

# Concepts for the Regulations Pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations May 2016



Environmental Advisory Services



**environmental affairs**

Department:  
Environmental Affairs  
**REPUBLIC OF SOUTH AFRICA**

# Content

- Recap of what was provided for in MPRDA
- Motivation for change
- Overall Principles
- Specific amendments – represents a departure
- Concerns raised
- Way forward

# Background

- Sections 41 and 43 of the MPRD Act required the owner to make financial provision for all mining related environmental liabilities
- 23 April 2004 - Mineral and Petroleum Resources Development Regulations issued
  - Part III
    - 53 – Method of financial provisioning
    - 54 – Quantum of financial provision -
      - Guideline published by DMR including itemisation of actual costs for Premature closure/ Decommissioning and final closure/Post closure management of residual and latent environmental impacts
    - Annual update of the quantum
      - As identified in EMP or EMPR or
      - As determined by the Minister
    - Inadequacies to be rectified in amendments to the EMP or EMPR
    - Or as determined by the Minister
- As at 2008 - 5 906 abandoned mines, 1 730 were classified by the CGS as high-risk mines – most prior to 2002 when MRPD can into force

# Motivation for change

- One Environmental System – environmental function of mining managed through NEMA
  - Prior to 8 December 2014 - environmental aspects of mining activities were regulated in terms of the MPRDA
  - In 2008 - agreement to align the environmental function of mining
  - Related to financial provision - the agreement entailed
    - ✓ Environmental function of mining to be regulated under NEMA
- Changes were made to NEMA
  - ✓ 24P – Financial provision for remediation of environmental damage
  - ✓ 24R - 24R was related to mine closure moved to NEMA

# Evaluation - Environmental Governance framework in the Mining sector- Study Findings

- Adequacy of the Guideline for the determining FP
  - considered insufficient for calculating the costs of rehabilitation
  - out-dated, too generic, does not include underground or surface water liabilities, which is a large % of liability
- Effectiveness of institutional mechanisms to promote good governance
  - Currently limited closure certificates are issued – 2013/2014 (575 were under review - 159 were issued)
  - Under MPRD DMR reluctant to close mines as liability transfers to State
  - Guideline for FP is insufficient – only 60% of operational mines in 2012-2013 had adequate financial provision

# Principles

- Amounts determined by actual calculation
- Every mine to have a rehabilitation fund
- Incentivise annual rehabilitation & risk reduction
- Transparency – using EMPR
- Third party checking – auditing and publishing
- Amount adequate for specified time
- Limit discretion
- Formalise care and maintenance – can occur in a controlled manner
- Preference for guarantees and insurance products – risk reduction
- Auditing
- CEO accountability
- Board accountability
- Guidance on plans
- Funds for long term liability – incentivise closure
- Enable rehabilitation without reliance on closure certificate

# Departure from MPRD regulations

- Scope of financial provision
  - Various risks associated with various phases
    - Annual rehabilitation and remediation;
    - decommissioning and closure activities at the end of operations
    - remediation & management of latent or residual impacts
  - Intended to be risk based deduct annual rehab each year based on survey reduce overall risk over time
- Method for determining financial provision –
  - detailed itemisation of activities and actual surveyed related costs and risk determination
  - For closure – sliding scale of accuracy required
    - 30 years from closure accuracy of  $\pm 50\%$ , 30 or less but more than 10 = 70%; 10 year or less but more than 5 = 90%

# Departure from MPRD regulations

- Availability of funds
  - Ensure that all mines had adequate funds available at all times – same provisions for all mines
    - Decided on a 10 year timeframe as there would be time required to finalise arrangements should a mine terminate unexpectedly
- Vehicle for payment – one or a combination
  - Removed provisions which were based on agreements – transparency and made exceptions
    - Move toward financial guarantee from a bank or from an insurance company – registered encourage risk reduction and clear manner of release of funds
    - deposit into an account administered by the Minister of DMR
    - contribution to a trust fund – only for latent defect portion of the calculation and if it's a mine right holder – cede to DMR on closure



# Departure from MRPD regulations

- Procedures in the event of the bank or insurer wanting to withdraw the financial guarantee
  - Where the insurer intends to withdrawn insurance – must notify DMR and DEA
  - DMR **must** call on the financial guarantee and deposit the funds in a bank account until alternative arrangements can be made
- General requirements
  - Specialists to determination of the financial provision as well as the sum and the annual review – reduces burden on DMR

# Departure from MRPD regulations

- Determination of the financial provision by the applicant
  - The applicant must submit the plans and calculations of the financial provision to the Minister DMR as part of the application for EA information – calculation is transparent
- Review, assessment & adjustment of the financial provision
  - Must review all plans annually and adjust accordingly
    - Calculated by specialists
    - Defer annual rehab against final closure
  - The review of the adequacy of the financial provision including the proof of payment must be independently audited – transparency and third party check
    - included in the audit of the EMPR as required by the EIA regs (five years) – transparency

# Departure from MPRD regulations

- Preparation and submission of plans
  - The sum including the manner in which the sum was calculated must appear in the EMPR required in terms of EIA regulations – transparency
  - The assessment of adequacy of the financial provision and proof of making the adjustment must be accompanied by a declaration signed by an independent auditor reconciling the financial provision submitted and any update thereof with the estimates of exposure and liability in the financial statements of the holder – third party check board knowledge of arrangements
- Responsibilities of right or permit holder
  - EMPR must be made available to the public
    - Website of holder
    - Site office of the mine
    - On request

# Departure from MPRD regulations

- Identified the responsibility of the CEO to implement plans, ensure FP etc. – accountability and liability
  - All documentation submitted to the DMR must be signed off by the CEO and the independent auditor – accountability and liability
- Powers of the Minister of DMR
  - May only grant EA after arrangements have been made for financial provision and proof is provided

# Departure from MPRD regulations

- Care and Maintenance
  - Holder must apply to be put on Care and Maintenance – formalise and an offense not to have permission
  - Review approval every five years – determine the necessity to remain on C&M
  - Care and maintenance plan – ensure management while on care and maintenance
  - Continue to maintain, review and audit FP during C&M

# Concerns raised

- Concerns raised - seem to have done a lot wrong
  - Removal of trust fund as a vehicle other than latent
    - Attract tax on withdrawal
    - Removal of ability for tax benefit
    - Reduces the amount of rehabilitation fund
  - Removal of MOAs
  - 10 year paid up is raised as a concern
  - Auditor signing off on plans
  - Appendix requires stakeholder consultation for the final rehabilitation plan – should not apply to operating mines
  - Concern that for mines that are unable to do annual rehabilitation the funds set aside for 10 years may not be sufficient should premature closure occur
  - Overstepped the NEMA mandate with respect to C&M

# Way forward

- Engage with Treasury around trust funds
- Clarification note to be released
- Correction notice to regulations expected towards the end of the year

Thank you for your attention