

NOTICE 1405 OF 2006**PUBLICATION OF DRAFT NATIONAL ENVIRONMENTAL MANGEMENT
AMENDMENT BILL FOR PUBLIC COMMENT**

Notice is hereby given that the Minister of Environmental Affairs and Tourism, intends to introduce in Parliament a draft Bill, set out in the Schedule hereto, containing certain proposed amendments to the National Environmental Management Act, **1998** (Act No. **107** of **1998**).

Any person who wishes to submit representations or objections in connection with the draft Bill is invited to do so before 31 October **2006**. All representations or objections must be submitted in writing to the Director-General of the Department of Environmental Affairs and Tourism:

By post to Private Bag **X447**, Pretoria, 0001;

By fax to **012 320 4431**; and

By e-mail to mjardine@deat.gov.za.

Any enquiries in connection with the draft Bill can be directed to Mark Jardine at **012 310 3375**.

SCHEDULE

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 AMENDMENT BILL, 2006

BILL

To amend the National Environmental Management Act, **1998**, in order to include in the definition of “specific environmental management Acts” a reference to the Environment Conservation Act, **1989**; to effect consequential amendments to the Environment Conservation Act; to provide for the Atmospheric Pollution Prevention Act, **1965**, to be deemed to be a specific environmental management Act until section **60** of the Air Quality Act, 2004, which repeals that Act takes effect; to provide for environmental management inspectors to be peace officers as contemplated in the Criminal Procedure Act, 1977; to provide for a penalty for the offence of failing to comply with a compliance notice in terms of section 31N of the National Environmental Management Act, **1998**; and to provide for matters connected therewith.

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act **46** of 2003 and section 1 of Act 8 of 2004.

1. Section 1 of the National Environmental Management Act, **1998**, (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) for the definition of “specific environmental management Acts” of the following definition:

“‘specific environmental management Acts’ means –

- (i) the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); **[and]**
- (ii) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003); **or**
- (iii) the Environment Conservation Act, 1989 (Act No. 73 of 1989), and includes any regulations or other subordinate legislation made in terms of any of those Acts;”.

Amendment of section 31H of Act 107 of 1998

2. Section 31H of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

“(6) An environmental management inspector is for purposes of the enforcement of this Act and a specific environmental management Act a peace officer as contemplated in the Criminal Procedure Act, 1977.”.

Amendment of section 31N of Act 107 of 1998

3. Section 31N of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding five million rand or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.”.

Insertion of section 1A in Act No. 73 of 1989

4. The following section is hereby inserted in the Environment Conservation Act, 1989, after section 1:

“Enforcement officers to be regarded as environmental management inspectors

1A. A person who is an enforcement officer contemplated in section 28 (b) when the N. i. Environmental Managen Amendment Act, 6 takes effect. must for purposes of the National Environmental Management Act, 1998 (Act No. 107 of 1998), be regarded as havinp been designated in terms of section

31B of that Act as an environmental management inspector mandated for the enforcement of this Act.”.

Repeal of section 41A of Act No. 73 of 1989

5. Section 41A the Environment Conservation Act, 1989, is hereby repealed.

Atmospheric Pollution Prevention Act, 1965, deemed to be specific environmental management Act

6. (1) The Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965), must, subject to subsection (2), be regarded to be a specific environmental management Act for purposes of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

(2) This section lapses when section 60 of the Air Quality Act, 2004 (Act 39 of 2004), takes effect.

Short title and commencement

7. This Act is called the National Environmental Management Amendment Act, 2006, and takes effect on a date determined by the Minister by notice in the Gazette.

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL
MANAGEMENT AMENDMENT BILL, 2006**

The purpose of the National Environmental Management Amendment Bill, 2006, is threefold. Firstly, to add the Environment Conservation Act, 1989 (ECA) and the Atmospheric Pollution Prevention Act, 1965, (APPA), to the list of Acts which environmental management inspectors are mandated to enforce. Secondly to provide for environmental management inspectors to be peace officers as contemplated in the Criminal Procedure Act, 1977. Lastly, to provide for the imposition of a penalty for the offence of failing to comply with a compliance notice in terms of section 31N of the National Environmental Management Act, 1998 (NEMA).

