

NOTICE 736 OF 2013**DEPARTMENT OF ENVIRONMENTAL AFFAIRS****EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS
AMENDMENT BILL, 2013**

The Minister of Water and Environmental Affairs intends introducing the National Environmental Management Laws Amendment Bill, 2013 in Parliament during August 2013. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

A copy of the draft Bill can also be obtained from Mr Sibusiso Shabalala.

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MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2013

1. PURPOSE OF BILL

The purpose of the Bill is to amend certain provisions under the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA), and the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA).

2. BACKGROUND

2.1. The NEMA is the environmental framework legislation which provides for environmental management in the Republic. However, prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area are currently still excluded from the scope of NEMA, since they are regulated in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA). Currently, prospecting, mining, exploration or production activities require approval in terms of the MPRDA and, if ancillary activities constitute a listed activity in terms of section 24(2)(a) of NEMA, it also requires an environmental authorization.

2.2. The NEMA and MPRDA have their own processes and information requirements and there is currently a lack of integration of these processes. In order to facilitate an integrated approach to prospecting, mining, exploration or production activities, the Department of Environmental Affairs (DEA) and the then

Department of Minerals and Energy (now Department of Mineral Resources) entered into discussions and, during 2008 agreed on **“One Environmental System”** for the country, which in essence means that all environmental related activities would be regulated through one system which is NEMA. The agreement was translated into the amendment of the NEMA and the MPRDA.

2.3. In 2008, the NEMA was amended by the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA) to, amongst others, empower the Minister of Mineral Resources to implement environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. The MPRDA was amended by the Mineral and Petroleum Resources Development Amendment Act, 2008 (Act No. 49 of 2008) (MPRDAA) to, amongst others, make the Minister of Mineral Resources the responsible authority for implementing environmental matters in terms of NEMA as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area.

2.4. However, the commencement date of the NEMAA was subject to the date of commencement of the MPRDAA. The NEMAA was assented to by the President on 09 January 2009 and came into effect on 01 May 2009. The MPRDAA was assented to by the President on 21 April 2009, but to date has not come into effect. During 2012, the Ministers of Water and Environmental Affairs and Mineral Resources agreed that the Amendment Acts must be implemented to give effect to the 2008 agreement.

2.5. The Bill proposes amendments to certain provisions under the NEMA and NEMAA in order to give effect to the ***“One Environmental System”*** by empowering the Minister of Mineral Resources to implement environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. The Bill further proposes amendments to the NEMWA to allow the Minister of Water and Environmental Affairs to develop regulations on the environmental management of residue deposits and stock piles for implementation by the Minister of Mineral Resources.

3. OBJECTS OF BILL

3.1. *National Environmental Management Act, 1998*

Clause 1: Amendment of section 1

Sections 31B, 31BA and 31C of NEMA currently allow the Minister of Water and Environmental Affairs or MECs responsible for environmental affairs to designate officials in national, provincial and local government as environmental management inspectors (EMIs). The definition of "environmental management inspector" only refers to sections 31B and 31C. This clause amends the definition of "environmental management inspector" to also refer to section 31BA of NEMA. The clause also inserts the definition of "environmental mineral resources inspector" to clarify that the environmental mineral resources inspectors will be designated by the Minister of Mineral Resources to enforce certain provisions of NEMA and National Environmental Management: Waste Act, 2008.

The clause further delete the definitions of "residue deposits and stock piles" under NEMA and inserts those definitions under the NEMWA in order to empower the Minister of Water and Environmental Affairs to develop regulations on the environmental management and control of residue deposits and stock piles for implementation by the Minister of Mineral Resources.

Clause 2: Amendment of section 24

Section 24(5)(b)(vi) provides the Minister of Water and Environmental Affairs with a legal mandate to develop regulations on the management and control of residue stock piles and deposits on a mining area. In line with the principle of "One Environmental System" this is a consequential amendment to ensure that regulations or norms and standards are developed either in terms of NEMA or specific environmental management Act, where necessary. In this regard, the development of waste related regulations must be undertaken under the NEMWA. This clause deletes the legal power of the Minister to develop regulations on the management of residue stock piles and deposits under NEMA and insert such power under the NEMWA.

