DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 8083 **23 October 2026**

PUBLICATION OF THE DRAFT NATIONAL ENVIRONMENTAL MANAGEMENT LAWS (ADMINISTRATIVE PENALTIES) AMENDMENT BILL, 2026 FOR PUBLIC COMMENT

I, David Maynier, Minister of Forestry, Fisheries and the Environment, hereby publish the National Environmental Management Laws (Administrative Penalties) Amendment Bill, 2026 for public comment.

In an effort to improve the effectiveness of enforcement in respect of environmental law contraventions, the Department reviewed the existing enforcement framework and found that the current reliance on criminal sanctions does not adequately address all forms of non-compliance. Certain contraventions are not effectively deterred or remedied through the criminal justice system alone, highlighting the need for additional enforcement tools capable of responding more appropriately to the diverse nature and severity of environmental harm.

As a result, the Department undertook a research and policy review process in order to develop an environmental enforcement system capable of effectively addressing all environmental contraventions. The review also noted that South Africa's current approach of addressing environmental law contraventions is limited and may not be aligned with international best practice, where many countries use a wider range of enforcement tools to address environmental law contraventions. These systems provide environmental authorities with a "toolbox" of enforcement options, allowing them to choose measures that best fit the nature and seriousness of a particular offence. Given the vast and dynamic nature of actions which result in harm to the environment, legislative tools needed to mitigate and in some cases, to stop or effectively remedy the environmental harm, are not currently available to environmental authorities in South Africa.

A regulatory tool that has been identified as one which will enhance the capacity of environmental authorities to effectively respond to the dynamic nature of environmental contraventions, is the imposition of non-criminal administrative penalties.

The National Environmental Management Laws (Administrative Penalties) Amendment Bill seeks to supplement the criminal sanctions currently provided for in South Africa's environmental law regime, by

introducing an administrative penalty system as additional means to discourage and penalise non-compliance with the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) and the specific environmental management Acts (SEMAs) that fall under the legislative framework of NEMA.

The proposed introduction of an administrative penalty system through the Draft National Environmental Management: Laws (Administrative Penalties) Amendment Bill is the result of a collaborative process involving all environmental enforcement agencies and government authorities responsible for environmental compliance and enforcement.

The Bill is accompanied by a Memorandum on the Objects of the Bill which sets out clause-by-clause explanatory notes on the proposed administrative penalty system and is attached in the schedule to this notice.

The Socio-Economic Impact Assessment Study is also available and can be accessed on the Department's website at www.dffe.gov.za/legislation/gazetted_notices

The public is invited to submit written representations on the draft Bill within 60 (sixty) calendar days from the date of the publication of this notice in the *Gazette* or from the date of the corresponding newspaper advert, whichever is the later date. Written representations received after this time may be disregarded. All representations and comments must be submitted as follows:

By hand: The Deputy Director-General
Attention: Mr Mark Jardine
Department of Forestry, Fisheries and the Environment
Branch: Regulatory Compliance & Sector Monitoring
473 Steve Biko Road
Pretoria, 0083

By e-mail: adminpenalties@dffe.gov.za

By post to: The Deputy Director-General
Attention: Mr Mark Jardine
Department of Forestry, Fisheries and the Environment
Branch: Regulatory Compliance & Sector Monitoring
Private Bag X447
PRETORIA, 0001

Enquiries: Mr Mark Jardine on (012) 399-9497 or e-mail mjardine@dffe.gov.za

A copy of the National Environmental Management: Laws (Administrative Penalties) Amendment Bill 2026 can also be downloaded from the website of the Department: **www.dffe.gov.za/legislation/gazetted_notices** and can also be obtained electronically upon request by email to **mjardine@dffe.gov.za**

The Department of Forestry, Fisheries and the Environment complies with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). Comments received and responses to those comments are collated into a comments and response report, which will be made available to the public as part of the consultation process. If you have any objection to your name being made publicly available in the comments and responses report, please clearly indicate your objection in your written comment.

SCHEDULE

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS (ADMINISTRATIVE PENALTIES) AMENDMENT BILL, 2026

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. XXXXX.)
(The English text is the official text of the Bill.)

(MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT)

[B — 2026]

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, to provide for the imposition of administrative penalties against persons for contravening specified provisions of the Act and specific environmental management Acts;**
- **National Environmental Management: Air Quality Act, 2004, to provide for the amendment of section 22A to provide for the imposition of administrative penalties against persons for unlawfully undertaking an activity listed in terms of section 21 or a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965;**

and to provide for matters related thereto.