The reason for including both ECA and APPA as specific environmental management Acts is to ensure that they, for the remainder of their phasing out periods, are enforced in terms of the new enforcement provisions in NEMA which were inserted in NEMA in terms of the National Environmental Management Amendment Act, 2003. In terms of this enforcement system both the Minister and the MECs for environmental affairs can appoint environmental management inspectors for the enforcement of NEMA and all “specific environment management Acts”. Effective enforcement powers are given in terms of this system to environmental management inspectors.

ECA is already partially repealed, and although it is envisaged that **ECA** will eventually be repealed in its totality, this Act is still being applied for managing the disposal of solid waste. It is therefore proposed that ECA for the remainder of its life span be brought under the NEMA enforcement system to make enforcement of its remaining provisions more effective. It is uncertain at this stage when the provisions of ECA on solid waste disposal would be replaced in its entirety by new legislation.

APPA, on the other hand, has already been repealed but as the repealing provision, section 60 of the Air Quality Act, 2004, has not yet been implemented, it is proposed that a provision be included in the Amendment Bill to provide for APPA to be deemed a specific environmental management until section 60 comes into effect. This course of


action will avoid an unnecessary amendment of NEMA at the stage when section 60 takes effect. It may still take some time before section 60 can be put into effect.

As APPA has its own enforcement provisions, the Bill will enable the current enforcement system of the Act to be retained until the repeal of APPA comes into effect. APPA provides for a detailed system of appointment in respect of air pollution control officers, and also stipulates qualification requirements for such officers because of the highly technical and specialised nature of their functions. The inclusion of the abovementioned deeming clause in this Amendment Bill will therefore not affect the current enforcement system of APPA but will strengthen the enforcement of APPA whilst it is still in force.

The second reason for the amendment is to clarify environmental management inspectors' status as peace officers when exercising certain of their powers. Among the inspection, investigation and enforcement powers given to environmental management inspectors by Chapter 7 of NEMA, is "all the powers assigned in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (CPA), to a police official who is not a commissioned officer" (Section 31H(5) of NEMA). Chapters 2, 5, 7, and 8 of the CPA refer to powers given to "peace officers".

Currently, NEMA does not expressly provide for an environmental management inspector's status as a peace officer when exercising powers under the CPA. Due to concern that this may cause interpretation difficulties in the courts, it is proposed that NEMA's Section 31H is amended by inserting a new sub-clause (6) which simply clarifies that, for the purposes of enforcement of NEMA and a specific environmental management Act, an environmental management inspector is a peace officer as contemplated in the CPA. A similar provision is contained in the Marine Living Resources Act, 1998.

Thirdly, the Amendment Bill provides for the imposition of a penalty in the event that a person is found guilty of the offence of failing to comply with a compliance notice in



terms of section 31N of NEMA. Currently, NEMA states that a person who fails to comply with a compliance notice commits an offence, but it does not provide for an accompanying penalty (either in the form of a fine and/or imprisonment) in the event of a conviction of this offence by a court of law. This may have an adverse effect on the competency of a court to regard the failure to comply with a compliance notice as a criminal offence and to impose any penalty. In order to set a meaningful standard for maximum penalties that is consistent with other national environmental quality and protection offences, the proposed maximum penalty for non-compliance with a compliance notice is equivalent to the maximum penalty currently prescribed in Section 24F(4) of the NEMA, namely 10 years and/or R5 million.

Financial implications

Other than notifying all institutions that implement and enforce NEMA, ECA and APPA and all designated environmental management inspectors (and officials awaiting designation as environmental management inspectors) of the amendment and implementing a communication strategy to advise the public of the amendment, there are no financial implications of any significance.

Consultation

The following persons and institutions have been consulted on the contents of this amendment bill:

- all provincial environment departments through Environment MINMEC
- other national departments represented on the Committee for Environmental Coordination

The Minister of Safety and Security has also have been advised of the contents of the amendment bill.

Tagging

The Department of Environmental Affairs and Tourism is of the view that the Bill should be dealt with as section 76 Bill in the Parliamentary process.