**NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL B14D-2017**

**ACRONYMS**

NEMLA National Environmental Laws Amendment Bill [B14D-2017]

NEMA National Environmental Management Act, 1998 (Act No. 17 of 1998)

NEMAQA National Environmental Management: Air Quality, 2004 (Act No. 39 of 2004)

NEMBA National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)

NEMICMA National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)

NEMPAA National Environmental Management: Protected Areas Act, (Act No. 57 of 2003)

NEMWA National Environmental Management: Waste Act 2008, (Act No. 59 of 2008)

SEMAS Specific Environmental Management Acts

**INTRODUCTION**

The National Environmental Management Act, 1998 (Act No. 17 of 1998) (NEMA) is the overarching umbrella legislation for environment in the country. Under this umbrella Act there are the specific environmental management Acts (SEMAs), which deal with specific aspects of the environment in more detail.

National Environmental Laws Amendment Bill [B14D-2017] seeks to amend the following Acts:

* National Environmental Management Act, 1998 (Act No. 17 of 1998) - (Clauses 1-37, amends 36 sections and inserts1 new section)
* National Environmental Management: Protected Areas Act, (Act No. 57 of 2003) - (Clauses 38-40, amends 3 sections)
* National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) – (Clauses 41-50, amends 8 sections and inserts 1 new section)
* National Environmental Management: Air Quality, 2004 (Act No. 39 of 2004) – (Clauses 51-55, amends 3 sections and inserts 1 section))
* National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) – (Clauses 56-57, amends 1 section and repeals one chapter)
* National Environmental Management: Waste Act 2008, (Act No. 59 of 2008) – (Clauses 58-81, amends 23 sections and repeals 1 section and 1 schedule)
* National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) – (Clauses 82, amends 1 section)

The National Environmental Laws Amendment Bill [B14-2017] was introduced to Parliament in May 2017. The D version of the Bill was passed by the National Assembly in November 2018. This is the version currently under consideration by the Select Committee. The discussion below explains the text currently before the Select Committee.