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 30 of 2013, and section 1 of Act 25 of 2014 and section 1 of Act 2 of 2022

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

(a) by the insertion after the definition of "activities" of the following definition:

" **'administrative penalty'** means a fixed administrative penalty or a variable administrative penalty imposed in terms of Part 2A of Chapter 7;";

(b) by the insertion after the definition of "development footprint" of the following definition:

" **'director'** means—

(a) a member of the board, executive committee or managing body of a corporate body;

(b) a member of a close corporation;

(c) a partner in a partnership; or

(d) a trustee of a trust;";

(c) by the insertion after the definition of "financial year" of the following definitions:

" **'firm'** means a body incorporated in terms of any law, including a partnership or trust;

'fixed administrative penalty' means a penalty prescribed in terms of section 31R(1);";

(d) by the insertion after the definition of "public participation process" of the following definition:

" **'public sector manager'** means—

(a) a municipal manager;

(b) a chief executive officer or member of a board of an organ of state;

(c) a Director-General of a national department; or

(d) a provincial head of department;"; and

(e) by the insertion after the definition of "this Act" of the following definitions:

" **'variable administrative penalty'** means a penalty determined in accordance with section 31U;

'variable administrative penalty committee' means a committee established in terms of section 31T.".

Amendment of section 24G of Act 107 of 1998, as substituted by section 6 of Act 62 of 2008, section 9 of Act 30 of 2013, and section 5 of Act 2 of 2022

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

(a) by the substitution for subsection (4) of the following subsection:

"(4) **[A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R10 million and which must be determined by the competent authority, before the]** The Minister, Minister responsible for mineral resources or MEC concerned may **[act in terms of subsection (2)*(a)* or *(b)*.]** only decide an application submitted in terms of subsection (1) after—

(a) the applicant has paid the application fee, if prescribed; and

(b) the applicant has paid the administrative penalty, if imposed; or

(c) the conclusion of any criminal proceedings, if initiated, against the applicant for the contravention of section 24F(1) or section 20*(b)* of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).";

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

"(4A) For purposes of subsection (4)*(c)*, criminal proceedings are deemed to have been concluded where—

(a) the National Prosecuting Authority has decided not to institute or proceed with the prosecution for the alleged contravention;

(b) the applicant is acquitted after prosecution; or

(c) the applicant has been convicted by a court of law of an offence for the contravention after having exhausted all judicial appeal or review proceedings in respect of the conviction.”; and

(c) by the substitution for the introductory part of subsection (6) of the following introductory part:

“(6) The submission of an application in terms of subsection (1)**[or the granting of an environmental authorisation in terms of subsection (2)*(b)* shall in no way]** does not derogate from—”;

(d) by the substitution for the full stop at the end of paragraph *(b)* of subsection (6), of “; and”;

(e) by the insertion after paragraph *(b)* of subsection (6) of the following paragraph:

“*(c)* the authority of the environmental management inspector or environmental mineral and petroleum inspector to impose an administrative penalty.”; and

(f) by the substitution for subsection (7) of the following subsection:

“(7) **[If, at any stage after the submission of an application in terms of subsection (1), it comes to the attention of the Minister, Minister for mineral resources or MEC, that the applicant is under criminal investigation for the contravention of or failure to comply with section 24F(1) or section 20*(b)* of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), the Minister, Minister responsible for mineral resources or MEC may**

defer a decision to issue an environmental authorisation 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]**The Minister may prescribe a fee for an application brought in terms of subsection (1).”.

Amendment of section 31H of Act 107 of 1998, as amended by section 6 of Act 44 of 2008; section 18 of Act 14 of 2009 and section 21 of Act 2 of 2022

3. Section 31H of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph *(f)* of the following paragraph:

“*(f)* inspect, question a person about, and **[if necessary]** remove any specimen, article, substance or other item which, on reasonable

grounds is believed to**[suspicion, may]** have been **[used]**involved in the—

[(i) committing an offence in terms of the law for which that inspector has been designated in terms of section 31D;]

(ii) **[breaching such law]**contravention of a law; or

(iii) **[breaching a term or condition of a permit, authorisation or other instrument issued in terms of such law]** contravention of a term or condition of a licence, permit, authorisation or exemption issued, or instrument adopted,

in terms of this Act or a specific environmental management Act;".

Insertion of Part 2A in Chapter 7 of Act 107 of 1998

4. The following Part is hereby inserted in Chapter 7 of the National Environmental Management Act, 1998, after section 31Q:

"***Part 2A***

Administrative penalties

Identification of administrative penalty

31R. (1) An environmental management inspector or environmental mineral and petroleum inspector may impose a fixed administrative penalty for—

(a) the contravention of a term or condition of a licence, permit, authorisation or exemption issued, or instrument adopted, in terms of this Act or a specific environmental management Act, which does not cause significant—

(i) pollution or degradation of the environment; or

(ii) harm to a specimen of a species or an ecosystem; and

(b) the contravention of a provision of this Act or any specific environmental management Act, or a norm or standard, identified in terms of subsection (2)*(b)*.

