
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS
NOTICE 986 OF 2015****NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2015**

The Minister of Environmental Affairs hereby publishes the National Environmental Management Laws Amendment Bill, 2015 in the Schedule hereto, for public comment. Copies of the socio-economic impact assessment report and memorandum of objects are available at www.environment.gov.za

Members of the public are invited to submit to the Minister, within 30 days of publication of this notice in the *Gazette*, written inputs or comments to the following addresses:

By post to: The Director General: Department of Environmental Affairs
Attention: Mr Rudzani Netsianda
Private Bag X447
Pretoria, 0001

By hand at: Environment House, 473 Steve Biko Street, Arcadia, Pretoria, 0001.

By email to: RNetsianda@environment.gov.za or TZwane@environment.gov.za.

Any inquiries in connection with the National Environmental Management Laws Amendment Bill, 2015 can be directed to Mr Sibusiso Shabalala at (012) 399 9351.

Comments received after the closing date may not be considered

SCHEDULE

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. 39287 of 13 October 2015)

(The English text is the official text of the Bill.)

(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B ... 2015]

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 amend the—**

- **National Environmental Management Act, 1998, so as to correct the citation to the definition of “Constitution”; to provide clarity to the definition of “financial provision” that an applicant or holder of an environmental authorisation relating to mining activities must set aside financial provision for progressive mitigation, mine closure and the management of post closure environmental impacts; to add a new definition of “primary processing”; to provide for simultaneous submission of NEMA and SEMA applications for purposes of one environmental system; to provide clarity that the Minister responsible for mineral resources is responsible for listed or specified activities that is or is directly related to prospecting, exploration, extraction or primary processing of a mineral or petroleum resource; to provide for simultaneous submission of NEMA and SEMA applications in order to enable integrated environmental authorisation; to provide for a trigger for the simultaneous submission of a NEMA or SEMA applications after acceptance of mining right; to provide clarity that a successor in title or person who controls the land may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to provide clarity that a section 24M exemption is not an appropriate mechanism for a third party to restrict information flowing to other interested and affected parties and applicant; to provide clarity that an applicant or holder of an environmental authorisation relating to**

mining activities must set aside financial provision for progressive mitigation, mine closure and the management of post closure environmental impacts; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to provide clarity that section 28 is applicable to anticipatory costs as well as remedial measures; to provide for joint and several liability in respect of the responsible persons listed section 28(8); to provide clarity that an environmental mineral resource inspector must also undergo approved training before designation; to provide legal clarity that the conducting of a “search” is not the primary purpose of an environmental management inspector undertaking a routine inspection; to provide clarity that an environmental management inspector may seize and detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide legal clarity that the Minister’s power to develop regulations on admission of guilt fines must be read together with the Criminal Procedure Act, 1977; to provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority; to add and remove certain offences to Schedule 3 to the NEMA;

- **National Environmental Management: Protected Areas Act, 2003**, so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the board; to create a new offence for non-compliance with section 48A which prohibit certain activities in marine protected areas; to rectify incorrect references to offences;
- **National Environmental Management: Biodiversity Act, 2004**, so as to provide to insert a definition of “eradicate” to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the board; to empower the Minister to take a decision in the place of the provincial issuing authority under certain circumstances; to provide clarity on the steps,

actions or methods to be undertaken to either control or eradicate listed invasive species; to provide clarity that MECs must follow a consultation process when exercising legal power under NEMBA;

- **National Environmental Management: Air Quality Act, 2004**, so as to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial department responsible for environmental affairs is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality; to provide for textual amendment to section 36(5)(d); to ensure alignment with respect to the implementation of one appeal process under NEMA; to ensure that an exemption in terms of section 59 may be issued subject to conditions;
- **National Environmental Management: Integrated Coastal Management Act, 2008**, so as to allow for the removal of structures erected prior to commencement of the Act; to provide legal clarity that an appeal against a decision issued by delegated official must be lodged at the appropriate sphere of government and appeal authority;
- **National Environmental Management: Waste Act, 2008**, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of “residue deposits” and “residue stockpiles” and “waste”; to provide clarity that the Waste Management Bureau is established as a specialised delivery unit within the Department; to provide clarity that the Chief Executive Officer is the accounting officer of the Bureau; to provide for consequential amendments with respect to the implementation of the waste management licensing system by the Minister responsible for mineral resources; to provide for the simultaneous submission of the site assessment report and remediation plan relating to a contaminated land; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is directly related to prospecting, exploration, extraction or primary

processing of a mineral or petroleum resource; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of processing fee for the variation of a waste management licence; to clarify that there will be no exemptions provided from obtaining a waste management licence; to substitute Schedule 3 with new Schedule;

- **National Environmental Management Amendment Act, 2008, so as to clarify that an environmental management programme or plan approved under the MPRDA is valid under NEMA; to provide clarity that an appeal against an environmental management programme or plan lodged under the MPRDA must be finalised under that Act; to provide clarity on the commencement date of the National Environmental Management Amendment Act, 2008;**
- **National Environmental Management Laws Amendment Act, 2014, so as to clarify that an environmental management programme or plan approved under the MPRDA is valid under NEMWA; to provide clarity regarding an appeal against environmental management programme or plan on residue deposit or residue stockpile lodged under the MPRDA to be finalised under that Act; to provide for continuation of environmental regulations developed under the MPRDA until the development and publication of such regulations under NEMA and NEMWA and to provide for matters connected therewith.**

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 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004, section 1 of Act 44 of 2008, section 1 of Act 62 of 2008, section 1 of Act 14 of 2009, section 1 of Act 25 of 2014

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

(a) by the substitution for the definition of “Constitution” of the following definition:

“**Constitution**’ means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];”;

- (b) by the substitution for the definition of “financial provision” of the following definition:

“ **‘financial provision’** means the **[insurance, bank guarantee, trust fund or cash that]** amount, determined by a prescribed method, which applicants for or holders of [an] environmental [authorisation] authorisations for listed or specified activities for or directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource must provide, through the use of financial vehicles, in terms of this Act, to [guaranteeing] guarantee the availability of sufficient funds to undertake the—

- (a) **[rehabilitation] mitigation and remediation** of the adverse environmental impacts of the listed or specified activities;
- (b) **[rehabilitation] mitigation and remediation** of the impacts of the **[prospecting, exploration, mining or production activities]** listed or specified activities constituting or directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource, including the pumping and treatment of polluted or extraneous water;
- (c) decommissioning and closure of **[the] such** operations;
- (d) remediation of latent or residual environmental impacts which become known in the future;
- (e) removal of building structures and other objects; or
- (f) remediation of any other negative environmental impacts;”;
- (c) by the insertion after the definition of “prescribe” of the following definition:

“primary processing” includes any process of the mining, recovering, extracting, concentrating, crushing, screening, stripping or washing of a mineral resource or petroleum resource.”.