| **CLAUSE** | **SECTION** | **CURRENT PROVISION** | **AMENDMENT** | **MOTIVATION** |
| --- | --- | --- | --- | --- |
| **NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (NEMA)** | | | | |
| **Clause 1** | **Section 1 definitions**:  Audit | None | Insertion of definition:  “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; | Clarity required of the meaning of the term for purposes of financial provision as contained in sections 24P and 24PA (Clauses 8 and 9). |
| Black | None. | Insertion of the definition  “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); | Term is used in newly inserted paragraph (qA) in subsection (4) of section 2 and requires definition. (Clause 2) |
| Constitution | “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);  Definition contains old reference | “Constitution” means the Constitution of the Republic of South Africa, 1996; | Correction of the citation of the Constitution required. |
| environmental management instrument | No current definition | Insertion of new definition:  “environmental management instrument” means —   1. Environmental management framework; 2. Strategic environmental assessment; 3. Spatial tool; environmental management programme; 4. environmental risk assessment; 5. environmental feasibility assessment; 6. norm or standard; 7. minimum information requirements; or 8. any other relevant environmental management instrument, as may be developed in time; | Defining the term “environmental management instrument” for purposes of NEMA, Chapter 5. |
| environmental mineral and petroleum inspector | “environmental mineral resource inspector” is currently defined as:  **“environmental mineral resource inspector”** means a person designated as an environmental mineral resource inspector in terms of [section 31BB](https://discover.sabinet.co.za/webx/access/netlaw/107_1998_national_environmental_management_act.htm#section31BB); | **“environmental mineral [resource] inspector”** means a person designated as an environmental mineral [resource] and petroleum inspector in terms of [section 31BB](https://discover.sabinet.co.za/webx/access/netlaw/107_1998_national_environmental_management_act.htm#section31BB); | * Change of term used for purposes of section 31BB (Clause 15) * Delete “resource”; add “petroleum” to cater for petroleum resources. |
| financial provision | “financial provision” means the insurance, bank guarantee, trust fund or cash that applicants for an environmental authorisation must provide in terms of this Act guaranteeing the availability of sufficient funds to undertake the-  (a) rehabilitation of the adverse environmental impacts of the listed or specified activities;  (b) rehabilitation of the impacts of the prospecting, exploration, mining or production activities, including the pumping and treatment of polluted or extraneous water;  (c) decommissioning and closure of the operations;  (d) remediation of latent or residual environmental impacts which become known in the future;  (e) removal of building structures and other objects; or  (f) remediation of any other negative environmental impacts;” | ‘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;’’ | * No specification of financial vehicles retained in the definition. * Inserted need to use the financial provisioning for purposes of progressive rehabilitation activities. * Add reference to mitigation of adverse environmental impacts. |
| latent environmental impact | None | ‘latent environmental impacts’ means impacts which are existing but not yet developed or manifest, dormant; | Added definition for purposes of clarity for financial provision definition and sections 24P and 24PA. (Clauses 8 and 9) |
| municipal council | None | ‘municipal council’ means a municipal council referred to in section 157(1) of the Constitution. | Consequential amendment due to making provision for the appeal powers of the municipal council in section 43. (Clause 34) |
| municipality | None | ‘municipality’, when referred to as—  (a) an entity, means a municipality as described in section 2 of the  Municipal Systems Act, 2000 (Act No. 32 of 2000); and  (b) a geographic area, means a municipal area determined in terms of section 21 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998). | Consequential amendment to the empowerment of municipal manager of municipality for purposes of section 28. (Clause 12) |
| municipal manager | None | ‘municipal manager’ means a person appointed in terms of section  54A(1) of the Local Government: Municipal Systems Act, 2000 (Act  No. 32 of 2000) | Consequential amendment to the empowerment of municipal manager of municipality for purposes of section 28 (Clause 12). |
| mitigate | None | ‘mitigate’ means to alleviate, reduce or make less severe | Definition added to clarify for purposes of financial provision. |
| rehabilitate | None | ‘rehabilitate’ means to restore to the approved end use of land | Definition added to clarify for purposes of financial provision. |
| remediate | None | ‘remediate’ means to repair or reverse damage | Definition added to clarify for purposes of financial provision. |
| residual environmental impact | None | ‘residual environmental impacts’ means impacts remaining after all  actions to mitigate, rehabilitate and remediate have been undertaken; | Definition added to clarify for purposes of financial provision. |
| Spatial development tool | “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;” | Delete | * Term has been deleted. * Terms “spatial tool” and “spatial development tool” used interchangeably currently, causing confusion. Term “spatial tool” is now part of the list of environmental management instruments. |
| **Clause 2** | Section 2(4)(qA) | None | Insert: “(qA) The full participation of black professionals in the environmental management sector must be recognised and their participation in the sector promoted.’’. | New principle added as deemed important, because there are still not enough Black professionals operating in the environmental sector. |
| **Clause 3** | Section 24(2)(b) & (c) | The Minister, or an MEC with the concurrence of the Minister, may identify-  …  (b) geographical areas based on environmental attributes, and as specified in spatial development tools adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which specified activities may not commence without an environmental authorisation from the competent authority;  (c) geographical areas based on environmental attributes, and specified in spatial tools or environmental management instruments, adopted in the prescribed manner by the 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;… | ‘‘(b) geographical areas based on environmental attributes, and as  specified in **[spatial development tools]** an environmental management instrument, adopted in the prescribed manner by the 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;  (c) geographical areas based on environmental attributes, and specified in **[spatial tools or]** an environmental management **[instruments]** instrument, adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which **[specified]** activities contemplated in paragraphs (a) and (b) may be excluded from the requirement to obtain an environmental authorisation from the competent authority, but which must comply with the requirements set in such environmental management instrument, if any;’’; | * Amended to facilitate more flexibility in the use of environmental management instruments and how they cater for environmental management. * Replace “spatial development tool” in (b) and “spatial tool” in (c) with “environmental management instrument”. * Insert cross-reference to paragraphs (a) and (b). * Insert need to comply with the requirements set by such environmental management instrument. |
|  | Section 24(2A)(b)(i) | “(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; …”. | (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 or restriction has been lifted;’’. | Amended to align the subparagraph with the rest of the section as it has to apply to both prohibitions and restrictions. |
|  | Section 24(5)(bA) | “(bA) laying down the procedure to be followed for the preparation, evaluation, adoption and review of prescribed environmental management instruments, including-  (i) environmental management frameworks;  (ii) strategic environmental assessments;  (iii) environmental impact assessments;  (iv) environmental management programmes;  (v) environmental risk assessments;  (vi) environmental feasibility assessments;  (vii) norms or standards;  (viii) spatial development tools;  (viiiA) minimum information requirements; or  (ix) any other relevant environmental management instrument that may be developed in time;” | ‘‘laying down the procedure to be followed for the preparation,  evaluation, adoption and review of **[prescribed]** environmental management instruments, including any conditions set out in such instrument, if any condition applies, including—’’ | The clause amends section 24(5)(bA) to provide for conditions contained in instruments to be included in the provision. |
|  | Section 24(5)(bB) | “(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;” | Deletes (bB). | Deletes subsection (bB) as it duplicates subsection (bA). |
|  | Section 24(5A) | None | ‘‘(5A) The Minister must keep a register of all environmental  management instruments adopted in terms of this Act and make it  publicly available.’’. | The clause inserts a new subsection (5A), providing that the Minister responsible for environmental affairs must keep a register of all environmental management instruments adopted in terms of the NEMA and make it publicly available. |
| Clause 4 | Section 24C | (2A) The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection (1) where the listed or specified activity is directly related to-  (a) prospecting or exploration of a mineral or petroleum resource; or  (b) extraction and primary processing of a mineral or petroleum resource.  (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.  (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:  (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;  (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.  (d) Once Cabinet has made the decision referred to in paragraph (a), the Minister must publish the decision by notice in the Gazette.  (3) The Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities-  (a) contemplated in subsection (2) may be dealt with by the MEC;  (b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister.  No current subsections (11); (12) or (13) | (2A) ‘‘The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection (1) where the listed or specified activity is, or is directly related to—’’;  (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, unless otherwise agreed to in terms of subsection (3).’’;  (3) The Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities-  ‘‘(a) contemplated in [**subsection]** subsections (2) and (2B) may be  dealt with by the MEC;’’;  ‘‘(11) A person who requires an environmental authorisation which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts must simultaneously submit those applications to the relevant competent authority or licensing authority, as the case may be, indicating in each application, all other licences, authorisations and permits applied for.  (12) A person who wishes to apply for an environmental authorisation  for listed or specified activities 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 which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts, must simultaneously apply for an  environmental authorisation after the acceptance of the application for a right or permit in terms of the Mineral and Petroleum Resources  Development Act, 2002.  (13) If the competent authority or licensing authority contemplated in  subsections (11) and (12), as the case may be, is the same authority to consider and decide the application for an environmental authorisation under this Act and the application under a specific environmental management Act, an integrated decision must be issued in accordance with section 24L.’’. | * Provides clarity that the Minister responsible for mineral resources is the competent authority for listed or specified activities that are, or are directly related to, prospecting or exploration of a mineral or petroleum resource or primary processing of a mineral or petroleum resource.   This clause has been amended to indicate that even in instances where activities have been declared as a national priority, the Minister and an MEC, can still agree that the matter can be dealt with by the MEC.   * Inserts new subsections to provide for the simultaneous submission of environmental authorisation application and any other related licence or permit required under any of the specific environmental management Act and for the submission of such application where mining is concerned, only after acceptance of the mining right or permit application. * Where the competent authority or licensing authority is the same authority for the NEMA and specific environmental management Act (SEMA) applications, an integrated decision must be issued. This can still take the form of multiple decisions, but it will force the process of reaching that decision to be consolidated and used to its full extent, namely using one process for information gathering to inform all decisions related to that proposed development.   However, if the competent authority/ licensing authority is the same authority to consider and decide the applications for authorisations, permits or licences under NEMA, one integrated decision must be issued. |
| Clause 5 | Section 24G(1)(b) and (c); (4) | 24G(1) On application by a person who-  …  (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;  (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;  (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.”  (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)…”. | ‘‘(b) has commenced, undertaken or conducted a waste management  activity without a waste management licence in terms of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)**[,]**;  (c) is in control of, or successor in title to, land on which a person—  (i) has commenced with a listed or specified activity without an  environmental authorisation in contravention of section 24F(1);  (ii) has commenced with, undertaken or conducted a waste  management activity in contravention of, section 20(b) of the National Environmental Management: Waste Act, 2008 (Act  No. 59 of 2008),  the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be**[,]**—  (aa) **[may]** must direct the applicant to—  **[(i)]**(A) immediately cease the activity pending a decision  on the application submitted in terms of this subsection, except if there are reasonable grounds  to believe the cessation will result in serious harm to the environment;  **[(ii)]**(B) investigate, evaluate and assess the impact of the activity on the environment;  **[(iii)]**(C) remedy any adverse effects of the activity on the environment;  **[(iv)]**(D) cease, modify or control any act, activity, process or  omission causing pollution or environmental degradation;  **[(v)]**(E) contain or prevent the movement of pollution or  degradation of the environment;  **[(vi)]**(F) eliminate any source of pollution or degradation;  **[(vii)]**(G) compile a report containing—  **[(aa)]**(AA) a description of the need and desirability of the activity;  **[(bb)]**(BB) an assessment of the nature, extent, duration and significance of the consequences  for, or impacts on, the environment  of the activity, including the  cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;  **[(cc)]**(CC) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment of the activity;  **[(dd)]**(DD) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed, if applicable; and  **[(ee)]**(EE) compile an environmental management programme; **[or]** and  (F) undertake public participation as prescribed; and  **[(viii)]**(bb) may direct the applicant to provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC, as the case may be, may deem necessary.’’; and  ‘‘(4) A person contemplated in **[subsection]** subsections (1) and (1A) must pay an administrative fine, which may not exceed **[R5]** R10 million and which must be determined by the competent authority, before the Minister, Minister responsible for mineral resources or MEC concerned  may act in terms of subsection (2)(a) or (b).’’. | * There is currently no provision to enable a person who has taken ownership or control of property (for example, a bona fide purchaser) on which an unlawful structure or development has been built or an illegal waste management activity has been conducted, to have such structure, development or activity authorised. This clause amends section 24G of the NEMA to allow a successor in title or person in control of such land to lodge a section 24G application for such structure or development. * The clause makes it mandatory for the Minister or MEC to direct an applicant to undertake certain actions, including the immediate cessation of the activity and the undertaking of public participation as prescribed under the environmental impact assessment regulations. * The clause increases the administrative fine from R5 million to a maximum of R10 million. |
| Clause 6 | Section 24N(2) | (2) The environmental management programme must contain-  (a) information on any proposed management, mitigation, protection or remedial measures that will be undertaken to address the environmental impacts that have been identified in a report contemplated in subsection 24(1A), including environmental impacts or objectives in respect of-  (i) planning and design;  (ii) pre-construction and construction activities;  (iii) the operation or undertaking of the activity in question;  (iv) the rehabilitation of the environment; and  (v) closure, if applicable;  (b) details of-  (i) the person who prepared the environmental management programme; and  (ii) the expertise of that person to prepare an environmental management programme;  (c) a detailed description of the aspects of the activity that are covered by the environmental management programme;  (d) information identifying the persons who will be responsible for the implementation of the measures contemplated in paragraph (a);  (e) information in respect of the mechanisms proposed for monitoring compliance with the environmental management programme and for reporting on the compliance;  (f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and  (g) a description of the manner in which it intends to-  (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;  (ii) remedy the cause of pollution or degradation and migration of pollutants; and  (iii) comply with any prescribed environmental management standards or practices.”. | ‘‘(2) The environmental management programme must contain**[—]** information  that is prescribed.  **[(a) information on any proposed management, mitigation, protection or remedial measures that will be undertaken to address the environmental impacts that have been identified in a report contemplated in subsection**  **(1A), including environmental impacts or objectives in respect of—**  **(i) planning and design;**  **(ii) pre-construction and construction activities;**  **(iii) the operation or undertaking of the activity in question;**  **(iv) the rehabilitation of the environment;**  **(v) closure, if applicable;**  **(b) details of—**  **(i) the person who prepared the environmental management**  **programme; and**  **(ii) the expertise of that person to prepare an environmental management programme;**  **(c) a detailed description of the aspects of the activity that are covered by the environmental management programme;**  **(d) information identifying the persons who will be responsible**  **for the implementation of the measures contemplated in paragraph (a);**  **(e) information in respect of the mechanisms proposed for monitoring compliance with the environmental management programme and for**  **reporting on the compliance;**  **(f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and**  **(g) a description of the manner in which it intends to—**  **(i) modify, remedy, control or stop any action, activity or process**  **which causes pollution or environmental degradation;**  **(ii) remedy the cause of pollution or degradation and migration of**  **pollutants; and**  **(iii) comply with any prescribed environmental management standards or practices.]**’’. | Deletes detail and replaces with an enabling power to prescribe detail as required, through regulations. |
| Clause 7 | Section 24O | **24O. Criteria to be taken into account by competent authorities when considering applications**  (2) The Minister, the Minister responsible for mineral resources or an MEC must consult with every State department that administers a law relating to a matter affecting the environment when such Minister, Minister responsible for mineral resources or MEC considers an application for an environmental authorisation.  (2A) Where the matter relates to prospecting, exploration, mining or production, the request for comment contemplated in subsection (2), must be submitted by registered mail to the Director-General or provincial head of department of the State department contemplated in subsection (2). | Heading: ‘‘Criteria to be taken into account by competent authorities when considering applications and consultation requirements’’;  (2) The Minister, the Minister responsible for mineral resources **[or]**, an MEC or an environmental assessment practitioner must consult with every State department that administers a law relating to a matter affecting the environment when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation.’’;  deletion of subsection (2A). | * Section 24O(2) of the NEMA requires the Minister responsible for environmental affairs, Minister responsible for mineral resources or an MEC to consult every State department that administers a law relating to a matter affecting the environment when processing an application for an environmental authorisation. * This clause seeks to amend section 24O(2) to also enable an environmental assessment practitioner to consult such State department. |
| Clause 8 | Section 24P | **24P. Financial provision for remediation of environmental damage**  (1) An applicant for an environmental authorisation relating to prospecting, exploration, mining or production must, before the Minister responsible for mineral resources issues the environmental authorisation, comply with the prescribed financial provision for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts.  2) If any holder or any holder of an old order right fails to rehabilitate or to manage any impact on the environment, or is unable to undertake such rehabilitation or to manage such impact, the Minister responsible for mineral resources may, upon written notice to such holder, use all or part of the financial provision contemplated in subsection (1) to rehabilitate or manage the environmental impact in question.  (3) Every holder must annually-  (a) assess his or her environmental liability in a prescribed manner and must increase his or her financial provision to the satisfaction of the Minister responsible for mineral resources; and  (b) submit an audit report to the Minister responsible for mineral resources on the adequacy of the financial provision from an independent auditor.  (4)  (a) If the Minister responsible for mineral resources is not satisfied with the assessment and financial provision contemplated in this section, the Minister responsible for mineral resources may appoint an independent assessor to conduct the assessment and determine the financial provision.  (b) Any cost in respect of such assessment must be borne by the holder in question.  (5) The requirement to maintain and retain the financial provision contemplated in this section remains in force notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002 to the holder or owner concerned and the Minister responsible for mineral resources may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent, residual or any other environmental impacts, including the pumping of polluted or extraneous water, for a prescribed period.  (6) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (1) and all amounts arising from that provision.  (7) The Minister, or an MEC in concurrence with the Minister, may in writing make subsections (1) to (6) with the changes required by the context applicable to any other application in terms of this Act. | **‘‘Financial provision for remediation of environmental damage**  24P. (1) In this section, ‘‘review’’ means a formal assessment of the  financial provisioning with the intention of instituting change, if necessary.  (2) The Minister, or an MEC in concurrence with the Minister, may  prescribe the instances for which financial provision must be determined and provided for listed or specified activities.  (3) Where prescribed, an applicant, must, before the competent authority issues an environmental authorisation, determine the financial provision which is required for undertaking progressive rehabilitation, decommissioning,  closure and post closure activities including the pumping and  treatment of extraneous and polluted water where relevant.  (4) Where prescribed, the applicant, holder of an environmental  authorisation, holder, holder of an old order right is required to provide  financial provision for progressive rehabilitation, decommissioning, closure and post closure activities, including the pumping and treatment of extraneous and polluted water where relevant, to ensure the mitigation, remediation and rehabilitation of adverse environmental impacts, including  latent environmental impacts and environmental residual impacts.  (5)A holder of an environmental authorisation, holder or holder of an old order right must annually undertake, as prescribed, the mitigation, remediation and rehabilitation measures.  (6) The financial provisioning vehicles which must be used when  providing the financial provision include—  (a) cash deposited into an account administered by the Minister responsible for mineral resources;  (b) insurance from an institution that is registered in terms of the  applicable insurance sector legislation;  (c) a financial guarantee from an institution that is registered in terms of the applicable financial sector legislation;  (d) a trust fund established for the sole purposes of subsection (4); and  (e) any other vehicle, including any condition applicable to such a  vehicle, identified by the Minister by notice in the Gazette in  concurrence with the Minister of Finance and the Minister responsible for mineral resources, and including, but not limited to—  (i) a closure rehabilitation company,  (ii) a parent company guarantee; and  (iii) an affiliate company guarantee.  (7) The financial provisioning vehicles contemplated in subsection (6) may be used in combination as required.  (8) (a) Where the Minister, Minister for mineral resources or the MEC is  not satisfied with the determination or review of the financial provision, the Minister, the Minister responsible for mineral resources or the MEC may appoint an independent party to conduct an assessment of the determination  or review on their behalf.  (b) Any costs in respect of such assessment must be borne by the  applicant, holder of the environmental authorisation, holder or holder of an old order right.  (9) If any holder of an environmental authorisation, holder or holder of  an old order right fails to undertake such mitigation, remediation and  rehabilitation of such impact, as prescribed, the Minister responsible for mineral resources, the Minister responsible for water affairs or MEC may, upon written notice to such holder, use all or part of the financial provision contemplated in this section to undertake mitigation, remediation and rehabilitation as the Minister responsible for mineral resources, the Minister or MEC deems appropriate.  (10) The financial provision may only be used for the purposes of  progressive rehabilitation, decommissioning, closure, post closure, as prescribed, to ensure mitigation, remediation and rehabilitation of adverse  environmental impacts for which it was provided and shall not be used for any other purposes.  (11) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to  any form of financial provision contemplated in subsection (2) and all amounts arising from that provision.’’. | * Clause 8 seeks to amend section 24P to enable the Minister or the MEC to prescribe instances when financial provision is required for listed or specified activities. When so prescribed, an applicant must determine the financial provision before the Minister or MEC issues an environmental authorisation. * The clause provides clarity that an applicant, a holder of an environmental authorisation, a holder, holder of an old order right must provide financial provision for progressive rehabilitation, decommissioning, closure and post closure activities. * Financial provision is provided to undertake measures to mitigate, remediate and rehabilitate adverse environmental impacts. The clause stipulates that these measures must be undertaken annually. * The clause sets out the financial provisioning vehicles to be used. * The clause provides for the Minister, MEC or the Minister responsible for mineral resources to appoint an independent party if not satisfied with the determination or review of financial provision, with associated costs to be borne by the applicant or holder. * The clause provides that the Minister responsible for mineral resources, MEC or Minister responsible for water affairs may use any part of the financial provision to undertake appropriate mitigation, remediation and rehabilitation measures. * The clause stipulates that financial provision may only be used for purposes of progressive rehabilitation, decommissioning, closure and post closure and not for any other purposes. * The clause stipulates that the Insolvency Act does not apply to any form of financial provision. |
| Clause 9 | Section 24(PA) | New provision specifically for mining | **‘‘Financial provision for mining**  24PA. (1) A holder of an environmental authorisation for listed or specified activities 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, a holder or holder of an old order right  must—  (a) maintain and retain a financial provision until a closure certificate is  issued by the Minister responsible for mineral resources in terms of the  Mineral and Petroleum Resources Development Act, 2002;  (b) every three years review the environmental liability as prescribed and adjust, where required, the financial provision accordingly to the  satisfaction of the Minister responsible for mineral resources;  (c) every three years subject the financial provision and the basis of the calculations to an independent audit, as prescribed;  (d) every five years, or in the case of a mining permit every three years,  submit to the Minister responsible for mineral resources, an audit  report;  (e) publish, within five days of being notified by the Minister responsible  for mineral resources of the review decision, the decision in a  provincial newspaper as well as a newspaper distributed within the  municipal area within which the mining operation is located, and  indicate where the review can be obtained; and  (f) annually undertake the mitigation, remediation and rehabilitation  measures, as prescribed.  (2) The Minister responsible for mineral resources may, in consultation with the Minister and Minister responsible for water affairs, approve an annual drawdown of the financial provision in the prescribed manner to support final decommissioning and closure for a period not exceeding 10 years before the final decommissioning and closure.  (3) The financial provision provided in respect of latent environmental  impacts or residual environmental impacts, including the pumping and  treatment of extraneous and polluted water, must be transferred to the Minister responsible for mineral resources upon the issuing of a closure certificate, unless otherwise prescribed.  (4) Where the financial provisioning vehicle used for the financial  provision in respect of latent environmental impacts or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, is insurance, the Minister responsible for mineral resources must access the funds on issuing the closure certificate.  (5) If any holder of an environmental authorisation contemplated in  subsection (1) fails to mitigate, remediate and rehabilitate environmental impacts as prescribed, the Minister responsible for mineral resources or the  Minister responsible for water affairs may, upon written notice to such  holder, use all or part of the financial provision contemplated in this section to rehabilitate or manage the environmental impact in question.’’. | Clause 9 of the Bill inserts a new section 24PA providing for financial provision for mining. The clause requires a holder of an environmental authorisation relating to listed or specified activities for or directly related to mining activities, a holder or holder of an old order right to maintain and retain financial provision until a closure certificate is issued; to review their environmental liability and adjust their financial provision every three years; to independently audit the financial provision and the basis on which it is determined every three years; to submit to the Minister responsible for mineral resources the audit report every five years (or three years in the case a mining permit); to publish the decision of the Minister responsible for mineral resources on the review of the financial provision publicly within five days of being notified of such review decision; and to annually undertake measures to mitigate, rehabilitate and remediate. This clause also empowers the Minister responsible mineral resources in consultation with the Minister responsible for water affairs to approve an annual drawdown of the financial provision subject to certain requirements. The clause further requires that financial provision for latent or residual environmental impacts must be transferred to the Minister responsible for mineral resources upon issuing of a closure certificate. The clause allows the Minister responsible for mineral resources to access the financial provision on issuing of closure certificate if the financial provisioning vehicle used is an insurance. The Minister responsible for mineral resources or Minister responsible for water affairs is also empowered to use the financial provision to rehabilitate or manage the environmental impacts, if a holder of an environmental authorisation relating to mining activities fails to mitigate, remediate and rehabilitate environmental impacts. |
| Clause 10 | Section 24R | **24R. Mine closure on environmental authorisation**   1. Every holder, holder of an old order right and owner of works remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of polluted or extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned.   (2) When the Minister responsible for mineral resources issues a closure certificate, he or she must return such portion of the financial provision contemplated in section 24P as the Minister may deem appropriate to the holder concerned, but may retain a portion of such financial provision referred to in subsection (1) for any latent, residual or any other environmental impact, including the pumping of polluted or extraneous water, for a prescribed period after issuing a closure certificate.  (3) Every holder, holder of an old order right or owner of works must plan, manage and implement such procedures and requirements in respect of the closure of a mine as may be prescribed. | ‘‘(1) Every holder, holder of an environmental authorisation for listed or specified activities 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 of an old order right and owner of works remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of polluted or extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned.  (2) Deletion of subsection (2).  ‘‘(3) Every holder, holder of environmental authorisation for listed or specified activities 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 of an old order right or owner of works must plan, manage and implement such procedures and requirements in respect of the closure of a mine as may be prescribed.’’. | * Repeals section 24R(2) as it duplicates section 24P. * The clause ensures that a holder of environmental authorisation related to mining activities, a holder and a holder of an old order right remain responsible for environmental liability notwithstanding the issuing of a closure certificate, and that such a holder must plan, manage and implement prescribed procedures and requirements in respect of the closure of the mine. |
| Clause 11 | Section 24S | **24S. Management of residue stockpiles and residue deposits**  Residue stockpiles and residue deposits must be deposited and managed in accordance with the provisions of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), on any site demarcated for that purpose in the environmental management plan or environmental management programme in question. | Section to be repealed. | Repeals section 24S of the NEMA which provides that residue stockpiles and residue deposits must be managed in terms of the provisions of the NEMWA. In this regard, the residue stockpiles and deposits will be managed in terms of the provisions of the NEMA. |
| Clause 12 | Section 28(3); (4); (4A); (5); (7); (8); (9) and (12) | **28. Duty of care and remediation of environmental damage**  **…**  (3) The measures required in terms of subsection (1) may include measures to -  (a) investigate, assess and evaluate the impact on the environment;  (b) inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;  (c) cease, modify or control any act, activity or process causing the pollution or degradation;  (d) contain or prevent the movement of pollutants or the causant of degradation;  (e) eliminate any source of the pollution or degradation; or  (f) remedy the effects of the pollution or degradation.  (4) The Director-General, the Director-General of the department responsible for mineral resources or a provincial head of department may, after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who is causing, has caused or may cause significant pollution or degradation of the environment to-  (a) cease any activity, operation or undertaking;  (b) investigate, evaluate and assess the impact of specific activities and report thereon;  (c) commence taking specific measures before a given date;  (d) diligently continue with those measures; and  (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.  No current subsection (4A)  (5) The Director-General, the Director-General of the department responsible for mineral resources or a provincial head of department, when considering any measure or time period envisaged in subsection (4), must have regard to the following;  (a) the principles set out in section 2;  (b) the provisions of any adopted environmental management plan or environmental implementation plan;  (c) the severity of any impact on the environment and the costs of the measures being considered;  (d) any measures proposed by the person on whom measures are to be imposed;  (e) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people; and  (f) any other relevant factors.  (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 may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.  (8) Subject to subsection (9), the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department may recover costs for reasonable remedial measures to be undertaken under subsection (7), before such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons-  (a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;  (b) the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner’s successor in title;  (c) the person in control of the land or any person who has or had a right to use the land at the time when -  (i) the activity or the process is or was performed or undertaken; or  (ii) the situation came about; or  (d) any person who negligently failed to prevent -  (i) the activity or the process being performed or undertaken; or  (ii) the situation from coming about:  Provided that such person failed to take the measures required of him or her under subsection (1).  (9) The Director-General, the Director-General of the department responsible for mineral resources or provincial head of department may in respect of the recovery of costs under subsection (8), claim proportionally from any other person who benefited from the measures undertaken under subsection (7).  (12) Any person may, after giving the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department 30 days’ notice, apply to a competent court for an order directing the Director-General, the Director-General of the department responsible for mineral resources or any provincial head of department to take any of the steps listed in subsection (4) if the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps, and the provisions of section 32(2) and (3) shall apply to such proceedings, with the necessary changes. | 28(3)  ‘‘(d) contain or prevent the movement of pollutants or the **[causant]** cause of degradation;’’;  ‘‘(4) The Director-General, the Director-General of the department responsible for mineral resources **[or]**, a provincial head of department or a municipal manager of a municipality may**[, after having given adequate opportunity to affected persons to inform him or her of their relevant interests,]** direct any person **[who is causing, has caused or may cause significant pollution or degradation of the environment]**  referred to in subsection (2) to—  (a) cease any activity, operation or undertaking;  (b) investigate, evaluate and assess the impact of specific activities and  report thereon;  (c) commence taking specific measures before a given date;  (d) diligently continue with those measures; and  (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**].’’;  ‘‘(4A) Before issuing a directive contemplated in subsection (4),  the Director-General, the Director-General of the department responsible for mineral resources, or a provincial head of department or a municipal manager of a municipality must give adequate notice in writing to the person to whom the directive is intended to be issued, of his or her intention to issue the directive and provide such person with a reasonable opportunity to make representations in writing: Provided that the Director-General, the Director-General of the department responsible for mineral resources, a provincial head of department or a municipal manager of a municipality may, if urgent action is necessary for the protection of the environment, issue the directive referred to in subsection (4), and give the person on whom the directive was issued an  opportunity to make representations as soon as is reasonable thereafter.’’;  (5) ‘‘The Director-General, the Director-General of the department responsible for mineral resources **[or]**, a provincial head of department or a municipal manager of a municipality, when considering any measure or time period envisaged in subsection (4), must have regard to the following**[—]**:’’;  ‘(7) Should a person fail to comply, or inadequately comply, with a  directive issued under subsection (4), the Director-General, the Director-General of the department responsible for mineral resources **[or]**, a provincial head of department or a municipal manager of a municipality may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.’’;  ‘‘(8) Subject to subsection (9), the Director-General, the Director-General of the department responsible for mineral resources **[or]**, provincial head of  department or a municipal manager of a municipality may recover costs  for reasonable remedial measures undertaken or to be undertaken under subsection (7), before or after such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—’’;  ‘‘(9) The Director-General, the Director-General of the department  responsible for mineral resources **[or]**, provincial head of department or a municipal manager of a municipality, may in respect of the recovery of costs under subsection (8), claim proportionally from any person who benefited from the measures undertaken under subsection (7).’’;  …  ‘‘(12) Any person may, after giving the Director-General, the  Director-General of the department responsible for mineral resources  **[or]**, provincial head of department or a municipal manager of a  municipality, 30 days’ notice, apply to a competent court for an order  directing the Director-General, the Director-General of the department  responsible for mineral resources **[or]**, any provincial head of department or a municipal manager of a municipality, to take any of the steps listed in subsection (4) if the Director-General, the Director-General of the department responsible for mineral resources **[or]**, provincial head of department or a municipal manager of a municipality, fails to inform  such person in writing that he or she has directed a person contemplated  in subsection **[(8)]** (4) to take one of those steps, and the provisions of  section 32(2) and (3) shall apply to such proceedings, with the necessary changes.’’. | * The scope of person on whom a section 28(4) of the NEMA directive can be issued is narrow and currently confined to the person that caused the pollution or degradation. This amendment expands the scope to all persons to whom the duty of care applies (e.g. an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which any activity or process is or was performed or undertaken); * This clause also clarifies the requirements, in line with the Promotion of Administrative Justice Act (PAJA), by providing the recipient of the directive with an opportunity to make representations before the directive is finalised. * The clause empowers environmental authorities to claim both anticipatory and costs already incurred as a result of having to undertake urgent remedial measures should the recipient fail to comply with the directive. * The clause also amends section 28(7), (8), (9) and (12) to empower a municipal manager of a municipality to also issue a section 28(4) directive – this corresponds with the growth in numbers of Environmental Management Inspectors at local authority level. |
| Clause 13 | Section 31B(1)(a)(ii) | **31B. Designation of environmental management inspectors by Minister**  (1) The Minister may -  (a) designate as an environmental management inspector, any staff member of -  (i) the Department; or  (ii) any other organ of state; and  (b) at any time withdraw a designation made in terms of paragraph (a).  (2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister and the relevant organ of state. | substitution in subsection (1)(a) for subparagraph (ii) of the  following subparagraph:  ‘‘(ii) any other organ of state that executes a regulatory function; and’’. | Clarifies that the Ministers responsible for environmental affairs may only designate environmental management inspectors from organ of state that executes a regulatory function. This is to ensure that only authorities that have a legal mandate to monitor compliance, enforce the provisions of NEMA and the SEMAs, have designated inspectors within their ranks. |
| Clause 14 | Section 31BA(1)(a)(i) & (ii) | **31BA.Designation of environmental management inspectors by Minister responsible for water affairs**  (1) The Minister responsible for water affairs may-  (a) designate as an environmental management inspector, any staff member of -  (i) the Department of Water Affairs and Forestry; or  (ii) any other organ of state; and  (b) at any time withdraw a designation made in terms of paragraph (a). | ‘‘(i) the Department **[of Water Affairs and Forestry]** responsible for water affairs; or  (ii) any other organ of state that executes a regulatory function; and’’. | Clarifies that the Ministers responsible for water affairs and MECs may only designate environmental management inspectors from organ of state that executes a regulatory function. This is to ensure that only authorities that have a legal mandate to monitor compliance and enforce the provisions of NEMA and the SEMAs, have designated inspectors within their ranks. |