(2) The Minister must, by notice in the *Gazette* identify—

(a) a specified penalty amount for a contravention contemplated in subsection (1)*(a)*;

(b) a provision of this Act, any specific environmental management Act or a norm or standard, and a specified penalty amount for a contravention contemplated in subsection (1)*(b)*; and

(c) an applicable reduced penalty amount for a penalty identified in paragraph *(a)* or *(b)* where the fixed administrative penalty is paid within the period specified in the notice.

(3) An environmental management inspector or environmental mineral and petroleum inspector may impose a variable administrative penalty for—

(a) the contravention of a norm or standard or a provision of this Act or a specific environmental management Act; and

(b) the contravention of a term or condition of a permit, licence, authorisation or exemption issued, or instrument adopted, in terms of this Act or a specific environmental management Act which may cause significant—

(i) pollution or degradation of the environment; or

(ii) harm to a specimen of a species or an ecosystem.

(4) Subsection (3)*(a)* does not apply where a fixed administrative penalty has been identified in terms of subsection (2).

Fixed administrative penalty

31S. (1) An environmental management inspector or an environmental mineral and petroleum inspector, within their mandate in terms of section 31D, may issue a fixed administrative penalty to a person if there are reasonable grounds to believe that there has been a contravention contemplated in section 31R(1) and (2).

(2) The fixed administrative penalty must—

(a) specify the contravention;

(b) specify that the offender is required to pay a fixed administrative penalty;

(c) specify the amount of a fixed administrative penalty and the reduction of the prescribed amount if payment is made within the prescribed period;

(d) specify the period within which the person is permitted to object to the penalty;

(e) specify the date and manner of payment;

(f) specify that non-payment of the fixed administrative penalty is an offence;

(g) specify whether any item removed is forfeited to the State in terms of section 34D(4); and

(h) include any other prescribed requirement.

(3) Any person issued with a fixed administrative penalty may object to the penalty by making written representations to an environmental management inspector or environmental mineral and petroleum inspector, as the case may be, within 30 days of receipt of the decision.

(4) The environmental management inspector or environmental mineral and petroleum inspector must consider the representations received in terms of subsection (3) and confirm, withdraw or reduce the amount of the fixed administrative penalty decision made by the environmental management inspector or an environmental mineral and petroleum inspector referred to in subsection (1) and provide written reasons for the decision.

(5) The Minister must prescribe—

(a) a system to provide that the person who issues the fixed administrative penalty is not the same person who decides the objection; and

(b) the factors and criteria that must be considered when deciding the objection.

Variable administrative penalty committee

31T. (1) An organ of state which employs an environmental management inspector or environmental mineral and petroleum inspector must establish a variable administrative penalty committee in accordance with subsection (4).

(2) A variable administrative penalty committee must consider the criteria in section 31U and make written recommendations to an environmental management inspector or environmental mineral and petroleum inspector about the imposition and the amount of a variable administrative penalty.

(3) The variable administrative penalty committee may—

(a) consult any person with relevant technical or specialist knowledge for advice; and

(b) instruct the offender to submit any specialist reports or other information which may be required to determine the fine, to the committee.

(4) The Minister must prescribe the composition of a variable administrative penalty committee.

Determination of variable administrative penalty

31U. (1) An environmental management inspector or environmental mineral and petroleum inspector may impose a variable administrative penalty which may not exceed R50 million per contravention.

(2) An environmental management inspector or environmental mineral and petroleum inspector must consider the following criteria when determining the quantum of the variable administrative penalty:

(a) the detrimental environmental impact or potential detrimental environmental impact which has occurred or may occur from the contravention, including—

(i) the pollution impact;

(ii) the biodiversity impact; and

(iii) the socio-economic impact;

(b) the fault of the offender;

(c) financial benefits to the offender, or any related party, arising from the contravention; and

(d) any other criteria as may be prescribed.

(3) An environmental management inspector or environmental mineral and petroleum inspector may increase or decrease the quantum of the variable administrative penalty determined in terms of subsection (2) after considering the following modifying factors:

(a) whether the offender has taken steps to mitigate, rehabilitate or remediate the impacts caused by the contravention;

(b) the offender's record of compliance or non-compliance in terms of this Act and any specific environmental management Act;

(c) whether the offender voluntarily reported the contravention;

(d) the extent of cooperation by the offender after the contravention, with environmental management inspectors or environmental mineral and petroleum inspectors;

(e) the ability of the offender to pay the determined variable administrative penalty; and

(f) any other modifying factor as may be prescribed.

