

No. 1110

1 August 2003

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT: SECOND
AMENDMENT BILL**

Mohammed Valli Moosa, the Minister of Environmental Affairs and Tourism, hereby publishes the draft National Environmental Management Act: Second Amendment Bill for public information and written comments in terms of Rule 241(1)(b) of the National Assembly and Rule 186(1)(a) of the National Council of Provinces.

The National Environmental Management Act: Second Amendment Bill contains amendments to chapter 5 of the National Environmental Management Act (Act 107 of 1998) (NEMA) on integrated environmental management. The bill seeks to amend NEMA to enable the system of environmental impact assessments and related management tools to be regulated in terms of NEMA, rather than under the Environment Conservation Act (Act 73 of 1989). In doing so, the bill introduces certain improvements to the system of environmental impact management.

The draft bill will be tabled in Parliament in August 2003 for consideration. Written comments and inputs are invited from interested and affected parties and public. These must be submitted to:

- 1, Mr. S Mfenyana
Secretary to Parliament
Parliament of South Africa
P O Box 15
CAPE TOWN
8000
Fax: (021) 403 2604

And/or

2. Ms G Mahlangu-Nkabinde
Chairperson of the Portfolio Committee on Environmental Affairs and Tourism
Parliament of South Africa
P O Box 15
CAPE TOWN
8000
Fax: (021) 403 2522

Copies of the bill can be obtained from:

- Government Printers – Cape Town & Pretoria
- Ms K Maphanga
Department of Environmental Affairs and Tourism
Private Bag X 447
PRETORIA
0001
Fax: (012) 320 0205
E-mail: Kmaphanga@ozone.pwv.gov.za

THE CLOSING DATE FOR COMMENTS IS 30 AUGUST 2003

MEMORANDUM ON THE OBJECTS OF THE BILL, 2003

NATIONAL ENVIRONMENTAL MANAGEMENT: SECOND AMENDMENT BILL

1. INTRODUCTION

The National Environmental Management Second Amendment Bill contains amendments to chapter 5 of the National Environmental Management Act (Act 107 of 1998) (NEMA), on integrated environmental management.

The Bill seeks to amend NEMA to enable the system of environmental impact assessments and related management tools to be regulated in terms of NEMA, rather than under the Environment Conservation Act (Act 73 of 1989). In doing so the Bill introduces certain improvements to the system of environmental impact management.

The second amendment to the National Environmental Management Act was approved by Cabinet on 16 April 2003 and published for comment on 22 April 2003. The closing date for the submission of comments was 30 May 2003. Comments were received from approximately 40 institutions and individuals. Amendments have been made to the Bill to streamline and simplify certain provisions. No substantive policy changes have been made to the Bill previously approved by Cabinet.

2. GENRAL BACKGROUND

The current system of environmental impact management is regulated in terms of sections 21, 22 and 26 of the Environment Conservation Act (Act 73 of 1989) (ECA) and regulations issued there under. Chapter 5 of NEMA established a new framework for environmental impact management. The Department now wishes to bring the system of impact assessments under NEMA. In order to do so chapter 5 of NEMA requires certain

amendments to streamline the process of regulating and administering the impact assessment process at national, provincial and local level. The amendments also provide for a range of integrated environmental management tools, including but not limited to environmental impact assessments.

This amendment to the Act seeks to:

- Provide for the listing of activities that require 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.

3. SUBSTANTIVE SUMMARY

A number of new definitions are added to the current list, defining terms specifically referred to in chapter 5 of the Act. This includes definitions of "assessment", "commence", "evaluation", "environmental assessment practitioner", "review" and "specified activity".

Section 24(1) stipulates that the potential impact on the environment of listed activities must be considered, assessed and reported on to the competent authority. Section 24(2) allows the Minister and relevant MEC to identify activities that will be subject to environmental impact assessments, and to identify specified activities within identified geographical areas, which will also be subject to environmental impact assessments.

An additional clause added to the Bill empowers the Minister and relevant MEC to identify areas in which specified activities may be excluded from authorization. The provision for the identification, by the Minister or MEC, of existing activities in respect of which an application for an environmental authorisation must be made, was amended to refer to

existing activities "which in the opinion of the Minister or MEC may have a detrimental effect on the environment".

Section 24(2A) provides for the Minister and relevant MEC to prepare information which must be taken into account by every competent authority. Section 24(3) lays down minimum content of procedures for the investigation, assessment and communication of the potential impact of activities. The words "socio-economic conditions and cultural heritage" were removed from section 24(3)(b) to align it with section 24(1). The words "including cumulative effects" in section 24(3) were removed and the wording of section 24(3)(d) was changed to ensure that the minimum standard set by section 24(3) is achievable.

Section 24(4) grants the Minister and relevant MEC the power to make regulations in a number of instances. This section now also provides for the Minister and relevant MEC to make regulations regarding review mechanisms and procedures.

