

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**NATIONAL ENVIRONMENTAL
MANAGEMENT: AIR QUALITY
AMENDMENT BILL**

[B 27—2013]

*(As agreed to by the Portfolio Committee on Water and Environmental Affairs
(National Assembly))*

[B 27A—2013]

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AMENDMENTS AGREED TO

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY AMENDMENT BILL

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LONG TITLE

1. On page 2, to omit the long title and substitute the following:

“To amend the National Environmental Management: Air Quality Act, 2004, so as to substitute certain sections; to provide for the establishment of the National Air Quality Advisory Committee; to provide for the consequences of unlawful commencement of a listed activity; to provide for monitoring, evaluation and reporting on the implementation of an approved pollution prevention plan; to empower the MEC or Minister to take a decision in the place of the licensing authority under certain circumstances; to provide for the Minister as licensing authorities in situations where the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission licence, where the applications are trans-boundary, where the air activity forms part of national priority project, where the activity is also related to the environmental impact and waste management activities authorised by the Minister, where the air activity relates to a prospecting, mining, exploration or production activity; to delete cross references to the Environmental Conservation Act, 1989; to clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission licence; to create an offence for non-compliance with controlled fuels standards; to provide for the development of regulations on climate change matters and the procedure and criteria for administrative fines; to delete certain obsolete provisions; and to provide for matters connected therewith.”.

CLAUSE 1

1. On page 2, after line 5, to insert the following:

(a) by the insertion after the definition of “Atmospheric Pollution Prevention Act”, of the following definition:
“‘commissioning’ means the commencement of a listed activity;”.

2. On page 2, after line 10, to insert the following:

(d) by the substitution for the definition of “licensing authority” of the following definition:
“‘licensing authority’ means an authority referred to in section 36(1), (2), [(3) or] 3A, (4) or (5) responsible for implementing the licensing system set out in Chapter 5;”;
and”.

CLAUSE 2

1. On page 3, from line 4, to omit “(1) The Minister may establish a National Air Quality Advisory Committee **[as a subcommittee of the National Environmental Advisory Forum, established in terms of]** in accordance with section 3A of the National Environmental Management Act, to advise the Minister on the implementation of this Act.”, and to substitute

“(1) The Minister **[may]** must, by notice in the Gazette, establish **[a]** the National Air Quality Advisory Committee **[as a subcommittee of the National Environmental Advisory Forum, established in terms of the National Environmental Management Act, to advise the Minister on the implementation of this Act]** in terms of this Act.”.

2. On page 3, in line 9, to omit “by the deletion of subsection (2)” and to substitute the following:

by the substitution in subsection (2) for paragraph (d) of the paragraph:

“(d) may **[determine]** prescribe any other matter relating to the Committee.”; and

3. On page 3, after line 9, to insert the following:

(c) by the addition of the following subsection:

“(3) The object of the Committee is to advise the Minister on any air quality related matter as the Minister may determine from time to time.”.

CLAUSE 3

1. Clause rejected.

CLAUSE 4

1. Clause rejected.

NEW CLAUSE

1. That the following be the new clause:

Insertion of section 22A of Act 39 of 2004

3. The following section is hereby inserted in the principal Act after section 22:

“Consequences of unlawful conduct of listed activity resulting in atmospheric emission

22A. (1) Section 24G of the National Environmental Management Act, 1998, as amended, applies to the commencement, without an environmental authorisation, of a listed activity or the activity specified in item 2 in Listing Notice 1 and items 5 and 26 in Listing Notice 2, relating to air quality in terms of Chapter 5 of the National Environmental Management Act, 1998.

(2) Subsections (4) to (10) are applicable to the operating, without a provisional registration or registration certificate, of a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965, at any time prior to the commencement of this Act.

(3) Subsections (4) to (10) are applicable to the conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, of an activity listed in terms of section 21 of this Act which results in atmospheric emission.

