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GOVERNMENT NOTICES

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 555

22 April 2003

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, hereby publishes the second draft National Environmental Management Second Amendment Bill, which provides for the further regulation of environmental impact assessments, environmental authorizations, the registration of associations of environmental assessment practitioners and incidental matters. More details are set out in the explanatory memorandum and the attached Bill.

Written comments and inputs are invited from interested parties and the general public, which must be submitted **on or before 30 May 2003** to:

Ms A Britz
Department of Environmental Affairs and Tourism
Private Bag X 477
PRETORIA
0001
E-mail: abritz@ozone.pwv.gov.za
Facsimile: (012) 310-3688

NATIONAL ENVIRONMENTAL MANAGEMENT SECOND AMENDMENT BILL, 2003

EXPLANATORY MEMORANDUM

The National Environmental Management Act, 1998 (NEMA) provides for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote co-operative governance and procedures for coordinating environmental functions exercised by organs of state.

This amendment to the Act seeks to:

- Provide for the listing of activities that requires an environmental authorization
- Provide for offences when listed activities are undertaken without or in contradiction with an environmental authorization
- Provide for associations of environmental assessment practitioners to be registered
- Provide for cost recovery for services delivered by competent authorities

Section 24 provides for both the Minister and MEC to identify activities or areas in which certain activities may not be undertaken in the absence of an environmental authorization.

This Bill will provide for the creation of certification authorities for environmental practitioners. This will ensure that proper standards are set and maintained by practitioners and would enhance the quality of reports submitted for approval. Authorities responsible for implementation of chapter 5 of NEMA would be able to charge a fee for services rendered in order to recover costs

GENERAL EXPLANATORY NOTE:

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

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

**NATIONAL ENVIRONMENTAL MANAGEMENT SECOND AMENDMENT
BILL, 2003**

BILL

To amend the National Environmental Management Act, 1998, to further regulate environmental authorisations; to provide for the registration of associations of environmental assessment practitioners; and to provide for incidental matters.

Amendment of section 1 of Act 107 of 1998

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

- (a) the insertion after the definition of “community” of the following definition:
“ ‘competent authority’ means, in respect of any listed activity, the organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, granting an environmental authorisation in respect of that activity;”;
- (b) the insertion after the definition of “environment” of the following definition:
“ ‘environmental authorisation’ means the authorisation by a competent authority of a listed activity in terms of this Act;”;
- (c) the insertion after the definition of “international environmental instrument” of the following definitions:
“ ‘listed activity’ means an activity identified in terms of section 24(2)(a) – (c);”;
“ ‘listed area’ means an area identified in terms of section 24(2)(b);”;

- (d) the substitution for the definition of “MEC” of the following definition:
 “ ‘MEC’ means the Member of the Executive Council to whom the Premier has assigned responsibility for the environment [the performance in the province of the functions entrusted to a MEC by or under such a provision];”;
- (e) the insertion after the definition of “regulation” of the following definition:¹
 “ ‘specific environmental management Act’ means –
 (i) the National Environmental Management: Biodiversity Act, 2003 (Act No... of 2003); and
 (ii) the National Environmental Management: Protected Areas Act, 2003 (Act No ... of 2003);
and includes any regulations or other subordinate legislation made in terms of these Acts;”.

Amendment of section 24 of Act 107 of 1998

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

“24 [Implementation]Environmental authorisations

(1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential impact on [-

- (a) the environment[;
- (b) **socio-economic conditions; and**
- (c) **the cultural heritage,]**

of listed activities [that require authorisation or permission by law and which may significantly affect the environment,] must be considered, investigated, **[and]** assessed **[prior to their implementation]** and reported on to the competent authority [organ of

¹ This definition also appeared in the NEMA Amendment Bill, 2003 (the first NEMA Amendment Bill). It is included here for convenience and to make this Bill understandable but will be deleted if the first NEMA Amendment Bill is passed prior to this Bill being introduced in Parliament or if the two Bills are merged prior to being introduced in Parliament.

state] charged by [law] this Act with granting the relevant environmental authorisation [authorising, permitting, or otherwise allowing the implementation of an activity].