Section 24(5) ensures that all authorisations prescribed by law for listed activities will be obtained. The newly added section 24(5A) stipulates that other authorisations or permits obtained for a listed or specified activity may be taken into consideration by the competent authority if it has complied with section 24(3)(d), i.e. the public participation process. Section 24(6) makes provision for instances where only the Minister of Environmental Affairs and Tourism may make regulations.

Sections 24A and B provide for a consultation process to be followed during the listing or delisting of activities and areas. The heading of section 24B was amended to align it with the headings of sections 24A and 24C. Section 24C provides for the procedure for identification of the competent authority, which is defined as the organ of state responsible for assessing and evaluating the environmental impact of listed or specified activities. An addition was made to section 24C(2) to include activities undertaken within a national proclaimed protected area or other conservation area under control of a national authority as activities where the Minister is identified as the competent authority.

Section 24D requires that lists of activities and/or areas should be published as well as the date on which the list comes into effect. Section 24E provides for minimum content of environmental authorizations and was amended to also provide for the transfer of rights and obligations when a change of ownership occurs.

Section 24F establishes offences and fines for contraventions of this bill. The undertaking of any listed or specified activity without an environmental authorization or in contravention of an authorisation, constitutes an offence, unless it is, in the opinion of the Minister, undertaken in response to an emergency. The calculation of fines was amended to a fixed monetary value (R 5 000 000 in section 24F(4)). The term of imprisonment provided for in section 24F(5) in the case of a "continuing offence" was amended to 10 days for every day on which the offence continues instead of the previously determined 60 days.

Sections 24H and 24I provide for the possibility of approving environmental authorizations ex post facto. A substantial fine, the calculation of which was replaced by fixed monetary values (R500 000 in the case of a contravention of the Environment Conservation Act, 1989 and R 1 million in the case of a contravention of this Act) will, however, be payable and should act as deterrent. The amended section 24J grants the Minister and relevant MEC the power to appoint external specialist reviewers in certain instances.

Amendments to sections 43, 44, 47 and 50 of the Act are also required. Section 43 provides for appeals to the Minister as well as the relevant MEC. Section 44 required minor editing. Section 47 seeks to simplify the regulation making process. Regulations will continue to be submitted to Parliament or the relevant provincial legislature for their approval or disapproval. Section 50 provides for necessary transitional arrangements.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

National and provincial government currently administer the system of environmental impact assessments and it is anticipated that the Bill will decrease the administrative burden on both spheres of government. The Bill will therefore not increase organizational or personnel requirements.

5. FINANCIAL IMPLICATIONS

As national and provincial departments currently administer the system of environmental impact assessments, it is not anticipated that the Bill will increase the financial resources required for administering EIAs. The Bill provides for the payment of services delivered by authorities and it will therefore have a positive impact on the budgets at national and provincial level.

6. OTHER DEPARTMENTS/BODIES CONSULTED

The Bill has been redrafted to incorporate comments from a wide range of stakeholders including national departments, provinces, business and industry, academic institutions and civil society.

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

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 “Agenda 21” of the following definition:
“ ‘**assessment**’ when used in Chapter 5 means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to decision-making;”;
- (b) the insertion after the definition of “best practicable environmental option” of the following definition:
“ ‘**commence**’, when used in Chapter 5 in the context of chapter 5, means the start of any physical activity on the site in furtherance of a listed activity ;”;
- (c) the insertion after the definition of “community” of the following definition:
“ ‘**competent authority**’, in respect of any listed activity or specified activity, means 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 such activity;”;
- (d) the insertion after the definition of “environment” of the following definition:

- “**‘environmental assessment practitioner’** when used in Chapter 5 means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management plans and/or any other appropriate environmental instruments introduced through regulations of this Act;”;
- (e) the insertion after the definition of “environmental assessment practitioner” of the following definition:
- “**‘environmental authorisation’** when used in Chapter 5 means the authorisation by a competent authority of a listed activity in terms of this Act;”;
- (f) the insertion after the definition of “environmental management plan” of the following definition:
- “**‘evaluation’** when used in Chapter 5 means the process of ascertaining the relative importance (or significance) of information, in the light of peoples’ values, preferences and judgements, in order to make a decision;”;
- (g) the insertion after the definition of “international environmental instrument” of the following definitions:
- “**‘listed activity’** when used in Chapter 5 means an activity identified in terms of section 24(2)(a);”;
- “**‘listed area’** when used in Chapter 5 means a geographical area identified in terms of section 24(2)[(b)] (b) and (d);”;
- (h) 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;”;
- (i) the insertion after the definition of “regulation” of the following definition:

“ ‘review’ when used in Chapter 5 means the process of determining whether an assessment has been carried out correctly and/or whether the resulting information is adequate for decision-making;”;

(j) the insertion after the definition of ‘review’ of the following definition:¹

“ ‘specific environmental management Act’ means national legislation that regulates a specific aspect of the environment, as defined in this Act, and includes any regulations or other subordinate legislation made in terms of such Acts;”;

(k) the insertion after the definition of “specific environmental management Act” of the following definition:

“ ‘Specified activity’ when used in Chapter 5 means an activity as specified within a listed geographical area in terms of section 24(2)(b) and (c);”.

