

# NATIONAL ENVIRONMENTAL MANAGEMENT ACT NO 107 OF 1998

Assented to: 19 November 1998

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## ACT

**To provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote cooperative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects of the administration and enforcement of other environmental management laws and to provide for matters connected therewith.**

[Long Title amended by Act 46 of 2003]

## PREAMBLE

WHEREAS many inhabitants of South Africa live in an environment that is harmful to their health and well-being;

everyone has the right to an environment that is not harmful to his or her health or well-being;

the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;

inequality in the distribution of wealth and resources, and the resultant poverty, are among the important causes as well as the results of environmentally harmful practices;

sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations;

everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation;

promote conservation; and

secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

the environment is a functional area of concurrent national and provincial legislative competence, and all spheres of government and all organs of state must co-operate with, consult and support one another;

AND WHEREAS it is desirable-

that the law develops a framework for integrating good environmental management into all development activities;

that the law should promote certainty with regard to decision-making by organs of state on matters affecting the environment; that the law should establish principles guiding the exercise of functions affecting the environment;

that the law should ensure that organs of state maintain the principles guiding the exercise of functions affecting the environment; that the law should establish procedures and institutions to

facilitate and promote co-operative government and intergovernmental relations; that the law should establish procedures and institutions to facilitate and promote public participation in environmental governance; that the law should be enforced by the State and that the law should facilitate the enforcement of environmental laws by civil society;

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## 1. Definitions

In this Act, unless the context requires otherwise-

**activities**, when used in Chapter 5, means policies, programmes, processes, plans and projects;

[Definition amended by Act 56 of 2002, by s.1 of Act 62 of 2008]

**Agenda 21** means the document by that name adopted at the United Nations Conference of Environment and Development held in Rio de Janeiro, Brazil in June 1992;

**aircraft** means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;

[Definition added by Act 46 of 2003]

**applicant** means a person who has submitted—

- (a) or who intends to submit an application for an environmental authorisation; or
- (b) an application for an environmental authorisation simultaneously with his or her application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;

[Definition added by s.1 of Act 62 of 2008]

**assessment**, when used in Chapter 5, means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to decision-making;

[Definition added by Act 8 of 2004]

**best practicable environmental option** means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term;

**commence**, when used in Chapter 5, means the start of any physical activity, including site preparation and any other activity on the site in furtherance of a listed activity or specified activity, but does not include any activity required for the purposes of an investigation or feasibility study as long as such investigation or feasibility study does not constitute a listed activity or specified activity;

[Definition added by Act 8 of 2004; amended by s.1 of Act 62 of 2008]

**commercially confidential information** means commercial information, the disclosure of which would prejudice to an unreasonable degree the commercial interests of the holder: Provided that details of emission levels and waste products must not be considered to be commercially confidential notwithstanding any provision of this Act or any other law;

**Committee community—** [Definition Deleted by s.4 of Act 14 of 2009]

- (a) means any group of persons or a part of such a group who share common interests, and who regard themselves as a community; and
- (b) in relation to environmental matters pertaining to prospecting, mining, exploration, production or related activity on a prospecting, mining, exploration or production area, means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that where as a consequence of the provisions of this Act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by prospecting, mining, exploration or production on land occupied by such members or part of the community;

[Definition amended by s.1 of Act 62 of 2008]

**competent authority**, in respect of a listed activity or specified activity, means the organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, with granting or refusing an environmental authorisation in respect of that activity;

[Definition added by Act 8 of 2004]

**Constitution** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**delegation**, in relation to a duty, includes an instruction to perform the duty;

[Definition added by Act 46 of 2003]

**Department** means the Department of Environmental Affairs and Tourism;

**development footprint**, in respect of land, means any evidence of its physical transformation as a result of the undertaking of any activity;

[Definition added by s.1 of Act 62 of 2008]

**Director-General** means the Director-General of Environmental Affairs and Tourism;

**ecosystem** means a dynamic system of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

**environment** means the surroundings within which humans exist and that are made up of-

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;
- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and

- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

**environmental assessment practitioner**, when used in Chapter 5, means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management plans or any other appropriate environmental instruments introduced through regulations;

[Definition added by Act 8 of 2004]

**environmental authorisation**, when used in Chapter 5, means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in specific environmental management Act;

[Definition added by Act 8 of 2004; amended by s.1 of Act 62 of 2008]

**environmental implementation plan** means an implementation plan referred to in section 11;

**environmental management co-operation agreement** means an agreement referred to in section 35(1);

**environmental management inspector** means a person designated as an environmental management inspector in terms of section 31B or 31C;

[Definition added by Act 46 of 2003]

**environmental management programme** means a programme required in terms of section 24;

[Definition added by s.1 of Act 62 of 2008]

**environmental management plan** means a management plan referred to in section 11;

**evaluation**, when used in Chapter 5, means the process of ascertaining the relative importance or significance of information, in the light of people's values, preferences and judgements, in order to make a decision;

[Definition added by Act 8 of 2004]

**exploration area** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

[Definition added by s.1 of Act 62 of 2008]

**financial year** means a period commencing on 1 April of any year and ending on 31 March of the following year;

**Forum** [Definition Deleted by s.4 of Act 14 of 2009]

**hazard** means a source of or exposure to danger;

**'holder** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**holder of an old order right** has the meaning assigned to 'holder' in item 1 of Schedule II to the Minerals and Petroleum Resources Development Act, 2002;

**integrated environmental authorisation** means an authorisation granted in terms of section 24L;

**interested and affected party**, for the purposes of Chapter 5 and in relation to the assessment of the environmental impact of a listed activity or related activity, means an interested and affected party contemplated in section 24(4)(a)(v), and which includes—

- (a) any person, group of persons or organisation interested in or affected by such operation or activity; and
- (b) any organ of state that may have jurisdiction over any aspect of the operation or activity;

[Definitions 'holder to interested and affected party' added by s.1 of Act 62 of 2008]

**international environmental instrument** means any international agreement, declaration, resolution, convention or protocol which relates to the management of the environment;

**listed activity**, when used in Chapter 5, means an activity identified in terms of section 24(2)(a) and (d);

[Definition added by Act 8 of 2004]

**listed area**, when used in Chapter 5, means a geographical area identified in terms of section 24(2)(b) and (c);

[Definition added by Act 8 of 2004]

**MEC** means the Member of the Executive Council to whom the Premier has assigned;

[Definition amended by Act 8 of 2004]

**mine** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**Mineral and Petroleum Resources Development Act, 2002** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

**mining area** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

[Definitions 'mine' to 'mining area' added by s.1 of Act 62 of 2008]

**Minister**, in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, means the Minister of Environmental Affairs and Tourism;

[Definition amended by s.1 of Act 62 of 2008]

**national department** means a department of State within the national sphere of government;

**norms or standards**, when used in Chapter 5, means any norm or standard contemplated in section 24(10);

[Definition added by s.1 of Act 62 of 2008]

**organ of state** means organ of state as defined in the Constitution;

**owner of works** has the meaning contemplated in paragraph (b) of the definition of 'owner' in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

[Definition added by s.1 of Act 62 of 2008]

**person** includes a juristic person;

**pollution** means any change in the environment caused by—

- (i) substances;
- (ii) radioactive or other waves; or
- (iii) noise, odours, dust or heat,

emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

**prescribe** means prescribe by regulation in the Gazette;

**production area** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**prospecting area** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

[Definitions 'production area' and 'prospecting area' added by s.1 of Act 62 of 2008]

**provincial head of department** means the head of the provincial department responsible for environmental affairs;

**public participation process**, in relation to the assessment of the environmental impact of any application for an environmental authorisation, means a process by which potential interested and affected parties are given opportunity to comment on, or raise issues relevant to, the application;

**Regional Mining Development and Environmental Committee** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

[Definitions 'public participation and Regional Mining' added by s.1 of Act 62 of 2008]