(4) The Minister must prescribe—

(a) the weighting of the modifying factors in subsection (3);

(b) how the variable administrative penalty should be calculated using the criteria in subsection (2); and

(c) the conditions applicable to the issuing of a variable administrative penalty.

Issue of variable administrative penalty

31V. (1) An environmental management inspector or an environmental mineral and petroleum inspector—

(a) may, subject to paragraph *(b),* issue a variable administrative penalty to a person if there are reasonable grounds to believe that there has been a contravention contemplated in section 31R(3); and

(b) must, before imposing a penalty in terms of paragraph *(a)*, give adequate written notice to the person to whom a variable administrative penalty will be issued and provide them with a reasonable opportunity to submit written representations to the variable administrative penalty committee.

(2) A notice in terms of subsection (1)*(b)* must—

(a) specify the alleged contravention;

(b) specify that the offender is required to pay a variable administrative penalty;

(c) specify the maximum amount in respect of a variable administrative penalty;

(d) set out the criteria which will be considered to determine the amount of the variable administrative penalty;

(e) require the offender to investigate, evaluate and assess the impact of the activity on the environment;

(f) specify the period within which the person is permitted to make representations;

(g) specify the proposed manner of payment;

(h) specify that a failure to pay the variable administrative penalty is an offence;

(i) specify whether any item removed is intended to be forfeited to the State in terms of section 34D(4) of this Act; and

(j) comply with any other prescribed requirement.

Variable administrative penalty decision

31W. (1) The environmental management inspector or an environmental mineral and petroleum inspector must—

(a) consider any representations made by the person to whom a notice in terms of section 31V(1) has been issued; and

(b) consider the recommendations of the variable administrative penalty committee, where applicable.

(2) The environmental management inspector or an environmental mineral and petroleum inspector must—

(a) issue an administrative penalty; or

(b) decide not to issue an administrative penalty,

and provide written reasons for the decision.

(3) The environmental management inspector or an environmental mineral and petroleum inspector may, when imposing a variable

administrative penalty, suspend part of the penalty in accordance with criteria and conditions which the Minister must prescribe.

(4) The environmental management inspector or an environmental mineral and petroleum inspector must, in the administrative penalty, specify the manner in which, and the date on which, the offender must pay the administrative penalty.

Objection to variable administrative penalty

31X. (1) Any person who is issued with a variable administrative penalty may, within 30 days of receipt of the penalty, object to the penalty by making written representations to—

(a) the Director-General;

(b) the Director-General of the department responsible for mineral resources;

(c) the Director-General of the department responsible for water affairs;

(d) a provincial head of department;

(e) municipal manager; or

(f) a chief executive officer of an organ of state responsible for enforcing provisions of this Act or any specific environmental management Act.

(2) A functionary listed in subsection (1)*(a)* to *(f)* must consider the representations received in terms of subsection (1) and either confirm, withdraw, reduce or increase the amount of the variable administrative penalty

issued by the environmental management inspector or environmental mineral and petroleum inspector.

Onus of proof and liability

31Y. (1) An environmental management inspector or an environmental mineral and petroleum inspector may impose an administrative penalty if it is established, on a balance of probabilities, that there has been a contravention contemplated in section 31R(1), (2)*(b)* or (3).

(2) Any person who is or was a director of a firm or a public sector manager at the time when that firm or the organ of state contravened a provision for which an administrative penalty may be imposed, may, in addition to the firm or organ of state, be held personally liable for the administrative penalty if the contravention resulted from the director or public sector manager failing to take all reasonable steps to ensure that the provision was not contravened.

(3) Proof of a contravention by a firm or organ of state constitutes *prima facie* evidence that a director or public sector manager is liable for the contravention.

(4) An employee or agent is personally liable, in addition to the firm or organ of state, for an administrative penalty if they act or fail to act where that act or failure is a contravention by an employer for which an administrative penalty may be imposed.

Administrative penalties and criminal prosecution

31Z. (1) An administrative penalty may only be imposed against a person—

(a) who has not also been criminally charged for the same contravention for which the penalty is being imposed; or

(b) where the prosecution against that person is withdrawn or the person is acquitted of that offence.

(2) An administrative penalty is not a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Publication of variable administrative penalties

31AA. A firm or organ of state that has been issued an administrative penalty must publish the details of that penalty—

(a) on its website for a period of one year from the date of the penalty;

(b) in its annual report; and

(c) in any other manner prescribed by the Minister.

