
GOVERNMENT NOTICES

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 392

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DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM NATIONAL ENVIRONMENTAL MANAGEMENT SECOND AMENDMENT BILL

The Minister of Environmental Affairs and Tourism, Marthinus van Schalkwyk, MP, hereby publishes the first draft National Environmental Management Second Amendment Bill, 2007, which provides for the further regulation of environmental impact assessments, environmental authorizations and incidental matters for comment. 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 to:

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**THE CLOSING DATE FOR COMMENTS IS 4 JUNE 2007. COMMENTS RECEIVED
AFTER THE CLOSING DATE MAY NOT BE CONSIDERED.**

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.

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.

Section 43 provides for appeal procedures in respect of any decision made by the relevant competent authority.

This amendment to the Act seeks to:

- Amend the National Environmental Management Act, 1998, so as to substitute certain definitions and to make certain textual alterations to others;
- To make certain textual alterations regarding environmental authorizations; and
- To substitute certain provisions relating to appeal procedures

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.

DRAFT BILL

To amend the National Environmental Management **Act, 1998**, so as to insert certain definitions and substitute others; to make further provision regarding environmental authorisations; *to make certain textual alterations and to provide for incidental matters.*

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 8 of 2004

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

(a) the substitution for the definition of "**commence**" of the following definition:

"**commence**" when used in Chapter 5. means the start of any physical activity on the site in furtherance of a listed activity and specified activity;"
and

(b) the substitution for the definition of '**environmental authorisation**' of the following definition:

““environmental authorisation”.when used in Chapter 5. means the authorisation by a competent authority of a listed and specified activity” in terms of this Act.”.

Substitution of section 24 of Act 107 of 1998

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

“Environmental authorisations

24. (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 and specified 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 identify-
- (a) activities which may not commence without environmental authorisation from the competent authority;
 - (b) geographical areas based on environmental attributes in which specified activities may not commence without environmental authorisation from the competent authority;
 - (c) geographical areas based on environmental attributes, including those attributes based on municipal or provincial Spatial Development Frameworks where such Spatial Development Frameworks have been officially accepted by the provincial authority, in which specified activities may be excluded from authorisation by the competent authority;
 - (d) individual or generic existing activities which may have a detrimental effect on the environment and in respect of which an application for an environmental authorisation must be made to the competent authority:

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

- (3) The Minister, and every MEC with the concurrence of the Minister, may compile 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.
- (4) Procedures for the investigation, assessment and communication of the potential impact of activities **[must ensure]** may include, [as a minimum,] 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 provide all interested and affected parties, including all organs of state in 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, 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 (3) are considered.

- (5) The Minister, and every MEC with the concurrence of the Minister, may make regulations consistent with subsection (4)-
- (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;]**
 - applications to the competent authority by any person to be exempted from the provisions of any regulation in respect of a specific activity;
 - appeals against decisions of competent authorities;
 - (c) laying down procedures and institutional arrangements to be followed for the preparation and evaluation of prescribed environmental management instruments including-
 - (i) environmental management frameworks;
 - (ii) strategic environmental assessments;
 - (iii) environmental impact assessments;
 - (iv) environmental management plans;
 - (v) environmental risk assessments;
 - (vi) environmental feasibility assessments; and
 - (vii) any other relevant environmental management instruments that may be developed in time;
 - (d) 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;
 - (e) 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;
- (f) 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 prescribed procedures;
 - (g) requiring that competent authorities maintain a registry of applications for, and records of decisions in respect of, environmental authorisations;
 - (h) specifying that a contravention of a specified regulation is an offence and prescribing penalties for the contravention of that regulation;
 - (i) prescribing minimum criteria for the report content for each type of report and for each process that is contemplated in terms of the regulations in order to ensure a consistent quality and to facilitate efficient evaluation of reports;
 - (j) prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in, the review process;
 - (k) prescribing any other matter necessary for dealing with making and evaluating applications for environmental authorisations.
- (6) An MEC may make regulations in terms of subsection (5) only in respect of listed and specified activities or areas in respect of which the MEC is the competent authority.
- (7) 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.
- (8) Authorisations or permits obtained under any other law 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 they are in compliance with subsection (4) (d).
- (9) Only the Minister may make regulations in accordance with subsection (5) 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 the activity will affect-
- (a) more than one province or traverse international boundaries; or
 - (b) compliance with obligations resting on the Republic under customary

international law or a convention.

(10) The Minister may identify-

- (a) norms and standards for identified or specified activities;
- (b) the process to be followed in determining which norms and standards may be published as prescribed norms and standards as contemplated in subsection (a);
- (c) activities which may be excluded from the application of regulations promulgated in terms of section 24(5) based on prescribed norms and standards;
- (d) specific monitoring and enforcement conditions relating to prescribed norms and standards."

Substitution of section **24C** of Act **107 of 1998**

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

"Procedure for identifying the competent authority

- 24C. (1) When listing or specifying 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 as the competent authority in terms of subsection (1) if the activity-
- (a) has implications for national environmental policy or international environmental commitments or relations;
 - (b) will take place within an area protected by means of an international environmental instrument. excluding [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] areas 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;
- (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, excluding any municipality, performing an exclusive competence of the national sphere of government; or
- (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 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."