| Clause 15 | Section 31BB | **31BB.Designation of environmental mineral resource inspectors by Minister responsible for mineral resources**  (1) The Minister responsible for mineral resources may-  (a) designate as an environmental mineral resource inspector, any staff member of the Department of Mineral Resources; and  (b) at any time withdraw a designation made in terms of paragraph (a). | (a) by the substitution for the heading of the following heading:  **‘‘Designation of environmental mineral [resource] and petroleum**  **inspectors by Minister responsible for mineral resources’**’;  (b) by the substitution for paragraph (a) of subsection (1) of the following  paragraph:  ‘‘(a) designate as an environmental mineral **[resource]** and petroleum  inspector, any staff member of **[the Department of Mineral Resources]**—  (i) the department responsible for mineral resources; or  (ii) any other organ of state that executes a regulatory function;  and’’; and  (c) by the addition of the following subsection:  ‘‘(2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister responsible for mineral resources and the relevant organ of state.’’. | * This clause amends section 31BB to empower the Minister to designate as an environmental mineral **and petroleum** inspector, any staff member of the department or any organ of state that executes a regulatory function. This is to allow for the designation of officials from the Petroleum Agency of South Africa to undertake compliance and enforcement activities in respect of petroleum resources. |
| Clause 16 | Section 31C(1)(a)(ii) | 31C. Designation of environmental management inspectors by MEC  (1) An MEC may -  (a) designate as an environmental management inspector, any staff member of -  (i) the department responsible for environmental management in the province;  (ii) any other provincial organ of state; or  (iii) any municipality in the province; and  (b) at any time withdraw a designation made in terms of paragraph (a). | ‘‘(ii) any other provincial organ of state that executes a regulatory function; and’’. | Clarifies that the Ministers responsible for environmental affairs, water affairs and MECs may only designate environmental management inspectors from organ of state that executes a regulatory function. This is to ensure that only authorities that have a legal mandate to monitor compliance and enforce the provisions of NEMA and the SEMAs have designated inspectors within their ranks. |
| Clause 17 | Section 31D(1)(d). (e) and (f); (2)(a); (3A); (4) and (8) | 31D. Mandates  (1) When designating a person as an environmental management inspector, the Minister, the Minister responsible for water affairs or MEC, as the case may be, must, subject to subsection (2), determine whether the person concerned is designated for the enforcement of -  (a) this Act;  (b) a specific environmental management Act;  (c) specific provisions of this Act or a specific environmental management Act;  (d) this Act and all specific environmental management Acts; or  (e) any combination of those Acts or provisions of those Acts.  (2) An MEC may designate a person as an environmental management inspector for the enforcement of only those provisions of this Act or any specific environmental management Act-  (a) which are administered by the MEC or a provincial organ of state; or  (b) in respect of which the MEC or a provincial organ of state exercises or performs assigned or delegated powers or duties.  No current subsection (3A)  (4) Despite the provisions in subsections (2A) and (3), the Minister may, with the concurrence of the Minister responsible for mineral resources, if the environmental mineral resource inspectors are unable or not adequately able to fulfill the compliance monitoring and enforcement functions, designate environmental management inspectors to implement these functions in terms of this Act or a specific environmental management Act in respect of which powers have been conferred on the Minister responsible for mineral resources.  (8) Subsequent to subsection (7), the Minister may, in concurrence with the Minister responsible for mineral resources, within a reasonable period of time and where appropriate-  (a) assist or support the Minister responsible for mineral resources to fulfill his or her compliance monitoring and enforcement obligations under this Act; or  (b) direct the environmental management inspectors as contemplated in subsection (4) to undertake the compliance monitoring and enforcement functions. | ‘‘(1)(d) this Act and all specific environmental management Acts; **[or]**  (e**) [any combination of those Acts or provisions of those Acts.]** any provincial Act that substantively deals with environmental management; or’’;  ‘‘(f) any combination of the Acts contemplated in this subsection or  combination of the provisions of the said Acts.’’;  (2)(a)  ‘‘An MEC may designate a person as an environmental management  inspector for the enforcement of only those provisions of this Act **[or],** any specific environmental management Act or any provincial Act that substantively deals with environmental management—’’;  ‘‘(3A) An environmental management inspector and environmental mineral and petroleum inspector must exercise any power bestowed on them in terms of this Act in accordance with any applicable duty provided for in this Act.’’;  ‘‘(4) Despite the provisions in subsections (2A) and (3), the Minister may, **[with the concurrence of]** after consultation with the Minister responsible for mineral resources**, [if the environmental mineral resource inspectors are unable or not adequately able to fulfil the**  **compliance and enforcement functions,]** if it is necessary to address significant harm to the environment caused by prospecting, exploration, mining or production activities, **[designate]** direct the environmental management inspectors to implement or support the implementation of these functions in terms of this Act or a specific environmental  management Act in respect of which powers have been conferred on the  Minister responsible for mineral resources.’’;  (8) ‘‘Subsequent to subsection (7), the Minister may, **[in concurrence]** after consultation with the Minister responsible for mineral resources, within  a reasonable period of time and where appropriate, direct the environmental management inspectors to—’’. | * Empowers the MEC to designate environmental management inspectors to monitor compliance and enforce of any provincial environmental management legislation. This is aimed at providing national consistency in the powers and duties accorded to these officials, whether undertaking compliance and enforcement in terms of national or provincial legislation. * Inserts a new subsection (3A) to provide clarity that environmental management inspectors and environmental mineral resource inspectors must exercise their respective powers in accordance with any applicable duty. * The clause amends subsections (4) and (7) to empower the Minister responsible for environmental affairs, after consultation with the Minister responsible for mineral resources, to support or undertake compliance monitoring and enforcement measures if it necessary to address significant harm to the environment caused by prospecting and mining activities. |
| Clause 18 | Section 31E(1)(a) &(b); (3) | **31E. Prescribed standards**  (1) The Minister may prescribe -  (a) qualification criteria for environmental management inspectors; and  (b) training that must be completed by environmental management inspectors.  (2) The Minister may only prescribe criteria and training in terms of subsection (1) after consultation with the Minister responsible for safety and security. | (1)‘‘(a) qualification criteria for environmental management inspectors and environmental mineral and petroleum inspectors; and  (b) training that must be completed by environmental management  inspectors and environmental mineral and petroleum inspectors.’’;  and  ‘‘(3) The Minister may prescribe a Code of Conduct applicable to all  designated environmental management inspectors and environmental mineral and petroleum inspectors.’’. | * The current provisions do not cater for the same training with respect to environmental mineral and petroleum inspectors. This clause amends section 31E to ensure that the environmental mineral and petroleum inspectors will receive the same standard of approved training as is currently being received by the environmental management inspectors, before designation. * The clause also adds subsection (3) to empower the Minister responsible for environmental affairs to prescribe through regulations the Code of Conduct applicable to environmental management inspectors and environmental mineral and petroleum inspectors. |
| Clause 19 | Section 31F | 31F. Proof of designation  (1) A prescribed identity card must be issued to each person designated as an environmental management inspector.  (2) When exercising any powers or performing any duties in terms of this Act or a specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card referred to in subsection (1). | ‘‘Proof of designation  31F. (1) A prescribed identity card must be issued to each person  designated as an environmental management inspector or an environmental mineral and petroleum inspector.  (2) When exercising any powers or performing any duties in terms of this Act **[or]**, a specific environmental management Act, or a provincial Act that substantively deals with environmental management, an environmental  management inspector or environmental mineral and petroleum inspector must, on demand by a member of the public, produce the identity card referred to in subsection (1).’’. | Section 31F requires that environmental management inspectors who exercise powers and perform duties in terms of the NEMA are required to present their identity cards upon request by a member of public as proof of their designation. The amendment seeks to extend this duty to include environmental mineral and petroleum inspectors, as well as when enforcing provincial environmental legislation. |
| Clause 20 | Section 31G(1)(a); (aA) | 31G. Functions of inspectors  (1) An environmental management inspector within his or her mandate in terms of section 31D -  (a) must monitor and enforce compliance with a law for which he or she has been designated in terms of that section;  (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute -  (i) an offence in terms of such law;  (ii) a breach of such law; or  (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law. | ‘‘An environmental management inspector or an environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D—’’;  ‘‘(aA) may access and inspect any property, object or pack-animal for  the purposes of ascertaining compliance with the legislation for  which that inspector has been designated in terms of section 31D  and for ascertaining compliance with a term or condition of a permit, authorisation or other instrument issued in terms of relevant legislation.’’. | The section does not explicitly provide for environmental management inspectors to undertake inspections in response to complaints of non-compliance. The amendment to section 31G(1)(a) allows them to do so. |
| Clause 21 | Section 31H(1)(a); (b); (c)(ii); (j); (k); (l); (2); (3). | 31H. General powers  (1) An environmental management inspector, within his or her mandate in terms of section 31D, may-  (a) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute -  (i) an offence in terms of a law for which that inspector has been designated in terms of that section;  (ii) a breach of such law; or  (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;  (b) issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;  (c) inspect, or question a person about, any document, book or record or any written or electronic information -  (i) which may be relevant for the purpose of paragraph (a); or  (ii) to which this Act or a specific environmental management Act relates;  (d) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph (c), or remove such document, book, record or written or electronic information in order to make copies or extracts;  (e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;  (f) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in -  (i) committing an offence in terms of the law for which that inspector has been designated in terms of section 31D;  (ii) breaching such law; or  (iii) breaching a term or condition of a permit, authorisation or other instrument issued in terms of such law;  (g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection;  [Para. (g) substituted by s. 18 of Act 14/2009]  (h) dig or bore into the soil;  (i) take samples;  (j) remove any waste or other matter deposited or discharged in contravention of the law for which that inspector has been designated in terms of section 31D or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or  (k) carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific environmental management Act.  (2) A written notice issued in terms of subsection (1)(b) must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.  (3) A person who receives a written notice in terms of subsection (1)(b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act or a specific environmental management Act. | (1)(a) ‘‘question a person about any act or omission **[in respect of which there is a reasonable suspicion that it might]** that may constitute—’’;  ‘‘(b) upon reasonable suspicion, issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that  paragraph;’’;  (c) ‘‘(ii) to which this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management, relates;’’;  ‘‘(j) remove any waste or other matter deposited or discharged in  contravention of the law for which that inspector has been  designated in terms of section 31D or a term or condition of a permit, authorisation or other instrument issued in terms of such law; **[or]**  **(k) [carry out any other prescribed duty not inconsistent with this**  **Act and any other duty that may be prescribed in terms of a specific environmental management Act]** issue a lawful instruction in the execution of his or her mandate;’’;  ‘‘(l) carry out any other prescribed duty not inconsistent with this Act,  and any other duty that may be prescribed in terms of a specific  environmental management Act or a provincial Act that substantively  deals with environmental management.’’;  ‘‘(2) A written notice issued in terms of subsection (1)(b) must **[be in**  **the]** correspond substantially with the prescribed format and must  require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that  questions are answered under oath or affirmation.’’;  ‘‘(3) A person who receives a written notice in terms of subsection  (1)(b), must answer all questions put to him or her truthfully and to the  best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management.’’. | * This clause amends section 31H(1)(a) to allow the environmental management inspectors to pose questions to persons while on an inspection. This is required in order to allow the inspectors to gather information of an alleged non-compliance through the asking of relevant questions prior to a reasonable suspicion being formed. * The clause amends section 31H to empower environmental management inspectors to issue lawful instructions. * The clause empowers environmental management inspectors to exercise their general powers in terms of 31H in respect of any provincial environmental management legislation |
| Clause 22 | Section 31I(2); (5)(a) & (b) | 31I. Seizure of items  (1) The provisions of sections 30 to 34 of the Criminal Procedure Act, 1977, apply to the disposal of anything seized in terms of this Part, subject to such modifications as the context may require.  (2) When an item is seized in terms of this Part, the environmental management inspector may request the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the inspector, and if the person refuses to take the item to the designated place, the inspector may do so.  (3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management inspector may immobilise it by removing a part.  (4) An item seized in terms of this section, including a part of a vehicle, vessel or aircraft referred to in subsection (3), must be kept in such a way that it is secured against damage.  (5) An environmental management inspector may -  (a) in the case of a specimen of a threatened or protected species or alien species being imported into the Republic, at the port of entry, request the person responsible for the import or that person’s agent, to produce the original copies of the import permit, together with such other documentation as may be required; and  (b) in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit, request the person responsible for the export or re-export or that person’s agent to produce the original copy of the export or re-export permit, together with such other documentation as may be required. | ‘‘(2) When an item is seized in terms of this Part, the environmental  management inspector may [request] instruct the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the inspector, and if the person refuses to take the  item to the designated place, the inspector may do so.’’;  (5) ‘‘(a) in the case of a specimen of threatened or protected species or alien species being imported into the Republic, at the port of entry,  **[request]** instruct the person responsible for the import or that  person’s agent, to produce the original copies of the import permit,  together with such other documentation as may be required; and  (b) in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit,  **[request]** instruct the person responsible for the export or re-export or that person’s agent to produce the original copy of the export or re-export permit, together with such other documentation as may be required.’’. | Consequential amendment to ensure that environmental management inspectors are empowered to issue lawful instructions, rather than mere requests, in accordance with the provisions of the NEMA. |
| Clause 23 | Section 31J(2)(d) | **31J. Powers to stop, enter and search vehicles, vessels and aircraft**  …  (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, pack-animal 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. | ‘(2) following paragraph (d)  ‘in terms of this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management.’’. | Consequential amendment to ensure that environmental management inspectors are also empowered to monitor compliance and enforce any provincial environmental management legislation. |
| Clause 24 | Section 31K(1)(a); (3); (5) | **31K. Routine inspections**  (1) An environmental management inspector, within his or her mandate in terms of section 31D, and subject to subsection (2), may at any reasonable time conduct routine inspections and, without a warrant, enter and inspect any building, land or premises or search, including but not limited to, any vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purposes of ascertaining compliance with-  [Words preceding para. (a) substituted by s. 19 of Act 14/2009]  (a) the legislation for which that inspector has been designated in terms of section 31D; or  (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.  (2) …  (3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the Acts for which that inspector has been designated in terms of section 31D.  (4) …  (5) While carrying out a routine inspection, an environmental management inspector may seize anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item 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. | ‘(1)(a) ‘An environmental management inspector or environmental mineral and  petroleum inspector, within his or her mandate in terms of section 31D, and subject to subsection (2), may at any reasonable time conduct routine inspections and, without a warrant, enter and inspect any building, land or premises **[or search]**, including but not limited to, any vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purposes of ascertaining compliance with—’’;  ‘‘(3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector or an environmental mineral and petroleum inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the  Acts for which that inspector has been designated in terms of section  31D.’’;  ‘‘(5) While carrying out a routine inspection, an environmental  management inspector or environmental mineral and petroleum inspector may **[seize anything in or on any, including but not limited to business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item 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.]**—  (a) upon reasonable suspicion that an offence in terms of the law for  which that inspector has been designated in terms of section 31D  has been committed, seize anything in or on any, including but not  limited to, business or residential premises, land or vehicle, vessel,  aircraft, pack-animals, container, bag, box, or item that may be used  as evidence in the prosecution of any person for an offence in terms  of this Act, a specific environmental management Act or a provincial Act that substantively deals with environmental management;  and  (b) detain, for a reasonable period of time, anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or  item for the purpose of ascertaining compliance with the legislation  for which that inspector has been designated in terms of sections  31B, 31BA and 31C, as the case may be.’’. | * Provides clarity that the conducting of a ‘‘search’’ is not included in the powers executed during a routine inspection, but rather the entry into certain premises for the purposes of ascertaining compliance. * The amendment extends the power to environmental mineral and petroleum inspectors to apply for a warrant to enter residential premises for the purposes of conducting an inspection. * The clause empowers an environmental management inspector to detain an item for a temporary period of time in order to conduct further analysis or verification as to whether or not such item complies with the relevant legal requirements. For example, a consignment of plant or animal specimens or any derivatives thereof being shipped in a container through a national port of entry or exit. An environmental management inspector may be required to detain the container in order to verify the exact nature and scope of the consignment. |
| Clause 25 | Section 31L(1)(a) | **31L. Power to issue compliance notices**  (1) An environmental management inspector, within his or her mandate in terms of section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied -  (a) with a provision of the law for which that inspector has been designated in terms of section 31D; or  (b) … | ‘‘An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may issue a compliance notice **[in]** which must correspond substantially with the prescribed  form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied—’’. | Clarifies that an environmental management inspector as well as an environmental mineral and petroleum inspector must issue a compliance notice which substantially complies with the prescribed form. |
| Clause 26 | Section 31M(1) and (2) | **31M. Objections to compliance notice**  (1) Any person who receives a compliance notice in terms of section 31L may object to the notice by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister or MEC may determine.  (2) After considering any representations made in terms of subsection (1) and any other relevant information, the Minister or MEC, as the case may be -  (a) may confirm, modify or cancel a notice or any part of a notice; and  (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified. | ‘‘(1) Any person who receives a compliance notice in terms of section 31L may object to the notice by making representations, in writing, to the Minister **[or]**, the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister **[or]**, the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council may determine.’’;  (2) ‘‘After considering any representations made in terms of subsection (1) and any other relevant information, the Minister **[or]**, the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council, as the case may be—’’. | Consequential amendment of section 31M to clarify that a person who wants to object to a compliance notice may do so, by making representations, to the relevant objection authority, namely, the Minister responsible for environmental affairs, the Minister responsible for mineral resources, the Minister responsible for water affairs or a municipal council, depending on which government department issued the compliance notice. |
| Clause 27 | Section 31O(1) | **31O. Powers of South African Police Service members**  (1) A member of the South African Police Service has, in respect of an offence in terms of this Act or a specific environmental management Act, all the powers of an environmental management inspector in terms of this Part excluding the power to conduct routine inspections in terms of section 31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O. | ‘‘(1) A member of the South African Police Service has, in respect of an offence in terms of this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management, all the powers of an environmental management inspector in terms of this Part, excluding the power to  conduct routine inspections in terms of section 31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O.’’. | Consequential amendment to ensure that the members of the South African Police Services are also empowered to monitor compliance and enforce any provincial environmental management legislation |
| Clause 28 | Section 31P | **31P. Duty to produce documents**  Any person to whom a permit, licence, permission, certificate, authorisation or any other document has been issued in terms of this Act or a specific environmental management Act, must produce that document at the request of an environmental management inspector. | ‘‘Duty to produce documents  31P. Any person to whom a permit, licence, permission, certificate,  authorisation or any other document has been issued in terms of this Act  **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management, must produce that document **[at the request]** on instruction of an environmental management  inspector or an environmental mineral and petroleum inspector.’’. | Section 31P of the NEMA imposes a duty on a holder of a permit, licence, permission, certificate, authorisation or any other document to produce such documents as and when requested by the environmental management inspector. Clause 28 amends section 31P to clarify that such a person must produce such documents on the lawful instruction by the environmental management inspector and an environmental mineral and petroleum inspector. This documentation includes those issued in terms of provincial environmental management legislation. |
| Clause 29 | Section 31Q(1); (c) | 31Q. Confidentiality  (1) It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act or a specific environmental management Act, except -  (a) if the information is disclosed in compliance with the provisions of any law;  (b) if the person is ordered to disclose the information by a court;  (c) if the information is disclosed to enable a person to perform a function in terms of this Act or a specific environmental management Act; or  (d) for the purposes of the administration of justice. | (1) preceding (a)  ‘‘It is an offence for any person to disclose information about any other  person if that information was acquired while exercising or performing any power or duty in terms of this Act **[or]**, a specific environmental management Act**[,]** or a provincial Act that substantively deals with environmental management, except—’’;  ‘‘(c) if the information is disclosed to enable a person to perform a  function in terms of this Act **[or]**, a specific environmental  management Act or a provincial Act that substantively deals with  environmental management; or’’. | Consequential amendment to clarify that the confidentiality is also applicable to provincial environmental management legislation. |
| Clause 30 | Section 34E | **34E. Treatment of seized live specimens**  Pending the institution of any criminal proceedings in terms of this Act or a specific environmental management Act or the resolution of such proceedings, a live specimen that has been seized in terms of this Part must be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it. | ‘‘Treatment of seized live specimens  34E. (1) Pending the institution of any criminal proceedings in terms of  this Act or a specific environmental management Act or the resolution of  such proceedings, a live specimen that has been seized in terms of this Part **[must]** may be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.  (2) For the purposes of this Chapter, seized live specimens may be  disposed of in terms of section 30(a) of the Criminal Procedure Act,  1977.’’. | * Provides that live specimens ‘‘may’’, instead of ‘‘must’’, be deposited with a suitable institution, rescue centre or facility; as the circumstances require. * Provides clarity that seized live specimens may be disposed of in terms of section 30(a) of the Criminal Procedure Act, 1977. This section of the Criminal Procedure Act provides legal mechanisms regulating the disposal of a seized perishable item. * This clause was amended to align to the provisions of the Criminal Procedure Act; and to reflect the limited safe keeping facilities available to inspectors. |
| Clause 31 | Section 34G(1) | **34G. Admission of guilt fines**  (1) The Minister may by regulation specify offences in terms of this Act or a specific environmental management Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence. | ‘‘(1) **[The]** Despite section 57(5) of the Criminal Procedure Act, 1977, the Minister may by regulation specify offences in terms of this Act or a specific environmental management Act in respect of which alleged offenders may pay a  prescribed admission of guilt fine instead of being tried by a court for the offence.’’. | Ensures that Minister’s regulatory power contextualizes section 57(5) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). |
| Clause 32 | Section 42B(1); (2)(c); (d); (e); (f); (3) | 42B. Delegation by Minister responsible for mineral resources  (1) The Minister responsible for mineral resources may delegate a function entrusted to him or her in terms of this Act to-  (a) the Director-General of the Department of Minerals and Energy; or  (b) any officer in the Department of Minerals and Energy.  (2) A delegation in terms of subsection (1)-  (a) must be in writing;  (b) may be made subject to any condition;  (c) does not prevent the performance of the function by the Minister himself or herself; and  (d) may be withdrawn by the Minister. | ‘‘(1) The Minister **[of Minerals and Energy]** responsible for mineral  resources may delegate a function entrusted to him or her in terms of this Act to—  (a) the Director-General of the Department **[of Minerals and Energy; or]** responsible for mineral resources;  (b) any officer in the Department **[of Minerals and Energy.]** responsible  for mineral resources; or  (c) any organ of state, by agreement with that organ of state.’’;  (2)‘‘(c) does not prevent the performance of the function by the Minister responsible for mineral resources himself or herself; **[and]**  (d) [may be withdrawn by the Minister] may include the power to  subdelegate**[.]**;’’;  (e) may be withdrawn by the Minister responsible for mineral  resources, subject to any rights that may have accrued to any  person; and  (f) does not divest the Minister responsible for mineral resources of the responsibility for the performance of the function.’’;  “(3) The Minister responsible for mineral resources may confirm, vary  or revoke any decision taken in consequence of a delegation or  subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.’’. | * Provides clarity that the Minister of mineral resources may also delegate his or her powers under NEMA to an organ of state subject to an agreement between the Minister responsible for mineral resources and that organ of state. * The clause provides clarity that the delegation may be sub delegated and also withdrawn. It further provides that the Minister responsible for mineral resources may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation, subject to any rights that may have accrued to a person as a result of the decision. |
| Clause 33 | Section 42C & 42D | None | ‘‘Delegation of powers and duties by Minister responsible for water  affairs  42C. (1) The Minister responsible for water affairs may delegate a power  or duty vested in him or her in terms of this Act to an official in the  department responsible for water affairs.  (2) A delegation in terms of subsection (1)—  (a) must be in writing;  (b) may be subject to conditions;  (c) does not prevent the exercise of the power or the performance of the  duty by the Minister responsible for water affairs personally;  (d) may include the power to subdelegate;  (e) may be withdrawn by the Minister responsible for water affairs, subject to any rights that may have accrued to any person; and  (f) does not divest the Minister responsible for water affairs of the  responsibility for the exercise of the power or the performance of the  duty.  Delegation of powers and duties by municipal manager  42D. (1) The municipal manager of a municipality may delegate a power  or duty vested in him or her in terms of this Act to an official in the  municipality.  (2) A delegation in terms of subsection (1)—  (a) must be in writing;  (b) may be subject to conditions;  (c) does not prevent the exercise of the power or the performance of the  duty by the municipal manager personally;  (d) may be withdrawn by the municipal manager, subject to any rights that may have accrued to any person; and  (e) does not divest the municipal manager of the responsibility for the  exercise of the power or the performance of the duty.’’. | These new sections empower the Minister responsible for water affairs and municipal manager of a municipality to delegate his or her powers under the NEMA to an official in the Department responsible for water affairs or municipality, respectively. |
| Clause 34 | Section 43(1C); (7); (8); (9) | None | ‘‘(1C) Any person may appeal against a decision made by the licensing authority contemplated in section 36(1) or 47A of the National  Environmental Management: Air Quality Act, 1998 (Act No. 39 of  2004), in the case of municipalities, to the municipal council.’’;  ‘‘(7) An appeal under this section suspends an environmental  authorisation, exemption**[,directive,]** or any other decision made in  terms of this Act or any other specific environmental Act, or any  provision or condition attached thereto, except for a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act.  (8) A person who receives a directive in terms of section 28(4) may lodge an appeal against the decision made by the Director-General or any person acting under his or her delegated authority, the Director-General of the department responsible for mineral resources or any person acting under his or her delegated authority, **[or]** the provincial head of department or any person acting under his or her delegated authority or the municipal manager of a municipality or any person acting under his or her delegated authority, to the Minister, the Minister responsible for  mineral resources **[or]**, the MEC or the municipal council, as the case  may be, within thirty days of receipt of the directive, or within such  longer period as the Minister, the Minister responsible for mineral  resources **[or]**, MEC or municipal council may determine.  (9) **[Notwithstanding]** Despite subsection (7) **[and]**, pending the  finalisation of the appeal, the Minister, Minister responsible for mineral resources **[or]**, the MEC or municipal council, as the case may be, may, on application and on good cause shown, direct that **[any part or provision of the directive not be suspended, but only strictly in**  **exceptional circumstances and where there is an imminent threat to human health or the environment.]**—  (a) the environmental authorisation, exemption or any other decision  made in terms of this Act or any other specific environmental management Act, or any provision or condition attached thereto  may wholly or in part, not be suspended; or  (b) the directive or any administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act or part thereof, be suspended.’’. | * The clause inserts subsection (1C) to allow appeals against a decision taken by a NEMAQA licensing authority. In the case of the licensing authority being a municipality the appeal is to the municipal council. * The amendment further clarifies that the submission of an appeal will not automatically suspend a section 28(4) directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment, unless there is good cause shown to the satisfaction of the Minister. * Section 43 does not allow for a person to lodge an appeal in a situation where the power to issue a section 28(4) directive was delegated by the Director-General of environment or mineral resources, a provincial head of department or municipal manager. This clause amends section 43 to ensure that a person may also appeal a section 28(4) directive issued by a delegated official. |
| Clause 35 | Section 49A(1)(bA);(m); (n); (o); (p); (q); (r) | 49A. Offences  (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);  (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);  (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;  (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;  (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;  (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;  (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;  (p) fails to comply with a request of an environmental management inspector. | (1)  ‘‘(bA) fails to comply with any provision identified as an offence in such applicable norm or standard, in which case paragraph (b) does not  apply;’’;  ‘‘(m) hinders or interferes with an environmental management inspector or an environmental mineral and petroleum inspector in the execution of that inspector’s official duties;  (n) pretends to be an environmental management inspector or an  environmental mineral and petroleum inspector, or the interpreter or assistant of such an inspector;  (o) furnishes false or misleading information when complying with **[a**  **request]** an instruction of an environmental management inspector or an environmental mineral and petroleum inspector;  (p) fails to comply with **[a request of]** an instruction from an  environmental management inspector or an environmental mineral and petroleum inspector.’’;  ‘‘(q) fails to comply with section 24P(3), (4), (5), (6) or (10);  (r) fails to comply with section 24PA(1) or (3).’’. | * This clause provides that where a norm and standard specifically provides for a provision to be an offence, then those specific provisions will be considered to be offences, rather than the generic clause currently provided in section 49A(1)(b). * The clause is amended to substitute the criminal offence of failing to comply with a “request” with an “instruction” from an environmental management inspector or environmental mineral and petroleum inspector. * The clause creates new offences of non-compliance with sections 24P(3), (4), (5), (6) or (10) and 24PA(1) and (2) (i.e. failure by a holder of an environmental authorisation, holder of an old order right or holder of an environmental authorisation for mining activities to provide financial provision for progressive rehabilitation, decommissioning, closure and post closure activities.) |
| Clause 36 | Section 49B(1); (3) | 49B. Penalties  (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.  (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.  (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. | ‘‘(1) A person convicted of an offence in terms of section 49A(1)(a), (b), (bA), (c), (d), (e), (f) **[or (g)]**, (g), (q) or (r) is liable to a fine not exceeding R10 million or imprisonment not exceeding 10 years, or to both fine and such imprisonment.’’;  ‘‘(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 not exceeding R1 million or imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.’’. | * Section 49B(3) of NEMA provides that 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. The fact that the monetary penalty is not specified makes the provision subject to the Adjustment of Fines Act, which in effect provides for a ratio of 1 year of imprisonment to R20 000. Some of the offences could be serious, for example, failing to comply with a condition of an exemption, hindering or interfering with an EMI in the execution of their duties etc. It is therefore proposed that the maximum monetary penalty for these offences be specified as R1 million, as is the standard ratio in NEMA and SEMAs. * The clause also provides for penalties relating to the non-compliance with sections 24P(3), (4), (5), (6) or (10) and 24PA(1) and (2) which are new provisions. |
| Clause 37 | Schedule 3 of NEMA | **Schedule 3**  (Section 34)  Part (a): National Legislation   |  |  |  | | --- | --- | --- | | **No. and year of law** | **Short title** | **Relevant provisions** | | Act No. 36 of 1947 | Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 | Section 18(1)(i) in so far as it relates to contraventions of sections 7 and 7bis | | Act No. 71 of 1962 | Animals Protection Act, 1962 | Sections 2(1) and 2A | | Act No. 63 of 1970 | Mountain Catchment Areas Act, 1979 | Section 14 in so far as it relates to contraventions of section 3 | | Act No. 15 of 1973 | Hazardous Substances Act, 1973 | Section 19(1)(a) and (b) in so far as it relates to contraventions of sections 3 and 3A | | Act No. 63 of 1977 | Health Act, 1977 | Section 27 | | Act No. 73 of 1980 | Dumping at Sea Control Act, 1980 | Sections 2(1)(a) and (b) | | Act No. 6 of 1981 | Marine Pollution (Control and Civil Liability) Act, 1981 | Section 2(1) | | Act No. 43 of 1983 | Conservation of Agricultural Resources Act, 1983 | Sections 6 and 7 | | Act No. 2 of 1986 | Marine Pollution (Prevention of Pollution from Ships) Act, 1986 | Section 3A | | Act No. 73 of 1989 | Environment Conservation Act, 1989 | Sections 19(1) and 19A read with 29(3), 20(1) and (9) read with section 29(4), 29(2)(a), 31A and 41A read with 29(3) | | Act No. 18 of 1998 | Marine Living Resources Act, 1998 | Section 58(1) in so far as it relates to contraventions of sections 43(2), 45 and 47, and section 58(2) in so far as it relates to contraventions of international conservation and management measures | | Act No. 36 of 1998 | National Water Act, 1998 | Section 151(1)(i) and (j) | | Act No. 84 of 1998 | National Forests Act, 1998 | Sections 4(8), 7(1), 10(1), 11(2)(b), 15(1)(a) and (b), 17(3) and (4), 20(3), 21(2), 21(5), 24(8), 63(1)(a), (d), (e) and (f), 63(2)(a) and (b), 63(3) to (5), 64(1) and (2) | | Act No. 101 of 1998 | National Veld and Forest Fire Act, 1998 | Sections 10(2), 12(1), 12(2)(b), 12(14)(a), (4), 17(1), 18(1)(a), 18(2), 18(3)(b), 18(4),18(4)(b),  (25(2)(a) to (e), 25(5), (6) and (7) | | Act No. 107 of 1998 | National Environmental Management Act, 1998 | Section 49A | | Act No. 25 of 1999 | National Heritage Resources Act, 1999 | Sections 27(18) and (22), (23)(b), 28(3), 29(10), 32(13),(15), (16), (17), (19) and (20) 33(1) and (2), 34(1), 35(3), (4), (6) and (7)(a) 36(3), 44(2) and (3), 50(5) and (12) and 51(8) | | Act No. 57 of 2003 | National Environmental Management : Protected Areas Act, 2003 | Sections 45(1), 46(1), 47(2), 47(3), 48(1), 50(5), read with sections 89(1), 89(1) (b), (c) and (d) and 50A | | Act No. 10 of 2004 | National Environmental Management : Biodiversity Act, 2004 | Sections 57(1) read with 101(1)(a), 65(1) read with 101(1)(a), 67(2) read with 101(1)(a), 71(1) read with 101(1)(a), 81(1) | | Act No. 39 of 2004 | National Environmental Management : Air Quality Act, 2004 | Sections 51(1)(a) to (h), 51(2) and (3) | | Act No. 59 of 2008 | National Environmental Management : Waste Act, 2008 | Sections 15(1) and (2), read with 67(1)(a), 16(1)(c), (d), (e), (f) read with 67(1)(a). 20 (a) and (b), read with 67(1)(a), 26(1) (a) and (b), read with 67(1)(a), 38 (2) and (3), read with 67(1)(a), 17(2) read with 67(1)(a), 18(1) read with 67(1)(a), 21 read with 67(1)(b), 22(1) read with 67(1)(b), 24 read with 67(1)(b), 27(2) read with 67(1)(b), 36(5) read with 67(1)(b), 40(1) read with 67(1)(b), 67(1) (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), 67(2)(a), (b), (c), (d), (e) | | Act No. 24 of 2008 | National Environmental Management : Integrated Coastal Management Act, 2008 | Sections 69 read with 79(1) (a), 70(1) read with 79(1) (b), (c), (d), (e), 79(1) (f), (g), (h), (i), 79(2) (a), (b), (c), 79(3) (a), (b), (c), 79(4) (a), (b) |   Part (b): Provincial Legislation   |  |  |  | | --- | --- | --- | | **No. and year of law** | **Short title** | **Relevant provisions** | | Ordinance No. 8 of 1969 | Orange Free State Conservation | Section 40(1)(a) in so far as it relates to contraventions of sections 2(3), 14(2), 15(a), 16(a) and 33 | | Ordinance No. 9 of 1969 | Orange Free State Townships | Section 40(1)(a)(ii) | | Ordinance No. 15 of 1974 | Natal Nature Conservation | Section 55 in so far as it relates to section 37(1), to section 49 in respect of specially protected game and to section 51 in respect of specially protected game, section 109 in so far as it relates to section 101, to section 102 and to section 104, section 154 in so far as it relates to section 152; section 185 in so far as it relates to section 183, and section 208 in so far as it relates to section 194 and to section 200 | | Ordinance No. 19 of 1974 | Nature and Environmental Conservation Ordinance | Section 86(1) in so far as it relates to contraventions of sections 41(1)(b)(ii) and (c) to (e), 52(a), 57(a), 58(b) and 62(1) | | Ordinance No. 12 of 1983 | Gauteng Nature Conservation | Sections 16A, 17 to 45, 47, 48, 51, 52, 54, 66, 71 to 78, 79, 80, 81, 83, 84, 85, 87, 88 to 93, 95, 96 98, 99, 100 and 107 | | Ordinance No. 15 of 1985 | Cape Land Use Planning | Section 46(1) in so far as it relates to sections 23(1) and 39(2) | | Ordinance No. 15 of 1986 | Transvaal Town Planning and Townships | Sections 42, 93 and 115 | | Act No. 5 of 1998 | KwaZulu Natal Planning and Development | Section 48 | | Act No. 29 of 1992 | KwaZulu Nature Conservation | Section 67 in so far as it relates to sections 59(1), 59(2), 60(1) and 62(1); section 86 in so far as it relates to sections 76, 77 and 82; and section 110 in so far as it relates to section 109 | | Schedule 3 to the National Environmental Management Act, 1998, is hereby amended—  (a) by the repeal in part (a) of line 5;  (b) by the substitution in line 17 of part (a) for column 3 the following column:  ‘‘Section 45(1), 46(1), 47(2), 47(3), 48(1), 48A(1), 50(5), read with  sections 89(1)(b), (c) and (d) and 50A’’;  (c) by the substitution in line 21 of part (a) for column 3 of the following column: ‘‘Sections 7B, 7C read with 79(1)(j), (k), 13(3) read with 79(1)(l), 13(1A) read with 79(2)(j), 79(2)(k), 15 read with 79(2)(d), 59 read with 79(2)(e), 60 read with 79(2)(a), 65 read with 79(1)(m), 69 read with 79(1)(a), 70(1) read with 79(1)(b), (c), (d), (e), 79(1)(f), (g), (h), (i), **[79(2)(a), (b), (c), 79(3)(a), (b), (c), 79(4)(a), (b)]** 92 read with 79(1)(n), 95 read with 79(2)(h), 79(2)(i), 96 read with 79(1)(o), 79(2)(a)’’; and  (d) by the substitution in line 4 of part (b) for column 3 of the following column:  ‘‘Section 86(1) in so far as it relates to contraventions of sections 26, **[41]** 44(1)(b)(ii) and 44(1)(c) to (e), 52(a), 57(a), 58(b) and 62(1)’’. | Amends Schedule 3 to provide for textual amendments to ensure the citation of appropriate offences listed in certain national and provincial legislation.  Section 34 read with Schedule 3 provides a legal framework for the State to request a court of law to, inter alia, enquire and assess the monetary value of any loss or damage caused to the environment as a consequence of the offence committed. The assessment may result in a court order either awarding damages or compensation or a fine equal to the amount so assessed, or remedial measures to be undertaken by a convicted person. |