**regulation** means a regulation made under this Act;

**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;

[Definitions 'residue deposit and stockpile' added by s.1 of Act 62 of 2008]

**review**, when used in Chapter 5, means the process of determining whether an assessment has been carried out correctly or whether the resulting information is adequate in order to make a decision;

[Definition added by Act 8 of 2004]

**spatial development tool**, when used in Chapter 5, means a spatial description of environmental attributes, developmental activities and developmental patterns and their relation to each other;

[Definition added by s.1 of Act 62 of 2008]

**specific environmental management Acts** means—

- (i) the National Environmental Management: Biodiversity Act, 2003; and
- (ii) the National Environmental Management: Protected Areas Act, 2003,

and includes any regulations or other subordinate legislation made in terms of any of those Acts;

[Definition added by Act 46 of 2003]

**specific environmental management Act** means—

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

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

[Definition added by Act 8 of 2004 and substituted by s. 3 Act No. 44 of 2008]

**specified activity**, when used in Chapter 5, means an activity as specified within a listed geographical area in terms of section 24(2)(b) and (c);

[Definition added by Act 8 of 2004]

**state land** means land which vests in the national or a provincial government, and includes land below the high water mark and the Admiralty Reserve, but excludes land belonging to a local authority;



**sustainable development** means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations;

**this Act** includes the schedules, and regulations and any notice issued under the Act.

**vessel** means any waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transporting anything by water.

[Definition added by Act 46 of 2003]

- (2) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.
- (3) A reasonable interpretation of a provision which is consistent with the purpose of this Act must be preferred over an alternative interpretation which is not consistent with the purpose of this Act.
- (4) Neither-
  - (a) a reference to a duty to consult specific persons or authorities, nor
  - (b) the absence of any reference in this Act to a duty to consult or give a hearing,exempts the official or authority exercising a power or performing a function from the duty to act fairly.
- (5) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act.

[Sub.s (5) added by s.1 of Act 62 of 2008]

## **CHAPTER 1 NATIONAL ENVIRONMENTAL MANAGEMENT PRINCIPLES**

### **2. Principles**

- (1) The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and-
  - (a) shall apply alongside all other appropriate and relevant considerations, including the State's responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination;
  - (b) serve as the general framework within which environmental management and implementation plans must be formulated;
  - (c) serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment;

- (d) serve as principles by reference to which a conciliator appointed under this Act must make recommendations; and
  - (e) guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment.
- (2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
- (3) Development must be socially, environmentally and economically sustainable.
- (4)(a) Sustainable development requires the consideration of all relevant factors including the following:
- (i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
  - (ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
  - (iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;
  - (iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
  - (v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
  - (vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
  - (vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
  - (viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.
- (b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.
- (c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.
- (d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.
- (e) Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.
- (f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.

- (g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.
- (h) Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.
- (i) The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
- (j) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.
- (k) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
- (l) There must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.
- (m) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.
- (n) Global and international responsibilities relating to the environment must be discharged in the national interest.
- (o) The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.
- (p) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.
- (q) The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.
- (r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

## CHAPTER 2 INSTITUTIONS

### Part 1: National Environmental Advisory Forum

[Repealed by s.5 of Act 14 of 2009]

### Part 2: Committee for Environmental Co-ordination

[Repealed by s.5 of Act 14 of 2009]

#### Establishment of Fora or Advisory Committees

3A. The Minister may by notice in the Gazette-

- (a) establish any forum or advisory committee;
- (b) determine its composition and functions; and
- (c) determine, in consultation with the Minister of Finance, the basis and extent of the remuneration and payment of expenses of any member of such forum or committee.

[3A Added by s.6 of Act 14 of 2009]

## CHAPTER 3 PROCEDURES FOR CO-OPERATIVE GOVERNANCE

#### 11. Environmental implementation plans and management plans

- (1) Every national department listed in Schedule 1 as exercising functions which may affect the environment and every province must prepare an environmental implementation plan within one year of the promulgation of this Act and at least every four years thereafter.
  - (2) Every national department listed in Schedule 2 as exercising functions involving the management of the environment must prepare an environmental management plan within one year of the promulgation of this Act and at least every four years thereafter.
  - (3) Every national department that is listed in both Schedule 1 and Schedule 2 may prepare a consolidated environmental implementation and management plan.
  - (4) Every organ of state referred to in subsections (1) and (2) must, in its preparation of an environmental implementation plan or environmental management plan, and before submitting such plan take into consideration every other environmental implementation plan and environmental management plan already adopted with a view to achieving consistency among such plans.
  - (5) The Minister may by notice in the Gazette-
    - (a) extend the date for the submission of any environmental implementation plans and environmental management plans for periods not exceeding 12 months;
    - (b) on application by any organ of state, or on his or her own initiative with the agreement of the relevant Minister where it concerns a national department, amend Schedules 1 and 2.
- [3A Amended by s.7 of Act 14 of 2009]
- (6) The Director-General must, at the request of a national department or province assist with the preparation of an environmental implementation plan.

- (7) The preparation of environmental implementation plans and environmental management plans may consist of the assembly of information or plans compiled for other purposes and may form part of any other process or procedure.
- (8) The Minister may issue guidelines to assist provinces and national departments in the preparation of environmental implementation and environmental management plans.

## 12. **Purpose and objects of environmental implementation plans and environmental management plans**

The purpose of environmental implementation and management plans is to-

- (a) co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, and of provincial and local spheres of government, in order to-
  - (i) minimise the duplication of procedures and functions; and
  - (ii) promote consistency in the exercise of functions that may affect the environment;
- (b) give effect to the principle of co-operative government in Chapter 3 of the Constitution;
- (c) secure the protection of the environment across the country as a whole;
- (d) prevent unreasonable actions by provinces in respect of the environment that are prejudicial to the economic or health interests of other provinces or the country as a whole; and
- (e) enable the Minister to monitor the achievement, promotion, and protection of a sustainable environment.

## 13. **Content of environmental implementation plans**

- (1) Every environmental implementation plan must contain:
  - (a) a description of policies, plans and programmes that may significantly affect the environment;
  - (b) a description of the manner in which the relevant national department or province will ensure that the policies, plans and programmes referred to in paragraph (a) will comply with the principles set out in section 2 as well as any national norms and standards as envisaged under section 146(2)(b)(i) of the Constitution and set out by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of the environment;
  - (c) a description of the manner in which the relevant national department or province will ensure that its functions are exercised so as to ensure compliance with relevant legislative provisions, including the principles set out in section 2, and any national norms and standards envisaged under section 146(2)(b)(i) of the Constitution and set out by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of the environment; and
  - (d) recommendations for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in Chapter 5.

- (2) The Minister may, make regulations for the purpose of giving effect to subsection (1)(b) and (c).

[ (2) Amended by s.8 of Act 14 of 2009 ]

#### 14. **Content of environmental management plans**

Every environmental management plan must contain-

- (a) a description of the functions exercised by the relevant department in respect of the environment;
- (b) a description of environmental norms and standards, including norms and standards contemplated in section 146(2)(b)(i) of the Constitution, set or applied by the relevant department;
- (c) a description of the policies, plans and programmes of the relevant department that are designed to ensure compliance with its policies by other organs of state and persons;
- (d) a description of priorities regarding compliance with the relevant department's policies by other organs of state and persons;
- (e) a description of the extent of compliance with the relevant department's policies by other organs of state and persons;
- (f) a description of arrangements for co-operation with other national departments and spheres of government, including any existing or proposed memoranda of understanding entered into, or delegation or assignment of powers to other organs of state, with a bearing on environmental management; and
- (g) proposals for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in Chapter 5.

#### 15. **Submission, scrutiny and adoption of environmental implementation plans and environmental management plans**

- (1) Every environmental implementation plan and every environmental management plan must be submitted for approval to the Minister or MEC, as the case may be.