Recovery of unpaid administrative penalty

31AB. (1) An environmental management inspector or an environmental mineral and petroleum inspector may file a copy of the administrative penalty with the registrar of a competent court to obtain a court order against the offender to recover an unpaid administrative penalty if—

(a) the amount payable in terms of the notice has not been paid; and

(b) either—

(i) the offender has not submitted an objection against the decision to impose the administrative penalty within the prescribed time period for the objection; or

(ii) the offender has submitted an objection and it has been decided that the offender is liable.

(2) A notice filed in terms of this section has the effect of a civil judgment and may be enforced as if handed down by a court."

Amendment of section 34 of Act 107 of 1998, as amended by section 22 of Act 14 of 2009

5. Section 34 of the National Environmental Management Act, 1998, is hereby amended by—

(a) the deletion of subsection (9); and

(b) insertion of the following subsection after subsection (10):

"(11) Whenever any person is convicted of an offence in terms of section 49A(1)*(s)*, the court may order that person to pay the administrative penalty issued.".

Amendment of section 34D of Act 107 of 1998, as substituted by section 23 of Act 14 of 2009

6. Section 34D of the National Environmental Management Act, 1998, is hereby amended by the insertion after subsection (3) of the following subsection:

"(4) An environmental management inspector or environmental mineral and petroleum inspector may, when issuing an administrative penalty, declare any item that was removed during the administrative penalty process, including but not limited to any specimen, article, substance or other item, to be forfeited to the State.".

Amendment of section 34E of Act 107 of 1998, as inserted by section 7 of Act 46 of 2003, and as amended by section 31 of Act 2 of 2022

7. Section 34E of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) Pending the **[institution]**finalisation of any criminal proceedings or administrative penalty process in terms of this Act or a specific environmental management Act **[or the resolution of such proceedings]**, a live specimen that has been seized or removed in terms of this Part may be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

(2) For the purposes of this Chapter, a seized or removed live **[specimens]**specimen may, with due regard to the interests of the person concerned, be disposed of **[in terms of section 30*(a)* of the Criminal Procedure Act, 1977]**as the circumstances may require.".

Amendment of section 44 of Act 107 of 1998, as amended by section 2 of Act 52 of 2002, section 21 of Act 30 of 2013, and section 15 of Act 25 of 2014

8. Subsection (1) of section 44 of the National Environmental Management Act, 1998, is hereby amended—

(a) by the deletion of the word "and" at the end of paragraph *(aG)*;

(b) by the substitution for the full stop at the end of paragraph *(aH)* of a semi-colon; and

(c) by the insertion after subparagraph *(aH)* of the following subparagraph:

"*(aI)* any matter necessary to facilitate the implementation of Part 2A of Chapter 7; and".

Amendment of section 49A of Act 107 of 1998, as inserted by section 25 of Act 30 of 2013 and as amended by section 36 of Act 2 of 2022

9. Subsection (1) of section 49A of the National Environmental Management Act, 1998, is hereby amended—

(a) by the deletion of the full stop at the end of paragraph *(r)* and the insertion of a semi-colon; and

(b) by the insertion after paragraph *(r)* of the following paragraph:

"*(s)* fails to pay a fixed administrative penalty or a variable administrative penalty; and

(t) fails to publish the details of the variable administrative penalty as required by section 31AA.".

Amendment of section 49B of Act 107 of 1998, as inserted by section 25 of Act 30 of 2013 and as amended by section 37 of Act 2 of 2022

10. Section 49B of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

"(2) A person convicted of an offence in terms of section 49A(1)*(i)*, *(j)***[or]**, *(k)*, or *(s)* is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for

a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.

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

Insertion of section 50B in Act 107 of 1998

11. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 50A:

"**Administrative penalty for acts after commencement of Part 2A**

50B. An administrative penalty may be imposed for any contravention committed after the date of commencement of Part 2A of Chapter 7."

Amendment of Table of Contents of Act 108 of 1998, as amended by section 28 of Act 30 of 2013 and section 30 of Act 25 of 2014

12. The Table of Contents of the National Environmental Management Act, 1998, is hereby amended—

(a) by the insertion after item 31Q of the following items:

"***Part 2A***

Administrative penalties

31R. Identification of administrative penalty

31S. Fixed administrative penalty

31T. Variable administrative penalty committee

31U. Determination of variable administrative penalty

31V. Issue of variable administrative penalty

31W. Variable administrative penalty decision

31X. Objection to variable administrative penalty

31Y. Onus of proof and liability

31Z. Administrative penalties and criminal prosecution

31AA. Publication of variable administrative penalties

31AB. Recovery of unpaid administrative penalty"; and

(b) by the insertion after item 50A of the following item:

"50B. Administrative penalty for acts prior to or after commencement of Part 2A".