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| **NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 2003 (NEMPAA)** | | | | |
| Clause 38 | Section 48(1)(b); (2); (3); (4); (5); (6); (8) | **Part 4**  **Restrictions**  **48. Prospecting and mining activities in protected area**  (1) Despite other legislation, no person may conduct commercial prospecting, mining, exploration, production or related activities -  (a) in a special nature reserve, national park or nature reserve;  [Para. (a) substituted by s. 18 of Act 31/2004]  (b) in a protected environment without the written permission of the Minister and the Cabinet member responsible for minerals and energy affairs; or  (c) in a protected area referred to in section 9(b), (c) or (d).  (2) The Minister, after consultation with the Cabinet member responsible for mineral and energy affairs, must review all mining activities which were lawfully conducted in areas indicated in subsection (1)(a), (b) and (c) immediately before this section took effect.  (3) The Minister, after consultation with the Cabinet member responsible for mineral and energy affairs, may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment or for the environmental protection of the area concerned.  (4) When applying this section, the Minister must take into account the interests of local communities and the environmental principles referred to in section 2 of the National Environmental Management Act, 1998. | (1) preceding (a):  ‘‘Despite other legislation, no person may conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production—’’;  (b) ‘‘(b) in a protected environment without the written permission of the Minister **[and the Cabinet member responsible for mineral and energy affairs]**; or  ‘‘(2) The Minister, after consultation with the Cabinet member  responsible for mineral resources **[and energy affairs]**, must review all mining activities which were lawfully conducted in areas indicated in subsection (1) (a), (b) and (c) immediately before this section took effect.  (3) The Minister, after consultation with the Cabinet member  responsible for mineral resources **[and energy affairs]**, may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment  or for the environmental protection of the area concerned.  (4) A person who wishes to apply for permission under subsection  (1)(b) to conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production, must immediately on receipt of an environmental authorisation in terms of the National Environmental Management Act, submit his or her  application in the prescribed manner to the Minister, together with—  (a) any information, reports, studies conducted or consultation done for  the environmental impact assessments process in respect of the activities under consideration in terms of Chapter 5 of the National  Environmental Management Act; and  (b) any appeal lodged in respect of the environmental authorisation.  (5) The Minister, when exercising his or her power in terms of  subsection (1)(b)—  (a) must take into account—  (i) the principles contained in section 2 of the National  Environmental Management Act;  (ii) any information, reports, studies conducted or consultation  done for the environmental impact assessments process in  respect of the activities under consideration in terms of  chapter 5 of the National Environmental Management Act;  (iii) any appeal contemplated in subsection (4)(b);  (iv) the ecological integrity of the protected environment;  (b) may, amongst others, take into account-  (i) the potential impact on ecological functioning and ecosystem  services provided by the protected environment to society;  (ii) whether the protected environment is a biodiversity priority  area for species; and  (iii) whether the protected environment is a strategic water  resource area;  (6) Despite subsection (4), the Minister may require the person who  applies for the permission under subsection (1)(b), to provide any further information as he or she may deem necessary before making a decision. | Amends subsection (4) to provide for the criteria under which the written permission contemplated in section 48(1)(b) may be issued by the Minister. The Minister may require any further information that he or she may deem necessary before making a decision. |
| Clause 39 | Section 57(1)(c) | **57. Composition**  (1) South African National Parks is governed by a board consisting of -  (a) no fewer than nine and no more than 12 members appointed in terms of section 59;  (b) the Director-General or an official of the Department designated by the Director-General; and  (c) the Chief Executive Officer. | (1) ‘‘(c) the Chief Executive Officer and the Chief Financial Officer.’’. | Currently, section 57 of the NEMPAA only allows for the Chief Executive Officer of the South African National Parks to be on its Board. However, in line with the recommendations of the third Report on Governance in South Africa, 2009 (King III), the Chief Financial Officer should also be on the Board. Provides clarity that the Chief Financial Officer must be a member of the Board. |
| Clause 40 | Section 89(1)(a); (c); (e); (2); (2A) | 89. Offences and penalties  (1) A person is guilty of an offence if that person-  (a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A) , 48(1), 49A(5)(b), 50(5) or 55(2)(fA);  (b) contravenes a notice issued under section 51;  (c) hinders or interferes with a management authority or a member or staff member of a management authority in the performance of official duties; or  (d) falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer.  (2) A person convicted of an offence in terms of subsection (1) is liable, in the case of a first conviction, to a fine not exceeding R5 million or imprisonment for a period not exceeding five years and, in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years or in both instances to both a fine and such imprisonment.  (3) Contravention of or failure to comply with any provision of a regulation made under section 86 or 87 is an offence.  (4) Notwithstanding anything to the contrary in any other law, a magistrate’s court shall have jurisdiction to impose any penalty prescribed by this Act. | (1) ‘‘(a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A), 48(1), 48A(1), **[49A(5)(b),]** or 50(5) **[or 55(2)(fA)]**.’;  Delete ‘‘or’’ at the end of paragraph (c);  substitution in subsection (1) for the fullstop at the end of paragraph (d)  of a semi-colon;  ‘‘(e) contravenes or fails to comply with a rule made in terms of section  55(2)(fA).’’;  ‘‘(2) A person convicted of an offence in terms of subsection (1)(a), (b), (c) or (d) is liable, in the case of a first conviction, to a fine not exceeding R5 million or imprisonment for a period not exceeding five years and, in the case of a second or subsequent conviction, to a fine not  exceeding R10 million or imprisonment for a period not exceeding ten years or in both instances to both a fine and such imprisonment.’’;  ‘‘(2A) A person convicted of an offence in terms of subsection (1)(e) is liable to the penalties prescribed pursuant to section 55(2)(fA).’’. | Section 89 currently does not make it an offence where a person undertakes a restricted activity in contravention of NEMPAA. Amends section 89 to insert section 89(1)(e) and (2A), and thus creating an offence for any person to undertake a restricted activity in contravention of NEMPAA. The clause also rectifies incorrect references to offences within NEMPAA |

