsible for water affairs”; and 25
- (c) by the substitution for the expression “Minister of Environmental Affairs and Tourism”, wherever it occurs, of the expression “Minister responsible for environmental affairs.”.

Amendment of Schedule 3 to Act 107 of 1998, as substituted by section 8 of Act 8 of 2004 and amended by section 25 of Act 14 of 2009 30

27. Schedule 3 to the principal Act is hereby amended by the substitution for the wording in the sixteenth row of the third column of the following wording:

“[Sections 24F(1) and (2), 24G(3), 28(14), 30(11), 31N(1) and 34A(a), (b), (c) and (d)] Section 49A”.

Amendment of Table of Contents of Act 107 of 1998 35

28. The Table of Contents of the principal Act is hereby amended—

- (a) by the insertion after item 16 of the following item:
“16A. Environmental Outlook Report”;
- (b) by the insertion after item 23 of the following item:
“23A. Mainstreaming environmental management”; 40
- (c) by the substitution for item 24F of the following item:
“24F. Prohibitions relating to commencement or continuation of listed activities”;
- (d) by the substitution for item 24G of the following item:
“24G. Consequences of commencement of unlawful activity”; 45
- (e) by the substitution for item 30 of the following item:
“30. Control of incidents”;
- (f) by the insertion after item 30 of the following item:
“30A. Emergency situations”;
- (g) by the insertion after item 39 of the following item:
“39A. Prohibition of certain products”; and 50
- (h) by the insertion after item 49 of the following items:
“49A. Offences
49B. Penalties”.

Short title and commencement

29. (1) This Act is called the National Environmental Management Laws Second Amendment Act, 2013, and all the sections of the Act, except for sections 3, 4, 5 and 14, come into operation on the date of publication of this Act by the President in the *Gazette* in terms of section 81 of the Constitution.

(2) Sections 3, 4, 5 and 14 take effect on a date 12 months from the date contemplated in subsection (1) or on a date fixed by the President by proclamation in the *Gazette*, whichever is the earliest.

5

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL
ENVIRONMENTAL MANAGEMENT LAWS SECOND AMENDMENT
BILL, 2013**

1. PURPOSE OF BILL

The purpose of the Bill is to amend certain provisions under the National Environmental Management Act, 1998 (Act No. 107 of 1998).

2. BACKGROUND

2.1 The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) is the environmental framework legislation which provides for environmental management. Other specific environmental management Acts were promulgated to deal with specific mediums of the environment, namely the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEM: PAA), the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM: BA), the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (NEM: AQA), the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEM: ICM) and the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEM: WA).

2.2 The Bill proposes amendments to certain provisions under NEMA. Most of the amendments were identified through the implementation of the Act and some originated from the Department of Cooperative Governance's process of identifying legislation that hampers service delivery.

3. OBJECTS OF BILL

Clause 1: Amendment of section 1

This amendment seeks to revise and insert certain definitions to provide clarity and to remove any ambiguity in the Act.

The definition of "commencement" has been amended to make provision for the instance where the "activity" is a plan, policy, programme or process.

The definition of environmental management practitioner has been amended to include officials that are responsible for the review of environmental impact assessments, strategic environmental assessments, environmental management programmes, etc.

Clause 2: Amendment of section 11

The current provisions of section 11 are not aligned with the term of office of the new government. Clause 2 amends section 11 of the Act to adjust the time-frames for the preparation of environmental implementation plans and environmental management plans by national and provincial government departments to enable a 5 year as opposed to four year planning horizon to achieve mainstreaming of environmental considerations into policy management systems and implementation.

Clause 3: Insertion of section 16A

This amendment inserts a new section requiring the national department responsible for environmental affairs and provincial departments responsible for environmental affairs and all metropolitan and district municipalities (although not compulsory for municipalities) to prepare and publish environment outlook reports, within four years of coming into operation of the Bill and at intervals of not more than four years thereafter. Not all provinces and municipalities are currently producing the environment outlook reports. This section will ensure uniformity. The environment outlook reports prepared by the provinces and municipalities will be prepared and published a year before the environmental implementation plans and environmental management plans in order to ensure that they feed into the national state of environment reports as well as environmental implementation plans and environmental management plans. The amendment further requires the Minister responsible for environmental affairs to publish in the *Gazette* the procedure to be followed to compile the report, the format of

the report and content of the report. These reports provide information that could and should be used in planning and decision-making processes.