Amendment of section 24C of Act 107 of 1998, as substituted by section 3 of Act 62 of 2008, section 6 of Act 30 of 2013 and section 3 of Act 25 of 2014

2. Section 24C of the National Environmental Management Act, 1998 is hereby amended—

(a) by the substitution for subsection (2A) of the following subsection:

“(2A) The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection (1) where the listed or specified activity is, or is directly related to—”;

(b) by the substitution in subsection (2A) for paragraph (b) of the following paragraph:

“(b) extraction [**and**] or primary processing of a mineral or petroleum resource.”; and

(c) by the addition of the following subsections:

“(4) A person who requires an environmental authorisation which also involves an activity that requires a licence or permit in terms of any of the specific environmental Management Act must simultaneously submit those applications to the relevant competent authority or licensing authority.

“(5) A person who wishes to apply for an environmental authorisation for listed or specified activities for or directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource which also involves an activity that requires a licence or permit in terms of any of the specific environmental Management Act, must simultaneously apply for an environmental authorisation within a maximum period of 14 months from the date of acceptance of the application

for a right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002.

(6) If the competent authority or licensing authority contemplated in subsections (4) and (5) is the same authority to consider and decide the application for an environmental authorisation under this Act and the application under a specific environmental management Act, an integrated decision must be issued in accordance with section 24L of this Act."

Amendment of section 24G of Act 107 of 1998, as substituted by section 6 of Act 62 of 2008 and section 9 of Act 30 of 2013

3. Section 24G of the National Environmental Management Act, 1998 is hereby amended—

(a) by the substitution in subsection (1)(b)(vii) for subparagraph (ee) of the following subparagraph:

"(ee) an environmental management programme; **[or] and**"; and

(b) by the insertion after subsection (1) of the following subsection:

"(1A) An application in terms of subsection (1) may also be submitted by a person in control of, or successor in title to, land on which a person—

(a) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1);

(b) has commenced, undertaken or conducted a waste management activity without a waste management licence in terms of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)."

Amendment of section 24M of Act 107 of 1998 as inserted by section 8 of Act 62 of 2008 and amended by section 10 of Act 30 of 2013

4. Section 24M of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister or MEC, as the case may be, may grant to an applicant or an organ of state an exemption from any provision of this Act, except from a provision of section 24(4)(a) or the requirement to obtain an environmental authorisation contemplated in section 24(2)(a) or (b).

Amendment of section 24P of Act 107 of 1998 as inserted by section 8 of Act 62 of 2008 and substituted by section 7 of Act 25 of 2014

5. Section 24P of the National Environmental Management Act, 1998, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) An applicant for an environmental authorisation relating to prospecting, exploration, mining or production must, before the Minister responsible for mineral resources issues the environmental authorisation, comply with the prescribed financial provision for **[the] progressive rehabilitation, mitigation, mine closure and [ongoing post decommissioning] the management of [negative] post closure** environmental impacts.”.

(b) by the insertion after subsection (1) of the following subsection:

“(1A) A holder of an environmental authorization relating to prospecting, exploration, mining or production must annually comply with the prescribed financial provision for progressive rehabilitation, mitigation and remediation, mine closure and the management of post closure environmental impacts.”.

(c) by the substitution for subsection (3) of the following subsection:

“(3) Every holder must **[annually] every five years—**

- (a) assess his or her environmental liability in a prescribed manner and must increase his or her financial provision to the satisfaction of the Minister responsible for mineral resources; and
- (b) submit an audit report to the Minister responsible for mineral resources on the adequacy of the financial provision from an independent auditor.”.
- (d) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:
- “(a) If the Minister responsible for mineral resources is not satisfied with the assessment or review and financial provision contemplated in this section, the Minister responsible for mineral resources may appoint an independent assessor or reviewer to conduct the assessment or review and determine the financial provision.
- (b) Any cost in respect of such assessment must be borne by the applicant or holder of environmental authorisation in question.”.
- (e) by the substitution for subsections (3) and (5) of the following subsections:
- “(3) Every applicant for or holder of an environmental authorisation relating to prospecting, exploration, mining or production must annually—
- (5) The requirement to maintain and retain the financial provision contemplated in this section remains in force notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002 to the applicant for or holder of an environmental authorisation for listed or specified activities for or directly related to prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource or owner concerned and the Minister responsible for mineral resources may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect

of latent, residual or any other environmental impacts, including the pumping of polluted or extraneous water, for a prescribed period.”.

Amendment of section 28 of Act 107 of 1998, as amended by section 12 of Act 14 of 2009, section 12 of Act 30 of 2013 and section 10 of Act 25 of 2014

6. Section 28 of the National Environmental Management Act, 1998, is hereby amended—

(a) by the substitution for subsections (4), (8), (9) and (12) of the following subsections:

“(4) The Director-General, the Director-General of the department responsible for mineral resources or a provincial head of department may, after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who is causing, has caused or may cause significant pollution or degradation of the environment, and any other person to whom the duty of care applies to—

(8) Subject to subsection (9), the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department may recover costs for reasonable remedial measures undertaken or to be undertaken under subsection (7), before or after such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—

(9) The Director-General, the Director-General of the department responsible for mineral resources or provincial head of department may in respect of the recovery of costs under subsection (8)[, **claim proportionally from any person who benefited from the measures undertaken under subsection (7).] claim—**

(a) jointly and severally from the persons specified in subsection (8); and

(b) proportionally from any other person who benefited from the measures undertaken under subsection (7).

(12) Any person may, after giving the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department 30 days' notice, apply to a competent court for an order directing the Director-General, the Director-General of the department responsible for mineral resources or any provincial head of department to take any of the steps listed in subsection (4) if the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department fails to inform such person in writing that he or she has directed a person contemplated in subsection [(8)] (4) to take one of those steps, and the provisions of section 32(2) and (3) shall apply to such proceedings, with the necessary changes.”; and

(b) by the deletion of subsection (11).

Amendment of section 31D of Act 107 of 1998, as inserted by section 5 of Act 44 of 2008

7. Section 31D of the National Environmental Management Act, 1998, is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) An environmental management inspector and environmental mineral resource inspector must exercise any power bestowed on him or her in terms of this Act in accordance with any applicable duty provided for in this Act.”.