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| **NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (NEMBA)** | | | | |
| Clause 41 | Section 1 definitions: control | “**control”,** in relation to an alien or invasive species, means-  (a) to combat or eradicate an alien or invasive species; or  (b) where such eradication is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species; | ‘‘ ‘control’, in relation to **[an alien or]** invasive species, means—  (a) **[to combat or eradicate an alien or invasive species]** the systematic destruction of all specimens of invasive species from within a specified area of, or the whole of, the Republic; or  (b) where such **[eradication]** systematic destruction is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of **[an alien or]** invasive species; | Amends the definition of ‘‘control’’, |
| Eradicate | None | ‘‘ ‘**eradicate**’ means the complete removal of invasive species from  within the Republic, including all living parts of that species;’’ | Inserts a new definition of ‘‘eradicate’’ in order to provide clarity on the actions, measures or methods to be undertaken when dealing with listed invasive species. |
| well-being | None | ‘‘ ‘**well-being’** means a state where the living conditions of a faunal  biological resource are conducive to its health;’’. | Inserts a new definition of ‘‘well-being’’ in order to provide clarity on the meaning of the expression. |
| Clause 42 | Section 2(a)(ii) | The objectives of the Act are—  (a) within the framework of the National Environmental Management Act, to provide for-  …  (ii) the use of indigenous biological resources in a sustainable manner; and | (2)(a) ‘‘(ii) the use of indigenous biological resources in a **[sustainable]** manner that is  ecologically sustainable, including taking into account the well-being of any faunal biological resource involved; and’’. | Extends the scope of the objects of the Act to clarify that the object of the Act is to provide that the use of indigenous biological resources is ecologically sustainable, including taking into account the well-being of any faunal biological resource. |
| Clause 43 | Section 3(2) | None | ‘‘(2) The Minister may, by notice in the Gazette, specify the species and the circumstances under which the State remains the custodian of faunal biological resources that escape from land under its control.’’. | * In terms of common law, all wild animals are regarded as *res nullius*, meaning it belongs to everybody, but belongs to nobody in particular. The implication of this common law principle is that, once a wild animal escapes from the land on which it occurred, the owner of such land loses ownership of the wild animal that has escaped. The Game Theft Act, 1991 (Act No. 105 of 1991), changed the common law status of wild animals, in that it makes provision for a person to retain ownership of a wild animal that escapes from land that it adequately fenced, and in respect of which a certificate of adequate enclosure has been issued by the Premier of the province in which the land is situated. The implication is that where wild animals escape from inadequately fenced state-owned land, the state is no longer the custodian of those animals. The clause provides that the Minister may specify species and circumstances under which the State remains the custodian in such cases. * This clause seeks to address this anomaly and clarify that in order for the state to give full effect to section 24 of the Constitution of the Republic of South Africa, 1996, the State must be in a position to remain the custodian of wild animals that escape from land under its control. The proposed amendment also gives effect to the judgement in Eastern Cape and Tourism Agency v Medbury (Pty) t/a Crown River Safari and Another (1466/2012) [2016] ZAECGHC 26, in which the High Court held that this issue must be legislated and not be relied on by developing the common law by way of jurisprudence. |
| Clause 44 | Section 9A | None | **Prohibition of certain activities**  **9A.** The Minister may, by notice in the Gazette and subject to such  conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of a faunal biological resource.’’. | Inserts a new section 9A to empower the Minister to prohibit, by notice in the Gazette, any activity that may negatively impact on the well-being of a faunal biological resource. Such a prohibition will be subject to such conditions as the Minister may specify in the notice. A public consultation process must be undertaken before the Minister publish the final notice. |
| Clause 45 | Section 13(1)(c) | 13. Composition  (1) The Institute is governed by a Board consisting of-  (a) not fewer than seven and not more than nine members appointed in terms of section 15;  (b) the Director-General or an official of the Department designated by the Director-General; and  (c) the Chief Executive Officer of the Institute. | ‘‘(c) the Chief Executive Officer and Chief Financial Officer of the Institute.’’ | Section 13 of the NEMBA only allows for the Chief Executive Officer of the South African National Biodiversity Institute to be on its Board. However, in line with the recommendations of King III, the Chief Financial Officer should also be on the Board. The amendment to section 13 is intended to provide clarity that the Chief Financial Officer must be a member of the Board. |
| Clause 46 | Section 73(2)(a)&(b); (2A) | (2) A person who is the owner of land on which a listed invasive species occurs must-  (a) notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;  (b) take steps to control and eradicate the listed invasive species and to prevent it from spreading; and  (c) take all the required steps to prevent or minimise harm to biodiversity.  No current subsection (2A) | Deletion of (2)(a)  (2)‘‘(b) take steps to control **[and]** or eradicate the listed invasive species  **[and to prevent it from spreading]** as prescribed by the Minister;  and’’;  ‘‘(2A) The Minister may prescribe circumstances under which a  competent authority must be notified in writing of the presence or  occurrence of a listed invasive species.’ | * Contains consequential amendments to the revised definitions of ‘control’ and ‘eradicate’. * It empowers the Minister to prescribe measures to control or eradicate listed invasive species. Categorisation of species in the regulations is not taken into account. All species are treated the same. This amendment allows the Minister to determine measures suitable for the different species. In addition, it remedies an impractical provision which requires every land owner or controller to know whether or not they have invasive species on their land. Potentially most people may have some or other invasive plant in their gardens and not know it. However, the more dangerous invasive species (from a health or environmental perspective) should be addressed and the Minister is given the power to prescribe the circumstances in which give written notification of invasive species on land or is necessary. |
| Clause 47 | Section 75(1); (2); (3); (6) | **75. Control and eradication of listed invasive species**  (1) Control and eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.  (2) Any action taken to control and eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.  (3) The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.  (4) The Minister must ensure the coordination and implementation of programmes for the prevention, control or eradication of invasive species.  (5) The Minister may establish an entity consisting of public servants to coordinate and implement programmes for the prevention, control or eradication of invasive species. | ‘‘(1) Control **[and]** or eradication of a listed invasive species must be  carried out by means of methods that are appropriate for the species  concerned and the environment in which it occurs.  (2) Any action taken to control **[and]** or eradicate a listed invasive  species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.  (3) The methods employed to control **[and]** or eradicate a listed  invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or reestablishing  itself in any manner.’’  ‘‘(6) The Minister must provide education and awareness to local  communities affected by listed invasive species.’’ | Inserts a new subsection (6) in section 75 empowering the Minister to provide education and awareness to local communities affected by listed invasive species. |
| Clause 48 | Section 97(1) addition of (aA) | (1) The Minister may make regulations relating to-  … | (1)‘‘(aA) the well-being of a faunal biological resource;’’. | The clause extends the power of the Minister to provide that the Minister may make regulations in relation to the well-being of a faunal biological resource. |
| Clause 49 | Section 99(1); preceding (2)(a); (2)(b) | 99. Consultation  (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister must follow an appropriate consultative process in the circumstances.  (2) The Minister must, in terms of subsection (1)-  (a) consult all Cabinet members whose areas of responsibility may be affected by the exercise of the power;  (b) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the MEC for Environmental Affairs of each province that may be affected by the exercise of the power; and  (c) allow public participation in the process in accordance with section 100. | ‘‘(1) Before exercising a power which, in terms of a provision of this  Act, must be exercised in accordance with this section and section 100, the Minister or MEC for Environmental Affairs must follow an  appropriate consultative process in the circumstances.’  Preceding (2)(a): ‘‘The Minister or MEC for Environmental Affairs, as the case may be, must, in terms of subsection (1)—’’;  (2)‘‘(b) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the MEC for Environmental Affairs of each province that may be affected by the  exercise of the power or, in the case of an MEC for Environmental  Affairs, he or she must consult the Minister.’’. | Provides clarity that the MEC for environmental affairs in each province must also follow the consultative process set out in sections 99 and 100 of the NEMBA when exercising a power under the Act. |
| Clause 50 | Section 100 (1) preceding (a); (a); (2)(a); (3); (4) | 100. Public participation  (1) The Minister must give notice of the proposed exercise of the power referred to in section 99-  (a) in the Gazette; and  (b) in at least one newspaper distributed nationally, or if the exercise of the power may affect only a specific area, in at least one newspaper distributed in that area.  (2) The notice must-  (a) invite members of the public to submit to the Minister, within 30 days of publication of the notice in the Gazette, written representations on, or objections to, the proposed exercise of the power; and  (b) contain sufficient information to enable members of the public to submit meaningful representations or objections.  (3) The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.  (4) The Minister must give due consideration to all representations or objections received or presented before exercising the power. | Preceding (1)(a): ‘‘The Minister or MEC for Environmental Affairs must give notice of the proposed exercise of the power referred to in section 99—’’;  ‘‘(a) in the Gazette or Provincial Gazette, as the case may be; and’’;  (2) ‘‘(a) invite members of the public to submit to the Minister or MEC for  Environmental Affairs, within 30 days of publication of the notice  in the Gazette or Provincial Gazette, as the case may be, written  representations on, or objections to, the proposed exercise of the  power; and’’;  ‘‘(3) The Minister or MEC for Environmental Affairs may in  appropriate circumstances allow any interested person or community to  present oral representations or objections to the Minister or MEC for  Environmental Affairs or a person designated by the Minister or MEC for Environmental Affairs.;  (4) The Minister or MEC for Environmental Affairs must give due  consideration to all representations or objections received or presented  before exercising the power.’’. | Provides clarity that the MEC for environmental affairs in each province must also follow the consultative process set out in sections 99 and 100 of the NEMBA when exercising a power under the Act. |