Substitution of section 24D of Act 107 of 1998

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

"Publication of list

24D. The Minister or MEC, as the case may be, must publish in the relevant ***Gazette*** a notice, listing activities or specifying activities or areas identified in terms of section 24 (2) and listing the competent authorities identified in terms of section 24C and the date on which the list is to come into effect."

Substitution of section 24F of Act 107 of 1998

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

"Offences relating to commencement or continuation of listed activity

24F. (1) Notwithstanding the provisions of any other Act, no person may commence an activity listed or specified 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 or specified

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 contravene subsection (1) or the conditions applicable to any environmental authorisation granted for a listed or specified activity.
- (3) It is a defence to a charge in terms of subsection (2) to show that the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment.
- (4) A person convicted of an offence in terms ~~of~~ subsection (2) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.”

Substitution of section 24G of Act 107 of 1998

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

“Rectification of unlawful commencement or continuation of listed activity

24G. (1) On application by a person who has committed an offence in terms of section 24F (2) the Minister or MEC, as the case may be, may direct the applicant to-

(a) compile a report containing one of the following-

- (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;

- (b) provide such other information or undertake such further studies as the Minister or MEC may deem necessary.
- (2) Upon the payment by the person of an administration fine not exceeding R1 million as determined by the competent authority, the Minister or MEC concerned must consider **[the report]** any reports or information submitted in terms of [contemplated in] subsection (1) and thereafter may-
 - (a) direct the person to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and 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) A person who fails to comply with a directive contemplated in subsection (2) (a) or who contravenes or fails to comply with a condition contemplated in subsection (2) (b) is guilty of an offence and liable on conviction to a penalty contemplated in section 24F (4)."

Amendment of section 24H of Act 107 of 1998, as amended by Act 8 of 2004

7. Section 24H of the principal Act is hereby amended by addition after subsection (5) of the following subsection:

"(6) The Minister may use his discretion in determining the number of reastration authorities to be authorized as contemplated in subsection 1, including the decision to limit the number of registration authorities to a single registration authorityv."

Amendment of section 24 of Act 107 of 1998, as amended by Act 8 of 2004

8. The following section is hereby inserted after subsection 24I of the principal Act:

“implementation Guidelines

24J. The Minister may, after consultation with every MEC, publish guidelines regarding the implementation, administration and institutional arrangements of regulations promulgated in terms of section 24 (5) of this Act.”

Amendment of section 24 of Act 107 of 1998, as amended by Act 8 of 2004

9. The following section is hereby inserted after subsection 24J of the principal Act:

“Consultation between competent authorities and consideration of legislative compliance requirements of other organs of state having jurisdiction

24K.(1) The Minister or MEC may consult with any organ of state responsible for administering the legislation of any aspect of an activity or process which also requires environmental authorization under this Act, in respect of the co-ordination of the requirements of the legislation and any regulations promulgated under the Act, to avoid duplication in the submission of such information or the carrying out of such processes.

(2) The Minister or MEC may, for purposes of the environmental authorization requirements provided in this Act, consider any aspect of the authorization process undertaken by any other organ of state having jurisdiction over any aspect of an activity or process which also requires environmental authorization under this Act.”

Amendment of section 24 of Act 107 of 1998, as amended by Act 8 of 2004

10. The following section is hereby inserted after subsection 24K of the principal Act:

“Exemption to persons, local authorities and government institutions from application of certain provisions

24L. (1) Any person, local authority or government institution may in writing apply to the Minister and every MEC, as the case may be, with the furnishing of reasons, for exemption from the application of any provision of section 23 or 24 of this Act.

(2) The Minister and every MEC, as the case may be, may after considering an application lodged in terms of sub section 1—

(a) refuse to grant exemption;

(b) in writing grant exemption from compliance with any of or all the provisions of section 23 or 24 of this Act.

(3) If any condition referred to in subsection (3)(b) is not being complied with, the Minister may in writing withdraw the exemption concerned or at his discretion determine new conditions.

J4) The Minister and every MEC, as the case may be, may from time to time review any exemption granted or condition determined, and if he deems it necessary, withdraw such exemption or delete or amend such condition.”

Substitution of section 43 of Act 107 of 1998

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

“Appeals

43. (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 to refuse to issue an environmental

(b) any provision or condition of an environmental authorisation or

(c) any directive issued in terms of Chapter 5.]

(3) An appeal under subsections (1) to (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

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

(5) 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 decision, including the decision that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(6) 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.

(7) Notwithstanding the provisions of subsections 1-6, any person whose interests are affected by a decision of an administrative body under this Act, may within 30 days after having become aware of such decision, request such body in writing to furnish reasons for the decision within 30 days after receiving the request.

(8) Within 180 days after having been furnished with reasons in terms of subsection (1), or after the expiration of the period within which reasons had to be so furnished by the administrative body, the person in question may apply to a division of the Supreme Court having jurisdiction to review the decision."

Short title and commencement

11. This Act is called the National Environmental Management Second Amendment Act, 2007 and commences on a date determined by the President by proclamation in the Gazette.