Amendment of section 31E of Act 107 of 1998

8. Section 31E of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

“(a) qualification criteria for environmental management inspectors and environmental mineral resource inspectors; and

(b) training that must be completed by environmental management inspectors and environmental mineral resource inspectors.”.

Amendment of section 31K of Act 107 of 1998, as substituted by section 19 of Act 14 of 2009

9. Section 31K of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsections (1) and (5) of the following subsections:

“(1) An environmental management inspector, within his or her mandate in terms of section 31D, and subject to subsection (2), may at any reasonable time conduct routine inspections and, without a warrant, enter and inspect any building, land or premises **[or search]**, including but not limited to, any vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purposes of ascertaining compliance with—;

(5) While carrying out a routine inspection, an environmental management inspector may **[seize anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.]—**

(a) seize anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act;

(b) detain, for reasonable period of time, anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purpose of ascertaining compliance with the legislation for which that inspector has been designated in terms of section 31D.”

Amendment of section 34G of Act 107 of 1998

10. Section 34G of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsections (1) of the following subsection:

“(1) Notwithstanding the provisions of section 57(5) of the Criminal Procedure Act, 1977, [The]the Minister may by regulation specify offences in terms of this Act or a specific environmental management Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence.”.

Amendment of section 43 of Act 107 of 1998, as amended by section 4 of Act 8 of 2004, section 10 of Act 62 of 2008 and section 14 of Act 25 of 2014

11. Section 43 of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) A person who receives a directive in terms of section 28(4) may lodge an appeal against the decision made by the Director-General or any person acting under his or her delegated authority, the Director-General of the department responsible for mineral resources or any person acting under his or her delegated authority, or the provincial head of department or any person acting under his or her delegated authority to the Minister, the Minister responsible for mineral resources or the MEC, as the case may be, within 30 days of receipt of the directive, or within such longer period as the Minister, the Minister responsible for mineral resources or MEC may determine.”.

Amendment of section 49A of Act 107 of 1998, as inserted by section 25 of Act 30 of 2013

12. Section 49A of the National Environmental Management Act, 1998 is hereby amended by the substitution for paragraph (p) in subsection (1) of the following paragraph:

“(p) fails to comply with **[a request]** an instruction of an environmental management inspector.”.

Amendment of section 49B of Act 107 of 1998, as inserted by section 25 of Act 30 of 2013

13. Section 49B of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine not exceeding R1 million or imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.

Amendment of Schedule 3 to Act 107 of 1998, as amended by section 8 of Act 8 of 2004, section 25 of Act 14 of 2009, Government Notice No. 731 of 2012 and section 27 of Act 30 of 2013

14. The Schedule to the National Environmental Management Act, 1998 is hereby amended by the substitution for the Schedule of the following Schedule:

“SCHEDULE”

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)(i) in so far as it relates to contraventions of sections 7 and 7bis |
| Act No. 71 of 1962 | Animals Protection Act, 1962 | Sections 2(1) and 2A |
| Act No. 63 of 1970 | Mountain Catchment Areas Act, 1979 | Section 14 in so far as it relates to contraventions of section 3 |
| 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 1977] | [Health Act, 1977] | [Section 27] |
|-----------------------------|---|---|
| Act No. 73 of 1980 | Dumping at Sea Control Act, 1980 | Sections 2(1)(a) and (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 | Sections 19(1) and 19A read with 29(3), 20(1) and (9) read with section 29(4), 29(2)(a), 31A and 41A read with 29(3) |
| Act No. 18 of 1998 | Marine Living Resources Act, 1998 | Section 58(1) in so far as it 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(1)(i) and (j) |
| Act No. 84 of 1998 | National Forests Act, 1998 | Sections 4(8), 7(1), 10(1), 11(2)(b), 15(1)(a) and (b), 17(3) and (4), 20(3), 21(2), 21(5), 24(8), 63(1)(a), (d), (e) and (f), 63(2)(a) and (b), 63(3) to (5), 64(1) and (2) |
| Act No. 101 of 1998 | National Veld and Forest Fire Act, 1998 | Sections 10(2), 12(1), 12(2)(b), 12(14)(a), (4), 17(1), 18(1)(a), 18(2), 18(3)(b), 18(4), 18(4)(b), |

| | | |
|---------------------|--|--|
| | | (25(2)(a) to (e), 25(5), (6) and (7) |
| Act No. 107 of 1998 | National Environmental Management Act, 1998 | Section 49A |
| Act No. 25 of 1999 | National Heritage Resources Act, 1999 | Sections 27(18) and (22), (23)(b), 28(3), 29(10), 32(13), (15), (16), (17), (19) and (20) 33(1) and (2), 34(1), 35(3), (4), (6) and (7)(a) 36(3), 44(2) and (3), 50(5) and (12) and 51(8) |
| Act No. 57 of 2003 | National Environmental Management: Protected Areas Act, 2003 | Sections 45(1), 46(1), 47(2), 47(3), 48(1), 48A(1) , 50(5), read with sections 89(1), 89(1) (b), (c) and (d) and 50A |
| Act No. 10 of 2004 | National Environmental Management: Biodiversity Act, 2004 | Sections 57(1) read with 101(1)(a), 65(1) read with 101(1)(a), 67(2) read with 101(1)(a), 71(1) read with 101(1)(a), 81(1) |
| Act No. 39 of 2004 | National Environmental Management: Air Quality Act, 2004 | Sections 51(1)(a) to (h), 51(2) and (3) |
| Act No. 59 of 2008 | National Environmental Management: Waste Act, 2008 | Sections 15(1) and (2), read with 67(1)(a), 16(1)(c), (d), (e), (f) read with 67(1)(a). 20 (a) and (b), read with 67(1)(a), 26(1) (a) and (b), read with 67(1)(a), 38 (2) and (3), read with 67(1)(a), 17(2) read with 67(1)(a), 18(1) read with 67(1)(a), 21 read with 67(1)(b), 22(1) read with 67(1)(b), 24 read with 67(1)(b), 27(2) read with 67(1)(b), 36(5) read with 67(1)(b), 40(1) read with 67(1)(b), 67(1) (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), 67(2)(a), (b), (c), (d), |

| | | |
|--------------------|--|---|
| | | (e) |
| Act No. 24 of 2008 | National Environmental Management: Integrated Coastal Management Act, 2008 | Sections <u>7B, 7C</u> read with <u>79(1)(j), (k), 13(3)</u> read with <u>79(1)(l), 13(1A)</u> read with <u>79(2)(j), 79(2)(k), 15</u> read with <u>79(2)(d), 59</u> read with <u>79(2)(e), 60</u> read with <u>79(2)(a), 65</u> read with <u>79(1)(m), 69</u> read with <u>79(1) (a), 70(1)</u> read with <u>79(1) (b), (c), (d), (e), 79(1) (f), (g), (h), (i), [79(2) (a), (b), (c), 79(3) (a), (b), (c), 79(4) (a), (b)]</u> 92 read with <u>79(1)(n), 95</u> read with <u>79(2)(h), 79(2)(i), 96</u> read with <u>79(1)(o), 79(2)(a)</u> |