[ (1) Amended by s.9 of Act 14 of 2009 ]

(2) [ (2) Deleted by s.9 of Act 14 of 2009 ]

(3) [ (3) Deleted by s.9 of Act 14 of 2009 ]

(4) [ (4) Deleted by s.9 of Act 14 of 2009 ]

- (5) A national department which has submitted an environmental management plan must adopt and publish its plan in the Gazette within 90 days of such submission and the plan becomes effective from the date of such publication.

- (6) The exercise of functions by organs of state may not be delayed or postponed on account of-
- (a) the failure of any organ of state to submit an environmental implementation plan;
  - (b) [(b) Deleted by s.9 of Act 14 of 2009]
  - (c) [(c) Deleted by s.9 of Act 14 of 2009]
  - (d) any difference or disagreement regarding any environmental implementation plan and the resolution of that difference or disagreement; or
  - (e) the failure of any organ of state to adopt and publish its environmental implementation or management plan.

**16. Compliance with environmental implementation plans and environmental management plans**

- (1)(a) Every organ of state must exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the environmental implementation plan or the environmental management plan prepared, submitted and adopted by that organ of state in accordance with this Chapter: Provided that any substantial deviation from an environmental management plan or environmental implementation plan must be reported forthwith to the Director-General.
- [(a) Amended by s.10 of Act 14 of 2009]
- (b) Every organ of state must report annually within four months of the end of its financial year on the implementation of its adopted environmental management plan or environmental implementation plan to the Director-General.
- [(b) Amended by s.10 of Act 14 of 2009]
- (c) The Minister may, recommend to any organ of state which has not submitted and adopted an environmental implementation plan or environmental management plan, that it comply with a specified provision of an adopted environmental implementation plan or submitted environmental management plan.
- [(c) Amended by s.10 of Act 14 of 2009]
- (2) The Director-General monitors compliance with environmental implementation plans and environmental management plans and may-
- (a) take any steps or make any inquiries he or she deems fit in order to determine if environmental implementation plans and environmental management plans are being complied with by organs of state; and
  - (b) if, as a result of any steps taken or inquiry made under paragraph (a), he or she is of the opinion that an environmental implementation plan and an environmental management plan is not substantially being complied with, serve a written notice on the organ of state concerned, calling on it to take such specified steps as the Director-General considers necessary to remedy the failure of compliance.
- (3)(a) Within 30 days of the receipt of a notice contemplated in subsection (2)(b), an organ of state must respond to the notice in writing setting out any-
- (i) objections to the notice;
  - (ii) steps that will be taken to remedy failures of compliance; or

- (iii) other information that the organ of state considers relevant to the notice.
- (b) After considering the representations from the organ of state and any other relevant information, the Director-General must within 30 days of receiving a response referred to in paragraph (a) issue a final notice-
  - (i) confirming, amending or cancelling the notice referred to in subsection (2)(b);
  - (ii) specify steps and a time period within which steps must be taken to remedy the failure of compliance.
- (c) If, after compliance with the provisions of paragraphs (a) and (b) there still remains a difference or disagreement between the organs of state and the Director-General, the organ of state may request the Minister to refer any difference or disagreement between itself and the Director-General regarding compliance with an environmental implementation plan, or the steps necessary to remedy a failure of compliance, to conciliation in accordance with Chapter 4.
- (d) Where an organ of state does not submit any difference or disagreement to conciliation in accordance with paragraph (c), or if conciliation fails to resolve the matter, the Director-General may within 60 days of the final notice referred to in paragraph (b) if the matter has not been submitted to conciliation, or within 30 days of the date of conciliation, as the case may be-
  - (i) where the organ of State belongs to the provincial sphere of government, request the Minister to intervene in accordance with section 100 of the Constitution: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41(2) of the Constitution once promulgated;
  - (ii) where the organ of State belongs to the local sphere of government, request the MEC to intervene in accordance with section 139 of the Constitution: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41(2) of the Constitution once promulgated; or
  - (iii) where the organ of state belongs to the national sphere of government refer the matter for determination by the Minister in consultation with the Ministers responsible for the Department of Land Affairs, Department of Water Affairs and Forestry, Department of Minerals and Energy and Department of Constitutional Development.
- (4) Each provincial government must ensure that-
  - (a) the relevant provincial environmental implementation plan is complied with by each municipality within its province and for this purpose the provisions of subsections (2) and (3) must apply with the necessary changes; and
  - (b) municipalities adhere to the relevant environmental implementation and management plans, and the principles contained in section 2 in the preparation of any policy, programme or plan, including the establishment of integrated development plans and land development objectives.
- (5) The Director-General must keep a record of all environmental implementation plans and environmental management plans, relevant agreements between organs of state and any reports submitted under subsection (1)(b); and such plans, reports and agreements must be available for inspection by the public.



## CHAPTER 4 FAIR DECISION-MAKING AND CONFLICT MANAGEMENT

### 17. Reference to conciliation

(1) Any Minister, MEC or Municipal Council-

- (a) where a difference or disagreement arises concerning the exercise of any of its functions which may significantly affect the environment, or
- (b) before whom an appeal arising from a difference or disagreement regarding the protection of the environment is brought under any law,

may, before reaching a decision, consider the desirability of first referring the matter to conciliation and-

- (i) must if he, she or it considers conciliation appropriate either-
    - (aa) refer the matter to the Director-General for conciliation under this Act; or
    - (bb) appoint a conciliator on the conditions, including time-limits, that he, she or it may determine; or
    - (cc) where a conciliation or mediation process is provided for under any other relevant law administered by such Minister, MEC or Municipal Council, refer the matter for mediation or conciliation under such other law; or
  - (ii) if he, she or it considers conciliation inappropriate or if conciliation has failed, make a decision: Provided that the provisions of section 4 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), shall prevail in respect of decisions in terms of that Act and laws contemplated in subsection 1(c) thereof.
- (2) Anyone may request the Minister, a MEC or Municipal Council to appoint a facilitator to call and conduct meetings of interested and affected parties with the purpose of reaching agreement to refer a difference or disagreement to conciliation in terms of this Act, and the Minister, MEC or Municipal Council may, subject to section 22, appoint a facilitator and determine the manner in which the facilitator must carry out his or her tasks, including time-limits.
- (3) A court or tribunal hearing a dispute regarding the protection of the environment may order the parties to submit the dispute to a conciliator appointed by the Director-General in terms of this Act and suspend the proceedings pending the outcome of the conciliation.

### 18. Conciliation

- (1) Where a matter has been referred to conciliation in terms of this Act, the Director-General may, on the conditions, including time-limits, that he or she may determine, appoint a conciliator acceptable to the parties to assist in resolving a difference or disagreement: Provided that if the parties to the difference or disagreement do not reach agreement on the person to be appointed, the Director-General may appoint a person who has adequate experience in or knowledge of conciliation of environmental disputes.
- (2) A conciliator appointed in terms of this Act must attempt to resolve the matter-
- (a) by obtaining such information whether documentary or oral as is relevant to the resolution of the difference or disagreement;
  - (b) by mediating the difference or disagreement;

- (c) by making recommendations to the parties to the difference or disagreement; or
  - (d) in any other manner that he or she considers appropriate.
- (3) In carrying out his or her functions, a conciliator appointed in terms of this Act must take into account the principles contained in section 2.
  - (4) A conciliator may keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of all or part of the proceedings relating to the conciliation of a matter.
  - (5) Where such record has been kept, any member of the public may obtain a readable copy of the record upon payment of a fee as approved by Treasury.
  - (6) Where conciliation does not resolve the matter, a conciliator may enquire of the parties whether they wish to refer the matter to arbitration and may with their concurrence endeavour to draft terms of reference for such arbitration.
  - (7)(a) The conciliator must submit a report to the Director-General, the parties and the person who referred the matter for conciliation, setting out the result of his or her conciliation, and indicating whether or not an agreement has been reached.
    - (b) In the event of no agreement having been reached, the report may contain his or her recommendations and reasons therefor.
    - (c) Where relevant, the report must contain the conciliator's comments on the conduct of the parties.
    - (d) The report and any agreement reached as a result of the conciliation must be available for inspection by the public and any member of the public may obtain a copy thereof upon payment of a fee as approved by Treasury.
  - (8) The Director-General may from time to time with the concurrence of the Minister of Finance, appoint persons or organisations with relevant knowledge or expertise to provide conciliation and mediation services.