(1A) Listed activities and areas are activities and areas identified by the Minister or MEC in terms of subsection (2)(a) – (c).

(2) The Minister [may with the concurrence of the MEC], and every MEC [may] with the concurrence of the Minister, may [in the prescribed manner]—

(a) identify activities which may not [be] commence[d] without prior environmental authorisation from the competent authority [Minister or MEC];

(b) identify geographical areas based on environmental attributes in which specified activities may not [be] commence[d] without prior environmental authorisation from the competent authority [Minister or MEC] and [specify such] identify any specified activities;

(c) identify existing activities in respect of which an application for an environmental authorisation must be made to the competent authority: [make regulations in accordance with subsections (3) and (4) in respect of such authorisations;]

[(d) identify existing authorised and permitted activities which must be considered, assessed, evaluated and reported on; and]

[(e) prepare compilations of information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every organ of state charged by law with authorising, permitting or otherwise allowing the implementation of a new activity, or with considering, assessing and evaluating an existing activity:]

Provided that where authorisation for an activity falls under the jurisdiction of another Minister, a decision in respect of paragraph (a) ~~[or (b)]~~ to (c) must be taken ~~[in] after~~ consultation with such other Minister.

(2A) The Minister, and every MEC with the concurrence of the Minister, may prepare compilations of information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority.

(3)[(a)] Procedures for the [The] investigation, assessment and communication of the potential impact of activities [contemplated in subsection (1) must take place in accordance with procedures complying with subsection (7)] must, as a minimum, ensure the following:

- (a) investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;
- (b) investigation of the potential impact, including cumulative effects, of the activity and its alternatives on the environment, socio-economic conditions and cultural heritage and assessment of the significance of that potential impact;
- (c) investigation of mitigation measures to keep adverse impacts to a minimum, as well as the option of not implementing the activity;
- (d) public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts;
- (e) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
- (f) investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation;

- (g) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;
- (h) that the findings and recommendations flowing from such investigation, and the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to the proposed policy, programme, plan or project; and
- (i) that environmental attributes identified in the compilation of information and maps as contemplated in subsection (2A) are considered.

[(b) Every Minister and MEC responsible for an organ of state that is charged by law with authorising, permitting, or otherwise allowing an activity contemplated in subsection (1) may prescribe regulations laying down the procedures to be followed and the report to be prepared for the purpose of compliance with paragraph (a).]

[(c) Any regulations made in terms of this subsection or any other law that contemplates the assessment of the potential environmental impact of activities must, notwithstanding any other law, comply with subsection (7).]

[(d) This section does not affect the validity of any law contemplated in paragraph (c) that is in force at the commencement of this Act, including the provisions and regulations referred to in section 50 (2): Provided that paragraph (a) must nevertheless be complied with.]

[(4) Before any regulations are prescribed under this section or any other law that contemplates the assessment of the potential environmental impact of activities, and notwithstanding such other law—

- (a) a Minister or MEC must submit a draft of such regulations to the Committee;**

(b) **the Committee must within 30 days of the receipt of such draft regulations—**

- (i) **determine whether the draft regulations would bring about a duplication of effort by persons initiating activities contemplated in subsection (1) in the investigation and assessment of the potential impacts of activities that require authorisation or permission from more than one organ of state; and**
- (ii) **approve the draft regulations unless they would bring about such a duplication of effort; or**
- (iii) **specify amendments to be made to such draft regulations in order to avoid such a duplication of effort;**

(c) **a Minister or MEC must—**

- (i) **where such draft regulations have been approved by the Committee, follow the procedure prescribed in section 47; or**
- (ii) **give effect to the amendments specified by the Committee, and thereafter follow the procedure prescribed in section 47.]**

(4) The Minister, and every MEC with the concurrence of the Minister, may make regulations consistent with subsection (3) –

(a) laying down the procedure to be followed in applying for, the issuing of and monitoring compliance with environmental authorisations;