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| **National Environmental Management: Air Quality Act, 2004 (NEMAQA)** | | | | |
| Clause 51 | Section 13(1) | (1) The Minister must, by notice in the Gazette, establish the National Air Quality Advisory Committee in terms of this Act. | ‘‘(1) The Minister **[must]** may, by notice in the Gazette, establish the National Air Quality Advisory Committee in terms of this Act.’’. | Provides the Minister with a discretion to establish a National Air Quality Advisory Committee |
| Clause 52 | Section 22A | 22A. Consequences of unlawful conduct of listed activity resulting in atmospheric emission  (1) Section 24G of the National Environmental Management Act, 1998, as amended, applies to the commencement, without an environmental authorisation, of a listed activity or the activity specified in item 2 in Listing Notice 1 and items 5 and 26 in Listing Notice 2, relating to air quality in terms of Chapter 5 of the National Environmental Management Act, 1998.  (2) Subsections (4) to (10) are applicable to the operating, without a provisional registration or registration certificate, of a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965, at any time prior to the commencement of this Act.  (3) Subsections (4) to (10) are applicable to the conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, of an activity listed in terms of section 21 of this Act which results in atmospheric emission.  (4) On application by a person who conducted an activity contemplated in subsection (2) or (3), the licensing authority may direct the applicant to-  (a) immediately cease the activity pending a decision on the application submitted in terms of this section;  (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;  (c) remedy any adverse effect of the activity on the environment, including the ambient air, and human health;  (d) cease, modify or control any act, activity, process or omission causing atmospheric emission;  (e) eliminate any source of atmospheric emission;  (f) compile a report containing-  (i) a description of the need and desirability of the activity;  (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health 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;  (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment, including the ambient air, and human health of the activity;  (iv) 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 issues raised have been addressed;  (v) an environmental management programme; or  (g) provide such other information or undertake such further studies as the licensing authority may deem necessary.  (5) The licensing authority must consider any reports or information submitted in terms of subsection (4) and thereafter may-  (a) refuse to issue an atmospheric emission licence;  (b) issue an atmospheric emission licence to such person to conduct the activity subject to such conditions as the licensing authority may deem necessary, which atmospheric emission licence shall only take effect from the date on which it has been issued; or  (c) direct the applicant to provide further information or take further steps prior to making a decision in terms of paragraphs (a) or (b).  (6) The licensing authority may as part of the decision contemplated in subsection (5), direct a person to-  (a) rehabilitate the environment within such time and subject to such conditions as the licensing authority may deem necessary;  (b) prevent or eliminate any source of atmospheric emission from the activity within such time and subject to such conditions as the licensing authority may deem necessary; or  (c) take any other steps necessary under the circumstances.  (7) A person contemplated in subsection (4) must pay an administrative fine, which may not exceed R5 million and which must be determined by the licensing authority, before the licensing authority may act in terms of subsection 5(a) or (b).  (8) In considering a decision contemplated in subsection (5)(a) or (b), the licensing authority may take into account whether or not the applicant complied with any directive issued in terms of subsections (4) or (5)(c).  (9) The submission of an application in terms of subsection (4) or the issuing of an atmospheric emission licence in terms of subsection 5(b) or the payment of the administrative fine in terms of subsection (7) shall-  (a) in no way derogate from the environmental management inspector's or the South African Police Services' authority to investigate any transgression of this Act; or  (b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; and  (c) not indemnify the applicant from liability in terms of section 5l(l)(a) for having contravened section 22.  (10) If, at any stage after the submission of an application in terms of subsection (4), it comes to the attention of the licensing authority, that the applicant is under criminal investigation for the contravention of or failure to comply with section 22, the licensing authority may defer a decision to issue an atmospheric emission licence until such time that the investigation is concluded and-  (a) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure;  (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. | ‘‘Consequences of unlawful conduct of listed activity resulting in  atmospheric emission  22A. (1) Upon application for an atmospheric emission licence by a  person who—  (a) operated, at any time prior to the commencement of this Act, a  scheduled process in terms of the Atmospheric Pollution Prevention  Act, without a provisional registration or registration certificate; or  (b) conducted or is conducting, without a provisional atmospheric  emission licence or an atmospheric emission licence, an activity listed  in terms of section 21 which results in atmospheric emission,  the relevant licensing authority must fine the applicant an administrative  fine which may not exceed R10 million before the application for an  atmospheric emission licence may be considered.  (2) An application contemplated in subsection (1) must be submitted in  accordance with the requirements contained in section 37.  (3) On application contemplated in subsection (1), the licensing authority must direct the applicant to—  (a) immediately cease the activity pending a decision on the application submitted in terms of this section;  (aA) undertake public participation, as prescribed;  (b) investigate, evaluate and assess the impact of the activity on the  environment, including the ambient air and human health;  (c) remedy any adverse effect of the activity on the environment,  including the ambient air and human health;  (d) cease, modify or control any act, activity, process or omission causing atmospheric emission;  (e) eliminate any source of atmospheric emission;  (f) compile a report containing—  (i) a description of the need and desirability of the activity;  (ii) an assessment of the nature, extent, duration and significance  of the consequences for or impacts on the environment, including the ambient air, and human health 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;  (iii) a description of mitigation measures undertaken or to be  undertaken in respect of the consequences for, or impacts on,  the environment, including the ambient air, and human health;  (iv) a description of the public participation process followed  during the course of compiling the report, including all comments received from the interested and affected parties and an indication of how issues raised have been addressed; and  (v) an environmental management programme; and  (g) provide such other information or undertake such further studies as the licensing authority may deem necessary.  (4) If it comes to the attention of the licensing authority that the applicant  is under criminal investigation for the contravention of, or failure to comply with section 22, the licensing authority may defer a decision to issue a provisional atmospheric emission licence or an atmospheric emission licence until such time that the investigation is concluded and—  (a) the National Prosecuting Authority has decided not to institute  prosecution in respect of the contravention of, or failure to comply  with, section 22;  (b) the applicant concerned is acquitted or found not guilty after  prosecution in respect of the contravention of, or failure to comply  with, section 22; or  (c) the applicant concerned has been convicted by a court of law of an offence in respect of the contravention of, or failure to comply with, section 22 and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.  (5) The submission of an application or the issuing of a provisional  atmospheric emission licence or an atmospheric emission licence in terms of this section, or the payment of an administrative fine in terms of  subsection (1), must—  (a) in no way derogate from the authority of the environmental  management inspector or the South African Police Service, to  investigate any transgression of this Act;  (b) in no way derogate from the National Prosecuting Authority’s legal authority to institute any criminal prosecution; or  (c) not indemnify the applicant from liability in terms of section  51(1)(a).’’. | * This clause substitutes section 22A to provide for the consequences of unlawful conducting of listed activities. The clause will address two scenarios, namely, to provide for those activities that were operated without a registration certificate under the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965), and those activities that no atmospheric emission licence under NEMAQA. * This clause provides for the process and procedures to be followed in addressing the non-compliance with the law. * The clause further empowers the Minister to direct an applicant to undertake certain action, including undertaking public participation as prescribed under the environmental impact assessment regulations. * The clause sets the administrative fine to a maximum of R10 million |
| Clause 53 | Section 36(2A); (5)(d); (8) | No current section 36(2A)  (d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, or the Minister has been identified as the competent authority; or  (8) The Minister and the licensing authority contemplated in subsections (1) to (4) may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister or the relevant licensing authority contemplated in subsections (1) to (4). | ‘‘(2A) A provincial organ of state must be regarded as the licensing  authority if a listed activity falls within the boundaries of more than one metropolitan municipality, or within the boundaries of more than one district municipality, and the relevant municipalities agreed thereto in writing.’  (5)‘‘(d) the listed activity relates to the activities listed in terms of section  24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, **[or]** and the Minister has been identified as the competent authority;’’  ‘‘(8) The Minister and the licensing authority contemplated in  subsections (1) to (4), or the MEC and the licensing authority  contemplated in subsections (1) to (5), may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister, MEC or the relevant licensing authority contemplated in subsections (1) to **[(4)](**5).’’ | * Provides clarity that a province must be regarded as a licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality. Section 36(5) identifies the Minister as the licensing authority, in certain instances, to issue atmospheric emission licences for air quality activities. Section 36(5)(d) is intended to facilitate the issuing of an integrated environmental authorisation where the Minister is also a competent authority for the environmental impact assessment activities, and licensing authority for the waste management activities. The current provision appears to suggest that the Minister will always be the licensing authority, whereas the intention is to provide that the Minister is only the licensing authority if the Minister is also identified as such in terms of NEMA and NEMWA. * The clause amends section 36(5)(d) to provide for textual amendments to clarify that the Minister is only the licensing authority if the Minister is identified as such in terms of NEMA, NEMWA and NEMAQA. Section 36(8) has been amended to extend the scope to also allow for co-operative agreement to be reached between the Municipality, MEC and the Minister on who the licensing authority will be on any application. |
| Clause 54 | Section 47A | None | Revocation or suspension of atmospheric emission licences  47A. (1) The licensing authority may, by written notice to the holder of an atmospheric emission licence, revoke or suspend that licence if the  licensing authority has evidence that the licence holder has contravened a provision of this Act or a condition of the licence and such contravention may have, or is having, a significant detrimental effect on the environment,  including health impacts.  (2) The licensing authority must before exercising the power in terms of subsection (1), in writing—  (a) consult organs of state whose areas of responsibility may be affected by the exercise of the power; and  (b) afford the holder of the atmospheric emission licence an opportunity to make a submission in respect of the intended revocation or suspension, which submission must be accompanied by an atmospheric impact report as contemplated in section 30 of this Act.  (3) The licencing authority, when consulting in terms of subsection (2), must indicate the time period within which—  (a) the organs of state must submit comments; and  (b) the holder or the atmospheric emission licence must make his or her submission to the licencing authority.”. | * Inserts a new section 47A to provide the licensing authority with the legal power to revoke or suspend an atmospheric emission licence subject to the legal requirements set out in the section. * The clause also sets out the procedure to be followed before a licensing authority may revoke or suspend the licence. |
| Clause 55 | Section 53(k) | The Minister may make regulations that are not in conflict with this Act, regarding –  …  (k) appeals against decisions of officials in the performance of their functions in terms of the regulations; | Deletion of paragraph (k) | Section 53(k) of the NEMAQA appears to limit Minister’s scope to the development of appeal regulations to process appeals against decisions of officials in the performance of their functions in terms of regulations. Most of the decisions are taken in terms of the Act itself or in terms of subordinate legislation other than regulations. The empowering provision for the development of appeal regulations under section 43 of the NEMA appears to be wider (appeals against a decision taken by any person acting under a power delegated by the Minister or MEC under NEMA or a SEMA). This clause deletes paragraph (k) in section 53 to ensure that appeal regulations developed under section 43 of NEMA are also applicable to appeals against air quality decisions. |

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| **National Environmental Management: Integrated Coastal Management Act, 2008 (NEMICMA)** | | | | |
| Clause 56 | Section 60(1)(a) | 60. Repair or removal of structures within coastal zone  (1) The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure -  (a) is having or is likely to have an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or  (b) has been erected, constructed or upgraded in contravention of this Act or any other law. | Preceding (1)(a); ‘‘The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that  structure either prior to or after the commencement of this Act—’’;  ‘‘(a) has had, is having or is likely to have, an adverse effect on the  coastal environment by virtue of its existence, because of its  condition or because it has been abandoned; or’’. | Section 60 has been amended to allow for the issuing of notices for the removal of structures that were erected prior to the commencement of the Act. This amendment clarifies the retrospective effect of section 60. Currently retrospectivity is implied, and its application may leave some doubt. This is also in line with section 59 of the Act, which expressly enables retrospective application. |
| Clause 57 | Chapter 9 | Chapter 9 of the NEMICMA (sections 74-78) deals with appeals under this Act. | Repealed. | Chapter 9 of the NEMICMA deals with appeals under this Act. It is the only Specific Environmental Management Act (SEMA) under the umbrella NEMA that has its own appeal provisions, despite the NEMA appeal provisions, specifically apply to all SEMAs. To streamline and avoid duplication, the Appeal chapter in the NEM:ICMA is being repealed. |