Clause 3: Amendment of section 24C

Section 24C of NEMA sets out the competent authorities (Minister and MECs responsible for environmental affairs) for the listed or specifies activities. This clause amends section 24C of NEMA to indicate that the Minister of Mineral Resources is the competent authority for the prospecting, mining, exploration, production activity on a mining area. The Minister of Mineral Resources mandate will be for all activities directly related to the application applied for in terms of the

Mineral and Petroleum Resources Development Act, 2002 (whether it is right or permit) and will be related to the area as applied for in terms of the Mineral and Petroleum Resources Development Act, 2002.

If a powerline is built, the Minister of Mineral Resources will be the competent authority for that portion of the powerline directly related to the mine (linked to the footprint of the mine as applied for). Section 24C of NEMA will apply to any other activities that are not related to mining i.e. Province or Department of Environmental Affairs will be the competent authority for those applications. The Minister of Mineral Resources mandate will be for all environmental impact assessment related aspects and will include NEMA, and National Environmental Management: Waste Act, 2008 as far as an environmental authorization is required for mining as applied for in terms of the MPRDA.

Any activities that are triggered in terms of NEMA on a footprint for which a mining right or permit is issued but that are unrelated to mining will not be for the Minister of Mineral Resources mandate e.g. if a landowner wants to build a dam on his property, which falls within the mining area, the Minister of Mineral Resources will not be the competent authority as this is unrelated to mining. The Minister of Mineral Resources will not be the licensing authority responsible for atmospheric emission licenses as this is the responsibility of municipalities and such decisions are taken after completion of the environmental impact assessment process.

Clause 4: Amendment of section 24O

Section 24O(3) require a consultation period of 40 days between State departments with respect to an application for an environmental authorisation. The provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), require as a minimum a period of 30 days for consultation with any interested and affected parties. The proposed amendment will ensure that section 24O(3) is in line with the provisions of the Promotion of Administrative Justice Act.

Clause 5: Insertion of section 31BB

Sections 31B, 31BA and 31C of NEMA currently only allow the Minister of Water and Environmental Affairs or MECs responsible for environmental affairs to designate officials in national, provincial and local government as EMIs. The function of the EMI is to monitor and enforce compliance with NEMA or a specific environmental management Act. The Minister of Mineral Resources will be the competent authority for application for environmental authorisation on prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. Therefore, it is also important for the Minister of Mineral Resources to enforce those environmental authorisation issued by him or her. The current provisions of NEMA does not empower the Minister of Mineral Resources to enforce compliance with environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area.

This amendment will empower the Minister of Mineral Resources to designate officials within the Department of Mineral Resources subject to certain conditions,

as environmental mineral resources inspectors responsible for compliance monitoring and enforcement of environmental provisions under NEMA and NEMWA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area.

Clause 6: Amendment of section 31D

This is a consequential amendment to empower the Minister of Mineral Resources to designate environmental mineral resources inspectors to monitor compliance and enforce specific provisions of NEMA and NEMWA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. The amendment further ensures alignment of the cross referencing in section 31D.

Clause 7: Amendment of section 43

In terms of the 2008 agreement the Minister of Water and Environmental Affairs will be the appeal authority against a decision taken by the Minister of Mineral Resources regarding environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. During, 2012, the Departments of Environmental Affairs and Mineral Resources discussed and agreed that there were no "in process appeals". This clause deletes section 43(1B) of NEMA.

Therefore, an aggrieved person appeals against an administrative decision to grant or reject an application for environmental authorisation. Accordingly, section 43(1A) of NEMA allows any person to appeal to the Minister responsible for

environmental affairs against a decision taken by the Minister of Mineral Resources in respect of an environmental authorisation or environmental management programme on a prospecting, mining, exploration or production area. The amendment provides legal clarity that the Minister of Water and Environmental Affairs is the appeal authority for decisions taken by the Minister of Mineral Resources in respect of an environmental authorisation or environmental management programme on a prospecting, mining, exploration or production area.