(b) laying down the procedure to be followed, and the institutional arrangements, in respect of –

- (i) the efficient administration and processing of environmental authorisations;
- (ii) fair decision-making and conflict management in the consideration and processing of applications for environmental authorisations;

- (iii) the preparation and evaluation of environmental impact assessments, strategic environmental assessments, environmental management plans, risk assessments, lifecycle assessments, and similar environmental management instruments;
- (iv) applications by any person to the competent authority to be exempted from the provisions of any regulation in respect of a specific application;
- (v) appeals against decisions of competent authorities;
- (c) prescribing fees to be paid for the consideration and processing of applications for environmental authorisations;
- (d) requiring the provision of funds or other security to ensure compliance with conditions attached to environmental authorisations;
- (e) specifying that environmental impact assessments, or other specified tasks performed in connection with an application for an environmental authorisation, may only be performed by an environmental assessment practitioner registered in accordance with the procedures to be established;
- (f) requiring that competent authorities maintain a registry of applications for, and records of decision in respect of, environmental authorisations;
- (g) specifying that a contravention of a specified regulation is an offence and prescribing penalties for the contravention of that regulation;
- (h) any other matter necessary for dealing with making and evaluating applications for environmental authorisations.

(4A) An MEC may make regulations in terms of section 24(4) only in respect of listed activities or areas in respect of which the MEC or the provincial department responsible for environmental affairs is the competent authority.

(5) Compliance with the procedure laid down by [a] the Minister or an MEC in terms of subsection (4) does not remove the need to obtain an authorisation other than an environmental authorisation, for that activity from any [other] organ of state

charged by law with authorising, permitting or otherwise allowing the implementation of the activity.

(6) Only the Minister may make regulations in accordance with subsection[s (3) and] (4) stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential impacts for the purpose of complying with subsection (1) where—

- (a) the activity will affect **[the interest of]** more than one province or traverse international boundaries;
- (b) the activity will affect compliance with obligations resting on the Republic under customary or conventional international law[; or
- (c) **an activity contemplated in subsection (1) is not dealt with in regulations made under subsection (3)].**

[(7) Procedures for the investigation, assessment and communication of the potential impact of activities must, as a minimum, ensure the following:

- (a) Investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;**
- (b) investigation of the potential impact, including cumulative effects, of the activity and its alternatives on the environment, socio-economic conditions and cultural heritage, and assessment of the significance of that potential impact;**
- (c) investigation of mitigation measures to keep adverse impacts to a minimum, as well as the option of not implementing the activity;**
- (d) public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts;**

- (e) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
- (f) investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation;
- (g) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;
- (h) that the findings and recommendations flowing from such investigation, and the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to the proposed policy, programme, plan or project; and
- (i) that environmental attributes identified in the compilation of information and maps as contemplated in subsection (2) (e) are considered.]”

Insertion of sections 24A to 24I in Act 107 of 1998

3. The following sections are hereby inserted in the principal Act after section 24:

“24A Procedure for listing activity or area

Before listing any activity or area in terms of section 24(2), the Minister or MEC must publish a notice in the relevant Gazette –

- (a) specifying the activity or area that it is proposed to list;
- (b) inviting interested parties to submit written comments on the proposed listing within a reasonable period.

24B Delisting of activities or areas

(1) The Minister may delist an activity or area made by the Minister in terms of subsection 24(2).

(2) The MEC may, with the concurrence of the Minister, delist an activity or area made by the MEC in terms of sub-section 24(2).

(3) The Minister or MEC must comply with section 24A, read with the changes required by the context, before delisting an activity or area in terms of this section.

24C Procedure for identifying the competent authority

(1) When listing activities in terms of section 24(2) the Minister, or the MEC with the concurrence of the Minister, must identify the competent authority responsible for granting environmental authorisations in respect of those activities.