(4) On application by a person who conducted an activity contemplated in subsection (2) or (3), the licensing authority may direct the applicant to—

- (a) immediately cease the activity pending a decision on the application submitted in terms of this section;
- (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;
- (c) remedy any adverse effect of the activity on the environment, including the ambient air, and human health;
- (d) cease, modify or control any act, activity, process or omission causing atmospheric emission;
- (e) eliminate any source of atmospheric emission;
- (f) compile a report containing—
 - (i) a description of the need and desirability of the activity;
 - (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
 - (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment, including the ambient air, and human health of the activity;
 - (iv) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;
 - (v) an environmental management programme; or
- (g) provide such other information or undertake such further studies as the licensing authority may deem necessary.

(5) The licensing authority must consider any reports or information submitted in terms of subsection (4) and thereafter may—

- (a) refuse to issue an atmospheric emission licence;
- (b) issue an atmospheric emission licence to such person to conduct the activity subject to such conditions as the licensing authority may deem necessary, which atmospheric emission licence shall only take effect from the date on which it has been issued; or
- (c) direct the applicant to provide further information or take further steps prior to making a decision in terms of paragraphs (a) or (b).

(6) The licensing authority may as part of the decision contemplated in subsection (5), direct a person to—

- (a) rehabilitate the environment within such time and subject to such conditions as the licensing authority may deem necessary;

(b) prevent or eliminate any source of atmospheric emission from the activity within such time and subject to such conditions as the licensing authority may deem necessary; or

(c) take any other steps necessary under the circumstances.

(7) A person contemplated in subsection (4) must pay an administrative fine, which may not exceed R5 million and which must be determined by the licensing authority, before the licensing authority may act in terms of subsection 5(a) or (b).

(8) In considering a decision contemplated in subsection (5)(a) or (b), the licensing authority may take into account whether or not the applicant complied with any directive issued in terms of subsections (4) or (5)(c).

(9) The submission of an application in terms of subsection (4) or the issuing of an atmospheric emission licence in terms of subsection 5(b) or the payment of the administrative fine in terms of subsection (7) shall—

(a) in no way derogate from the environmental management inspector's or the South African Police Services' authority to investigate any transgression of this Act; or

(b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; and

(c) not indemnify the applicant from liability in terms of section 51(1)(a) for having contravened section 22.

(10) If, at any stage after the submission of an application in terms of subsection (4), it comes to the attention of the licensing authority, that the applicant is under criminal investigation for the contravention of or failure to comply with section 22, the licensing authority may defer a decision to issue an atmospheric emission licence until such time that the investigation is concluded and—

(a) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure;

(b) the applicant concerned is acquitted or found not guilty after prosecution in respect of such contravention or failure has been instituted; or

(c) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.”.

CLAUSE 5

1. On page 4, in line 42, after “plan” to insert “that has been”.

CLAUSE 6

1. On page 4, from line 45, to omit “by the addition of the following subsections”, and to substitute “—”.
2. On page 4, after line 45, to insert the following:

(a) by the deletion of subsection (3);

(b) by the insertion of the following subsections after subsection (3):

“(3A) (a) In accordance with sections 125(2)(b) and 156(1)(b) of the Constitution whenever a licensing authority fails to take a decision on an application for an

atmospheric emission licence within the time period set out in section 40(3) or (3A) of this Act, the person that applied for an atmospheric emission licence may apply to the Minister or MEC, as the case may be, to take the decision.

(b) The person contemplated in paragraph (a) must notify the licensing authority in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.

(c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the licensing authority in order to enable the Minister or MEC, as the case may be, to take a decision.

(d) Before taking a decision as contemplated in paragraph (a), the Minister or MEC must request the licensing authority to provide him or her with a report within a specified time period on the status and causes of delay in the application.