Amendment of section 24 of Act 107 of 1998

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

“24 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 the environment of listed activities must be considered, investigated, assessed and reported on to the competent authority charged by this Act with granting the relevant environmental authorisation.

(2) The Minister, and every MEC with the concurrence of the Minister, may —

- (a) identify activities which may not commence without environmental authorisation from the competent authority;
- (b) identify geographical areas based on environmental attributes in which specified activities may not commence without environmental authorisation from the competent authority and identify any specified activities;
- (c) identify geographical areas based on environmental attributes in which specified activities may be excluded from authorisation by the competent authority and identify any specified activities;
- (d) identify individual or generic existing activities, which in the opinion of the Minister or the MEC may have a detrimental effect on the environment, in respect of which an application for an environmental authorisation must be made to the competent authority;

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

- (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) Procedures for the investigation, assessment and communication of the potential impact of activities must, as a minimum, ensure the following with respect to every application for an environmental authorisation:
- (a) investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;
 - (b) investigation of the potential impact of the activity and its alternatives on the environment 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 which provides all interested and affected parties, including all organs of state at all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in such information and participation procedures;
 - (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.
- (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, and any other relevant environmental management instruments that may be developed in time;

- (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:
 - (i) the consideration and processing of applications for environmental authorisations;
 - (ii) the review of documents, processes and procedures by specialists on behalf of the competent authority;
- (d) requiring the provision of financial or other security to cover the risks to the State and the environment of non-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) prescribing minimum criteria for the report content for each type of report and for each process that is contemplated in terms of

these regulations in order to ensure a consistent quality and to facilitate efficient evaluation of reports;

(i) prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in the review process;

(j) 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 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 organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity.

(5A) Authorisations or permits obtained under any other legislation for an activity listed or specified in terms of this Act does not absolve the applicant from obtaining authorisation under this Act and any such other authorisations or permits may only be considered by the competent authority if it is in compliance with section 24(3)(d).

(6) Only the Minister may make regulations in accordance with subsection (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 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.

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

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, through description, a map or any other appropriate manner, 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 Procedure for 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) or (c) 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, or the buffer zone or transitional area of a biosphere reserve or a world heritage site;
 - (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;
 - (e) will take place within a national proclaimed protected area or other conservation area under control of a national authority.
- (3) The Minister and an MEC may agree that applications for environmental authorisations with 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 and the date on which the list would come into effect.

24E Minimum conditions attached to environmental authorisations

Every environmental authorisation must as a minimum ensure:

- (1) 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;
- (2) that the property, site or area is specified and that provision is made for the transfer of rights and obligations when a change of ownership thereof occurs.

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),(b) and (c) 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)(d) 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, in the opinion of the Minister or MEC, 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 R5,000,000.00 (five million rands).
- (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 10 (ten) 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) 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 not exceeding R1,000,000.00 (one million rands) as determined by the competent authority, the Minister

or MEC concerned must consider the report contemplated in that section and thereafter may –

- (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.”

24 I Activities commenced or continued in contravention of the Environment Conservation Act 1989, (Act No. 73 of 1989) (ECA)

(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 the ECA, or caused any listed activity to be commenced or continued in contravention of the ECA, to compile a report containing the information as described in section 24H(i)(a)(i-v).

(2) Upon the payment by the person of a fine not exceeding R500,000.00 (five hundred thousand rands) as determined by the competent authority, the Minister or MEC concerned must consider the report contemplated in that section and thereafter may –

- (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) Activities that remain in contravention of the ECA 6 months after the promulgation of this amendment Act, may be declared illegal by notice in the Gazette by the Minister and must be dealt with as offences in terms of section 24F(2).

24J Appointment of external specialist reviewers

- (1) The Minister or MEC may appoint external specialist reviewers in instances where:
- (a) the technical knowledge required to review any aspect of an assessment is not readily available within the competent authority;
 - (b) in the opinion of the competent authority, a high level of objectivity is required which is not apparent in the documents submitted, in order to ascertain whether the information contained in such documents is adequate for decision making or whether it requires amendment.

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

- (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.

- (3) Any affected party 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, refer the regulations to Parliament or the relevant provincial legislature as the case may be.”

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

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

(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.”

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

“(4) If 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.”

(4) In order to ensure that the transition between the legal requirements of sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act 73 of 1989) and the requirements of this Act is efficient, the Minister may through notice in the Gazette list activities included in government notice R1182 of 5 September 1997 that will remain valid from a date to be published by the Minister in the Gazette until such time as a MEC promulgates a list of activities for that province.

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, 1980	Sections 2(1)(a) and 2(1)(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	Section 29(2)(a) and (4)
Act No. 18 of 1998	Marine Living Resources Act,	Section 58(1) in so far as it

	1998	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)

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.