Part (b): Provincial Legislation

| No. and year of law | Short title | Relevant provisions |
|--------------------------|--------------------------------|--|
| Ordinance No. 8 of 1969 | Orange Free State Conservation | Section 40(1)(a) in so far as it relates to contraventions of sections 2(3), 14(2), 15(a), 16(a) and 33 |
| Ordinance No. 9 of 1969 | Orange Free State Townships | Section 40(1)(a)(ii) |
| Ordinance No. 15 of 1974 | Natal Nature Conservation | Section 55 in so far as it relates to section 37(1), to section 49 in respect of specially protected game and to section 51 in respect of specially protected game, section 109 in so far as it relates to section 101, to section 102 and to section 104, section 154 in so far as it relates to section 152; section 185 in so far as it relates to section 183, and |

| | | |
|--------------------------|---|--|
| | | section 208 in so far as it relates to section 194 and to section 200 |
| Ordinance No. 19 of 1974 | Nature and Environmental Conservation Ordinance | Section 86(1) in so far as it relates to contraventions of sections [41] 44(1)(b)(ii) and (c) to (e), 52(a), 57(a), 58(b) and 62(1) |
| Ordinance No. 12 of 1983 | Gauteng Nature Conservation | Sections 16A, 17 to 45, 47, 48, 51, 52, 54, 66, 71 to 78, 79, 80, 81, 83, 84, 85, 87, 88 to 93, 95, 96 98, 99, 100 and 107 |
| Ordinance No. 15 of 1985 | Cape Land Use Planning | Section 46(1) in so far as it relates to sections 23(1) and 39(2) |
| Ordinance No. 15 of 1986 | Transvaal Town Planning and Townships | Sections 42, 93 and 115 |
| Act No. 5 of 1998 | KwaZulu Natal Planning and Development | Section 48 |
| Act No. 29 of 1992 | KwaZulu Nature Conservation | Section 67 in so far as it relates to sections 59(1), 59(2), 60(1) and 62(1); section 86 in so far as it relates to sections 76, 77 and 82; and section 110 in so far as it relates to section 109 |

Amendment of section 57 of Act 57 of 2003

15. Section 57 of the National Environmental Management: Protected Areas Act, 2003 is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the Chief Executive Officer and Chief Financial Officer.

Amendment of section 89 of Act 57 of 2003, as substituted by section 28 of Act 14 of 2009

16. Section 89 of the National Environmental Management: Protected Areas Act, 2003 is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A), 48(1), 48A(1), **[49A(5)(b),]** or 50(5) **[or 55(2)(fA)]**.”;

(b) by the deletion of the word “or” at the end of paragraph (c) in subsection (1), the insertion of the word “or” at the end of paragraph (d) in subsection (1) and the addition of the following paragraph:

“(e) contravenes or fails to comply with a rule made in terms of section 55(2)(fA).”;

(c) by the substitution for subsection (2) of the following subsection:

“(2) A person convicted of an offence in terms of subsection (1)(a), (b), (c) or (d) is liable, in the case of a first conviction, to a fine not exceeding R5 million or imprisonment for a period not exceeding five years and, in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years or in both instances to both a fine and such imprisonment.”;
and

(d) by the insertion after subsection (2) of the following subsection:

“(2A) A person convicted of an offence in terms of subsection (1)(e) is liable to the penalties prescribed pursuant to section 55(2)(fA).”

Amendment of section 1 of the Act 10 of 2004, as amended by section 29 of Act 14 of 2009 and section 1 of Act 14 of 2013

17. Section 1 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

(a) by the substitution for the definition of “control” of the following definition:

“ **‘control’**, in relation to an alien or invasive species, means—

(a) **[to combat or eradicate an alien or Invasive species]**the systematic removal of all visible specimens of an alien or invasive species from within a specified area of or the whole of the Republic; or

(b) where such **[eradication]**systematic removal is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;” and

(b) by the insertion after the definition of “environmental management inspector” of the following definition:

“‘eradicate’ means the complete removal of an alien or invasive species from within the Republic, including all living parts of that species.”

Amendment of section 13 of Act 10 of 2004

18. Section 13 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the Chief Executive Officer and Chief Financial Officer of the Institute.

Amendment of section 87A of Act 10 of 2004, as inserted by section 22 of Act 14 of 2013

19. Section 87A of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the addition of the following subsection:

“(4) (a) In accordance with section 125(2)(b) of the Constitution whenever an issuing authority, referred to in subsection (2), fails to take a decision on an application for a permit within the time period prescribed by this Act, the person that applied for a permit may apply to the Minister to take the decision.

(b) The person referred to in paragraph (a) must notify the MEC 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 MEC in order to enable the Minister to take a decision.

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

(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 MEC within the specified time period the Minister must, where appropriate—

(i) inform the applicant in the event that the MEC had complied with the relevant prescripts;

(ii) assist the MEC in accordance with section 125(3) of the Constitution to fulfil his or her obligations under this Act; or

(iii) direct the MEC to take the decision and such other steps as the Minister may deem necessary within a specified time period.

(f) In the event that the MEC 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 must take the decision within a reasonable period of time.

(g) The Minister 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 setting out the details regarding the exercise of the power referred to in this section during the previous financial year.”.

Amendment of section 73 of Act 10 of 2004

20. Section 73 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

- (a) by the deletion of paragraph (a) of subsection (2);
- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 - “(b) take steps to control ~~[and]or~~ eradicate the listed invasive species ~~[and to prevent it from spreading]~~as prescribed by the Minister; and”; and
- (c) by the insertion after subsection (2) of the following subsection:
 - “(2A) The Minister may prescribe circumstances when a competent authority must be notified in writing of the presence or occurrence of a listed invasive species.”

Amendment of section 75 of Act 10 of 2004

21. Section 75 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) Control **[and]or** eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.

(2) Any action taken to control **[and]or** eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.

(3) The methods employed to control **[and]or** eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.”.

Amendment of section 99 of Act 10 of 2004

22. Section 99 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister or MEC for Environmental Affairs must follow an appropriate consultative process in the circumstances.

(2) The Minister or MEC for Environmental Affairs must, in terms of subsection (1) —”.