## 19. **Arbitration**

- (1) A difference or disagreement regarding the protection of the environment may be referred to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).
- (2) Where a dispute or disagreement referred to in subsection (1) is referred to arbitration the parties thereto may appoint as arbitrator a person from the panel of arbitrators established in terms of section 21.

## 20. **Investigation**

The Minister may at any time appoint one or more persons to assist either him or her or, after consultation with a Municipal Council or MEC or another national Minister, to assist such a Municipal Council or MEC or another national Minister in the evaluation of a matter relating to the protection of the environment by obtaining such information, whether documentary or oral, as is relevant to such evaluation and to that end-

- (a) the Minister may by notice in the Gazette give such person or persons the powers of a Commission of Inquiry under the Commissions Act, 1947 (Act No. 8 of 1947);
- (b) the Minister may make rules by notice in the Gazette for the conduct of the inquiry: Provided that the decision of the inquiry and the reasons therefor must be reduced to writing;
- (c) the Director-General must designate, subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as many officers and employees of the Department as may be necessary to assist such person and any work may be performed by a person other than such officer or employee at the remuneration and allowances which the Minister with the concurrence of the Minister of Finance may determine.

## 21. **Appointment of panel and remuneration**

- (1) The Minister may, with the concurrence of the Minister of Finance, determine remuneration and allowances, either in general or in any particular case, to be paid from money appropriated by Parliament for that purpose to any person or persons appointed in terms of this Act to render facilitation, conciliation, arbitration or investigation services, who are not in the full-time employment of the State.
- (2) The Minister may create a panel or panels of persons from which appointment of facilitators and arbitrators in terms of this Act may be made, or contracts entered into in terms of this Act.
- (3) The Minister may, pending the establishment of a panel or panels in terms of subsection (2), adopt the panel established in terms of section 31(1) of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).

## 22. **Relevant considerations, report and designated officer**

- (1) Decisions under this Act concerning the reference of a difference or disagreement to conciliation, the appointment of a conciliator, the appointment of a facilitator, the appointment of persons to conduct investigations, and the conditions of such appointment, must be made taking into account-
  - (a) the desirability of resolving differences and disagreements speedily and cheaply;
  - (b) the desirability of giving indigent persons access to conflict resolution measures in the interest of the protection of the environment;
  - (c) the desirability of improving the quality of decision-making by giving interested and affected persons the opportunity to bring relevant information to the decision-making process;
  - (d) any representations made by persons interested in the matter; and
  - (e) such other considerations relating to the public interest as may be relevant.
- (2)(a) [(a) Deleted by s.11 of Act 14 of 2009]
- (b) [(b) Deleted by s.11 of Act 14 of 2009]
- (c) The Director-General shall designate an officer to provide information to the public on appropriate dispute resolution mechanisms for referral of disputes and complaints.

- (d) The reports, records and agreements referred to in this subsection must be available for inspection by the public.

## **CHAPTER 5 INTEGRATED ENVIRONMENTAL MANAGEMENT**

### **23. General objectives**

- (1) The purpose of this Chapter is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities.
- (2) The general objective of integrated environmental management is to-
- (a) promote the integration of the principles of environmental management set out in section 2 into the making of all decisions which may have a significant effect on the environment;
  - (b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2;
  - (c) ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them;
  - (d) ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment;
  - (e) ensure the consideration of environmental attributes in management and decision-making which may have a significant effect on the environment; and identify and employ the modes of environmental management best suited to ensuring that a particular activity is pursued in accordance with the principles of environmental management set out in section 2.
- (3) The Director-General must coordinate the activities of organs of state referred to in section 24(1) and assist them in giving effect to the objectives of this section and such assistance may include training, the publication of manuals and guidelines and the co-ordination of procedures.

### **24. Environmental authorisations**

- (1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential consequences for, or impacts on the environment of listed activities or specified activities must be considered, investigated, assessed and reported on to the competent authority or the Minister of Minerals and Energy, as the case may be, except in respect of those activities that may commence without having to obtain an environmental authorisation in terms of this Act.

[Sub.s (1) amended by s.2 of Act 62 of 2008]

- (1A) Every applicant must comply with the requirements prescribed in terms of this Act in relation to—
- (a) steps to be taken before submitting an application, where applicable;

- (b) any prescribed report;
- (c) any procedure relating to public consultation and information gathering;
- (d) any environmental management programme;
- (e) the submission of an application for an environmental authorisation and any other relevant information; and
- (f) the undertaking of any specialist report, where applicable.

[Sub.s (1A) added by s.2 of Act 62 of 2008]

- (2) The Minister, or an MEC with the concurrence of the Minister, may identify—
  - (a) activities which may not commence without environmental authorisation from the competent authority;
  - (b) geographical areas based on environmental attributes, and as specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may not commence without environmental authorisation from the competent authority;
  - (c) geographical areas based on environmental attributes, and specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may be excluded from authorisation by the competent authority;
  - (d) activities contemplated in paragraph (a) and (b) that may commence without an environmental authorisation, but that must comply with prescribed norms or standards:

Provided that where an activity falls under the jurisdiction of another Minister or MEC, a decision in respect of paragraphs (a) to (d) must be taken after consultation with such other Minister or MEC.

- (3) The Minister, or an MEC with the concurrence of the Minister, may compile information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority.
- (4) Procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment—
  - (a) must ensure, with respect to every application for an environmental authorisation—
    - (i) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;
    - (ii) that the findings and recommendations flowing from an investigation, the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to any proposed policy, programme, process, plan or project;
    - (iii) that a description of the environment likely to be significantly affected by the proposed activity is contained in such application;

- (iv) investigation of the potential consequences for or impacts on the environment of the activity and assessment of the significance of those potential consequences or impacts; and
  - (v) public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in those information and participation procedures; and
- (b) must include, with respect to every application for an environmental authorisation and where applicable—
- (i) investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity;
  - (ii) investigation of mitigation measures to keep adverse consequences or impacts to a minimum;
  - (iii) investigation, assessment and evaluation of the impact of any proposed listed or specified activity on any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), excluding the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act;
  - (iv) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
  - (v) investigation and formulation of arrangements for the monitoring and management of consequences for or impacts on the environment, and the assessment of the effectiveness of such arrangements after their implementation;
  - (vi) consideration of environmental attributes identified in the compilation of information and maps contemplated in subsection (3); and
  - (vii) provision for the adherence to requirements that are prescribed in a specific environmental management Act relevant to the listed or specified activity in question.
- (4A) Where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, subsection (4)(b) is applicable.
- (5) The Minister, or an MEC with the concurrence of the Minister, may make regulations consistent with subsection (4)—
- (a) laying down the procedure to be followed in applying for, the issuing of, and monitoring compliance with, environmental authorisations;
  - (b) laying down the procedure to be followed in respect of—
    - (i) the efficient administration and processing of environmental authorisations;
    - (ii) fair decision-making and conflict management in the consideration and processing of applications for environmental authorisations;
    - (iii) ..... [deleted]
    - (iv) applications to the competent authority by any person to be exempted from the provisions of any regulation in respect of a specific activity;
    - (v) appeals against decisions of competent authorities;
    - (vi) the management and control of residue stock piles and deposits on a prospecting, mining, exploration and production area;
    - (vii) consultation with land owners, lawful occupiers and other interested or affected parties;