(2) The Minister must be identified in terms of subsection (1) as the competent authority if the activity -

- (a) has implications for national environmental policy or international environmental commitments or relations;
- (b) will take place within an area identified in terms of section 24(2)(b) as a result of the obligations resting on the Republic in terms of any international environmental instrument, other than any area falling within the sea-shore, a conservancy, a protected natural environment, a proclaimed private nature reserve, a natural heritage site, a world heritage site or the buffer zone or transitional area of a biosphere reserve;
- (c) will affect more than one province or traverse international boundaries; or
- (d) is undertaken, or is to be undertaken, by -
 - (i) a national department;
 - (ii) a provincial department responsible for environmental affairs; or

(iii) a statutory body performing an exclusive competence of the national sphere of government.

(3) The Minister and an MEC may agree that applications for environmental authorisations in regard to any activity or class of activities-

(a) contemplated by sub-section (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.

24D Publication of list

The Minister or MEC must publish in the relevant Gazette a notice listing activities and areas identified in terms of subsection 24(2) and listing the competent authorities identified in terms of subsection 24C.

24E Minimum conditions attached to environmental authorisations

Every environmental authorisation must as a minimum ensure that adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity.

24F Commencing or continuing listed activity

(1) Notwithstanding the provisions of any other Act, no person may commence an activity listed in terms of section 24(2)(a) or (b) unless the competent authority has granted an environmental authorisation for the activity, and no person may continue an existing activity listed in terms of section 24(2)(c) if an application for an environmental authorisation is refused.

(2) It is an offence for any person to commence or continue any listed activity, or cause any listed activity to be commenced or continued -

(a) in contravention of subsection (1);

(b) in contravention of the environmental authorisation granted for the activity.

(3) Sub-sections (1) and (2) do not apply if the activity was commenced or continued in response to an emergency, involving the safety of humans or property or the protection of the environment.

(4) A person convicted of an offence in terms of subsection (2) is liable to a fine or imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment. A fine imposed in terms of this section shall not exceed three times the value of the activity on completion.

(5) A person convicted of an offence in terms of subsection (2), and who after such conviction persists in the act or omission which constituted the offence, shall be guilty of a continuing offence and liable on conviction to a fine or to imprisonment for a period not exceeding 60 days for every day on which he or she so persists with such act or omission, or to both such fine and imprisonment.

24G Registration authorities

(1) Any association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in such manner as the Minister may determine.

(2) _____

(2) The application must contain-

- (a) the constitution of the association;
- (b) a list of the members of the association;
- (c) a description of the criteria and process to be used to register environmental assessment practitioners;
- (d) a list of the qualifications of the members of the association responsible for the assessment of applicants for registration;
- (e) a code of conduct regulating the ethical and professional conduct of members of the association; and
- (f) any other prescribed requirements.

(3) After considering an application, and any other additional information that the Minister may require, the Minister may-

- (a) by notice in the Gazette, appoint the association as a registration authority; or
- (b) on notice to the association, refuse to appoint the association as a registration authority.

(4) The Minister for good cause and on notice to the association may terminate the appointment of an association as a registration authority.

(5) The Minister must maintain a register of all associations appointed as registration authorities in terms of this section.

24H Activities commenced or continued in contravention of Chapter 5 of this Act

(1) Notwithstanding any other powers they may have, the Minister or MEC may direct any person who has commenced or continued any listed activity in contravention of Chapter 5, or caused any listed activity to be commenced or continued in contravention of Chapter 5, to-

- (a) compile a report containing -
 - i) an assessment of the nature, extent, duration and significance of the impacts of the activity on the environment, including the cumulative effects;
 - ii) a description of mitigation measures undertaken or to be undertaken in respect of the impacts of the activity on the environment;
 - (iii) 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;
 - iv) an environmental management plan; and
 - v) provide such other information or undertake such further studies as the Minister or MEC deem necessary.

(2) Upon the payment by the person of a fine of 10% of the estimated value of the activity on completion, the Minister or MEC concerned must consider the report contemplated in that section and thereafter must -

- (a) direct such person to cease the activity, either wholly or in part and rehabilitate the environment subject to such conditions as the Minister or MEC may deem necessary; or
- (b) issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.”