Amendment of section 100 of Act 10 of 2004

23. Section 100 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections:

“(1) The Minister or MEC for Environmental Affairs must give notice of the proposed exercise of the power referred to in section 99—

(2) The notice must—

(a) invite members of the public to submit to the Minister or MEC for Environmental Affairs, within 30 days of publication of the notice in the Gazette, written representations on, or objections to, the proposed exercise of the power; and

(b) contain sufficient information to enable members of the public to submit meaningful representations or objections.

(3) The Minister or MEC for Environmental Affairs may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or MEC for Environmental Affairs or a person designated by the Minister or MEC for Environmental Affairs.

(4) The Minister or MEC for Environmental Affairs must give due consideration to all representations or objections received or presented before exercising the power.”.

Substitution of section 22A of Act 39 of 2004, as inserted by section 3 of Act 20 of 2014

24. The following section is hereby substituted for section 22A of the National Environmental Management: Air Quality Act, 2004:

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

22A. (1) Upon application by a person who—

(a) operated, at any time prior to the commencement of this Act, a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965 without a provisional registration or registration certificate; or

(b) conducted or is conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, an activity listed in terms of section of this Act which results in atmospheric emission,

the relevant licensing authority may fine the applicant an administrative penalty which may not exceed R5 million.

(2) An application contemplated in subsection (1) must be accompanied by such documentation and information as may be required by the licensing authority.

(3) Should a person who, at any time, operated unlawfully contemplated in subregulation (1)(a) or (b) above thereafter apply for a provisional atmospheric emission licence or atmospheric emission licence and 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 or provisional 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.

(4) The submission of an application or the issuing of an atmospheric emission licence or provisional atmospheric emission licence in terms of this section, or the payment of an administrative penalty in terms of subsection (1) 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."

Amendment of section 36 of Act 39 of 2004, as amended by section 5 of Act 20 of 2014

25. Section 36 of the National Environmental Management: Air Quality Act, 2004, is hereby amended

(a) by the insertion after subsection (2) of the following subsection:

"(2A) A provincial organ of state must be regarded as the licensing authority if a listed activity falls within the boundaries of more than one metropolitan municipality, or more than one district municipality."; and

(b) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

"(d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, [or] and the Minister has been identified as the competent authority;"

Amendment of section 53 of Act 39 of 2004, as amended by section 12 of Act 20 of 2014

26. Section 53 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the deletion of paragraph (k).

Amendment of section 59 of Act 39 of 2004

27. Section 59 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the insertion after subsection (3) of the following subsections:

"(3A) The Minister may—

(a) grant an exemption from the application of a provision of this Act; or

(b) refuse to grant such an exemption.

(3B) If an application for exemption is granted, the Minister must issue a written exemption notice to the person or organ of state contemplated in subsection (1) stating—

(a) the name, address and telephone number of the person or organ of state to which the exemption is granted;

(b) the provision of this Act from which exemption is granted;

(c) the conditions subject to which the exemption is granted;
and

(d) the period for which exemption is granted."

Amendment of section 60 of Act 24 of 2008, as amended by section 31 of Act 36 of 2014

28. Section 60 of the National Environmental Management: Integrated Coastal Management Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure either prior to or after the commencement of this Act—

(a) has had, is having or is likely to have an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or

(b) has been erected, constructed or upgraded in contravention of this Act or any other law.”.

Amendment of section 74 of Act 24 of 2008, as amended by section 43 of Act 36 of 2014

29. Section 74 of the National Environmental Management: Integrated Coastal Management Act, 2008, is hereby amended—

(a) by the deletion of subsection (1); and

(b) by the substitution for subsection (2) of the following subsection:

“(2) A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel a coastal authorisation or a decision to issue a notice in terms of sections 59 or 60, may lodge a written appeal against that decision with—

Amendment of section 1 of Act 59 of 2008, as amended by section 38 of Act 14 of 2013 and section 1 of Act 26 of 2014

30. Section 1 of the National Environmental Management: Waste Act, 2008, is hereby amended—

(a) by the deletion of the definition of “associated structures and infrastructure”;

(b) by the insertion after the definition of “best practicable environmental option” of the following definitions:

“‘building and demolition waste’ means waste, excluding hazardous waste, produced during the construction, alteration, repair or demolition of any

structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition;

'business waste' means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes;";

- (c) by the insertion after the definition of "disposal" of the following definition:

"domestic waste' means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential, educational, health care, sport or recreation purposes;";

- (d) by the insertion after the definition of "Gazette" of the following definition:

"general waste' means waste that does not pose an immediate hazard or threat to health or to the environment, and includes—

(a) domestic waste;

(b) building and demolition waste;

(c) business waste; or

(d) inert waste;";

- (e) by the insertion after the definition of "general waste" of the following definition:

"hazardous waste' means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;";

- (f) by the insertion after the definition of "industry waste management plan" of the following definition:

"inert waste' means waste that—

(a) does not undergo any significant physical, chemical or biological transformation after disposal;

(b) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and

(c) does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant.”;

(g) by the insertion after the definition of “prescribe” of the following definition:

“‘primary processing’ has the meaning assigned to it in section 1 of the National Environmental Management Act;”;

(h) by the substitution for the definition of “recovery” of the following definition:

“‘recovery’ means the controlled extraction or retrieval of [any substance,] energy, or material [or object] from waste;”;

(i) by the insertion after the definition of “recycle” of the following definitions:

“‘residue deposit’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

‘residue stockpile’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”; and

(j) by the substitution for the definition of “waste” of the following definition:

“‘waste’ means—

(a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or

recovered and includes all waste **[as defined]**from the sources of waste in Schedule 3 to this Act; or

(b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the *Gazette*,

but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste—

(i) once an application for its re-use, recycling or recovery has been approved **[or, after such approval, once it is, or has been re-used, recycled or recovered]**and re-used, recycled or recovered in accordance with the conditions in the approval;

(ii) where approval is not required, once a waste is, has been re-used, recycled or recovered; or

(iii) [where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or]

(iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.”

Amendment of section 34A of Act 59 of 2008 as inserted section 13 of Act 26 of 2014

31. Section 34A of the National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) An implementation Bureau dealing with waste management to be known as the “Waste Management Bureau” is hereby established, in terms of section 7B of the Public Service Act, 1994, as a specialised service delivery unit, within the Department**[, as a juristic person]**.

(2) The Bureau must comply with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and the Public Service Act, 1994.”.

Amendment of section 34F of Act 59 of 2008 as inserted by section 13 of Act 26 of 2014

32. Section 34F of the National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The Chief Executive Officer is responsible and accountable to the **[Director-General of the Department] Minister**, through the **Director-General**, as the accounting **[authority] officer** for all money received by the Bureau and the utilisation of that money.”.

