

REPUBLIC OF SOUTH AFRICA

**NATIONAL ENVIRONMENTAL
MANAGEMENT LAWS
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Environmental Affairs (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B 14D—2017

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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 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 environmental 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.

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 1 of Act 44 of 2008, section 1 of Act 62 of 2008, section 1 of Act 14 of 2009, section 1 of Act 30 of 2013, and section 1 of Act 25 of 2014

1. Section 1 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the insertion after the definition of ‘assessment’ of the following definition: 10
 “**‘audit’** means a review of the scientific and engineering acceptability of the measures and the adequacy of related costs associated with undertaking progressive rehabilitation, decommissioning, closure and post closure activities for listed and specified activities, including the pumping and treatment of extraneous and polluted water, where relevant;”;
- (b) by the insertion after the definition of ‘best practicable environmental option’ of the following definition: 15
 “**‘black’**, when used in section 2(4)(qA), has the meaning assigned to “black people” in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);”;
- (c) by the substitution for the definition of “Constitution” of the following definition: 20
 “**‘Constitution’** means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];”;
- (d) by the insertion after the definition of ‘environmental management inspector’ of the following definition: 25
 “**‘environmental management instrument’** means—
 (i) environmental management framework;
 (ii) strategic environmental assessment;
 (iii) spatial tool;
 (iii) environmental management programme;
 (iv) environmental risk assessment;
 (v) environmental feasibility assessment;
 (vi) norm or standard;
 (vii) minimum information requirements; or
 (viii) any other relevant environmental management instrument, as may be developed in time;”;
- (e) by the substitution for the definition of “environmental mineral resource inspector” of the following definition: 30
 “**‘environmental mineral [resource] and petroleum inspector’** means a person designated as an environmental mineral [resource] and petroleum inspector in terms of section 31BB;”;
- (f) by the substitution for the definition of ‘financial provision’ of the following definition: 35
 “**‘financial provision’** means the amount which is to be provided in terms of this Act, guaranteeing the availability of sufficient funds to undertake progressive rehabilitation, decommissioning, closure and post closure activities for listed and specified activities to ensure the mitigation, remediation and rehabilitation of adverse environmental impacts including latent environmental impacts and residual environmental impacts as well as the pumping and treatment of extraneous and polluted water, where relevant;”;