3.2. *National Environmental Management: Waste Act, 2008*

Clause 8: Amendment of section 1

The definitions of "residue deposits and residue stock piles" were deleted under NEMA, and this clause inserts those definitions under the NEMWA. This is a consequential amendment related to the Minister's legal power to develop regulations on the environmental management of residue stock deposits and stock piles under the NEMWA.

Clause 9: Amendment of section 4

Section 4 excludes the environmental management of residue deposits and stock piles under the jurisdiction of the NEMWA. However, in line with the 2008 agreement environmental norms and standards and regulations must be developed either in terms of NEMA or a specific environmental management Act for implementation by the Minister of Mineral Resources. This clause will ensure that the regulatory tools for management and control of residue deposits and stock piles are developed under the NEMWA for implementation by the Minister of Mineral Resources.

Clause 10: Amendment of section 43

This clause inserts subsection (1A) to ensure that the Minister of Mineral Resources continues as the licensing authority for those waste management activities involving residue deposits and residue stock piles on a mining area. The management and control of the residue deposits and residue stock piles must comply with the regulations to be developed under the NEMWA.

Clause 11: Amendment of section 69

This clause inserts paragraph (iA) empowering the Minister of Water and Environmental Affairs to develop regulations on the management and control of residue deposits and residue stock piles on a mining area for implementation by the Minister of Mineral Resources.

3.3. *National Environmental Management Amendment Act, 2008***Clause 12: Amendment of section 12**

Section 12 of the NEMAA does not contain provisions dealing with the transitional arrangements with respect appeals against environmental management programmes in so far as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area issued before and after commencement of the National Environmental Management Amendment Act, 2013. In terms of the 2008 agreement (NEMAA) the Minister of Mineral Resources will be the competent authority for the issuing of an environmental authorisation and environmental management programme if the application relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area. Any appeals

against the decision of the Minister of Mineral Resources will be submitted to the Minister of Water and Environmental Affairs as an appeal authority.

The amendment will provide for transitional arrangements regarding appeals against environmental management programme issued in terms of the MPRDA before the commencement date of the National Environmental Management Amendment Act, 2013, and appeals against environmental authorisation or environmental management programme in so far as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area lodged after the commencement date of the National Environmental Management Amendment Act, 2013.

Clause 13: Repeal of section 13

The Portfolio Committees which were responsible for environment and mining, in 2008, agreed at the joint meeting to insert section 13 which provided that the environmental management function regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area will revert back to the Department of Environmental Affairs after 3 years. However, the commencement date of this section was subject to the date of commencement of the MPRDAA, but to date the MPRDAA has not come into effect. In addition, the Ministers of Water and Environmental Affairs and Mineral Resources have since agreed that the Minister of Mineral Resources will be the competent authority for prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area, and such a function will be performed in terms of NEMA. Therefore, these developments make section 13 of the NEMAA obsolete.

The repeal of section 13 of the NEMAA will ensure that the Minister of Mineral Resources is the competent authority regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area, and the Minister of Water and Environmental Affairs as the appeal authority.

Clause 14: Repeal of Schedule

The Portfolio Committees which were responsible for environment and mining, in 2008, agreed at the joint meeting to insert the Schedule, read with section 13 of the NEMAA, which provided that the environmental management function regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area will revert back to the Department of Environmental Affairs after 3 years. However, the commencement date of this section was subject to the date of commencement of the MPRDAA, but to date the MPRDAA has not come into effect.

This is a consequential amendment linked to the repeal of section 13 of the NEMAA. The repeal of the Schedule to the NEMAA will ensure that the Minister of Mineral Resources is the competent authority regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area, and the Minister of Water and Environmental Affairs becoming the appeal authority on the date of commencement of the NEMAA.

4. DEPARTMENTS CONSULTED

The following national and provincial Departments were consulted:

- Water Affairs;
- Mineral Resources; and
- All provincial departments responsible for environmental affairs through Environment MINMEC.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill does not create further financial liabilities to the Department of Environmental Affairs, however the Department of Mineral Resources must create capacity to implement environmental impact management as well as compliance monitoring and enforcement provisions under NEMA.

6. PARLIAMENTARY PROCEDURE

6.1. The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution since it falls within functional areas listed in Schedule 4 to the Constitution, namely "Environment".

6.2. 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 custom of traditional communities.