Amendment of section 34G of Act 59 of 2008 as inserted by section 13 of Act 26 of 2014

33. Section 34G of the National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The **[Director-General of the Department] Chief Executive Officer** is, for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the accounting **[authority] officer** and must cause full and proper books of account and all the necessary records in relation thereto to be kept.”.

Amendment of section 34H of Act 59 of 2008 as inserted by section 13 of Act 26 of 2014

34. Section 34H of the National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding subsection (1), the Bureau must submit such additional reports as the Minister **[or] through** the Director-General may require.”.

Amendment of section 34J of Act 59 of 2008 as inserted by section 13 of Act 26 of 2014

35. Section 34J of the National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsections (1) and (5) of the following subsections:

“(1) The **[Director-General of the Department] Minister** must recruit **[and the Minister must approve the appointment of]** a suitably qualified and skilled person as the Chief Executive Officer of the Bureau in accordance with the Public Service Act, 1994, including its employment practices, but at a level of remuneration and employment service conditions **[as determined by the Minister]**, in concurrence with the Minister of Finance.

(5) The **[Director-General of the Department, with the approval of the Minister,] Minister** may terminate the Chief Executive Officer's employment in accordance with the Public Service Act, 1994.”.

Amendment of section 34K of Act 59 of 2008 as inserted by section 13 of Act 26 of 2014

36. Section 34K of the National Environmental Management: Waste, 2008 is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

“(a) the management of the operations of the Bureau, subject to the direction of the **[Director-General of the Department] Minister through the Director-General**;

(b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by **[the Director-General of the Department and]** the Minister through the Director-General”; and

(b) by the substitution for subsections (2), (4) and (5) of the following subsections:

“(2) The Chief Executive Officer is accountable to the **[Director-General of the Department]** Minister through the Director-General and must report to him or her on the activities of the Bureau.

(4) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the **[Director-General of the Department]** Minister must, in writing, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions, but not for a period longer than six months, except under circumstances where the absence of the Chief Executive Officer is due to a disciplinary matter.;

(5) The Chief Executive Officer may, in writing and on such conditions as he or she may determine, delegate any power or duty of the Chief Executive Officer to a senior member of the Bureau, unless the **[Director-General of the Department or]** Minister prohibits a specific delegation.”

Amendment of section 37 of Act 59 of 2008

37. Section 37 of the National Environmental Management: Waste Act, 2008 is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) cause a site assessment to be conducted and submit a site assessment report and a remediation plan to the Minister or MEC, as the case may be, in respect of the relevant investigation area; or”;

(b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:

“(ii) direct the person who has undertaken or is undertaking the high risk activity or activity that caused or may have caused the contamination of the investigation area, to cause a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report and a remediation plan to the Minister or MEC within a period specified in the notice.”; and

- (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) A site assessment report and a remediation plan must comply with any directions that may have been published or given by the Minister or MEC in a notice contemplated in section 36(1) or (6) and must at least include information on whether the investigation area is contaminated.”.

Amendment of section 38 of Act 59 of 2008

38. Section 38 of the National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) On receipt of a site assessment report and a remediation plan contemplated in section 37, the Minister or MEC, as the case may be, may, after consultation with the Minister [**of Water Affairs and Forestry**] responsible for water affairs and any other organ of state concerned, decide that—

Amendment of section 43 of Act 59 of 2008, as amended by section 21 of Act 25 of 2014

39. Section 43 of the National Environmental Management: Waste Act, 2008 is hereby amended—

- (a) by the substitution in subsection (1A) for paragraph (b) of the following paragraph:

“(b) extraction **[and]** or primary processing of a mineral or petroleum resource; or”;

(b) by the substitution for subsections (1B) and (3) of the following subsections:

“(1B) The Minister responsible for mineral resources is responsible for the implementation of the **[provisions that relate to]** licensing system provided for in Chapter 5 in so as far as the matters referred to in subsection (1A).

(3) Despite subsections (1), (1A) and (2), the Minister, Minister responsible for mineral resources and an MEC may agree that an application or applications for waste management licences regarding any waste management activity—

(a) referred to in subsection (1), may be dealt with by the MEC or Minister responsible for mineral resources; [or]

(aA) referred to in subsection (1A), may be dealt with by the Minister; or

(b) in respect of which the MEC or Minister responsible for mineral resources has been identified as the licensing authority, may be dealt with by the Minister.”; and

(c) by the addition of the following subsection:

“(4) (a) In accordance with section 125(2)(b) of the Constitution whenever a licensing authority, referred to in subsection (2), fails to take a decision on an application for a waste management licence within the time period prescribed by this Act, the person that applied for a waste management licence may apply to the Minister to take the decision.

(b) The person referred to in paragraph (a) must notify the MEC 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 MEC in order to enable the Minister to take a decision.

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

(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 MEC within the specified time period the Minister must, where appropriate—

(i) inform the applicant in the event that the MEC had complied with the relevant prescripts;

(ii) assist the MEC in accordance with section 125(3) of the Constitution to fulfil his or her obligations under this Act; or

(iii) direct the MEC to take the decision and such other steps as the Minister may deem necessary within a specified time period.

(f) In the event that the MEC 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 must take the decision within a reasonable period of time.

(g) The Minister 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 setting out the details regarding the exercise of the power referred to in this section during the previous financial year.”

Amendment of section 52 of Act 59 of 2008

40. Section 52 National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If the environment or the rights or interests of other parties are likely to be adversely affected, the **[Minister or MEC] licensing authority** must, before deciding the application for transfer, request the applicant to conduct a consultation process that may be appropriate in the circumstance to bring the application for the transfer of a waste management licence to the attention of relevant organs of state, interested persons and the public.”.

Amendment of section 53 of Act 59 of 2008

41. Section 54 of the National Environmental Management: Waste Act, 2008 is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The variation of a waste management licence is subject to the payment of a prescribed processing fee.”.

Amendment of section 74 of Act 59 of 2008

42. Section 74 National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person may apply in writing for exemption from the application of a provision of this Act to the Minister or, where the Minister responsible for mineral resources is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the Minister responsible for mineral resources or, where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the MEC, except from the requirement to obtain a waste management licence contemplated in Chapter 5.”.

Amendment of section 75 of Act 59 of 2008

43. Section 75 National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may request an applicant contemplated in section 74 to furnish additional information where such information is necessary for the purposes of informing the Minister, Minister responsible for mineral resources or MEC’s decision.