Amendment of section 1 of Act 39 of 2004, as amended by section 1 of Act 20 of 2014

13. Section 1 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the by the insertion before the definition of "air pollution" of the following definition:

" **'administrative penalty'** has the meaning assigned to it in section 1 of the National Environmental Management Act;".

Amendment of section 22A of Act 39 of 2004, as inserted by section 22A of Act 30 of 2014 and as amended by section 55 of Act 2 of 2022

14. Section 22A of the National Environmental Management: Air Quality Act, 2004, is hereby amended—

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

"the relevant licensing authority **[must fine the applicant an administrative fine which may not exceed R10 million before the application for an atmospheric emission licence may be considered]**may only decide that application after—

(i) the applicant has paid the application fee, if prescribed; and

(ii) the applicant has paid an administrative penalty, if imposed; or

(iii) the conclusion of any criminal proceedings, if initiated against the applicant for the contravention of section 22.";

(b) by the deletion of subsection (4);

(c) by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

"The submission of an application **[or the issuing of]**for a provisional atmospheric emission licence or an atmospheric emission licence in terms of this section**[, or the payment of an administrative fine in terms of subsection (1), must]**—

(d) by the deletion of the word "or" at the end of paragraph *(b)* of subsection (5);

(e) by the substitution in paragraph *(c)* of subsection (5) for the full stop of ''; or'' and by the insertion after paragraph *(c)* of the following paragraph:

"*(d)* in no way derogates from the authority of the environmental management inspector authority to impose an administrative penalty."; and

(f) by the insertion after subsection (5) of the following subsection:

"(6) The Minister may prescribe an application fee for an application contemplated in subsection (1).".

Transitional arrangements

15. (1) An application in terms of section 24G of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or section 22A of the

National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), which is pending when sections 2 and 7 of this Act commences, must be administered and decided in terms of those sections as if those sections were not amended by this Act.

(2) A decision taken in terms of the sections referred to in subsection (1) is deemed to be a decision taken in terms of sections 24G and 22A as amended by this Act.

Short title and commencement

16. (1) This Act is called the National Environmental Management Laws (Administrative Penalties) Amendment Act, 2026, and commences on a date determined by the President by proclamation in the *Gazette*.

(2) A proclamation may determine different commencement dates for different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS (ADMINISTRATIVE PENALTIES) AMENDMENT BILL, 2026

1. BACKGROUND

1.1. The National Environmental Management Laws (Administrative Penalties) Amendment Bill, 2026 (Bill) seeks to amend the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) to introduce an additional enforcement tool – an administrative penalty. Its development followed a lengthy and inclusive consultation process with the Environmental Management Inspectorate institutions across all three spheres of government, which then led to the development, and approval by MINMEC of the policy on the introduction of an administrative penalty system into national framework legislation and eventually to this Bill.

1.2. The Bill seeks to address the shortcomings that were identified with the current enforcement approach (i.e. the criminal enforcement process) by introducing administrative penalties as additional means by which to discourage and penalise non-compliance with NEMA and the specific environmental management Acts (SEMAs).

1.3. The Bill will also make consequential amendments to the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (AQA) which is a SEMA, and which, like NEMA, currently contains a quasi-administrative penalty specifically in respect of *ex post facto* authorisation for unlawful commencement of certain listed or specified activities.

2. OBJECTS OF BILL

2.1. The purpose of the Bill is to introduce an administrative penalty system as an additional enforcement tool to be used by environmental management inspectors and environmental mineral and petroleum inspectors to ensure compliance with NEMA and the SEMAs.

3. CLAUSE BY CLAUSE EXPLANATION

3.1. **Ad clause 1 (Addition of definitions)**

Certain definitions are required to ensure that the terms used in the Bill are given their intended meaning.

3.2. **Ad clause 2 (Amendment to consequences of unlawful commencement of activity)**

It was necessary to amend section 24G of NEMA to remove the section 24G fine created by section 24G(4) of NEMA. Instead, the Bill envisages that a person who commences unlawfully and applies for *ex post facto* authorisation, may either be criminally prosecuted or issued with an administrative penalty and it is only after the conclusion of the selected enforcement process (if any) that the application may be considered. Clarity is therefore provided on when criminal proceedings are deemed to have been concluded. It is also made clear that there may be instances where no enforcement action is required and in those circumstances the application may be considered upon submission.

It was also made clear that the submission of an application in terms of section 24G of NEMA does not derogate from the authority of an environmental management inspector or environmental mineral and petroleum inspector to impose an administrative penalty.

The power to prescribe a section 24G application fee has also been given to the Minister.