- (viii) mine closure requirements and procedures, the apportionment of liability for mine closure and the sustainable closure of mines with an interconnected or integrated impact resulting in a cumulative impact;
  - (ix) financial provision; and
  - (x) monitoring and environmental management programme performance assessments;
- (bA) laying down the procedure to be followed for the preparation, evaluation and adoption of prescribed environmental management instruments, including—
- (i) environmental management frameworks;
  - (ii) strategic environmental assessments;
  - (iii) environmental impact assessments;
  - (iv) environmental management programmes;
  - (v) environmental risk assessments;
  - (vi) environmental feasibility assessments;
  - (vii) norms or standards;
  - (viii) spatial development tools; or
  - (ix) any other relevant environmental management instrument that may be developed in time;
- (c) prescribing fees, after consultation with the Minister of Finance, to be paid for—
- (i) the consideration and processing of applications for environmental authorisations; and
  - (ii) the review of documents, processes and procedures by specialists on behalf of the competent authority;
- (d) requiring, after consultation with the Minister of Finance, the provision of financial or other security to cover the risks to the State and the environment of non-compliance with conditions attached to environmental authorisations;
- (e) specifying that specified tasks performed in connection with an application for an environmental authorisation may only be performed by an environmental assessment practitioner registered in accordance with the prescribed procedures;
- (f) requiring that competent authorities maintain a registry of applications for, and records of decisions in respect of, environmental authorisations;
- (g) specifying that a contravention of a specified regulation is an offence and prescribing penalties for the contravention of that regulation;
- (h) prescribing minimum criteria for the report content for each type of report and for each process that is contemplated in terms of the regulations in order to ensure a consistent quality and to facilitate efficient evaluation of reports;
- (i) prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in, the review process; and
- (j) prescribing any other matter necessary for dealing with and evaluating applications for environmental authorisations.
- (6) An MEC may make regulations in terms of subsection (5) only in respect of listed activities and specified activities or areas in respect of which the MEC is the competent authority.
- (7) Compliance with the procedure laid down by the Minister or an MEC in terms of subsection (4) does not absolve a person from complying with any other statutory requirement to obtain

authorisation from any organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity in question.

- (8)(a) Authorisations obtained under any other law for an activity listed or specified in terms of this Act does not absolve the applicant from obtaining authorisation under this Act unless an authorisation has been granted in the manner contemplated in section 24L.
- (b) Authorisations obtained after any investigation, assessment and communication of the potential impacts or consequences of activities, including an exemption granted in terms of section 24M or permits obtained under any law for a listed activity or specified activity in terms of this Act, may be considered by the competent authority as sufficient for the purposes of section 24(4), provided that such investigation, assessment and communication comply with the requirements of section 24(4)(a) and, where applicable, comply with section 24(4)(b).
- (9) Only the Minister may make regulations in accordance with subsection (5) stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential consequences for or impacts on the environment by activities, for the purpose of complying with subsection (1), where the activity—
- (a) has a development footprint that falls within the boundaries of more than one province or traverses international boundaries; or
- (b) will affect compliance with obligations resting on the Republic under customary international law or a convention.
- (10)(a) The Minister, or an MEC with the concurrence of the Minister, may—
- (i) develop or adopt norms or standards for activities, or for any part of an activity or for a combination of activities, contemplated in terms of subsection (2)(d);
- (ii) prescribe the use of the developed or adopted norms or standards in order to meet the requirements of this Act;
- (iii) prescribe reporting and monitoring requirements; and
- (iv) prescribe procedures and criteria to be used by the competent authority for the monitoring of such activities in order to determine compliance with the prescribed norms or standards.
- (b) Norms or standards contemplated in paragraph (a) must provide for rules, guidelines or characteristics—
- (i) that may commonly and repeatedly be used; and
- (ii) against which the performance of activities or the results of those activities may be measured for the purposes of achieving the objects of this Act.
- (c) The process of developing norms or standards contemplated in paragraph (a) must, as a minimum, include—
- (i) publication of the draft norms or standards for comment in the relevant *Gazette*;
- (ii) consideration of comments received; and
- (iii) publication of the norms or standards to be prescribed.
- (d) The process of adopting norms or standards contemplated in paragraph (a) must, as a minimum, include—



- (i) publication of the intention to adopt existing norms or standards in order to meet the requirements of this Act for comment in the relevant *Gazette*;
- (ii) consideration of comments received; and
- (iii) publication of the norms or standards to be prescribed.

[Section 24 amended by s.2 of Act 62 of 2008]

#### **24A. Procedure for listing activity or area**

Before identifying any activity or area in terms of section 24(2), the Minister or MEC, as the case may be, must publish a notice in the relevant *Gazette*—

- (a) specifying, through description, a map or any other appropriate manner, the activity or area that it is proposing to list;
- (b) inviting interested parties to submit written comments on the proposed listing within a period specified in the notice.

#### **24B. Procedure for delisting of activities or areas**

- (1) The Minister may delist an activity or area identified by the Minister in terms of section 24(2).
- (2) An MEC may, with the concurrence of the Minister, delist an activity or area identified by the MEC in terms of section 24(2).
- (3) The Minister or MEC, as the case may be, must comply with section 24A, read with the changes required by the context, before delisting an activity or area in terms of this section.

#### **24C. Procedure for identifying the competent authority**

- (1) When listing or specifying activities in terms of section 24(2) the Minister, or an MEC with the concurrence of the Minister, must identify the competent authority responsible for granting environmental authorisations in respect of those activities.
- (2) The Minister must be identified as the competent authority in terms of subsection (1) if the activity—
  - (a) has implications for international environmental commitments or relations;
  - (b) will take place within an area protected by means of an international environmental instrument, other than—
    - (i) any area falling within the sea-shore or within 150 metres seawards from the high-water mark, whichever is the greater;
    - (ii) a conservancy;
    - (iii) a protected natural environment;
    - (iv) a proclaimed private nature reserve;
    - (v) a natural heritage site;
    - (vi) the buffer zone or transitional area of a biosphere reserve; or
    - (vii) the buffer zone or transitional area of a world heritage site;
  - (c) has a development footprint that falls within the boundaries of more than one province or traverses international boundaries;

- (d) is undertaken, or is to be undertaken, by—
  - (i) a national department;
  - (ii) a provincial department responsible for environmental affairs or any other organ of state performing a regulatory function and reporting to the MEC; or
  - (iii) a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government; or
- (e) will take place within a national proclaimed protected area or other conservation area under control of a national authority.
- (2A) The Minister of Minerals and Energy must be identified as the competent authority in terms of subsection (1) where the activity constitutes prospecting, mining, exploration, production or a related activity occurring within a prospecting, mining, exploration or production area.
- (3) The Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities—
  - (a) contemplated in subsection (2) may be dealt with by the MEC;
  - (b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister.

[Section 24C amended by s.3 of Act 62 of 2008]

#### 24D **Publication of list**

- (1) The Minister or MEC concerned, as the case may be, must publish in the relevant Gazette a notice containing a list of—
  - (a) activities or areas identified in terms of section 24(2); and
  - (b) competent authorities identified in terms of section 24C.
- (2) The notice referred to in subsection (1) must specify the date on which the list is to come into effect.

[Section 24D amended by s.4 of Act 62 of 2008]

#### 24E. **Minimum conditions attached to environmental authorisations**

Every environmental authorisation must as a minimum ensure that—

- (a) adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity;
- (b) the property, site or area is specified; and
- (c) provision is made for the transfer of rights and obligations when there is a change of ownership in the property.