Clause 4: Insertion of section 23A

A new clause 23A has been inserted to make provision for guidelines for the development and use of voluntary organisation or sector based instruments, which could be endorsed by the Minister. This mechanism is introduced to ensure the mainstreaming of environmental considerations into business practices and technology to ensure environmentally sound technology and practices.

Clause 5: Amendment of section 24

Clause 5 amends section 24 of the Act to enable, as appropriate, the use of spatial tools, norms and standards and environmental management instruments in decision-making as an alternative to environmental authorization procedures, where:

- i. Specified activities in certain geographical areas, based on environmental attributes and specified in adopted spatial tools or environmental management instruments may be excluded from the requirement to obtain an environmental authorisation;
- ii. Listed activities may be excluded from the requirement to obtain an environmental authorisation as long as they comply with adopted norms or standards;
- iii. Listed activities, based on adopted environmental management instruments may be excluded from the requirement to obtain and environmental authorization;
- iv. The Minister may prohibit the granting of environmental authorizations in a particular geographic area if it is necessary to ensure the protection of the environment.

Clause 5(d) (section 24(5)(bB)) was inserted to allow the Minister or the MEC, in concurrence with the Minister, to lay down the procedure for the preparation, evaluation and adoption of the instruments referred to in section 24(2)(c), (d) and (e), including criteria or conditions to be included in such instruments. This power is to be distinguished from the regulation power in section 24(5)(bA), which relates to environmental management instruments that are considered when decisions are made, e.g. when an environmental authorisation is issued.

The amendment to section 24(10)(a) now allows for the development and adoption of norms or standards for sectors, geographical areas, parts of listed or specified activities or a combination of activities, sectors and geographical areas.

Clause 6: Amendment of section 24C

There are differing views in relation to the applications for which the Minister is the competent authority. The amendment seeks to provide the necessary clarity.

Over the years Cabinet took a number of decisions declaring certain projects as national priority, for example, the renewable energy plan projects. Such decisions created challenges with respect to the competent authority to process the environmental authorisation applications for those priority projects. This amendment will provide clarity that any activity relating to a matter that has been declared a national priority by Cabinet must be processed by the national Department. However, the legislature was mindful that this power may encroach on the powers of other competent authorities. A process was therefore inserted to alert other competent authorities of the possibility that Cabinet may take such a decision. The decision must be published in the Gazette in order to notify the public and other competent authorities of the decision.

The amendment also seeks to add new subsections (4), (5), (6) and (7) to section 24C. The additions propose that in instances where the MEC responsible for environmental affairs fails to take a decision within prescribed timeframes, an applicant may request the Minister to take the decision. When considering this subsection the Portfolio Committee for Water and Environmental Affairs was mindful of sections 125(2)(b) of the Constitution of the Republic of South Africa, 1996, which provides that the Premier, together with other members of the Executive Council has the power to implement all national legislation within the functional areas listed in Schedule 4 or 5 of the Constitution, except where the Constitution or an Act of Parliament provides otherwise.

The intention of this amendment is therefore to make provision for this exceptional circumstance in instances where the MEC either unreasonably or due to capacity challenges fails to take a decision within the prescribed time-frames. The Portfolio Committee was also mindful of section 125(3), which obliges the national government by legislation or other measures to develop the administrative capacity required for the effective exercise of their powers and performance of their functions. The Minister is obliged to report annually to Parliament on the exercise of this power.

Clause 7: Amendment of section 24E

This section deals with the minimum conditions that must be contained in an environmental authorisation. The current provisions only allow for the transfer of rights and obligations with respect to the environmental authorisation when there is a change of ownership in the property.

This amendment will ensure that an environmental authorisation provides for the transfer of rights and obligations even when there is no change in ownership in the property.

Clause 8: Amendment of section 24F

This is a consequential amendment as a result of moving all offences and penalties to one part of the Act, namely sections 49A and 49B.

Clause 9: Substitution of section 24G

Over the years, a trend in the abuse of the section 24G environmental authorisation process has been noticed. Many people tend to knowingly commence with a listed activity without an environmental authorisation and later apply for a section 24G environmental authorisation to rectify the unlawful commencement. These challenges, amongst others, pose serious dangers to the credibility of the environmental impact assessment process. Therefore, in an effort to deal with the challenges, more stringent provisions have been introduced.