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| **National Environmental Management: Waste Act, 2008 (NEMWA)** | | | | |
| Clause 58 | Section 1 definitions:  associated structures and infrastructure | “**associated structures and infrastructure**”, when referred to in Schedule 1, means any building or infrastructure that is necessary for the functioning of a facility or waste management activity or that is used for an ancillary service or use from the facility; | ‘‘**‘associated structures and infrastructure’ [, when referred to in Schedule 1,]** means any building or infrastructure that is necessary for the functioning of a facility or waste management activity or that is used for an ancillary service or use from the facility;’’; | Substitutes the existing definition with the new proposed definition. These definitions are removed from Schedule 3 and inserted in section 1 of the Act. |
| building and demolition waste | None | ‘‘‘**building and demolition waste’** means waste, excluding hazardous  waste, produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition; | This definition is removed from Schedule 3 and inserted in section 1 of the Act. |
| business waste | None | **‘business waste’** means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes;’’; | This definition is removed from Schedule 3 and inserted in section 1 of the Act. |
| domestic waste | None | ‘‘**‘domestic waste’** means waste, excluding hazardous waste, that  emanates from premises that are used wholly or mainly for residential,  educational, health care, sport or recreation purposes;’’; | This definition is removed from Schedule 3 and inserted in section 1 of the Act. |
| general waste | None | ‘‘**‘general** waste’ means waste that does not pose an immediate hazard  or threat to health or to the environment, and includes—  (a) domestic waste;  (b) building and demolition waste;  (c) business waste;  (d) inert waste; or  (e) any waste classified as non-hazardous waste in terms of the  regulations made under section 69;’ | This definition is removed from Schedule 3 and inserted in section 1 of the Act. |
| hazardous waste | None | ‘‘‘**hazardous waste’** means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;’ | This definition is removed from Schedule 3 and inserted in section 1 of the Act. |
| inert waste | None | ‘‘**‘inert waste’** means waste that—  (a) does not undergo any significant physical, chemical or biological  transformation after disposal;  (b) does not burn, react physically or chemically biodegrade or  otherwise adversely affect any other matter or environment with  which it may come into contact; and  (c) does not impact negatively on the environment, because of its  pollutant content and because the toxicity of its leachate is  insignificant.’’ | This definition is removed from Schedule 3 and inserted in section 1 of the Act. |
| Recovery | **“recovery”** means the controlled extraction or retrieval of any substance, material or object from waste; | ‘‘‘**recovery**’ means the controlled extraction or retrieval of [any  substance,] energy, or material [or object] from waste;’’; |  |
| residue deposit | None | ‘‘‘**residue deposit’** has the meaning assigned to it in section 1 of the  Mineral and Petroleum Resources Development Act, 2002; | inserts new definitions of ‘‘residue deposit’’ and ‘‘residue stockpile’’ in alignment with NEMA and the Mineral and Petroleum Resources Development Act, 2002. |
| residue stockpile | None | ‘**residue stockpile’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;’’ | inserts new definitions of ‘‘residue deposit’’ and ‘‘residue stockpile’’ in alignment with NEMA and the Mineral and Petroleum Resources Development Act, 2002. |
| waste (a); (b); (b)(i), (2) & (iii) | **“waste”** means-  (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to this Act; or  (b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the Gazette,  but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste-  (i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;  (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered;  (iii) where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or  (iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste. | ‘‘(a) any substance, material or object, that is unwanted, rejected,  abandoned, discarded or disposed of, or that is intended or required  to be discarded or disposed of, by the holder of that substance,  material or object, whether or not such substance, material or object  can be re-used, recycled or recovered **[and includes all wastes as defined in Schedule 3 to this Act]**; or  (b) any other substance, material or object **[that is not included in**  **Schedule 3]** that may be defined as a waste by the Minister by  notice in the Gazette,’’;  (b)‘‘(i) once an application for its re-use, recycling or recovery has been  approved **[or, after such approval, once it is, or has been re-used,**  **recycled or recovered]** and the waste or portion of waste is re-used,  recycled or recovered in accordance with the conditions in the  approval;  insert “or” at the end of (b)(ii);  deletion of (b)(iii). | The clause provides for textual amendments to the definition of ‘‘waste’’ so as to provide legal clarity on the interpretations and to prevent unintended consequences. |
| Clause 59 | Section 4(bA) | None | ‘‘(bA) residue deposits and residue stockpiles that are regulated under the National Environmental Management Act;’’. | Provides clarity that residue stockpiles and residue deposits are no longer regulated under NEMWA, but under NEMA. |
| Clause 60 | Section 34A(1); (3) | **34A. Establishment of Waste Management Bureau**  (1) An implementation Bureau dealing with waste management to be known as the “Waste Management Bureau” is hereby established, within the Department, as a juristic person.  (2) The Bureau must comply with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).  (3) In the event of absence of a functional Bureau or a Chief Executive Officer, the powers and duties of the Bureau revert to the Director-General of the Department contemplated in section 34G(1), who, in such a case, must exercise those powers and perform those duties until the Bureau is functional or a Chief Executive Officer is appointed. | ‘‘(1) An implementation Bureau dealing with waste management to be known as the ‘‘Waste Management Bureau’’ is hereby established**[,within the Department,]** as a juristic person.’’  ‘‘(3) In the event of absence of a functional **[Bureau or a Chief**  **Executive Officer]** Board, the powers and duties of the **[Bureau]** Board revert to **the [Director-General of the Department contemplated in section 34G(1),]** Minister who, in such a case, must exercise those powers and perform those duties until the **[Bureau]** Board is functional **[or a Chief Executive Officer is appointed]** again.’’. | Provides clarity that the Waste Management Bureau is established as a juristic person with a Board, and that in absence of a functional board, the powers and duties of the Board revert to the Minister responsible for environmental affairs. |
| Clause 61 | Section 34C | **34C. Minister’s supervisory powers**  (1) The Bureau must exercise its powers and perform its functions subject to the policy determined in terms of [section 34B](http://discover.sabinet.co.za/webx/access/netlaw/59_2008_national_environmental_management_waste_act.htm#section34B) (1) or (2), the service level standards and norms contemplated in subsection (2)(b) and any directives issued by the Minister in terms of subsection 2(c).  (2) The Minister-  (a) must monitor the exercising of powers and performance of functions of the Bureau in terms of the policy determined in terms of [section 34B](http://discover.sabinet.co.za/webx/access/netlaw/59_2008_national_environmental_management_waste_act.htm#section34B)(1) or (2);  (b) may set service level standards and norms for the Bureau in the execution of its powers and functions; or  (c) must issue directives to the Bureau in the case of non-compliance with the policy determined in terms of [section 34B](http://discover.sabinet.co.za/webx/access/netlaw/59_2008_national_environmental_management_waste_act.htm#section34B)(1) or (2) or the service level standards and norms issued in terms of subsection 2(b), to ensure the effective and efficient functioning of the Bureau and for the achievement of the objectives of this Act. | ‘‘**Minister’s supervisory powers**  **34C**. (1) The Minister—  (a) must monitor the exercise and performance by the Bureau of its  powers and duties;  (b) may set norms and standards for the exercise and performance by the Bureau of its powers and duties;  (c) may issue directives to the Bureau on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning; and  (d) must determine limits on fees charged by the Bureau in the exercise and performance of its powers and duties.  (2) The Bureau must exercise its powers and perform its duties subject to the policy determined under section 34B and any norms and standards, directives and determinations issued by the Minister in terms of subsection  (1).’’. | Substitutes section 34C of the NEMWA and sets out the Minister’s supervisory powers. |
| Clause 62 | Section 34F-L | **34F. Funding of Bureau**  (1) The funds of the Bureau consist of-  (a) money derived and allocated from charges referred to in section 13B;  (b) income derived by it for services rendered;  (c) money appropriated by Parliament;  (d) voluntary contributions, donations and bequests received consistent with the provisions of the regulations made in terms of [section 76](http://discover.sabinet.co.za/webx/access/netlaw/1_1999_public_finance_management_act.htm#section76)(1)(k) or (l) of the Public Finance Management Act, 1999; and  (e) income derived from investments referred to in [section 34E](http://discover.sabinet.co.za/webx/access/netlaw/59_2008_national_environmental_management_waste_act.htm#section34E)(2)(b).  (2) The Bureau must utilise its funds to defray expenses incurred in the performance of its functions.  (3) The Bureau must utilise the donations and contributions referred to in subsection (1)(d) in accordance with the conditions, if any, imposed by the donor or contributor concerned, but those conditions must be approved by the Minister, in concurrence with the Minister of Finance, and must not be inconsistent with the objects of the Bureau, provisions of this Act, regulations made in terms of [section 76](http://discover.sabinet.co.za/webx/access/netlaw/1_1999_public_finance_management_act.htm#section76)(1)(k) or (l) of the Public Finance Management Act, 1999, or any other law.  (4) The Chief Executive Officer must, with the concurrence of the Minister and the Minister of Finance-  (a) open an account in the name of the Bureau with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and  (b) deposit therein all money received in terms of subsection (1).  (5) The Chief Executive Officer is responsible and accountable to the Director-General of the Department as the accounting authority for all money received by the Bureau and the utilisation of that money.  **34G. Financial management**  (1) The Director-General of the Department is, for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the accounting authority and must cause full and proper books of account and all the necessary records in relation thereto to be kept.  (2) The Chief Executive Officer must ensure compliance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), including ensuring that the Bureau’s annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted.  **34H. Reporting and audit**  (1) The Bureau must in each financial year, on or before a date determined by the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit an annual report on its activities and a statement of its income and estimated expenditure for the next financial year to the Minister through the Director-General for approval.  (2) Notwithstanding subsection (1), the Bureau must submit such additional reports as the Minister or the Director-General may require.  (3) The books, records of account and financial statements of the Bureau must be audited annually by the Auditor-General.  **34I. Immovable property**  (1) The Bureau may, with the approval of the Minister, acquire, hold or dispose of immovable property in the course of its business.  (2) The policy and procedure of the Bureau with regard to the acquisition and disposal of immovable property must be in accordance with the policies, regulations and practices of the public service.  **34J. Chief Executive Officer of Bureau**  (1) The Director-General of the Department must recruit and the Minister must approve the appointment of a suitably qualified and skilled person as the Chief Executive Officer of the Bureau in accordance with the Public Service Act, 1994, including its employment practices, but at a level of remuneration and employment service conditions as determined by the Minister, in concurrence with the Minister of Finance.  (2) The appointment of the Chief Executive Officer must follow a transparent and competitive recruitment and selection process, in accordance with the Public Service Act, 1994.  (3) The Chief Executive Officer must be appointed for a term not exceeding five years subject to subsection (1).  (4) The Chief Executive Officer must enter into a written performance agreement with the Minister within three months of taking up the post as Chief Executive Officer.  (5) The Director-General of the Department, with the approval of the Minister, may terminate the Chief Executive Officer’s employment in accordance with the Public Service Act, 1994.  (6) The Chief Executive Officer may not serve for more than two consecutive terms, unless otherwise stipulated by the Minster, after consultation with the Minister of Finance.  **34K. Functions of Chief Executive Officer**  (1) The Chief Executive Officer is responsible for-  (a) the management of the operations of the Bureau, subject to the direction of the Director-General of the Department;  (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Director-General of the Department and the Minister;  (c) the appointment of members of staff;  (d) control of, and maintenance of discipline over, members of staff of the Bureau; and  (e) any other function provided for in this Act.  (2) The Chief Executive Officer is accountable to the Director-General of the Department and must report to him or her on the activities of the Bureau.  (3) The Chief Executive Officer must ensure that the Bureau complies with all relevant provisions of applicable public service policy, regulations and legislation.  (4) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Director-General of the Department must, in writing, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions, but not for a period longer than six months, except under circumstances where the absence of the Chief Executive Officer is due to a disciplinary matter.  (5) The Chief Executive Officer may, in writing and on such conditions as he or she may determine, delegate any power or duty of the Chief Executive Officer to a senior member of the Bureau, unless the Director-General of the Department or Minister prohibits a specific delegation.  (6) A delegation made under subsection (4) does not-  (a) divest the Chief Executive Officer of the accountability concerning the performance of the function in question; or  (b) prohibit the performance of the function in question by the Chief Executive Officer.  (7) A delegation made under subsection (4) may be repealed, withdrawn or amended, but the repeal, withdrawal or amendment does not affect any right which may have accrued to a person as a result of the function performed before the delegation was repealed, withdrawn or amended.  **34L. Employees of Bureau**  (1) Subject to subsection (2), the Chief Executive Officer-  (a) must appoint such number of employees, within allocated resources available for that purpose, or receive on therefrom such number of persons provided to enable the Bureau to perform its functions;  (b) is responsible for the administrative control of the Bureau and for the discipline of the employees and persons contemplated in paragraph (a); and  (c) must ensure compliance with applicable public service and labour legislation.  (2) The employees referred to in subsection (1) must at least have the following specialist expertise:  (a) resource economics;  (b) financial accounting;  (c) financial management;  (d) process chemistry or engineering; and  (e) technical expert knowledge in the waste and environmental resource management fields.  (3) The provisions relating to employment practice contained in the Public Service Act, 1994, the regulations, determinations, deemed determinations contemplated in section 5(6) of that Act and directives made in terms of that Act apply, except with regard to consideration of scales of remuneration and employment conditions service of the staff referred to in subsection (3).  (4) The Minister must determine, in concurrence with the Minister of Finance, the organisational structure and the scale of remuneration for employees referred to in paragraphs (a) to (e) of subsection (3), which may be different from those of the public service.  (5) A person employed by the Bureau may become a member of the Government Employees’ Pension Fund mentioned in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service.  (6) The Bureau may utilise persons seconded from or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). | ‘‘**General powers**  **34F.** The Bureau may, for the purpose of performing its duties—  (a) appoint its own staff, subject to section 34X;  (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;  (c) acquire, or dispose of, any right in, or to, movable or immovable  property, or hire or let any property, subject to the Public Finance  Management Act, 1999 (Act No. 1 of 1999);  (d) open and operate its own bank accounts;  (e) invest any of its money, subject to section 34W;  (f) charge fees for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 34E;  (g) collect royalties resulting from any discoveries, inventions or computer programmes;  (h) insure itself against—  (i) any loss, damage or risk; or  (ii) any liability it may incur in the application of this Act;  (i) perform legal acts, including acts in association with, or on behalf of,  any other person or organ of state; and  (j) institute or defend any legal action.  **Governing board, composition and membership**  **34G**. (1) The Bureau is governed by a Board consisting of—  (a) not fewer than seven and not more than nine members appointed in terms of section 34I;  (b) the Director-General or an official of the Department designated by the  Director-General; and  (c) the Chief Executive Officer of the Bureau.  (2) The Minister—  (a) must determine the number of members to be appointed in terms of subsection (1)(a); and  (b) may alter the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.  (3) The Board takes all decisions in the performance of the duties and  exercise of powers of the Bureau, except—  (a) those decisions taken in consequence of a delegation in terms of section 34U; or  (b) where the Public Finance Management Act provides otherwise.  **Qualifications**  **34H.** (1) A member of the Board must—  (a) be a fit and proper person to hold office as a member; and  (b) have appropriate qualifications and experience in the field of waste  management.  (2) The following persons are disqualified from becoming or remaining members of the Board:  (a) A person holding office as a member of Parliament, a provincial  legislature or a municipal council; or  (b) a person who has been removed from office in terms of section 34O.  **Appointment procedure**  **34I.** (1) Whenever it is necessary to appoint members of the Board  referred to in section 34G(1)(a), the Minister must—  (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and  (b) compile a list of the names of persons nominated, setting out the  prescribed particulars of each individual nominee.  (2) Any nomination made pursuant to an advertisement in terms of  subsection (1)(a) must be supported by—  (a) the personal details of the nominee;  (b) the nominee’s qualifications or experience; and  (c) any other information that may be prescribed.  (3) The Minister must, subject to subsection (4), appoint—  (a) the required number of persons from the list compiled in terms of  subsection (1)(b); and  (b) if such list is inadequate, any suitable person.  (4) When making appointments the Minister must—  (a) consult the MECs for Environmental Affairs; and  (b) have regard to the need for appointing persons to promote  representivity.  (5) Appointments must be made in such a way that the Board is  composed of persons covering a broad range of appropriate expertise in the field of waste management, and have gender representation and other categories.  **Chairperson**  **34J.** (1) Whenever necessary, the Minister must appoint a member of the Board as the Chairperson of the Board.  (2) The Chairperson is appointed for a period determined by the Minister  which may, in the case of a member referred to in section 34K(1)(a), not  extend beyond the period of his or her term as a member.  (3) The Minister may appoint a member of the Board as acting  chairperson of the Board if—  (a) the Chairperson is absent for a substantial period; or  (b) the appointment of a Chairperson is pending.  **Term of office**  **34K.** Members of the Board referred to in section 34G(1)(a)—  (a) are appointed for a period of three years or, if section 34P(2) applies, for a term determined in terms of that section;  (b) on completion of that term, are eligible for reappointment for one  additional term of three years; and  (c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.  **Conditions of appointment**  **34L.** (1) The Minister must determine the conditions of employment of members of the Board referred to in section 34G(1)(a).  (2) (a) The Minister may, with the concurrence of the Minister of  Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the government.  (b) The remuneration and allowances of the members of the Board contemplated in paragraph (a) must be paid by the Bureau.  (3) (a) Members who are in the employ of the government are not  entitled to remuneration and allowances, but must be compensated for out of-  pocket expenses by the Bureau.  (b) The members of the Board referred to in paragraph (a) are appointed on a part-time basis. | Sets out the general powers of the Waste Management Bureau, governing Board of the Waste Management Bureau, composition and membership, qualifications for members of the governing Board, appointment procedure for members of the governing Board, term of office of members of the Board and conditions of appointment of members of the governing Board. |
| Clause 63 | Section 34M-Z | None | ‘‘**Conduct of members**  **34M.** (1) A member of the Board—  (a) must perform the duties of office in good faith and without favour or  prejudice;  (b) must disclose to the Board any personal or private business interest  that that member, or any spouse, partner or close family member of  that Board member, may have in any matter before the Board, and  must withdraw from the proceedings of the Board when that matter is  considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;  (c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and  (d) may not act in any other way that compromises the credibility,  impartiality, independence or integrity of the Bureau.  (2) A member of the Board who contravenes or fails to comply with  subsection (1) is guilty of misconduct.  **Termination of membership**  **34N.** (1) A member of the Board referred to in section 34G(1)(a) ceases to be a member when that person—  (a) is no longer eligible in terms of section 34H to be a member;  (b) resigns; or  (c) is removed from office in terms of section 34O.  (2) A member may resign only by giving at least three months’ written  notice to the Minister, but the Minister may accept a shorter period in a specific case.  **Removal from office**  **34O.** (1) The Minister may, subject to due process of law, remove a  member of the Board referred to in section 34G(1)(a) from office, but only on the ground of—  (a) misconduct, incapacity or incompetence;  (b) absence from three consecutive meetings of the Board without the  prior permission of the Board except on good cause shown;  (c) insolvency; or  (d) conviction of a criminal offence without the option of a fine.  (2) A member of the Board may be removed from office on the grounds  of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.  (3) The Minister may suspend a member under investigation in terms of this section.  **Filling of vacancies**  **34P.** (1) A vacancy in the Board is filled—  (a) in the case of a vacating Chairperson, by appointing another member in terms of section 34J(1) as the Chairperson; and  (b) in the case of a vacating member referred to in section 34G(1)(a), by following the procedure set out in section 34I.  (2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating Chairperson or member.  **Meetings**  **34Q.** (1) The Chairperson of the Board decides when and where the  Board meets, but a majority of the members may request the Chairperson in  writing to convene a Board meeting at a time and place set out in the  request.  (2) The Chairperson presides at meetings of the Board, but if the  Chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.  **Procedures**  **34R.** (1) The Board may determine its own procedures subject to the  provisions of this Act.  (2) The Board must keep records of its proceedings and of the decisions  taken.  **Quorum and decisions**  **34S.** (1) A majority of the members of the Board serving at any relevant  time constitutes a quorum for a meeting of the Board.  (2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.  (3) If on any matter before the Board there is an equality of votes, the  member presiding at the meeting must exercise a casting vote in addition to that person’s vote as a member.  **Committees**  **34T.** (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.  (2) When appointing members to a committee, the Board is not restricted to members of the Board.  (3) The Board—  (a) must determine the duties of a committee;  (b) must appoint a chairperson and other members of a committee;  (c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and  (d) must determine a working procedure of a committee.  (4) The Board may dissolve a committee at any time.  (5) (a) Section 34L, read with the necessary changes as the context may require, applies to the terms and conditions of employment of committee members.  (b) A staff member of the Bureau appointed to a committee serves on the committee subject to the terms and conditions of that person’s employment.  **Delegation of powers and duties**  **34U.** (1) When necessary for the proper performance of its duties, the  Board may, subject to subsection (2), delegate any of its powers or duties to—  (a) a member of the Board;  (b) a committee referred to in section 34T; or  (c) a staff member of the Bureau.  (2) The following powers and duties may not be delegated by the Board:  (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 34V(1) or (2);  (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 34V(3);  (c) the determination of an employment policy in terms of section 34X(1); and  (d) the setting of financial limits in terms of section 34X(2)(a) or (3).  (3) A delegation in terms of subsection (1)—  (a) is subject to any limitations, conditions and directions that the Board may impose;  (b) must be in writing;  (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and  (d) does not prevent the exercise of the delegated power or the carrying  out of the delegated duty by the Board.  (4) The Board may confirm, vary, revoke or withdraw any decision taken in consequence of a delegation in terms of this section, subject to any rights  that may have accrued to a person as a result of the decision.  **Appointment of Chief Executive Officer**  **34V.** (1) The Board, acting with the concurrence of the Minister, must  appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Bureau.  (2) The Chief Executive Officer—  (a) is appointed for a term not exceeding five years; and  (b) may be reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five years.  (3) The Chief Executive Officer is employed subject to such terms and  conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.  (4) The Chief Executive Officer—  (a) must perform such duties and may exercise such powers as the Board may delegate to him or her; and  (b) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner as the Board may determine.  (5) (a) The Chairperson of the Board may appoint another employee of  the Bureau as acting Chief Executive Officer for a period not exceeding six months, whenever—  (i) the Chief Executive Officer is for any reason absent or unable to  perform his or her duties; or  (ii) there is a vacancy in the office of the Chief Executive Officer.  (b) Whilst acting as Chief Executive Officer, such employee—  (i) has the powers and duties of the Chief Executive Officer; and  (ii) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).  **Employment of staff**  **34X.** (1) The Board, acting with the concurrence of the Minister, must  determine an employment policy for the Bureau.  (2) The Chief Executive Officer—  (a) within the financial limits set by the Board, must determine a staff  establishment necessary for the work of the Bureau; and  (b) may appoint persons in posts on the staff establishment.  (3) An employee of the Bureau is employed subject to the terms and  conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of the Bureau and within the financial limits set by the Board.  (4) (a) A person in the service of another organ of state may be seconded to the Bureau by agreement between the Chief Executive Officer and such  organ of state.  (b) Persons seconded to the Bureau perform their duties under the  supervision of the Chief Executive Officer.  (5) A person in the service of the Bureau may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.  **Funding**  **34Y.** The funds of the Bureau consist of—  (a) income derived by the Bureau from the performance of its duties and the exercise of its powers;  (b) money appropriated by Parliament;  (c) grants received from organs of state;  (d) voluntary contributions, donations and bequests;  (e) income derived from investments referred to in section 34W; and  (f) money derived from any other source, subject to the Public Finance Management Act.  **Investments**  **34W.** The Bureau may invest any of its funds not immediately  required—  (a) subject to any investment policy that may be prescribed in terms of  section 7(4) of the Public Finance Management Act; and  (b) in such a manner as the Minister may approve.  **Winding up or dissolution of Bureau**  **34Z**. (1) The Bureau may not be wound up or dissolved except in terms of an Act of Parliament.  (2) Upon its winding-up or dissolution, the Bureau must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to an equivalent Schedule 3A Public Entity contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), which has the same objectives as the Bureau.’’. | These sections set out the  Governance matters of the Board. |
| Clause 64 | Section 36(5) | (5) An owner of land that is significantly contaminated, or a person who undertakes an activity that caused the land to be significantly contaminated, must notify the Minister and MEC of that contamination as soon as that person becomes aware, of that contamination. | ‘‘(5) An owner of the land that is **[significantly]** likely to be contaminated, or a person who undertakes an activity that caused the land to be significantly  contaminated, must notify the Minister and MEC of that contamination as soon as  that person becomes aware, of that contamination.’’. | Provides clarity that an owner of the land that is likely to be contaminated has a legal obligation to notify the Minister of such contamination as soon as that owner becomes aware. |
| Clause 65 | Section 37(1)(a);(1)(b)(ii); | **37. Consequences of identification and notification of investigation areas**  (1) The Minister or MEC, as the case may be, may in respect of an investigation area contemplated in section 36, after consultation with the Minister of Water Affairs and Forestry-  (a) cause a site assessment to be conducted in respect of the relevant investigation area; or  (b) in a notice published under section 36(1) or issued under section 36(6)-  (i) direct the owner of the investigation area; or  (ii) direct the person who has undertaken or is undertaking the high risk activity or activity that caused or may have caused the contamination of the investigation area, to cause a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report to the Minister or MEC within a period specified in the notice. | (1)‘‘(a) **[cause]** require a site assessment to be conducted in respect of the relevant investigation area, and submit a site assessment report and a remediation plan, if applicable, to the Minister or the MEC, as the case may be; or’’  (1)(b): ‘‘(ii) direct the person who has undertaken or is undertaking the high risk activity or activity that caused or may have caused the contamination of the investigation area, to **[cause]** require a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report and a remediation plan, if applicable, to the Minister or MEC within a period specified in the notice.’’;  (2)‘‘(a) A site assessment report and a remediation plan, if applicable,  must comply with any directions that may have been published or given  by the Minister or MEC in a notice contemplated in section 36(1) or (6) and must at least include information on whether the investigation area is contaminated.’’. | Provides clarity that a site assessment report must be submitted together with a remediation plan. |
| Clause 66 | Section 38(1) | **38. Consideration of site assessment reports**  (1) On receipt of a site assessment report contemplated in section 37, the Minister or MEC, as the case may be, may, after consultation with the Minister of Water Affairs and Forestry and any other organ of state concerned, decide that-  (a) the investigation area is contaminated, presents a risk to health or the environment, and must be remediated urgently;  (b) the investigation area is contaminated, presents a risk to health or the environment, and must be remediated within a specified period;  (c) the investigation area is contaminated and does not present an immediate risk, but that measures are required to address the monitoring and management of that risk; or  (d) the investigation area is not contaminated. | (1)‘‘On receipt of a site assessment report and a remediation plan, if applicable, contemplated in section 37, the Minister or MEC, as the case may be, may, after consultation with the Minister **[of Water Affairs and Forestry]** responsible for water affairs and any other organ of state concerned, decide that—’’. | Provides clarity that a site assessment report must be submitted together with a remediation plan. |
| Clause 67 | Section 41(1); (2); (3) | **41. Contaminated land register**  (1) The Minister must keep a national contaminated land register of investigation areas that includes information on-  (a) the owners and any users of investigation areas;  (b) the location of investigation areas;  (c) the nature and origin of the contamination;  (d) whether an investigation area-  (i) is contaminated, presents a risk to health or the environment, and must be remediated urgently;  (ii) is contaminated, presents a risk to health or the environment, and must be remediated within a specified period;  (iii) is contaminated and does not present an immediate risk, but measures are required to address the monitoring and management of that risk; or  (iv) is not contaminated;  (e) the status of any remediation activities on investigation areas; and  (f) restrictions of use that have been imposed on investigation areas.  (2) The Minister may change the status of an investigation area contemplated in subsection (1)(d)(i) or (ii) as provided for in subsection (1)(d)(iii) or (iv) if a remediation order has been complied with or other circumstances eventuate that justify such a change.  (3) An MEC who has identified an investigation area must furnish the relevant information to the Minister for recording in the national contaminated land register. | ‘‘(1) The Minister must keep a national contaminated land register of **[investigation]** contaminated land areas that includes information on—  (a) the owners and any users of **[investigation]** contaminated land areas;  (b) the location of **[investigation]** contaminated land areas;  (c) the nature and origin of the said contamination;  (d) whether **[an investigation]** a contaminated land area—  (i) **[is contaminated,]** presents a risk to health or the environment, and  must be remediated urgently;  (ii) **[is contaminated,]** presents a risk to health or the environment, and must be remediated within a specified period; or  (iii) **[is contaminated,]** does not present an immediate risk, but measures are required to address the monitoring and management of that risk; **[or]** and  **[(iv) is not contaminated;**  **(e) the status of any remediation activities on investigation areas; and]**  (f) restrictions of use that have been imposed on the **[investigation]** contaminated land areas.  (2) The Minister may change the status of **[an investigation]** the contaminated land area contemplated in subsection (1)(d)(i) or (ii) as provided for in subsection  (1)(d)(iii) or (iv) if a remediation order has been complied with or other circumstances eventuate that justify such a change.  (3) An MEC who has identified **[an investigation]** a contaminated land area must furnish the relevant information to the Minister for recording in the national  contaminated land register.’’. | Provides clarity that the Minister must keep a national register of all contaminated land. |
| Clause 68 | Section 43(1A)(a)&(b); (c);(1B); (3); (4) | (1A) The Minister responsible for mineral resources is the licensing authority where the waste management activity is, or is directly related to-  (a) prospecting or exploration of a mineral or petroleum resource;  (b) extraction and primary processing of a mineral or petroleum resource; or  (c) residue deposits and residue stockpiles from a prospecting, mining, exploration or production operation.  (1B) The Minister responsible for mineral resources is responsible for the implementation of the provisions that relate to matters referred to in subsection (1A).  (2) Subject to subsection (1), the MEC of the province in which the waste management activity is being or is to be carried out is the licensing authority.  (3) Despite subsections (1) and (2), the Minister and an MEC may agree that an application or applications for waste management licences regarding any waste management activity-  (a) referred to in subsection (1), may be dealt with by the MEC; or  (b) in respect of which the MEC has been identified as the licensing authority, may be dealt with by the Minister. | (1A)‘‘(a) prospecting or exploration of a mineral or petroleum resource; or  (b) extraction and primary processing of a mineral or petroleum resource **[; or]**.’’;  deletion of (1A)(c);  ‘‘(1B) The Minister responsible for mineral resources is responsible  for the implementation of the **[provisions that relate to]** licensing  system provided for in this Chapter in so far as the matters referred to in  subsection (1A) are concerned.’’;  ‘‘(3) Despite subsections (1), (1A) and (2), the Minister, the Minister  responsible for mineral resources and an MEC may agree that an application or applications for waste management licences regarding any  waste management activity—  (a) referred to in subsection (1), may be dealt with by the MEC or the  Minister responsible for mineral resources; **[or]**  (aA) referred to in subsection (1A), may be dealt with by the Minister; or  (b) in respect of which the MEC or the Minister responsible for  mineral resources has been identified as the licensing authority,  may be dealt with by the Minister.’’;  ‘‘(4) (a) In accordance with section 125(2)(b) of the Constitution,  whenever a licensing authority, referred to in subsection (2), fails to take a decision on an application for a waste management licence within the period prescribed by this Act, the person that applied for a waste  management licence may apply to the Minister to take the decision.  (b) The person referred to in paragraph (a) must notify the MEC or the Minister responsible for mineral resources, as the case may be, in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.  (c) The application contemplated in paragraph (a) must, at least,  contain all the documents submitted to the MEC or the Minister  responsible for mineral resources, as the case may be, in respect of the application for a waste management licence, in order to enable the Minister to take a decision.  (d) Before taking a decision contemplated in paragraph (a), the  Minister must request the MEC or the Minister responsible for mineral  resources, as the case may be, to provide him or her with a report within a specified period on the status and causes for the failure to make a decision in the application for waste management licence concerned.  (e) After having received the report referred to in paragraph (d) or in  the event that no response or no satisfactory response or cooperation is received from the MEC or the Minister responsible for mineral  resources, as the case may be, within the specified period, the Minister must, where appropriate—  (i) inform the applicant in the event that the MEC or the Minister  responsible for mineral resources, as the case may be, had complied with the relevant prescripts;  (ii) assist the MEC or the Minister responsible for mineral resources,  as the case may be, in accordance with section 125(3) of the  Constitution to fulfil his or her obligations under this Act; or  (iii) direct the MEC or the Minister responsible for mineral resources,  as the case may be, to take the decision and such other steps as the Minister may deem necessary within a specified period.  (f) In the event that the MEC or the Minister responsible for mineral  resources, as the case may be, fails to take the decision within the  specified time period or in any other manner fails to comply with the  directive contemplated in paragraph (e)(iii), the Minister must take the  decision within a reasonable period.  (g) 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 this section during the previous financial year.’’ | * Amends subsection (1B) to ensure that the Minister responsible for mineral resources as the identified licensing authority is responsible for the implementation of the waste management licensing system in so far as the waste management activities is or is directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource. * Also amends subsection (3) to facilitate an agreement between the licensing authorities on the implementation of the licensing system. * The amendment also seeks to add new subsection (4) to section 43. The addition proposes that in instances where the MEC responsible for environmental affairs fails to take a decision to issue a waste management licence within prescribed timeframes, an applicant may request the Minister to take the decision. The intention of this amendment is therefore to make provision for exceptional circumstance in instances where the MEC unreasonably fails to take a decision within the prescribed timeframes. When considering this amendment the Department 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. |