**24F. Offences relating to commencement or continuation of listed activity**

- (1) Notwithstanding any other Act, no person may—
  - (a) commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority or the Minister of Minerals and Energy, as the case may be, has granted an environmental authorisation for the activity; or
  - (b) commence and continue an activity listed in terms of section 24(2)(d) unless it is done in terms of an applicable norm or standard.
- (2) It is an offence for any person to fail to comply with or to contravene—
  - (a) subsection (1)(a);
  - (b) subsection (1)(b);
  - (c) the conditions applicable to any environmental authorisation granted for a listed activity or specified activity;
  - (d) any condition applicable to an exemption granted in terms of section 24M; or
  - (e) an approved environmental management programme.
- (3) It is a defence to a charge in terms of subsection (2) to show that the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment.
- (4) A person convicted of an offence in terms of subsection (2) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

[Section 24F amended by s.5 of Act 62 of 2008]

**24G. Rectification of unlawful commencement or continuation of listed activity**

- (1) On application by a person who has committed an offence in terms of section 24F(2)(a) the Minister, Minister of Minerals and Energy or MEC concerned, as the case may be, may direct the applicant to—
  - (a) compile a report containing—
    - (i) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects;
    - (ii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;
    - (iii) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;
    - (iv) an environmental management programme; and
  - (b) provide such other information or undertake such further studies as the Minister or MEC, as the case may be, may deem necessary.

- (2) The Minister or MEC concerned must consider any reports or information submitted in terms of subsection (1) and thereafter may—
  - (a) direct the person to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and subject to such conditions as the Minister or MEC may deem necessary; or
  - (b) issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.
- (2A) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R1 million and which must be determined by the competent authority, before the Minister of MEC concerned may act in terms of subsection (2)(a) or (b).
- (3) A person who fails to comply with a directive contemplated in subsection (2)(a) or who contravenes or fails to comply with a condition contemplated in subsection (2)(b) is guilty of an offence and liable on conviction to a penalty contemplated in section 24F(4).

[Section 24G amended by s.6 of Act 62 of 2008]

#### 24H. **Registration authorities**

- (1) An association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in such manner as the Minister may prescribe.
- (2) The application must contain—
  - (a) the constitution of the association;
  - (b) a list of the members of the association;
  - (c) a description of the criteria and process to be used to register environmental assessment practitioners;
  - (d) a list of the qualifications of the members of the association responsible for the assessment of applicants for registration;
  - (e) a code of conduct regulating the ethical and professional conduct of members of the association; and
  - (f) any other prescribed requirements.
- (3) After considering an application, and any other additional information that the Minister may require, the Minister may—
  - (a) by notice in the Gazette, appoint the association as a registration authority; or
  - (b) in writing addressed to the association, refuse the application, giving reasons for such refusal.
- (4) The Minister may, for good cause and in writing addressed to the association, terminate the appointment of an association as a registration authority.

- (5) The Minister must maintain a register of all associations appointed as registration authorities in terms of this section.
- (6) The Minister may appoint as registration authorities such number of associations as are required for the purposes of this Act and may, if circumstances so require, limit the number of registration authorities to a single registration authority.

[Sub.s (6) added by s.7 of Act 62 of 2008]

#### 24I. **Appointment of external specialist to review assessment**

The Minister or MEC may appoint an external specialist reviewer, and may recover costs from the applicant, in instances where—

- (a) the technical knowledge required to review any aspect of an assessment is not readily available within the competent authority;
- (b) a high level of objectivity is required which is not apparent in the documents submitted, in order to ascertain whether the information contained in such documents is adequate for decision-making or whether it requires amendment.

[24 amended, 24A to 24I added by Act 8 of 2004]

#### 24J. **Implementation guidelines**

The Minister or an MEC, with the concurrence of the Minister, may publish guidelines regarding—

- (a) listed activities or specified activities; or
- (b) the implementation, administration and institutional arrangements of regulations made in terms of section 24(5).

#### 24K. **Consultation between competent authorities and consideration of legislative compliance requirements of other organs of state having jurisdiction**

- (1) The Minister or an MEC may consult with any organ of state responsible for administering the legislation relating to any aspect of an activity that also requires environmental authorisation under this Act in order to coordinate the respective requirements of such legislation and to avoid duplication.
- (2) The Minister or an MEC, in giving effect to Chapter 3 of the Constitution and section 24(4)(a)(i) of this Act, may after consultation with the organ of state contemplated in subsection (1) enter into a written agreement with the organ of state in order to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires environmental authorisation under this Act.
- (3) The Minister or an MEC may—
  - (a) after having concluded an agreement contemplated in subsection (2), consider the relevance and application of such agreement on applications for environmental authorisations; and

- (b) when he or she considers an application for environmental authorisation that also requires authorisation in terms of other legislation take account of, either in part or in full and as far as specific areas of expertise are concerned, any process authorised under that legislation as adequate for meeting the requirements of Chapter 5 of this Act, whether such processes are concluded or not and provided that section 24(4)(a) and, where applicable, section 24(4)(b) are given effect to in such process.

#### 24L. **Alignment of environmental authorisations**

- (1) If the carrying out of a listed activity or specified activity contemplated in section 24 is also regulated in terms of another law or a specific environmental management Act, the authority empowered under that other law or specific environmental management Act to authorise that activity and the competent authority empowered under Chapter 5 to issue an environmental authorisation in respect of that activity may exercise their respective powers jointly by issuing—
- (a) separate authorisations; or
- (b) an integrated environmental authorisation.
- (2) An integrated environmental authorisation contemplated in subsection (1)(b) may be issued only if—
- (a) the relevant provisions of this Act and the other law or specific environmental management Act have been complied with; and
- (b) the environmental authorisation specifies the—
- (i) provisions in terms of which it has been issued; and
- (ii) relevant authority or authorities that have issued it.
- (3) A competent authority empowered under Chapter 5 to issue an environmental authorisation in respect of a listed activity or specified activity may regard such authorisation as a sufficient basis for the granting or refusing of an authorisation, a permit or a licence under a specific environmental management Act if that specific environmental management Act is also administered by that competent authority.
- (4) A competent authority empowered under Chapter 5 to issue an environmental authorisation may regard an authorisation in terms of any other legislation that meets all the requirements stipulated in section 24(4)(a) and, where applicable, section 24(4)(b) to be an environmental authorisation in terms of that Chapter.

#### 24M. **Exemptions from application of certain provisions**

- (1) The Minister or an MEC, as the case may be, may grant an exemption from any provision of this Act, except from a provision of section 24(4)(a).
- (2) The Minister of Minerals and Energy may grant an exemption from any matter contemplated in section 24(4)(b).
- (3) The Minister or an MEC, as the case may be, must prescribe the process to be followed for the lodging and processing of an application for exemption in terms of this section.

- (4) The Minister, the Minister of Minerals and Energy or MEC may only grant an exemption contemplated in subsection (1) or (2), as the case may be, if—
- (a) the granting of the exemption is unlikely to result in significant detrimental consequences for or impacts on the environment;
  - (b) the provision cannot be implemented in practice in the case of the application in question; or
  - (c) the exemption is unlikely to adversely affect the rights of interested or affected parties.

**24N. Environmental management programme**

- (1) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may require the submission of an environmental management programme before considering an application for an environmental authorisation.
- (1A) Where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, or where such application relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, the Minister, the Minister of Minerals and Energy, an MEC or identified competent authority must require the submission of an environmental management programme before considering an application for an environmental authorisation.
- (2) The environmental management programme must contain—
- (a) information on any proposed management, mitigation, protection or remedial measures that will be undertaken to address the environmental impacts that have been identified in a report contemplated in subsection 24(1A), including environmental impacts or objectives in respect of—
    - (i) planning and design;
    - (ii) pre-construction and construction activities;
    - (iii) the operation or undertaking of the activity in question;
    - (iv) the rehabilitation of the environment; and
    - (v) closure, if applicable;
  - (b) details of—
    - (i) the person who prepared the environmental management programme; and
    - (ii) the expertise of that person to prepare an environmental management programme;
  - (c) a detailed description of the aspects of the activity that are covered by the environmental management programme;
  - (d) information identifying the persons who will be responsible for the implementation of the measures contemplated in paragraph (a);
  - (e) information in respect of the "mechanisms proposed for monitoring compliance with the environmental management programme and for reporting on the compliance;
  - (f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or

