

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENT LAWS AMENDMENT BILL

(As amended by the Select Committee on Land and Environmental Affairs)
(The English text is the official text of the Bill)

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 35B—2007]

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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.

BILL

To provide for the Atmospheric Pollution Prevention Act, 1965, to be regarded as a specific environmental management Act until section 60 of the National Environmental Management: Air Quality Act, 2004, takes effect; to amend the Environment Conservation Act, 1989, so as to rectify certain incorrect references in the Act; to amend the National Environmental Management Act, 1998, so as to clarify an uncertainty in the Act concerning certain definitions; to authorise the Minister of Water Affairs and Forestry to designate persons as environmental management inspectors; to provide for environmental management inspectors to be regarded as peace officers as contemplated in the Criminal Procedure Act, 1977; and 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 amend the National Environmental Management: Air Quality Act, 2004, so as to substitute Schedule 1 to that Act; and to provide for matters connected therewith.

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

Atmospheric Pollution Prevention Act, 1965, to be regarded as specific environmental management Act

1. (1) Subject to subsection (2), the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965), must be regarded as a specific environmental management Act for the purposes of the National Environmental Management Act, 1998 (Act No. 107 of 1998). 5

(2) This section lapses when section 60 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), takes effect.

Amendment of section 29 of Act 73 of 1989, as amended by section 18 of Act 79 of 1992, Proclamation R29 of 1995 and Proclamation R43 of 1996 10

2. Section 29 of the Environment Conservation Act, 1989, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any person who contravenes a provision of section 20(1), **[20(6)]** 20(9), 22(1) or 23(2) or a direction issued under section **[20(5)]** 20(8) or fails to comply 15

with a condition of a permit, permission, authorization or direction issued or granted under the said provisions shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.”. 5

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004 and section 60 of Act 39 of 2004

3. Section 1 of the National Environmental Management Act, 1998, is hereby amended— 10

- (a) by the deletion in subsection (1) of the definition of “specific environmental management Acts”; and
- (b) by the substitution in subsection (1) for the definition of “specific environmental management Act” of the following definition: 15

“**‘specific environmental management Act’** means—

 - (a) the Environment Conservation Act, 1989 (Act No. 73 of 1989);
 - (b) the National Water Act, 1998 (Act No. 36 of 1998);
 - (c) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003); 20
 - (d) the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); or
 - (e) the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), 25

and includes any regulation or other subordinate legislation made in terms of any of those Acts;”.

Insertion of section 31BA in Act 107 of 1998

4. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 31B:

“Designation of environmental management inspectors by Minister of Water Affairs and Forestry 30

- 31BA.** (1) The Minister of Water Affairs and Forestry may—
- (a) designate as an environmental management inspector, any staff member of— 35
 - (i) the Department of Water Affairs and Forestry; or
 - (ii) any other organ of state; and
 - (b) at any time withdraw a designation made in terms of paragraph (a).
- (2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister of Water Affairs and Forestry and the relevant organ of state.”. 40

Substitution of section 31D of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

5. The following section is hereby substituted for section 31D of the National Environmental Management Act, 1998:

“Mandates 45

- 31D.** (1) When designating a person as an environmental management inspector, the Minister, the Minister of Water Affairs and Forestry or MEC, as the case may be, must, subject to subsection (2), determine whether the person concerned is designated for the enforcement of— 50
- (a) this Act;
 - (b) a specific environmental management Act;
 - (c) specific provisions of this Act or a specific environmental management Act;

- (d) this Act and all specific environmental management Acts; or
- (e) any combination of those Acts or provisions of those Acts.

(2) An MEC may designate a person as an environmental management inspector for the enforcement of only those provisions of this Act or any specific environmental management Act—

- (a) which are administered by the MEC or a provincial organ of state; or
- (b) in respect of which the MEC or a provincial organ of state exercises or performs assigned or delegated powers or duties.

(3) A person designated as an environmental management inspector may exercise any of the powers given to environmental management inspectors in terms of this Act that are necessary for the inspector's mandate in terms of subsection (1) and that may be specified by the Minister, the Minister of Water Affairs and Forestry or MEC by notice in writing to the inspector.”.

Amendment of section 31H of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

6. Section 31H of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) In addition to the powers set out in this Part, an environmental management inspector must be regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)—

- (a) to comply with his or her mandate in terms of section 31D; and
- (b) within the area of jurisdiction for which he or she has been designated.”.

Amendment of section 31N of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

7. Section 31N of the National Environmental Management Act, 1998, is hereby amended by the addition 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 10 years or to both such fine and such imprisonment.”.