The heading now clearly indicates that the section deals with the consequences for unlawful commencement of a listed activity.

Clause 9 makes substantive amendments to section 24G of the Act to address the numerous complaints received from the public that section 24G (rectification of the commencement of unlawful activities) is abused in that applicants proceed with illegal activities on the assumption that their 24G applications will be successful and further that competent authorities have experienced a reluctance from the National Prosecution Authority to institute prosecution once a person applied for or has received an environmental authorisation in terms of section 24G. The Minister of Environmental Affairs, the Minister of Mineral Resources and the MEC responsible for environmental affairs are given substantive powers to issue directives for a variety of reasons. The administrative fine has been increase considerably. The requirements for the report to be compiled by the applicant have been tightened. The section is amended to make it clear that criminal prosecution may still be instituted despite the fact that a person has applied for an environmental authorisation in terms of section 24G. The amendment also allows the Minister of Environmental Affairs, the Minister of Mineral Resources or the MEC to defer a decision until such time that the criminal investigation has been concluded.

The amendment will also provide legal clarity on the applicability of section 24G to the unlawful commencement of waste management activities under the National Environmental Management: Waste Act, 2008.

Clause 10: Amendment of section 24M

The regulated community appears to be confused with respect to the matter of exemption from the legal requirements to obtain an environmental authorisation for a listed activity. This amendment will reaffirm that no exemption may be granted from the legal requirements to obtain an environmental authorisation when intending to undertake a listed activity in terms of section 24 of NEMA.

The amendment will also allow for an exemption to be granted for an activity that is of a national and provincial importance and is aimed at preventing or mitigating serious harm to the environment or property.

Clause 11: Amendment of section 24O

The Department from time to time develops and adopts guidelines and environmental management instruments with respect to environmental impact management. Thereafter, the adopted environmental management instruments are relied upon when decisions are made with respect to an application for an environmental authorisation. This amendment will allow the competent authority to take into account any adopted environmental management instruments when considering an application for an environmental authorisation.

Clause 12: Amendment of section 28

The environmental management inspectors are currently experiencing challenges when issuing the section 28 directive. The challenge is proving that a person has not taken reasonable measures before the issuing of the directive.

The amendment will de-link the duty of care requirement from the issuing of a directive. This amendment will allow for easier implementation of the section 28 directive by the Director-General of the Department of Environmental Affairs or Head of Department of a provincial department.

Clause 13: Amendment of section 30

Clauses 13 and 14 introduce amendments that clarify the distinction between an “incident” as referred to in section 30 of the Act; and an “emergency situation” which will be regulated in terms of a new section 30A. While section 30 deals with the reporting and remediation duties of a person responsible for the sudden, unexpected and uncontrolled release of a hazardous substance, a new section 30A seeks to address a situation where a listed or specified activity is about to commence in response to an “emergency situation”, where the time-frames do not allow for normal assessments or applications for environmental authorisations. An example of the latter “emergency situation” is the commencement of flood defence activities by a local authority in response to sudden and inclement weather conditions. In these types of situations, the urgent response times would not permit the conducting of the normal environmental assessment and authorization process, but would now be subject to written or verbal directives by the competent authority. The definition of an “emergency situation” is now including a “disaster” as defined in the Disaster Management Act, 2002 (Act No. 57 of 2002).

The deletion of subsection (11) is as a result of moving all the offences to the new section 49A.

Clause 14: Insertion of section 30A

This new provision allows the competent authority to issue a directive on own initiative or on written or oral request in order to prevent or contain an emergency or disaster or to prevent, contain or mitigate the effects of the emergency or disaster.

Clause 15: Amendment of section 31J

This amendment will allow an environmental management inspector to seize, without a warrant, a vehicle, vessel, aircraft or any other transport mechanism under certain circumstances. The amendment is also in line with section 20 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Clause 16: Amendment of section 31N

This is a consequential amendment as a result of moving all offences and penalties under one portion of the Act, namely clause 22 (sections 49A and 49B).

Clause 17: Amendment of section 31Q

This is a consequential amendment as a result of moving all offences and penalties under one portion of the Act, namely clause 22 (sections 49A and 49B).

Clause 18: Repeal of section 34A

This is a consequential amendment as a result of moving all offences and penalties under one portion of the Act, namely clause 22 (sections 49A and 49B).