(3) The Minister or MEC may, on good cause shown, reduce the amount of the fine contemplated in subsection (2).

Amendment of section 43 of Act 107 of 1998

4. The following section is hereby substituted for section 43 of the principal Act:

“43 Appeals [to the Minister]

(1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.

(2) Any affected person may appeal to the relevant MEC against a decision taken by any person acting under a power delegated by the MEC under this Act or a specific environmental management Act [An appeal under subsection (1) must be noted and must be dealt with in the manner prescribed].

(3) Any affected person may appeal to the Minister or MEC as the case may be against -

- (a) any decision to issue or refuse to issue an environmental authorisation or grant an exemption in terms of chapter 5 of this Act;
- (b) any provision or condition of an environmental authorisation or exemption issued or granted in terms of chapter 5 of this Act;
- (c) any directive issued in terms of chapter 5 of this Act.

(4) An appeal under subsections (1) to (3) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

(5) The Minister or MEC, as the case may be, may, either consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.

(6) The Minister or MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate order, including an order that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(7) An appeal under this section does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or any directive, unless the Minister or MEC directs otherwise.”

Amendment of section 44 of Act 107 of 1998

5. Section 44 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may make regulations –

(a) dealing with any matter which under this Act must, or may, be dealt with by regulation; and

(b) generally, to carry out the purposes and the provisions of this Act.”

Amendment of section 47 of Act 107 of 1998

6. Section 47 of the principal Act is hereby amended by –

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

“(2) The Minister or MEC must, within 30 days after promulgating and publishing any regulations under this Act, [table] refer the regulations to Parliament or the relevant provincial legislature as the case may be [in the National Assembly and the National Council of Provinces and an MEC must so table the regulations in the relevant provincial legislature or, if Parliament or the provincial legislature is then not in session, within 30 days after the beginning of the next ensuing session of Parliament or the provincial legislature].”

(b) by the deletion of subsections (3) and (4);

(c) by the substitution of subsection (5) for the following subsection:

“[(5)(a) The National Assembly, after considering any rejection of a regulation by the National Council of provinces: and the relevant provincial legislature, may by resolution within 60 days after they have been tabled disapprove of the regulations,]

(3) Parliament or the relevant provincial legislature must consider the regulations and may approve the regulations or disapprove the regulations and may suspend its disapproval for any period and on any conditions to allow the Minister or MEC to amend the regulations [correct a defect].”

(d) by the substitution of subsection (6) for the following subsection:

“[(6) (4) If [the National Assembly] Parliament or a provincial legislature disapproves of any regulation, the regulation lapses, but without affecting –

- (i) the validity of anything done in terms of the regulation before it lapsed;
or
- (ii) a right or privilege acquired or an obligation or liability incurred before it lapsed.”

Amendment of section 50 of Act 107 of 1998

7. Section 50 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection;

“(3) Any application made in terms of sections 21 or 22 of the Environment Conservation Act, 1989 (Act 73 of 1989) that has commenced but not been finalised when those sections are repealed, shall be finalised as if those sections had not been repealed.”

Substitution of Schedule 3 to Act 107 of 1998

8. The following Part is hereby substituted for Part (a) of Schedule 3 to the principal Act:

“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) (l) in so far as it relates to contraventions of sections 7 and 7bis
Act No. 71 of 1962	Animal Protection Act, 1962	Sections 2(1) and 2A
Act No. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	Section 9
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 1976	Mountain Catchment Areas Act, 1976	Section 14 in so far as it relates to contraventions of section 3
Act No. 63 of 1977	Health Act, 1977	Section 27
Act No. 73 of 1980	Dumping at Sea Control Act,	Sections 2(1)(a) and 2(1)(b)

	1980	
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	Section 29(2)(a) and (4)
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(I) and (j)
<u>Act No. 107 of 1998</u>	<u>National Environmental Management Act, 1998</u>	<u>Section 24 (G)</u>

Short title and commencement

9. This Act is called the National Environmental Management Second Amendment Act, 2003, and takes effect on a date determined by the President by proclamation.