Substitution of Schedule 1 to Act 39 of 2004

8. The following Schedule is hereby substituted for Schedule 1 to the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004):

“SCHEDULE 1

(Section 60)

Legislation repealed

<u>No. and year of Act</u>	<u>Short title</u>	<u>Extent of repeal</u>	5
<u>Act No. 45 of 1965</u>	<u>Atmospheric Pollution Prevention Act, 1965</u>	<u>The whole</u>	
<u>Act No. 17 of 1973</u>	<u>Atmospheric Pollution Prevention Amendment Act, 1973</u>	<u>The whole</u>	
<u>Act No. 21 of 1981</u>	<u>Atmospheric Pollution Prevention Amendment Act, 1981</u>	<u>The whole</u>	10
<u>Act No. 15 of 1985</u>	<u>Atmospheric Pollution Prevention Amendment Act, 1985</u>	<u>The whole”.</u>	

Short title and commencement

9. This Act is called the National Environment Laws Amendment Act, 2008, and takes effect on a date determined by the Minister of Environmental Affairs and Tourism by notice in the *Gazette*. 15

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENT LAWS AMENDMENT BILL, 2007

1. OBJECTS

The objects of this Bill are the following:

- (a) To have the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965) (“APPA”), regarded as a specific environmental management Act for the purposes of the enforcement of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”), and other specific environmental management Acts;
- (b) to amend the Environment Conservation Act, 1989 (Act No. 73 of 1989) (“ECA”), to rectify certain incorrect references to provisions in the Act;
- (c) to add APPA, ECA and the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (“NEM: AQA”), to the list of Acts which environmental management inspectors (“EMIs”) are mandated to enforce;
- (d) to provide for EMIs to be peace officers as contemplated in the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (e) 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 NEMA; and
- (f) to substitute a Schedule to NEM: AQA.

1.1 APPA regarded a specific environmental management Act (Clause 1)

Clause 1 is an interim measure. It seeks to have the APPA regarded as being a specific environmental management Act. APPA deals to a certain extent with similar matters contained in the National Environmental Management: Air Quality Act, 2004. The latter Act is not yet of full force and effect. In terms of the proposed clause it will lapse when section 60 of NEM: AQA, which repeals APPA, takes effect.

1.2 Amending ECA to rectify certain incorrect references (Clause 2)

The Environment Conservation Amendment Act, 2003 (Act No. 50 of 2003), *inter alia*, substituted section 20 of ECA to provide for the transfer of the administration of waste disposal sites from the Department of Water Affairs and Forestry to the Department of Environmental Affairs and Tourism. However, section 29(4) of ECA (which sets out criminal offences in terms of the Act) was not updated to reflect the correct cross-references to the subsections of the new section 20. The proposed amendment seeks to rectify this.

1.3 Including national pollution and waste legislation in the mandates of environmental management inspectors (Clause 3)

The National Environmental Management Amendment Act, 2003 (Act No. 46 of 2003), empowers the Minister or MECs to designate officials in national, provincial and local government as EMIs. The function of an EMI is to monitor and enforce compliance with a law for which he or she has been designated. In order to carry out this function, EMIs have been accorded a range of statutory powers, including inspection, investigation, enforcement and administrative powers.

There are currently only three pieces of legislation that EMIs may enforce: NEMA, the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), and the National Environmental Management: Protected Areas Act, 2004 (Act No. 57 of 2004). The current mandate of EMIs therefore covers “green” issues (biodiversity and protected areas) and environmental impact assessments, but excludes “brown” issues such as pollution and waste. This is due to the fact that the national legislation regulating pollution and waste matters, particularly NEM: AQA, is not yet fully in effect, and the national Waste Bill still has to be tabled in Parliament. Until these two pieces of new legislation are fully in effect, it is crucial that EMIs are given the mandate to enforce and monitor compliance with ECA and APPA (until the latter two Acts are repealed), and compliance with those provisions of NEM: AQA that are already in effect.

It is therefore proposed that ECA, APPA and NEM: AQA be included in the definition of “specific environmental management Act” in NEMA. The proposed amendment also promotes a consistent approach to enforcement of environmental legislation.

1.4 Clarifying the status of environmental management inspectors as peace officers (Clause 6)

Section 31H(5) of NEMA, as proposed in clause 4, seeks to clarify the status of EMIs as peace officers when exercising certain of their powers. Apart from powers of inspection, investigation and enforcement given to EMIs by Chapter 7 of NEMA, an EMI has, in terms of section 31H(5) of NEMA, “all the powers assigned in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (CPA), to a police official who is not a commissioned officer”. Although provisions of Chapters 2, 5, 7 and 8 of the CPA relate to police officials, some provisions in those Chapters refer to powers of “peace officers”. Currently, NEMA does not expressly provide for an EMI’s status as a peace officer when exercising powers under the CPA. Due to concern that this may cause interpretation difficulties, it is proposed that section 31H(5) of NEMA should be substituted to reflect that EMIs must be regarded as peace officers.

1.5 Penalty for failing to comply with a compliance notice (Clause 7)

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 or imprisonment) in the event of a conviction of this offence by a court of law. 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 NEMA, namely a fine not exceeding R5 million or imprisonment for a period not exceeding 10 years.

1.6 Substituting Schedule 1 in NEM: AQA (Clause 8)

In terms of Schedule 1 to NEM: AQA the definition of “specific environmental management Act” was inserted in NEMA. Because of the proposed changes mentioned in paragraph 1.3 above, the insertion becomes obsolete and can be deleted. The proposed substitution of Schedule 1, contained in clause 6, seeks to achieve that purpose.

2. PERSONS OR BODIES CONSULTED

The following persons and institutions have been consulted on the contents of this 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 been advised of the contents of the Bill and has responded in a letter stating that, in principle, the South African Police Service approves of the proposed status of environmental management inspectors as peace officers.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Environmental Affairs and Tourism are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996, since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Environment”.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.