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## **THE PRESIDENCY**

No. 22

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 62 of 2008: National Environmental Management Amendment Act, 2008.**



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

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

(English text signed by the President.)  
(Assented to 5 January 2009.)

# ACT

To amend the National Environmental Management Act, 1998, so as to insert certain definitions and to substitute others; to further regulate environmental authorisations; to empower the Minister of Minerals and Energy to implement environmental matters in terms of the National Environmental Management Act, 1998, in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area; to align environmental requirements in the Mineral and Petroleum Resources Development Act, 2002, with the National Environmental Management Act, 1998, by providing for the use of one environmental system and by providing for environmental management programmes, consultation with State departments, exemptions from certain provisions of the National Environmental Management Act, 1998, financial provision for the remediation of environmental damage, the management of residue stockpiles and residue deposits, the recovering of cost in the event of urgent remedial measures and the issuing of closing certificates as it relates to the conditions of the environmental authorisation; and to effect certain textual alterations; and to provide for matters connected therewith.

**B**E 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 and section 3 of National Environment Laws Amendment Act, 2008**

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

- (a) the substitution for the definition of “**activities**” of the following definition:  
“**‘activities’ [includes], when used in Chapter 5, means policies, programmes, processes, plans and projects;”**
- (b) the insertion after the definition of “**aircraft**” of the following definition:  
“**‘applicant’ means a person who has submitted—**  
(a) **or who intends to submit an application for an environmental authorisation; or**  
(b) **an application for an environmental authorisation simultaneously with his or her application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;”**

- (c) the substitution for the definition of “**commence**” of the following definition:  
 “**‘commence’**, when used in Chapter 5, means the start of any physical activity, including site preparation and any other activity on the site in furtherance of a listed activity or specified activity, but does not include any activity 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;”;
- (d) the substitution for the definition of “**community**” of the following definition:  
 “**‘community’**—  
 (a) means any group of persons or a part of such a group who share common interests, and who regard themselves as a community; and  
 (b) in relation to environmental matters pertaining to prospecting, mining, exploration or production or related activity on a prospecting, mining, exploration or production area, means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that where as a consequence of the provisions of this Act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by prospecting, mining, exploration or production on land occupied by such members or part of the community;”;
- (e) the insertion after the definition of “**Department**” of the following definition:  
 “**‘development footprint’**, in respect of land, means any evidence of its physical transformation as a result of the undertaking of any activity;”;
- (f) the substitution for the definition of “**environmental authorisation**” of the following definition:  
 “**‘environmental authorisation’**, when used in Chapter 5, means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a specific environmental management Act;”;
- (g) the insertion after the definition of “**environmental management plan**” of the following definition:  
 “**‘environmental management programme’** means a programme required in terms of section 24;”;
- (h) the insertion after the definition of “**evaluation**” of the following definition:  
 “**‘exploration area’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (i) the insertion after the definition of “**hazard**” of the following definitions:  
 “**‘holder’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;  
**‘holder of an old order right’** has the meaning assigned to ‘holder’ in item 1 of Schedule II to the Minerals and Petroleum Resources Development Act, 2002;  
**‘integrated environmental authorisation’** means an authorisation granted in terms of section 24L;  
**‘interested and affected party’**, for the purposes of Chapter 5 and in relation to the assessment of the environmental impact of a listed activity or related activity, means an interested and affected party contemplated in section 24(4)(a)(v), and which includes—  
 (a) any person, group of persons or organisation interested in or affected by such operation or activity; and  
 (b) any organ of state that may have jurisdiction over any aspect of the operation or activity;”;

- (j) the insertion after the definition of “**MEC**” of the following definitions:  
     “**‘mine’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;  
     “**‘Mineral and Petroleum Resources Development Act, 2002’** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);  
     “**‘mining area’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (k) the substitution for the definition of “**Minister**” of the following definition:  
     “**‘Minister’**, in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, means the Minister of Environmental Affairs and Tourism;”;
- (l) the insertion after the definition of “**Minister**” of the following definition:  
     “**‘Minister of Minerals and Energy’** means the Minister responsible for the implementation of environmental matters relating to prospecting, mining, exploration, production and related activities within a mining, prospecting, exploration or production area;”;
- (m) the insertion after the definition of “**organ of state**” of the following definition:  
     “**‘owner of works’** has the meaning contemplated in paragraph (b) of the definition of “owner” in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);”;
- (n) the insertion after the definition of “**national department**” of the following definition:  
     “**‘norms or standards’**, when used in Chapter 5, means any norm or standard contemplated in section 24(10);”;
- (o) the insertion after the definition of “**prescribe**” of the following definitions:  
     “**‘production area’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;  
     “**‘prospecting area’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (p) the insertion after the definition of “**provincial head of department**” of the following definitions:  
     “**‘public participation process’**, in relation to the assessment of the environmental impact of any application for an environmental authorisation, means a process by which potential interested and affected parties are given opportunity to comment on, or raise issues relevant to, the application;  
     “**‘Regional Mining Development and Environmental Committee’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (q) the insertion after the definition of “**regulation**” of the following definitions:  
     “**‘residue deposit’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;  
     “**‘residue stockpile’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (r) the insertion after the definition of “**review**” of the following definition:  
     “**‘spatial development tool’**, when used in Chapter 5, means a spatial description of environmental attributes, developmental activities and developmental patterns and their relation to each other;”;

(s) the addition of the following subsection:

“(5) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act.”.

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**Substitution of section 24 of Act 107 of 1998, as substituted by section 2 of Act 8 of 2004**

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

**“Environmental authorisations**

**24.** (1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential **[impact]** consequences for or impacts on the environment of listed activities or specified activities must be considered, investigated, assessed and reported on to the competent authority **[charged by this Act with granting the relevant environmental authorisation]** or the Minister of Minerals and Energy, as the case may be, except in respect of those activities that may commence without having to obtain an environmental authorisation in terms of this Act. 10 15

(1A) Every applicant must comply with the requirements prescribed in terms of this Act in relation to— 20

- (a) steps to be taken before submitting an application, where applicable;
- (b) any prescribed report;
- (c) any procedure relating to public consultation and information gathering;
- (d) any environmental management programme;
- (e) the submission of an application for an environmental authorisation and any other relevant information; and
- (f) the undertaking of any specialist report, where applicable. 25

(2) The Minister, **[and every]** or an MEC with the concurrence of the Minister, may identify— 30

- (a) activities which may not commence without environmental authorisation from the competent authority;
- (b) geographical areas based on environmental attributes, and as specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may not commence without environmental authorisation from the competent authority; 35
- (c) geographical areas based on environmental attributes, and specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may be excluded from authorisation by the competent authority; 40
- (d) **[individual or generic existing activities which may have a detrimental effect on the environment and in respect of which an application for an environmental authorisation must be made to the competent authority]** activities contemplated in paragraphs (a) and (b) that may commence without an environmental authorisation, but that must comply with prescribed norms or standards; 45

Provided that where an activity falls under the jurisdiction of another Minister or MEC, a decision in respect of paragraphs (a) to (d) must be taken after consultation with such other Minister or MEC. 50

(3) The Minister, **[and every]** or an MEC with the concurrence of the Minister, may compile information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority. 55