- to a land use which conforms to the generally accepted principle of sustainable development; and
- (g) a description of the manner in which it intends to—
    - (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
    - (ii) remedy the cause of pollution or degradation and migration of pollutants; and
    - (iii) comply with any prescribed environmental management standards or practices.
  - (3) The environmental management programme must, where appropriate—
    - (a) set out time periods within which the measures contemplated in the environmental management programme must be implemented;
    - (b) contain measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting area or mining area in question; and
    - (c) develop an environmental awareness plan describing the manner in which—
      - (i) the applicant intends to inform his or her employees of any environmental risk which may result from their work; and
      - (ii) risks must be dealt with in order to avoid pollution or the degradation of the environment.
  - (4) The Minister of Minerals and Energy may not grant an environmental authorisation, unless he or she has considered any recommendation by the Regional Mining Development and Environmental Committee.
  - (5) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may call for additional information and may direct that the environmental management programme in question must be adjusted in such a way as the Minister, the Minister of Minerals and Energy or the MEC may require.
  - (6) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may at any time after he or she has approved an application for an environmental authorisation approve an amended environmental management programme.
  - (7) The holder and any person issued with an environmental authorisation—
    - (a) must at all times give effect to the general objectives of integrated environmental management laid down in section 23;
    - (b) must consider, investigate, assess and communicate the impact of his or her prospecting or mining on the environment;
    - (c) must manage all environmental impacts—
      - (i) in accordance with his or her approved environmental management programme, where appropriate; and
      - (ii) as an integral part of the reconnaissance, prospecting or mining, exploration or production operation, unless the Minister of Minerals and Energy directs otherwise;



- (d) must monitor and audit compliance with the requirements of the environmental management programme;
- (e) must, as far as is reasonably practicable, rehabilitate the environment affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and
- (f) is responsible for any environmental damage, pollution, pumping and treatment of extraneous water-or ecological degradation as a result of his or her prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting or mining area to which such right or permit relates.

**240. Criteria to be taken into account by competent authorities when considering applications**

- (1) If the Minister, the Minister of Minerals and Energy, an MEC or identified competent authority considers an application for an environmental authorisation, the Minister, Minister of Minerals and Energy, MEC or competent authority must—
  - (a) comply with this Act;
  - (b) take into account all relevant factors, which may include—
    - (i) any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused;
    - (ii) measures that may be taken—
      - (aa) to protect the environment from harm as a result of the activity which is the subject of the application; and
      - (bb) to prevent, control, abate or mitigate any pollution, substantially detrimental environmental impacts or environmental degradation;
    - (iii) the ability of the applicant to implement mitigation measures and to comply with any conditions subject to which the application may be granted;
    - (iv) where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment;
    - (v) any information and maps compiled in terms of section 24(3), including any prescribed environmental management frameworks, to the extent that such information, maps and frameworks are relevant to the application;
    - (vi) information contained in the application form, reports, comments, representations and other documents submitted in terms of this Act to the Minister, Minister of Minerals and Energy, MEC or competent authority in connection with the application;
    - (vii) any comments received from organs of state that have jurisdiction over any aspect of the activity which is the subject of the application; and
    - (viii) any guidelines, departmental policies and decision making instruments that have been developed or any other information in the possession of the competent authority that are relevant to the application; and
  - (c) take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.
- (2) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority must consult with every State department that administers a law relating to a

matter affecting the environment when he or she considers an application for an environmental authorisation.

- (3) A State department consulted in terms of subsection (2) must submit comment within 40 days from the date on which the Minister, Minister of Minerals and Energy, MEC or identified competent authority requests such State department in writing to submit comment.
- (4) If any State department contemplated in subsection (2) objects to the contents of an application for prospecting, mining, exploration, production or related activities in a prospecting, mining, exploration or production area, the Minister of Minerals and Energy must refer the objection to the Regional Mining Development and Environmental Committee for consideration and recommendation.
- (5) The Regional Mining Development and Environmental Committee must, within 45 days after the date of receiving such an objection, consider the objection and must make recommendations to the Minister of Minerals and Energy for a final decision.

#### **24P. Financial provision for remediation of environmental damage**

- (1) An applicant for an environmental authorisation relating to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area must make the prescribed financial provision for the rehabilitation, management and closure of environmental impacts, before the Minister of Minerals and Energy issues the environmental authorisation.
- (2) If any holder or any holder of an old order right fails to rehabilitate or to manage any impact on the environment, or is unable to undertake such rehabilitation or to manage such impact, the Minister of Minerals and Energy may, upon written notice to such holder, use all or part of the financial provision contemplated in subsection (1) to rehabilitate or manage the environmental impact in question.
- (3) Every holder must annually assess his or her environmental liability and, if circumstances so require, must adjust his or her financial provision to the satisfaction of the Minister of Minerals and Energy.
- (4) (a) If the Minister of Minerals and Energy is not satisfied with the assessment and financial provision contemplated in this section, the Minister of Minerals and Energy may appoint an independent assessor to conduct the assessment and determine the financial provision.  
(b) Any cost in respect of such assessment must be borne by the holder in question.
- (5) The requirement to maintain and retain the financial provision contemplated in this section remains in force until the Minister of Minerals and Energy issues a certificate to such holder, but the Minister of Minerals and Energy may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent or residual environmental impacts.
- (6) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (1) and all amounts arising from that provision.
- (7) The Minister, or an MEC in concurrence with the Minister, may in writing make subsection (1) to (6) with the changes required by the context applicable to any other application in terms of this Act.

**24Q. Monitoring and performance assessment**

As part of the general terms and conditions for an environmental authorisation and in order to—

- (a) ensure compliance with the conditions of the environmental authorisation; and
- (b) in order to assess the continued appropriateness and adequacy of the environmental management programme,

every holder and every holder of an old order right must conduct such monitoring and such performance assessment of the approved environmental management programme as may be prescribed.

**24R. Mine closure on environmental authorisation**

- (1) Every holder, holder of an old order right and owner of works remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of extraneous water, the management and sustainable closure thereof until the Minister of Minerals and Energy has issued a closure certificate in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned.
- (2) When the Minister of Minerals and Energy issues a closure certificate, he or she must return such portion of the financial provision contemplated in section 24P as the Minister may deem appropriate to the holder concerned, but may retain a portion of such financial provision for any latent and or residual environmental impact that may become known in the future.
- (3) Every holder, holder of an old order right or owner of works must plan, manage and implement such procedures and requirements in respect of the closure of a mine as may be prescribed.
- (4) The Minister may, in consultation with the Minister of Minerals and Energy and by notice in the *Gazette*, identify areas where mines are interconnected or their impacts are integrated to such an extent that the interconnection results in a cumulative impact.
- (5) The Minister may, by notice in the *Gazette*, publish strategies in order to facilitate mine closure where mines are interconnected, have an integrated impact or pose a cumulative impact.

[Sections 24J to 24R added by s.8 of Act 62 of 2008]

## **CHAPTER 6 INTERNATIONAL OBLIGATIONS AND AGREEMENTS**

**25. Incorporation of international environmental instruments**

- (1) Where the Republic is not yet bound by an international environmental instrument, the Minister may make a recommendation to Cabinet and Parliament regarding accession to and ratification of an international environmental instrument, which may deal with the following:
  - (a) Available resources to ensure implementation;

- (b) views of interested and affected parties;
  - (c) benefits to the Republic;
  - (d) disadvantages to the Republic;
  - (e) the estimated date when the instrument is to come into effect;
  - (f) the estimated date when the instrument will become binding on the Republic;
  - (g) the minimum number of states required to sign the instrument in order for it to come into effect;
  - (h) the respective responsibilities of all national departments involved;
  - (i) the potential impact of accession on national parties;
  - (j) reservations to be made, if any; and
  - (k) any other matter which in the opinion of the Minister is relevant.
- (2) Where the Republic is a party to an international environmental instrument the Minister, after compliance with the provisions of section 231(2) and (3) of the Constitution, may publish the provisions of the international environmental instrument in the Gazette and any amendment or addition to such instrument.
- (3) The Minister may introduce legislation in Parliament or make such regulations as may be necessary for giving effect to an international environmental instrument to which the Republic is a party, and such legislation and regulations may deal with inter alia the following-
- (a) the co-ordination of the implementation of the instrument;
  - (b) the allocation of responsibilities in terms of the instrument, including those of other organs of state;
  - (c) the gathering of information, including for the purposes of compiling and updating reports required in terms of the instrument and for submission to Parliament;
  - (d) the dissemination of information related to the instrument and reports from international meetings;
  - (e) initiatives and steps regarding research, education, training, awareness raising and capacity building;
  - (f) ensuring public participation;
  - (g) implementation of and compliance with the provisions of the instrument, including the creation of offences and the prescription of penalties where applicable; and
  - (h) any other matter necessary to give effect to the instrument.