(2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must, before deciding the application, request the applicant to—

(a) bring the application to the attention of relevant organs of state, interested persons and the public by conducting a public participation process indicated by the Minister, Minister responsible for mineral resources or MEC; and

(b) to submit any comments received from the public following such process to the Minister, Minister responsible for mineral resources or MEC.”.

Amendment of section 76 of Act 59 of 2008

44. Section 76 National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsections (1), (3) and (4) of the following subsections:

“(1) The Minister, Minister responsible for mineral resources or the MEC, as the case may be, may—

(3) If an application is granted, the Minister, Minister responsible for mineral resources or MEC must issue a written exemption notice to the applicant stating—

(4) The Minister, Minister responsible for mineral resources or the MEC, as the case may be, may by notice in the *Gazette* exempt an organ of state from a provision of this Act if—

Amendment of section 77 of Act 59 of 2008

45. Section 77 National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) The Minister, Minister responsible for mineral resources or MEC may—

(2) Before suspending, withdrawing or amending an exemption, the Minister, Minister responsible for mineral resources or MEC must give the person to whom the exemption was granted an opportunity to comment, in writing, on the reasons for the suspension, withdrawal or amendment.

(3) If an exemption has been granted in respect of a waste management activity, or part thereof, and ownership of that waste management activity is transferred, the exemption may, with the permission of the Minister, Minister responsible for mineral resources or MEC, be transferred by the holder of the exemption to the new owner of the waste management activity.”.

Substitution of certain expressions in Act 59 of 2008

46. The National Environmental Management: Waste Act, 2008 is hereby amended by the substitution for the expression “Minister of Water Affairs and Forestry”, whenever it occurs, of the expression “Minister responsible for water affairs”.

Substitution of Schedule 3 to Act 59 of 2008, as inserted by section 18 of Act 26 of 2014

47. The following Schedule is hereby substituted for Schedule 3 of the National Environmental Management: Waste Act, 2008:

"SCHEDULE 3

SOURCES OF WASTES

1. EXPLORATION, MINING, QUARRYING, AND PHYSICAL AND CHEMICAL TREATMENT OF MINERALS

- a) mineral excavation
- b) physical and chemical processing of metalliferous minerals
- c) physical and chemical processing of non-metalliferous minerals
- d) drilling muds and other drilling

2. AGRICULTURE, HORTICULTURE, AQUACULTURE, FORESTRY, HUNTING AND FISHING, FOOD PREPARATION AND PROCESSING

- a) agriculture, horticulture, aquaculture, forestry, hunting and fishing
- b) preparation and processing of meat, fish and other foods of animal origin
- c) fruit, vegetables, cereals, edible oils, cocoa, coffee, tea and tobacco preparation and processing; conserve production; yeast and yeast extract production, molasses preparation and fermentation
- d) sugar processing
- e) dairy products industry
- f) baking and confectionery industry
- g) production of alcoholic and non-alcoholic beverages

3. WOOD PROCESSING AND THE PRODUCTION OF PANELS AND FURNITURE, PULP, PAPER AND CARDBOARD

- a) wood processing and the production of panels and furniture
- b) wood preservation
- c) pulp, paper and cardboard production and processing

4. LEATHER, FUR AND TEXTILE INDUSTRIES

- a) leather and fur industry
- b) textile industry

5. PETROLEUM REFINING, NATURAL GAS PURIFICATION AND PYROLYTIC TREATMENT OF COAL

- a) petroleum refining
- b) pyrolytic treatment of coal
- c) natural gas purification and transportation

6. INORGANIC CHEMICAL PROCESSES

- a) manufacture, formulation, supply and use (MFSU) of acids
- b) MFSU of bases
- c) MFSU of salts and their solutions and metallic oxides
- d) metal-containing waste other than those mentioned in item 6(c) above
- e) sludge from effluent treatment
- f) MFSU of sulphur chemicals, sulphur chemical processes and desulphurisation processes
- g) MFSU of halogens and halogen chemical processes
- h) MFSU of silicon and silicon derivatives

- i) MSFU of phosphorous chemicals and phosphorous chemical processes
- j) MFSU of nitrogen chemicals, nitrogen chemical processes and fertiliser manufacture
- k) manufacture of inorganic pigments and opacifiers
- l) inorganic chemical processes not otherwise specified

7. ORGANIC CHEMICAL PROCESSES

- a) MFSU of basic organic chemicals
- b) MFSU of plastics, synthetic rubber and man-made fibres
- c) MFSU of organic dyes and pigments
- d) MFSU of organic plant protection products, wood preserving agents and other biocides
- e) MFSU of pharmaceuticals
- f) MFSU of fats, grease, soaps, detergents, disinfectants and cosmetics
- g) MFSU of fine chemicals and chemical products not otherwise specified

8. MFSU OF COATINGS (PAINTS, VARNISHES AND VITREOUS ENAMELS), ADHESIVES, SEALANTS AND PRINTING INKS

- a) MFSU and removal of paint and varnish
- b) MFSU of other coatings (including ceramic materials)
- c) MFSU of printing inks
- d) MFSU of adhesives and sealants (including waterproofing products)

9. PHOTOGRAPHIC INDUSTRY

- a) photographic industry

10. THERMAL PROCESSES

- a) power stations and other combustion plants
- b) iron and steel industry
- c) aluminium thermal metallurgy
- d) lead thermal metallurgy
- e) zinc thermal metallurgy
- f) copper thermal metallurgy
- g) silver, gold and platinum thermal metallurgy
- h) other non-ferrous thermal metallurgy
- i) casting of ferrous pieces
- j) casting of non-ferrous pieces
- k) manufacture of glass and glass products
- l) manufacture of ceramic goods, bricks, tiles and construction products
- m) manufacture of cement, lime and plaster and articles and products made from them
- n) crematoria

11. CHEMICAL SURFACE TREATMENT AND COATING OF METALS AND OTHER MATERIALS; NON-FERROUS HYDROMETALLURGY

- a) chemical surface treatment and coating of metals and other materials (including galvanic processes, zinc coating processes, pickling processes, etching, phosphating, alkaline degreasing, anodising)
- b) non-ferrous hydrometallurgical processes
- c) sludge and solids from tempering processes
- d) hot galvanising processes

12. SHAPING AND PHYSICAL AND MECHANICAL SURFACE TREATMENT OF METALS AND PLASTICS

- a) shaping and physical and mechanical surface treatment of metals and plastics
- b) water and steam degreasing processes

13. OIL WASTES AND WASTES OF LIQUID FUELS

- a) waste of hydraulic oils
- b) waste of engine, gear and lubricating oils
- c) waste of insulating and heat transmission oils
- d) waste of bilge oils
- e) oil or water separator contents
- f) waste of liquid fuels
- g) oil waste not otherwise specified