3.3. **Ad clause 3 (Amendment to general powers of environmental management inspectors)**

Section 31H(1)(f) of NEMA is being amended so that environmental management inspectors and environmental mineral and petroleum inspectors are able to inspect, question a person about and remove any specimen, article, substance or other item which on reasonable grounds is believed to have been involved in the contravention of a law. It is therefore delinked from the criminal process so that it may apply also to the administrative penalties process.

3.4. **Ad clause 4**

3.4.1. **31R Identification of administrative penalty**

Two types of administrative penalties are created by 31R, fixed administrative penalties and variable administrative penalties. Fixed administrative penalties may be imposed where the Minister has identified a provision as attracting a fixed administrative penalty or where the contravention of a term or condition of an authorisation or instrument does not cause significant environmental harm (i.e. for less serious offences). Where the Minister has not identified the provision in a gazette or where the contravention of a term or condition of an authorisation or instrument causes significant environmental harm, a variable administrative penalty may be issued (i.e. for the more serious offences).

In identifying a fixed administrative penalty, the Minister must specify the amount of the penalty and reduced amount if it is paid on time.

3.4.2. **31S Fixed administrative penalty**

Proposed section 31S details the simple process that an environmental management inspector or environmental mineral and petroleum inspector must follow to impose a fixed administrative penalty.

It also creates a process by which a person who has received a fixed administrative penalty may object to it. On objection, another environmental management inspector or environmental mineral and petroleum inspector will decide whether to confirm, withdraw or reduce the amount of the fixed administrative penalty. It is envisaged that the *Regulations relating to qualification criteria, training and identification of, and forms to be used by, environmental management inspectors and environmental mineral resource inspectors* (published in Government Notice R480 in *Government Gazette* 40879 of 31 May 2017) will be amended so that the consideration of objections lies with grade 1 environmental management inspectors and environmental mineral and petroleum inspectors while the fixed administrative penalties can be imposed by grades 2 to 5.

3.4.3. **31T Variable administrative penalty committee**

A variable administrative penalty committee must be created by each institution that employs an environmental management inspector or environmental mineral and petroleum inspector so that the committee can consider the information submitted, obtain further information, consult specialists where necessary and advise the environmental management inspector or environmental mineral and petroleum inspector on the quantum of the penalty. The clause does not specify the composition of the committee but rather empowers the Minister to do so.

3.4.4. **31U Determination of variable administrative penalty**

Proposed section 31U provides for the imposition of a variable administrative penalty and sets the maximum amount for that penalty. Additionally, it sets out the criteria that must be considered when determining the quantum of the variable administrative penalty as well as criteria which enable the quantum to be modified. The clause empowers the Minister to prescribe the weighting of the modifying factors, how the variable penalty should be calculated with reference to the criteria and the conditions applicable to the issuance of a variable administrative penalty.

3.4.5. **31V Issue of variable administrative penalty**

Proposed section 31V provides for notification of the intended imposition of a variable administrative penalty coupled with an opportunity to make representations before it

is issued. The minimum requirements to be contained in the notice of intention to issue the variable administrative penalty are set out.

3.4.6. **31W Variable administrative penalty decision**

In terms of proposed section 31W, any representations received must be considered together with the recommendations made by the variable administrative penalty committee before a decision is taken by the environmental management inspector or environmental mineral and petroleum inspector as to whether to issue a variable administrative penalty.

The ability to suspend part of the administrative penalty is available in accordance with criteria and conditions which may be prescribed.

The administrative penalty must contain the details regarding how, and by when, payment must be made.

3.4.7. **31X Objection to variable administrative penalty**

An objection to variable administrative penalty is provided for in proposed section 31X and the person to whom the objection lies is dependent on which institution the environmental management inspector or environmental mineral and petroleum inspector is employed by. For example, an objection against a decision taken by an environmental management inspector employed by a municipality will lie to the municipal manager.

3.4.8. **31Y Onus of proof and liability**

Proposed section 31Y makes it clear that the burden of proof is a balance of probabilities. It also enables piercing of the corporate veil to create personal liability for directors of firms and public sector managers of organs of state, as well as for employees who contravene the law, much like section 34 of NEMA does currently in respect of criminal liability.

3.4.9. **31Z Administrative penalties and criminal prosecution**

This proposed section 31Z clarifies that a person cannot be both convicted in the criminal process and issued with an administrative penalty.

3.4.10. **31AA Publication of variable administrative penalties**

This proposed section 31AA obliges a firm or an organ of state to publish an administrative penalty issued to it as set out in the proposed section and in any other manner prescribed by the Minister. The primary aim of the proposed section is to create a deterrent effect.