| Clause 69 | Section 43A | **43A. Residue stockpiles and residue deposits**  (1) Residue stockpiles and residue deposits must be managed in the prescribed manner on any site demarcated for that purpose in the environmental management plan or environmental management programme for that prospecting, mining, exploration or production operation.  (2) No person may temporarily or permanently deposit any residue stockpile or residue deposit on any site other than on a site contemplated in subsection (1). | Repealed | Consequential amendment. This clause repeals section 43A of the NEMWA to provide clarity that residue stockpiles and residue deposits are no longer regulated under NEMWA, but under NEMA. |
| Clause 70 | Section 52(5) | (5) If the environment or the rights or interests of other parties are likely to be adversely affected, the Minister or MEC must, before deciding the application for transfer, request the applicant to conduct a consultation process that may be appropriate in the circumstances to bring the application for the transfer of a waste management licence to the attention of relevant organs of state, interested persons and the public. | ‘‘(5) If the environment or the rights or interests of other parties are likely to be adversely affected, the **[Minister or MEC]** licensing authority must, before deciding the application for transfer, request the applicant to conduct a consultation  process that may be appropriate in the circumstances to bring the application for the transfer of a waste management licence to the attention of relevant organs of state,  interested persons and the public.’’. | The NEMWA was amended to include the Minister responsible for mineral resources as one of the licensing authorities. The term licensing authority, collectively, include the Minister, Minister responsible for mineral resources and MECs. Clause 70 provides for the consequential textual amendment in section 52(5). |
| Clause 71 | Section 54(2A) | None | ‘‘(2A) The variation of a waste management licence is subject to the payment of a prescribed processing fee.’’. | Currently, the variation of a waste management licence is not subject to the payment of a prescribed processing fee. Practically, it has been established that the variation of a waste management licence involves a lot of work. Clause 71 provides for the payment of a prescribed processing fee for the variation of a waste management licence. |
| Clause 72 | Section 67(1)(a);(fA) | (1) A person commits an offence if that person-   1. contravenes or fails to comply with a provision of section 15, 16(1)(c), (d), (e) or (f), 20, 26(1), 43A or any order under section 38(2) or (3) or a notice under section 17(2) or 18(1);   …  (f) contravenes or fails to comply with a norm or standard established in terms of this Act; | ‘‘(a) contravenes or fails to comply with a provision of section 15,  16(1)(c), (d), (e) or (f), 20, 26(1), **[43A,]** or any order under section  38(2) or (3) or a notice under section 17(2) or 18(1);’’;  ‘‘(fA) contravenes any provision in the norm or standard contemplated  in paragraph (f), in which such contravention is identified as an  offence, and in such case paragraph (f) does not apply;’’. | Consequential amendment deleting the offence regarding residue stockpiles and residue deposits. These stockpiles and deposits are no longer regulated under NEMWA, but under NEMA. The clause also creates an offence if a person contravenes a provision of a norm or standard. |
| Clause 73 | Section 69 | **69. Regulations by Minister**   1. The Minister may make regulations regarding-   …  (iA) the management and control of residue stockpiles and residue deposits from a prospecting, mining, exploration or production operation. | Deletion of (1)(iA) | Consequential amendment deleting the Minister’s power to develop regulations. Residue stockpiles and residue deposits are no longer regulated under NEMWA, but under NEMA. |
| Clause 74 | Section 69A | **69A. Regulations for Bureau**  The Minister must make regulations regarding-  (a) any matter required or to be prescribed in terms of Part 7A;  (b) the setting or determination of service fees by the Bureau, other than those referred to in section 13B;  (c) the circumstances under which service fees can be charged;  (d) the manner in which the Bureau will receive and disburse funds referred to in section 34F(1); or  (e) any other matter in relation to the Bureau that is necessary to be prescribed for the proper implementation of this Act. | Repealed | Repeals section 69A as it is no longer necessary for the Minister to make regulations pertaining to the Waste Management Bureau as it will now be a fully-fledged public entity. |
| Clause 75 | Section 71(2); (2A) | (2) Regulations made under this Act may provide that any person who contravenes or fails to comply with a provision thereof commits an offence and is liable on conviction to-  (a) imprisonment for a period not exceeding 15 years;  (b) an appropriate fine; or  (c) both a fine and imprisonment. | ‘‘(2) Regulations made in terms of sections 69 and 70 may provide that  any person who contravenes or fails to comply with a provision thereof,  is guilty of an offence and liable on conviction to—  (a) imprisonment for a period not exceeding five years;  (b) a fine not exceeding five million rand, and in the case of a second or  subsequent conviction, to a fine not exceeding R10 million or  imprisonment for a period not exceeding 10 years or in both  instances to both a fine and such imprisonment; or  (c) both a fine and imprisonment.’’.  ‘‘(2A) Regulations made in terms of sections 69 and 70 may differentiate between the penalties for the contravention of the different  provisions thereof, but the maximum penalty may not exceed a penalty  provided for in subsection (2).’’. | The fines that can be imposed in terms of regulations under this Act have been amended by clause 75 to be in line with fines that can be imposed in terms of the National Environmental Management Act, 1998 and the other specific environmental management Acts. |
| Clause 76 | Section 74(1) | **74. Applications for exemption**  (1) Any person may apply in writing for exemption from the application of a provision of this Act to the Minister or, where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the MEC. | ‘‘(1) Any person or organ of state may apply in writing for exemption from the application of a provision of this Act—  (a) to the Minister **[or,]**;  (b) where the Minister responsible for mineral resources is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the Minister responsible for mineral resources; or  (c) where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the MEC,  except the exemption from the requirement to obtain a waste management licence contemplated in Chapter 5.’’. | * The provisions of section 74 do not provide the Minister responsible for mineral resources with legal power to issue exemptions in so far such exemptions relate to provisions administered by the Minister responsible for mineral resources. The scope for exemption applications also appears to be wide. * Clauses 76, 77, 78 and 79 amend sections 74, 75, 76 and 77 provide for the consequential textual amendment empowering the Minister responsible for mineral resources to issue an exemption in so far such an exemption relate to a provision administered by the Minister responsible for mineral resources. * The clauses also provide clarity that there will be no exemptions provided from the requirement to obtain a waste management licence. |
| Clause 77 | Section 75(1); (2) | 75. Consideration of applications for exemption  (1) The Minister or MEC, as the case may be, may request an applicant contemplated in section 74 to furnish additional information where such information is necessary for the purposes of informing the Minister or MEC’s decision.  (2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister or MEC, as the case may be, must, before deciding the application, request the applicant to-  (a) bring the application to the attention of relevant organs of state, interested persons and the public by conducting a public participation process indicated by the Minister or MEC; and  (b) to submit any comments received from the public following such process to the Minister or MEC. | ‘‘(1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may request an applicant contemplated in section 74 to furnish additional information where such information is necessary for the purposes of  informing the Minister, Minister responsible for mineral resources or MEC’s decision.  (2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must, before deciding the application, request the  applicant to—  (a) bring the application to the attention of relevant organs of state, interested persons and the public by conducting a public participation process indicated by the Minister, Minister responsible for mineral resources or MEC; and  (b) [to] submit any comments received from the public following such process to the Minister, Minister responsible for mineral resources or MEC.’’. | * The provisions of section 74 do not provide the Minister responsible for mineral resources with legal power to issue exemptions in so far such exemptions relate to provisions administered by the Minister responsible for mineral resources. The scope for exemption applications also appears to be wide. Clauses 76, 77, 78 and 79 amend sections 74, 75, 76 and 77 provide for the consequential textual amendment empowering the Minister responsible for mineral resources to issue an exemption in so far such an exemption relate to a provision administered by the Minister responsible for mineral resources. * The clauses also provide clarity that there will be no exemptions provided from the requirement to obtain a waste management licence. |
| Clause 78 | Section 76(1); (3); (4) | 76. Decisions on applications for exemption  (1) The Minister or the MEC, as the case may be, may-  (a) grant an exemption from the application of a provision of this Act; or  (b) refuse to grant such exemption.  (2) Sections 48 and 49(2) to (6), inclusive, apply with the changes required by the context to the consideration of applications for exemptions.  (3) If an application is granted, the Minister or MEC must issue a written exemption notice to the applicant stating-  (a) the name, address and telephone number of the person to whom the exemption is granted;  (b) the provision of this Act from which exemption is granted;  (c) the conditions subject to which the exemption is granted, if the exemption is granted subject to conditions; and  (d) the period for which exemption is granted, if the exemption is granted for a period.  (4) The Minister or the MEC, as the case may be, may by notice in the Gazette exempt an organ of state from a provision of this Act if-  (a) the provision, but for the definition of “person” contained in section (1), clearly should not apply to an organ of state;  (b) the exemption would not defeat the objects of this Act; and  (c) it is in the public interest to grant the exemption. | (1) ‘‘The Minister, Minister responsible for mineral resources or the MEC, as the case may be, may—’;  (3) ‘‘If an application is granted, the Minister, Minister responsible for  mineral resources or MEC, as the case may be, must issue a written  exemption notice to the applicant stating—’’;  (4) ‘‘The Minister, Minister responsible for mineral resources or the MEC, as the case may be, may by notice in the Gazette exempt an organ of state from a provision of this Act if—’’. | * The provisions of section 74 do not provide the Minister responsible for mineral resources with legal power to issue exemptions in so far such exemptions relate to provisions administered by the Minister responsible for mineral resources. The scope for exemption applications also appears to be wide. Clauses 76, 77, 78 and 79 amend sections 74, 75, 76 and 77 provide for the consequential textual amendment empowering the Minister responsible for mineral resources to issue an exemption in so far such an exemption relate to a provision administered by the Minister responsible for mineral resources. * The clauses also provide clarity that there will be no exemptions provided from the requirement to obtain a waste management licence. |
| Clause 79 | Section 77(1); (2); (3) | 77. Review and transfer of exemptions  (1) The Minister or MEC may-  (a) from time to time review any exemption granted in terms of section 76; and  (b) on good grounds suspend or withdraw such exemption or amend the exemption, or any part thereof.  (2) Before suspending, withdrawing or amending an exemption, the Minister or MEC must give the person to whom the exemption was granted an opportunity to comment, in writing, on the reasons for the suspension, withdrawal or amendment.  (3) If an exemption has been granted in respect of a waste management activity, or part thereof, and ownership of that waste management activity is transferred, the exemption may, with the permission of the Minister or MEC, be transferred by the holder of the exemption to the new owner of the waste management activity. | (1) ‘‘The Minister, Minister responsible for mineral resources or MEC may—’’;  ‘‘(2) Before suspending, withdrawing or amending an exemption, the  Minister, Minister responsible for mineral resources or MEC must give  the person to whom the exemption was granted an opportunity to  comment, in writing, on the reasons for the suspension, withdrawal or  amendment.  (3) If an exemption has been granted in respect of a waste management activity, or part thereof, and ownership of that waste management activity is transferred, the exemption may, with the permission of the Minister, Minister responsible for mineral resources or MEC, be transferred by the holder of the exemption to the new owner of the waste management activity.’’ | * The provisions of section 74 do not provide the Minister responsible for mineral resources with legal power to issue exemptions in so far such exemptions relate to provisions administered by the Minister responsible for mineral resources. The scope for exemption applications also appears to be wide. Clauses 76, 77, 78 and 79 amend sections 74, 75, 76 and 77 provide for the consequential textual amendment empowering the Minister responsible for mineral resources to issue an exemption in so far such an exemption relate to a provision administered by the Minister responsible for mineral resources. * The clauses also provide clarity that there will be no exemptions provided from the requirement to obtain a waste management licence. |
| Clause 80 | Expressions in NEMWA:  “Minister of Water Affairs and Forestry” |  | substitution for the expression ‘‘Minister of Water Affairs and Forestry’’, whenever it occurs, of the expression ‘‘Minister responsible for water affairs’’. | Replaces the expression of the ‘‘Minister of Water Affairs and Forestry’’ with the Minister responsible for water affairs. |
| Clause 81 | Schedule 3 of NEMWA | **SCHEDULE 3**  **Defined Wastes**  **CATEGORY A: Hazardous Waste**   |  | | --- | | **“hazardous waste”** means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment and includes hazardous substances, materials or objects within business waste, residue deposits and residue stockpiles as outlined below: |   **“business waste”** means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes, which include:   |  |  | | --- | --- | | **1. Wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing, food preparation and processing** | (a) hazardous portion of wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing | | **2. Wastes from wood processing and the production of panels and furniture, pulp, paper and cardboard** | (a) hazardous portion of wastes from wood processing and the production of panels and furniture | | (b) hazardous portion of wastes from wood preservation | | (c) hazardous portion of wastes from pulp, paper and cardboard production and processing | | **3. Wastes from the leather, fur and textile industries** | (a) hazardous portion of wastes from the leather and fur industry | | (b) hazardous portion of wastes from the textile industry | | **4. Wastes from petroleum refining, natural gas purification and pyrolytic treatment of coal** | (a) wastes from petroleum refining | | (b) wastes from the pyrolytic treatment of coal | | (c) wastes from natural gas purification and transportation | | **5. Wastes from inorganic chemical processes acids** | (a) wastes from the manufacture, formulation, supply and use (MFSU) of acids | | (b) wastes from the MFSU of bases | | (c) wastes from the MFSU of salts and their solutions and metallic oxides | | (d) metal-containing wastes | | (e) wastes from the MFSU of sulphur chemicals, sulphur chemical processes and desulphurisation processes | | (f) wastes from the MFSU of halogens and halogen chemical processes | | (g) wastes from the MFSU of silicon and silicon derivatives | | (h) wastes from the MSFU of phosphorous chemicals and phosphorous chemical processes | | (i) wastes from the MFSU of nitrogen chemicals, nitrogen chemical processes and fertiliser manufacture | | (j) wastes from the manufacture of inorganic pigments | | (k) other wastes from inorganic chemical processes | | **6. Wastes from organic chemical processes** | (a) wastes from the manufacture, formulation, supply and use (MFSU) of basic organic chemicals | | (b) wastes from the MFSU of plastics, synthetic rubber and man-made fibres | | (c) wastes from the MFSU of organic dyes and pigments | | (d) wastes from the MFSU of organic plant protection products, wood preserving agents and other biocides | | (e) wastes from the MFSU of pharmaceuticals | | (f) wastes from the MFSU of fats, grease, soaps, detergents, disinfectants and cosmetics | | (g) other wastes from the MFSU of fine chemicals and chemical products | | **7. Wastes from thermal processes** | (a) hazardous portion of wastes from power stations and other combustion plants | | (b) hazardous portion of wastes from the iron and steel industry | | (c) wastes from aluminium thermal metallurgy | | (d) wastes from lead thermal metallurgy | | (e) wastes from zinc thermal metallurgy | | (f) wastes from copper thermal metallurgy | | (g) wastes from silver, gold and platinum thermal metallurgy | | (h) wastes from other non-ferrous thermal metallurgy | | (i) hazardous portion of wastes from casting of ferrous pieces | | (j) hazardous portion of wastes from casting of non-ferrous pieces | | (k) hazardous portion of wastes from manufacture of glass and glass products | | (l) hazardous portion of wastes from manufacture of ceramic goods, bricks, tiles and construction products | | (m) hazardous portion of wastes from manufacture of cement, lime and plaster and articles and products made from them | | **8. Waste from the photographic industry** | (a) hazardous portion of waste from the photographic industry | | **9. Wastes from the manufacture, formulation, supply and use (MFSU) of coatings (paints, varnishes and vitreous enamels), adhesives, sealants and printing inks** | (a) wastes from MFSU and removal of paint and varnish | | (b) wastes from MFSU of other coatings (including ceramic materials) | | (c) wastes from MFSU of printing inks | | (d) wastes from MFSU of adhesives and sealants (including waterproofing products) | | **10. Wastes from chemical surface treatment and coating of metals and other materials; non-ferrous hydrometallurgy** | (a) wastes from chemical surface treatment and coating of metals and other materials (for example galvanic processes, zinc coating processes, pickling processes, etching, phosphating, alkaline degreasing, anodising) | | (b) wastes from non-ferrous hydrometallurgical processes | | (c) wastes from sludges and solids from tempering processes | | (d) wastes from hot galvanising processes | | **11. Wastes from shaping and physical and mechanical surface treatment of metals and plastics** | (a) hazardous portion of wastes from shaping and physical and mechanical surface treatment of metals and plastics | | (b) wastes from water and steam degreasing processes | | **12. Oil wastes and wastes of liquid fuels (except edible oils)** | (a) waste hydraulic oils | | (b) waste engine, gear and lubricating oils | | (c) waste insulating and heat transmission oils | | (d) oil/water separator contents | | (e) wastes of liquid fuels | | **13. Waste organic solvents, refrigerants and propellants** | (a) waste organic solvents, refrigerants and foam/aerosol propellants | | **14. Other wastes not specified in the list** | (a) hazardous portion of wastes from end-of-life vehicles from different means of transport (including off-road machinery) and wastes from dismantling of end-of-life vehicles and vehicle maintenance | | (b) hazardous portion of wastes from electrical and electronic equipment | | (c) hazardous portion of wastes from off-specification batches and unused products | | (d) wastes from discarded gases in pressure containers and discarded chemicals | | (e) wastes from discarded batteries and accumulators | | (f) wastes from transport tank, storage tank and barrel cleaning | | (g) spent catalysts wastes | | (h) oxidising substances wastes | | (i) aqueous liquid wastes destined for off-site treatment | | (j) waste linings and refractories | | **15. Construction wastes** | (a) wastes from bituminous mixtures, coal tar and tarred products | | (b) discarded metals (including their alloys) | | (c) waste soil (including excavated soil from contaminated sites), stones and dredging spoil | | (d) wastes from insulation materials and asbestos-containing construction materials | | (e) wastes from gypsum-based construction material | | (f) wastes from other construction and demolition | | **16. Wastes from human or animal health care and/or related research (except kitchen and restaurant wastes not arising from immediate health care)** | (a) wastes from natal care, diagnosis, treatment or prevention of disease in humans | | (b) wastes from research, diagnosis, treatment or prevention of disease involving animals | | **17. Wastes from waste management facilities** | (a) hazardous portion of wastes from incineration or pyrolysis of waste | | (b) hazardous portion of wastes from physico/chemical treatments of waste | | (c) hazardous portion of stabilised/solidified wastes | | (d) hazardous portion of wastes from aerobic treatment of solid wastes | | (e) hazardous portion of wastes from anaerobic treatment of waste | | (f) landfill leachate wastes | | (g) wastes from shredding of metal-containing wastes | | (h) wastes from oil regeneration | | (i) wastes from soil remediation |   **“residue deposits”** means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right or production right;  **“residue stockpile”** means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, mineral processing plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated within the mining area for potential re-use, or which is disposed of, by the holder of a mining right, mining permit or, production right or an old order right, including historic mines and dumps created before the implementation of this Act.  Residue deposits and residue stockpiles include:   |  |  | | --- | --- | | **1) Wastes resulting from exploration, mining, quarrying, and physical and chemical treatment of minerals** | (a) wastes from mineral excavation | | (b) wastes from physical and chemical processing of metalliferous minerals | | (c) wastes from physical and chemical processing of non-metalliferous minerals | | (d) wastes from drilling muds and other drilling operations |   **CATEGORY B: General Waste**   |  | | --- | | **“general waste”** means waste that does not pose an immediate hazard or threat to health or to the environment, and includes-  (a) domestic waste;  (b) building and demolition waste;  (c) business waste;  (d) inert waste; or  (e) any waste classified as non-hazardous waste in terms of the regulations made under [section 69](http://discover.sabinet.co.za/webx/access/netlaw/59_2008_national_environmental_management_waste_act.htm#section69),  and includes non-hazardous substances, materials or objects within business, domestic, inert, building and demolition wastes as outlined below: |   **“business waste”** means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes, which include:   |  |  | | --- | --- | | **1. Wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing, food preparation and processing** | (a) wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing not otherwise specified in Category A | | (b) wastes from the preparation and processing of meat, fish and other foods of animal origin | | (c) wastes from fruit, vegetables, cereals, edible oils, cocoa, coffee, tea and tobacco preparation and processing; conserve production; yeast and yeast extract production, molasses preparation and fermentation | | (d) wastes from sugar processing | | (e) wastes from the dairy products industry | | (f) wastes from the baking and confectionery industry | | (g) wastes from the production of alcoholic and non-alcoholic beverages (except coffee, tea and cocoa) | | **2. Wastes from wood processing and the production of panels and furniture, pulp, paper and cardboard** | (a) wastes from wood processing and the production of panels and furniture not otherwise specified in Category A | | (b) wastes from wood preservation not otherwise specified in Category A | | (c) wastes from pulp, paper and cardboard production and processing not otherwise specified in Category A | | **3. Wastes from the leather, fur and textile industries** | (a) wastes from the leather and fur industry not otherwise specified in Category A | | (b) wastes from the textile industry not otherwise specified in Category A | | **4. Wastes from thermal processes** | (a) wastes from power stations and other combustion plants not otherwise specified in Category A | | (b) wastes from the iron and steel industry not otherwise specified in Category A | | (c) wastes from casting of ferrous pieces not otherwise specified in Category A | | (d) wastes from casting of non-ferrous pieces not otherwise specified in Category A | | (e) wastes from manufacture of glass and glass products not otherwise specified in Category A | | (f) wastes from manufacture of ceramic goods, bricks, tiles and construction products not otherwise specified in Category A | | (g) wastes from manufacture of cement, lime and plaster and articles and products made from them not otherwise specified in Category A | | **5. Waste from the photographic industry** | (a) waste from the photographic industry not otherwise specified in Category A | | **6. Wastes from shaping and physical and mechanical surface treatment of metals and plastics** | (a) wastes from shaping and physical and mechanical surface treatment of metals and plastics not otherwise specified in Category A | | **7. Oil wastes and wastes of liquid fuels** | (a) oil wastes not otherwise specified in Category A | | **8. Other wastes not specified in the list** | (a) wastes from end-of-life vehicles from different means of transport (including off-road machinery) and wastes from dismantling of end-of-life vehicles and vehicle maintenance not otherwise specified in Category A | | (b) wastes from electrical and electronic equipment not otherwise specified in Category A | | (c) wastes from off-specification batches and unused products not otherwise specified in Category A | | **9. Food wastes** | (a) waste from kitchen and restaurant facilities | | **10. Wastes from waste management facilities** | (a) wastes from incineration or pyrolysis of waste not otherwise specified in Category A | | (b) wastes from aerobic treatment of solid wastes not otherwise specified in Category A | | (c) wastes from anaerobic treatment of waste not otherwise specified in Category A | | (d) wastes from shredding of metal-containing wastes not otherwise specified in Category A | | (e) wastes from the mechanical treatment of waste not otherwise specified in Category A (for example sorting, crushing, compacting, pelletising) not otherwise specified |   **“building and demolition waste”** means waste, excluding hazardous waste, produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition, which include:   |  |  | | --- | --- | | **11. Building and demolition wastes** | (a) discarded concrete, bricks, tiles and ceramics | | (b) discarded wood, glass and plastic | | (c) discarded metals | | (d) discarded soil, stones and dredging spoil | | (e) Other discarded building and demolition wastes |   **“domestic waste”** means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential, educational, health care, sport or recreation purposes, which include:   |  |  | | --- | --- | | **12. Domestic wastes** | (a) garden and park wastes | | (b) municipal waste | | (c) food waste |   **“inert waste”** means waste that-  (a) does not undergo any significant physical, chemical or biological transformation after disposal;  (b) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and  (c) does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant; and which include:   |  |  | | --- | --- | | **13. Inert waste** | (a) discarded concrete, bricks, tiles and ceramics | | (b) discarded glass | | (c) discarded soil, stones and dredging spoil | | Repealed | Schedule 3 provides for sources of waste and is read with the definition of ‘‘waste’’ contained in section 1 of the Act. Clause 81 repeals Schedule 3 in order to provide clarity of what is waste. The revised definition of ‘‘waste’’ provides such clarity on what is waste. |
| **TRANSITIONAL PROVISIONS** **NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT ACT, 2008** | | | | |
| Clause 82 | Section 12 of Act 62 of 2008, as amended by section 26 Act 25 of 2014 Transitional provisions | Transitional provisions  12. (1) Anything done or deemed to have been done under a provision repealed or amended by this Act—  (a) remains valid to the extent that it is consistent with the principal Act as amended by this Act until anything done under the principal Act as amended by this Act overrides it; and  (b) subject to paragraph (a), is considered to be an action under the corresponding provision of the principal Act as amended by this Act.  (2) An application for authorisation of an activity that is submitted in terms of Chapter 5 of the principal Act and that is pending when this Act takes effect must, despite the amendment of the principal Act by this Act, be dispensed with in terms of Chapter 5 of the principal Act as if Chapter 5 had not been amended.  (3) Section 24G of the principal Act applies with the changes required by the context in respect of any activity undertaken in contravention of section 22 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), if such activity is a listed activity under the principal Act.  (4) An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); immediately before the date on which this Act came into operation must be regarded as  having been approved in terms of the principal Act as amended by this Act.  (5) (a) Notwithstanding subsection (4), the Minister of Minerals and Energy may direct any holder or any holder of an old order right, if he or she is of the opinion that the prospecting, mining, exploration or production operations in question are likely to result in unacceptable pollution, ecological degradation or damage to the environment, to take such action to upgrade the environmental management plan or programme to address  the deficiencies in the plan or programme as the Minister may direct in terms of the principal Act as amended by this Act.  (b) For the purposes of this subsection, "Minister of Minerals and Energy", "holder" and "holder of an old order right" have the meanings assigned to them in section 1 of the principal Act as amended by this Act. | substituted for section 12 of the National Environmental Management Amendment Act, 2008:  ‘‘**12.** (1) Where, prior to 8 December 2014—  (a) an environmental authorisation or a waste management licence was  required for activities directly related to—  (i) prospecting or exploration of a mineral or petroleum resource;  or  (ii) extraction and primary processing of a mineral or petroleum resource, and such environmental authorisation or waste management licence  has been obtained; and  (b) a right, permit or exemption was required in terms of the Mineral and  Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)  for—  (i) prospecting or exploration of a mineral or petroleum resource;  or  (ii) extraction and primary processing of a mineral or petroleum resource, and such right, permit or exemption has been obtained, and activities authorised in such environmental authorisation, waste management licence, right, permit or exemption commenced after 8 December 2014, such environmental authorisation, waste management licence, right, permit or exemption is regarded as fulfilling the requirements of the Act: Provided that where an application for an environmental authorisation or waste management licence was refused or not obtained in terms of the Act for activities directly related to prospecting, exploration or extraction of a mineral or petroleum  resource, including primary processing, this subsection does not  apply.  (2) Despite subsection (1), the Minister responsible for mineral resources may direct the holder of a right, permit or any old order right, if he or she is of the opinion that the prospecting, mining, exploration and production operations are likely to result in unacceptable pollution, ecological degradation or damage to the environment, to take any action to upgrade the environmental management plan or environmental management programme to address the deficiencies in the plan or programme.  (3) The Minister responsible for mineral resources must issue an  environmental authorisation if he or she is satisfied that the deficiencies in the environmental management plan or environmental management  programme referred to in subsection (2) have been addressed and that the requirements contained in Chapter 5 of the National Environmental Management Act, 1998, have been met.’’. | * It appears that there is legal uncertainty whether an environmental management plan or environmental management programme approved and issued in terms of the Mineral and Petroleum Resources Development Act, prior to the implementation of the One Environmental System on 8 December 2014 is deemed an environmental authorisation under the National Environmental Management Act, 1998. The clause amends clause 12 of the NEMA Amendment Act, 2008 to provide legal clarity that an environmental management plan or programme applied for and approved in terms of the Mineral and Petroleum Resources Development Act, 2002, on or before 8 December 2014, is deemed to have been approved and issued in terms of National Environmental Management Act, 1998. * The clause also provides clarity that if an EA or WML was required for mining activities before 8 December 2014 and obtained prior to commencement of such mining activities, or if an MPRDA right or permit was required prior to 8 December 2014 and was obtained prior to commencement thereof, such EA, WML or right/permit is deemed as fulfilment of the requirements of NEMA and NEMWA. However, if an EA or WML was required but not obtained or refused, this will not be regarded as having fulfilled the necessary requirements. * This clause further provides that the Minister responsible for mineral resources may direct a MPRDA right/permit holder to upgrade the environmental management plan or programme if operations are likely to result in unacceptable pollution, ecological degradation or environmental damage. * The clause also enables the Minister to issue an environmental authorisation once the deficiencies have been rectified. |
| Clause 83 | Transitional provisions for residue deposits and residue stockpiles | None | Transitional provisions for residue deposits and residue stockpiles  83. (1) Despite the repeal of the relevant provisions in relation to residue stockpiles in the National Environmental Management: Waste Act, 2008, by the National Environmental Management Laws Amendment Act, 2016, any approval granted or waste management licence issued in relation to residue deposits and residue stockpiles remain valid until it lapse or replaced under the provisions of the National Environmental Management Act, 1998.  (2) Despite the repeal of section 69(iA) of the National Environmental Management: Waste Act, 2008, the regulations pertaining to the management of residue deposits and residue stockpiles made in terms of this section, remain operational and shall be deemed to have been made under the National Environmental Management Act, 1998. | * Provides for transitional provisions regarding residue stockpiles and residue deposits approvals issued in terms of the National Environmental Management: Waste Act, 2008. * The clause provides for clarity that the residue stockpiles and residue deposits approvals or waste management licences issued in terms of the National Environmental Management: Waste Act, 2008, remain valid until they lapse or are replaced under National Environmental Management Act, 1998. * The clause further provides clarity that the regulations pertaining to the management and control of residue stockpiles and residue deposits developed under the National Environmental Management: Waste Act, 2008 remain valid and are regarded as being developed under NEMA. |
| Clause 84 | Transitional provisions for Waste Management Bureau |  | Transitional provisions for Waste Management Bureau  84. (1) Anything done under the repealed provisions in Part 7A of the National Environmental Management: Waste Act, 2008, remains valid until anything done under the provisions that substitutes the provisions in Part 7A overrides it.  (2) The Waste Management Bureau in place at the time of the commencement of the National Environmental Management Laws Amendment Act, 2017, remains in place until the members of Board are appointed in terms of section 34G of the National Environmental Management: Waste Act, 2008, (as amended by this Amendment Act).  (3) The Minister may direct that the employees or the Chief Executive Officer of the Waste Management Bureau at the time of the commencement of the National Environmental Management Laws Amendment Act, 2017, be absorbed by the new structure in the same positions. | * Provides for transitional provisions for the Waste Management Bureau. The clause provides clarity that anything done by the Waste Management Bureau under the repealed Part 7A of the National Environmental Management: Waste Act, 2008 remains valid until any subsequent new provisions overrides it. * The clause further indicates that the Waste Management Bureau in place at the time of commencement of this Amendment Act remains in place until members of the Board are appointed in terms of the new section 34G of NEMWA. * The clause further clarifies that the Minister may direct that employees or the CEO of the Waste Management Bureau at the time of the coming into effect of this Amendment Act be absorbed into the new structure in same positions. |
| Clause 85 | Short title and commencement |  | Short title and commencement  85. This Act is called the National Environmental Management Laws Amendment Act, 2017, and comes into operation on a date fixed by the President by proclamation in the Gazette. |  |