14. WASTE ORGANIC SOLVENTS, REFRIGERANTS AND PROPELLANTS

- a) waste organic solvents, refrigerants and foam or aerosol propellants

15. WASTE PACKAGING; ABSORBENTS, WIPING CLOTHS, FILTER MATERIALS AND PROTECTIVE CLOTHING NOT OTHERWISE SPECIFIED

- a) packaging
- b) absorbents, filter materials, wiping cloths and protective clothing

16. WASTES NOT OTHERWISE SPECIFIED IN THE LIST

- a) end-of-life vehicles from different means of transport (including off-road machinery) and wastes from dismantling of end-of-life vehicles and vehicle maintenance

- b) electrical and electronic equipment
- c) off-specification batches and unused products
- d) explosives waste
- e) gases in pressure containers and discarded chemicals
- f) batteries and accumulators
- g) transport tank, storage tank and barrel cleaning
- h) spent catalysts
- i) oxidising substances
- j) aqueous liquid wastes destined for off-site treatment
- k) linings and refractories

17. CONSTRUCTION AND DEMOLITION WASTE (INCLUDING EXCAVATED SOIL FROM CONTAMINATED SITES)

- a) concrete, bricks, tiles and ceramics
- b) wood, glass and plastic
- c) bituminous mixtures, coal tar and tarred products
- d) metals (including their alloys)
- e) soil (including excavated soil from contaminated sites), stones and dredging spoil
- f) insulation materials and asbestos-containing construction materials
- g) other construction and demolition waste
- h) gypsum-based construction material

18. HUMAN OR ANIMAL HEALTH CARE AND/OR RELATED RESEARCH

- a) natal care, diagnosis, treatment or prevention of disease in humans
- b) research, diagnosis, treatment or prevention of disease involving animals

19. WASTE MANAGEMENT FACILITIES, WASTE WATER TREATMENT PLANTS AND THE PREPARATION OF WATER INTENDED FOR HUMAN CONSUMPTION AND WATER FOR INDUSTRIAL USE

- a) incineration or pyrolysis of waste
- b) thermal treatment of waste (including autoclave, hydroclave, microwave)
- c) physic or chemical treatments of waste (including dechromatation, decyanidation, neutralisation)
- d) stabilised or solidified waste
- e) vitrified or vitrification waste
- f) aerobic treatment of waste
- g) anaerobic treatment of waste
- h) landfill leachate
- i) waste water treatment plants not otherwise specified
- j) preparation of water intended for human consumption or water for industrial use
- k) shredding of metal-containing wastes
- l) oil regeneration
- m) mechanical treatment of waste (including sorting, crushing, compacting, pelletising) not otherwise specified
- n) soil and groundwater remediation

20. GENERAL WASTE (INCLUDING DOMESTIC WASTE, BUILDING AND DEMOLITION WASTE, BUSINESS WASTE AND INERT WASTE)

- a) separately collected fractions
- b) other municipal waste
- c) garden and park waste (including cemetery waste).”

Amendment of section 12 of Act 62 of 2008, as amended by section 26 Act 25 of 2014

48. Section 12 of the National Environmental Amendment Act, 2008 is hereby amended—

- (a) by the substitution for subsections (4) and (6) of the following subsections:

“(4) An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)[; **immediately**] **before the date on which this Act came into operation**] on or before 2 September 2014 shall be deemed to have been approved in terms of the **[principal Act] National Environmental Management Act, 1998** and an environmental authorisation issued**[by this Act]**.

(6) Any appeal lodged in terms of section 96 of the Mineral and Petroleum Resources Development Act, 2002, against a decision in respect of environmental aspects made in terms of that Act, **[that is pending on the date referred to in section 14(2)(b) of the National Environmental Management Amendment Act, 2008]** must be **[dealt with] finalised** in terms of the Mineral and Petroleum Resources Development Act, 2002 as if the relevant provisions of that Act has not been amended.”; and

- (b) by the insertion after subsection (4) of the following subsection:

“(4A) An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 after 2

September 2014 shall be deemed to have been approved in terms of the National Environmental Management Act, 1998 and an environmental authorisation issued.”.

Amendment of section 14 of Act 62 of 2008, as amended by Act 25 of 2014

49. Section 14 of the National Environmental Management Amendment Act, 2008 is hereby amended by the addition of the following subsection:

“(3) This Act will be deemed as having commenced on 2 September 2014.”.

Insertion of section 29A in Act 25 of 2014

50. The following section is hereby inserted in the National Environmental Management Laws Amendment Act, 2014 after section 29:

“Transitional Provisions

29A. (1) An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) on or before 3 September 2014 shall be deemed to have been approved and a waste management licence issued in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

(2) An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 after 3 September 2014 shall be deemed to have been approved and a waste management licence issued in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

(3) Notwithstanding subsections (1) and (2), the Minister responsible for mineral resources may direct any holder, if he or she is of the opinion that the residue deposit or residue stockpile in question are likely to result in significant pollution, degradation or damage to the environment, to take such action to upgrade the environmental management plan or programme to

address the deficiencies in the environmental management plan or environmental management programme.

(4) An appeal lodged in terms of section 96 of the Mineral and Petroleum Resources Development Act, 2002, against a decision in respect of a residue deposit or residue stockpile made in terms of that Act, must be finalised in terms of that Act, as if the relevant appeal provisions of that Act has not been amended.

(5) Any reference in the—

(a) National Environmental Management Act, 1998 to regulations pertaining to the financial provision for the mitigation and rehabilitation, closure and post closure of prospecting, mining or production operations;

(b) National Environmental Management: Waste Act, 2008 to the regulations pertaining to the management and control of residue stockpiles and residue deposits from a prospecting, mining, exploration or production operation,

must be read as a reference to the relevant regulations in the Mineral and Petroleum Resources Development Regulations published under Government Notice No. R527 in *Government Gazette* No. 26275 of 23 April 2004, as amended, until such time as the regulations have been published in terms of the National Environmental Management Act, 1998 and the National Environmental Management: Waste Act, 2008, respectively.”.

(6) The provision in subsection (5) applies retrospectively to 2 September 2014.”.

Amendment of Table of Contents of Act 10 of 2004

51. The Table of Contents of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution after items 80, 81A and 82 of the following items:

“81. [Bioprospecting involving indigenous biological resources] Permits

82. [Benefit-sharing agreements] Certain interests to be protected before permits are issued

83. [Export of listed indigenous biological resources] Benefit-sharing agreements”

Short title and commencement

52. This Act is called the National Environmental Management Laws Amendment Act, 2015.