3.4.11. **31AB Recovery of unpaid administrative penalty**

This proposed section 31AB provides for a civil mechanism through which to enforce the payment of an administrative penalty if the penalty remains unpaid after the time periods for objections have lapsed or after objections have been decided.

3.5. **Ad clause 5 (Amendment to criminal proceedings)**

Section 34(9) of NEMA contains definitions of “firm” and “director” when used in that section. However, these terms have been defined in the Bill and will, if the Bill is passed, be used in respect of both the criminal and administrative penalty systems going forward. Accordingly, the terms needed to be defined in section 1 of NEMA instead of in section 34.

In addition, a new subsection (11) is proposed to enable a court, when convicting a person for the newly created offence of failing to pay an administrative penalty, to order the payment of that penalty in the criminal process, as an alternative to the civil recovery mechanism.

3.6. **Ad clause 6 (Amendment of forfeiture of items)**

Section 34D of NEMA deals with the forfeiture of items seized in the criminal process to be declared forfeited. A new subsection (4) is proposed so that items removed during the administrative penalty process may be declared forfeited to the State.

3.7. **Ad clause 7 (Amendment of treatment of seized live specimens)**

The proposed amendment to section 34E is intended to ensure that any live specimen seized during the administrative enforcement process is also covered by the procedure set out in this section which currently applies only in respect of the criminal process.

3.8. **Ad clause 8 (Amendment to regulations in general)**

Section 44 of NEMA empowers the Minister to make regulations. The intention is to amend this section to include a specific power to make regulations to facilitate the implementation of the administrative penalties system.

3.9. **Ad clause 9 (Amendment to offences)**

An amendment is proposed to section 49A of NEMA to include two new offences specific to the administrative penalty system being the failure to pay the administrative penalty and the failure to publish the details of a variable administrative penalty as required by proposed section 31AA.

3.10. **Ad clause 10 (Amendment to penalties)**

The penalty section in section 49B of NEMA is required to be amended to incorporate penalties for the newly created offences.

3.11. **Ad clause 11 (Insertion of administrative penalty for acts after commencement of Part 2A)**

This clause makes it clear that an administrative penalty may be imposed for contraventions that happened after the commencement of this administrative penalty system.

3.12. **Ad clause 12 (Amendment to the table of contents in NEMA)**

The table of contents has been revised to include the additional sections.

3.13. **Ad clause 13 (Amendment to the definitions in AQA)**

This clause provides for the inclusion of the definition of “administrative penalty” into AQA.

3.14. **Ad clause 14 (Amendment to consequences of unlawful conduct of listed activity resulting in atmospheric emission in AQA)**

Similar amendments are proposed to section 22A of AQA as those proposed to section 24G of NEMA to remove the section 22A fine created by section 22A(1) of AQA. Instead, a person who commences unlawfully and applies for *ex post facto*

authorisation may either be criminally prosecuted or issued with an administrative penalty and it is only after the conclusion of the selected enforcement process (if any) that the application may be considered. Clarity is therefore provided on when criminal proceedings are deemed to have been concluded.

It was also made clear that the submission of an application in terms of section 22A of AQA does not derogate from the authority of an environmental management inspector to impose an administrative penalty.

The Minister is now vested with the power to prescribe a section 22A application fee.

3.15. **Ad clause 15 (Transitional arrangements)**

The purpose of this clause is to make it clear that any application submitted in terms of either section 24G of NEMA or section 22A of AQA and which is pending at the time this Bill is enacted must be dealt with in terms of the regime applicable at the time of submission.

3.16. **Ad clause 16 (Short title and commencement)**

This clause sets out the name of the Bill and makes it clear that the Bill will commence on a date determined by the President and that different provisions can commence at different times.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

4.1. Enforcement authorities (local and provincial government)

4.2. Department of Mineral and Petroleum Resources

4.3. MINTECH Working Groups 1,2,4,5,7,8,9 and 10

4.4. MINTECH

4.5. MINMEC

5. IMPLICATIONS FOR VULNERABLE GROUPS

None

6. FINANCIAL IMPLICATIONS FOR THE STATE

The implementation of the administrative penalty system will largely utilise existing human and financial environmental compliance and enforcement resources that may be redirected to administer an administrative penalty system, for example, where there are dedicated S24G personnel appointed.

However, it is envisaged that a minor increase in human and financial resources will be required to ensure the system is implemented optimally.

7. PARLIAMENTARY PROCEDURE

7.1. The State Law Advisers and the Department of Forestry, Fisheries and the Environment are of the opinion that the proposed Bill falls within the ambit of section 76(3) of the Constitution as it deals with a functional area listed in Schedule 4. As such, the Bill must be dealt with in accordance with the procedure established in terms of section 76(1) or (2) of the Constitution.

7.2. 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.