(e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactory response or cooperation is received from the licensing authority within the specified time period the Minister or MEC, as the case may be, must, where appropriate—

- (i) inform the person that applied for an atmospheric emission licence in the event that the licensing authority has complied with the relevant pre-cripts;
- (ii) assist the licensing authority in accordance with sections 125(3) and 155(7) of the Constitution to fulfil its obligations under this Act; or
- (iii) direct the licensing authority to take the decision and such other steps as the Minister or MEC, as the case may be, may deem necessary, within a specified time period.

(f) In the event that the licensing authority fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in paragraph (e)(iii), the Minister or MEC, as the case may be, must take the decision within a reasonable period of time.

(g) The Minister or MEC, as the case may be, must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament or Provincial Legislature, as the case may be, setting out the details regarding the exercise of the power referred to in this section during the previous financial year.

(3B) The MEC or Minister, as the case may be, must make a decision on the application contemplated in subsection (3A)(a), within a reasonable period of time from the date of receipt of the application.

(3C) In the event that the MEC fails to make a decision on the application, within a reasonable period of time, as contemplated in subsection (3B), the applicant may submit the application to the Minister for a decision in terms of subsection (3A)(a).

(3D) In the event that the MEC does not have capacity to exercise the power, or for any good reason is unable to do so or to do so within a reasonable period of time, the MEC may request, in writing, the Minister to exercise the power in terms of subsection (3A)(a).”; and

(c) by the addition of the following subsections:

3. On page 4, in line 52, after the first “the”, to insert “listed”.
4. On page 4, in line 53, after “the” to insert “listed”.
5. On page 4, in line 56, to omit “or”.
6. On page 4, in line 57, after the first “the”, to insert “listed”.
7. On page 4, in line 58, to omit “and” and substitute “or”.
8. On page 5, in line 2, to omit the full stop and substitute “; or”.
9. On page 5, after line 2, to insert:

“(e) the listed activity relates to a prospecting, mining, exploration or production activity as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998.”.
10. On page 5, in line 8, after “1998” to omit the comma.
11. On page 5, from line 9, to omit “, and the activities contemplated in subsection (5)(d)”.

CLAUSE 7

1. On page 5, in line 27, after “licences,” to insert “which are subject to an environmental impact assessment in terms of section 24 of the National Environmental Management Act,”.
2. On page 5, in line 30, to omit “and”.
3. On page 5, after line 36, to insert the following:

(c) by the insertion in subsection (3)(b) of the following subparagraph after subparagraph (ii):
“(iiA) indicating where a copy of the application can be obtained;”.

CLAUSE 8

1. On page 5, in line 43, after “authorisation,” to insert “and”.

CLAUSE 9

1. On page 5, in line 52, after “authorisation,” to insert “and”.
2. On page 6, after line 5, to insert the following:

(c) by the insertion after subsection (3) of the following subsection
“(3A) Where the listed activity relates to a prospecting, mining, exploration or production activity contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for

mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998, the Minister, after consultation with the licensing authority contemplated in section 36(1) and (2) of this Act, must decide the application within the timeframes set out in the National Environmental Management Act, 1998.”.

CLAUSE 10

1. On page 6, in line 10, after “activity” to insert “, and may be extended for an additional one year on good cause shown to the licensing authority”.

CLAUSE 11

1. On page 6, in line 14, to omit “[**been**]”, and to substitute “been”

CLAUSE 13

1. On page 6, from line 22, to omit “by the insertion of the following paragraph after paragraph (l)”, and to substitute “—”.
2. On page 6, after line 22, to insert the following:
 - (a) by the substitution for paragraph (a) of the following paragraph:
“(a) any matter necessary to give effect to the Republic’s obligations in terms of an international agreement relating to air quality and climate change;”;
 - (b) by the insertion of the following paragraph after paragraph (a):
“(aA) information relating to energy that is required for compiling atmospheric emissions;”; and
 - (c) by the insertion of the following paragraph after paragraph (l).

CLAUSE 18

1. On page 6, from line 39, to omit “a date fixed by the President by proclamation in the *Gazette*” and to substitute “the date of publication in the *Gazette* as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996.”.