Clause 19: Amendment to section 34H

This amendment serves as a reminder to the competent authority that under circumstances where harsher sentences are appropriate, the competent authority may request the national prosecuting authority to institute the criminal proceedings in the High Court.

Clause 20: Insertion of section 39A

This amendment is not entirely new, but was repealed when certain sections of the Environment Conservation Act, 1989 were repealed. The asbestos regulations were developed in terms of similar provisions under the Environment Conservation Act, 1989. From time to time, certain products are introduced and used in the market but their impact on the environment is not always regulated. This amendment will provide the Minister with a legal mandate to develop regulations to control products that may have a detrimental effect on the environment.

Clause 21: Amendment of section 44

From time to time, certain products are introduced and used in the market, but often their impact on the environment is not always regulated. This amendment will provide the Minister with a legal mandate to develop regulations to control products that may have a detrimental effect on the environment. The amendment will also require the Minister to publish such regulations after consultation with all Cabinet members whose areas of responsible will be affected.

The current provisions of NEMA do not contain a provision that require the procedure and criteria for the determination of the section 24G administrative fine to be prescribed through regulations. This procedure and criteria is important for persons to know how a section 24G administrative fine was calculated. The amendment will provide the Minister with a legal mandate to develop regulations relating to the procedure and criteria to be followed in the determination of a section 24G administrative fine.

A new empowering provision has been added to empower the Minister to make regulations relating to the procedure to be followed when oral requests are made in terms of section 30A.

Clause 22: Amendment of section 47

Section 47 has been amended to stipulate that the Minister or the MEC must 30 days before final publication of regulations made in terms of the Act, table the regulations in Parliament or the provincial legislature, respectively.

Clause 23: Amendment of section 47D

The current provisions of section 47D only caters for two methods of delivering documents, namely, hand delivery or registered mail. As a result, the section is not in line with current developments of business interactions. This amendment will allow for the use of other mechanisms of delivering documents under the NEMA or other specific environmental management Act, namely, by fax, e-mail or ordinary mail.

Clause 24: Repeal of section 48

Section 48 has been repealed. In light of provisions the Constitution, organs of state are bound by the provisions of legislation and this section is therefore no longer required.

Clause 25: Insertion of sections 49A and 49B

This amendment inserts new sections setting out all offences and penalties under NEMA. It also further clarifies the defence provision in section 49A(2) which is only applicable to the offence relating to the commencement of a listed or specified activity in the absence of an environmental authorization (section 49A(1)(a)). The defence provision is only applicable in the event that a listed or specified activity commences without an environmental authorization in response to an emergency situation as defined in section 30A or to an incident as defined in section 30. In relation to an emergency situation, the defence is only applicable if the response complies with the directive issued in terms of section 30A. In relation to an incident, the defence is only applicable if the response is aimed at complying with the obligations set out in section 30(4) and is necessary and proportionate in relation to the threat to human life, property or the environment. The Committee acknowledges that even though a person may be able to rely on this defence in relation to commencing with a listed or specified activity without authorization, the defence is not applicable to other offences such as the offence of unlawfully and intentionally or negligently committing any act or omission which causes significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment.

Clause 26: General amendment

This is a general amendment necessitated by the name changes in the Ministries of Water Affairs and Forestry, Minerals and Energy and Environmental Affairs and Tourism. This amendment will update the Ministries name change wherever it appears in the NEMA.

Clause 27: Amendment to Schedule 3

This amendment is a consequential amendment due to making provision for all criminal offences under one section.

Clause 28: Amendment of table of contents

This amendment is necessitated by the insertion of new sections in the principal Act.

Clause 29

Acknowledging that it will not be possible to bring all the sections of the Bill into effect immediately, the Bill indicates the dates on which the various sections will take effect.

4. DEPARTMENTS CONSULTED

The following national Departments were consulted:

- Agriculture;
- Forestry and Fisheries;
- Cooperative Governance and Traditional Affairs;
- Defence and Military Veterans;
- Energy;
- Health;
- Human Settlements;
- Labour;
- Mineral Resources;
- Rural Development and Land Reform;
- Trade and Industry;
- Transport and Water Affairs.

These Departments are identified in schedules 1 and 2 to NEMA as national Departments exercising functions which may affect the environment or that involve the management of the environment.

4. FINANCIAL IMPLICATIONS FOR STATE

The Bill does not create further financial liabilities to the State.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Schedule 4 to the Constitution, namely “Environment” and “Nature Conservation”.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

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