- (4) The Minister may prior to a recommendation referred to in subsection (1), publish a notice in the Gazette, stating his or her intention to make such recommendation and inviting written comments.

## 26. Reports

- (1) The Minister must report to Parliament once a year regarding international environmental instruments for which he or she is responsible and such report may include details on-
- (a) participation in international meetings concerning international environmental instruments;
  - (b) progress in implementing international environmental instruments to which the Republic is a party;
  - (c) preparations undertaken in respect of international instruments to which the Republic is likely to become a party;
  - (d) initiatives and negotiations within the region of Southern Africa;
  - (e) the efficacy of co-ordination mechanisms; and
  - (f) legislative measures that have been taken and the time frames within which it is envisaged that their objectives will be achieved.
- (2)(a) The Minister must initiate an Annual Performance Report on Sustainable Development to meet the government's commitment to Agenda 21.
- (b)(i) The Annual Performance Report must cover all relevant activities of all national departments and spheres of government.
  - (ii) All relevant organs of state must provide information to the Minister by a date to be determined by the Minister for the purposes of the report referred to in paragraph (a) and this may consist of an assembly of information compiled for other purposes.
  - (c) The Minister may appoint persons as he or she considers necessary to act as a Secretariat to ensure preparation of the report.
  - (d) The purpose of the report shall be to-
    - (i) provide an audit and a report of the government's performance in respect of Agenda 21;
    - (ii) review procedures for co-ordinating policies and budgets to meet the objectives of Agenda 21; and
    - (iii) review progress on a public educational programme to support the objectives of Agenda 21.

## 27. Application

- (1) This Chapter applies to any international environmental instrument whether the Republic became a party to it before or after the coming into force of this Act.
- (2) The provisions of any international environmental instrument published in accordance with this section are evidence of the contents of the international environmental instrument in any proceedings or matter in which the provisions of the instrument come into question.

## CHAPTER 7 COMPLIANCE, ENFORCEMENT AND PROTECTION

### Part 1: Environmental hazards, access to information and protection of whistleblowers

[Heading amended by Act 46 of 2003]

#### 28. Duty of care and remediation of environmental damage

(1) Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

(1A) Subsection (1) also applies to a significant pollution or degradation that-

- (a) occurred before the commencement of this Act;
- (b) arises or is likely to arise at a different time from the actual activity that caused the contamination; or
- (c) arises through an act or activity of a person that results in a change to pre-existing contamination.

[(1A) Added by s.12 of Act 14 of 2009]

(2) Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures, include an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which-

- (a) any activity or process is or was performed or undertaken; or
- (b) any other situation exists,

which causes, has caused or is likely to cause significant pollution or degradation of the environment.

(3) The measures required in terms of subsection (1) may include measures to-

- (a) investigate, assess and evaluate the impact on the environment;
- (b) inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
- (c) cease, modify or control any act, activity or process causing the pollution or degradation;
- (d) contain or prevent the movement of pollutants or the causing of degradation;
- (e) eliminate any source of the pollution or degradation; or
- (f) remedy the effects of the pollution or degradation.

- (4) The Director-General or a provincial head of department may, after consultation with any other organ of state concerned and after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who fails to take the measures required under subsection (1) to-
- (a) investigate, evaluate and assess the impact of specific activities and report thereon;
  - (b) commence taking specific reasonable measures before a given date;
  - (c) diligently continue with those measures; and
  - (d) complete them before a specified reasonable date:

Provided that the Director-General or a provincial head of department may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable.

- (5) The Director-General or a provincial head of department, when considering any measure or time period envisaged in subsection (4), must have regard to the following:
- (a) the principles set out in section 2;
  - (b) the provisions of any adopted environmental management plan or environmental implementation plan;
  - (c) the severity of any impact on the environment and the costs of the measures being considered;
  - (d) any measures proposed by the person on whom measures are to be imposed;
  - (e) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people;
  - (f) any other relevant factors.
- (6) If a person required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to, use of or a limitation on use of that land in order to effect rehabilitation or remedial work, but is unable to acquire it on reasonable terms, the Minister may-
- (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and
  - (b) recover from the person for whose benefit the expropriation was effected all costs incurred.
- (7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General or provincial head of department responsible for environmental affairs may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.

[(7) Amended by s.12 of Act 14 of 2009]

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

[(8) Amended by s.12 of Act 14 of 2009]

- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;
- (b) the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner's successor in title;
- (c) the person in control of the land or any person who has or had a right to use the land at the time when-
  - (i) the activity or the process is or was performed or undertaken; or
  - (ii) the situation came about; or
- (d) any person who negligently failed to prevent-
  - (i) the activity or the process being performed or undertaken., or
  - (ii) the situation from coming about:

Provided that such person failed to take the measures required of him or her under subsection (1).

- (9) The Director-General or provincial head of department may in respect of the recovery of costs under subsection (8), claim proportionally from any other person who benefited from the measures undertaken under subsection (7).
- (10) The costs claimed under subsections (6), (8) and (9) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.
- (11) If more than one person is liable under subsection (8), the liability must be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (4).
- (12) Any person may, after giving the Director-General or provincial head of department 30 days' notice, apply to a competent court for an order directing the Director-General or any provincial head of department to take any of the steps listed in subsection (4) if the Director-General or provincial head of department fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps, and the provisions of section 32(2) and (3) shall apply to such proceedings with the necessary changes.
- (13) When considering any application in terms of subsection (12), the court must take into account the factors set out in subsection (5).
- (14) No person may-
  - (a) unlawfully and intentionally or negligently commit any act or omission which causes significant or is likely to cause significant pollution or degradation of the environment;



- (b) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect the environment in a significant manner; or
  - (c) refuse to comply with a directive issued under this section.
- (15) Any person who contravenes or fails to comply with subsection (14) is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.
- [(14) and (15) Added by s.12 of Act 14 of 2009]

## 29. **Protection of workers refusing to do environmentally hazardous work**

- (1) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having refused to perform any work if the person in good faith and reasonably believed at the time of the refusal that the performance of the work would result in an imminent and serious threat to the environment.
- (2) An employee who has refused to perform work in terms of subsection (1) must as soon thereafter as is reasonably practicable notify the employer either personally or through a representative that he or she has refused to perform work and give the reason for the refusal.
- (3) Subsection (1) applies whether or not the person refusing to work has used or exhausted any other applicable external or internal procedure or otherwise remedied the matter concerned.
- (4) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (1).
- (5) No person may threaten to take any action contemplated by subsection (1) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (1).

## 30. **Control of emergency incidents**

- (1) In this section-
  - (a) "incident" means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed.
  - (b) "responsible person" includes any person who-
    - (i) is responsible for the incident;
    - (ii) owns any hazardous substance involved in the incident; or
    - (iii) was in control of any hazardous substance involved in the incident at the time of the incident;
  - (c) "relevant authority" means-
    - (i) a municipality with jurisdiction over the area in which an incident occurs;
    - (ii) a provincial head of department or any other provincial official designated for that purpose by the MEC in a province in which an incident occurs;
    - (iii) the Director-General;
    - (iv) any other Director-General of a national department.

- (2) Where this section authorises a relevant authority to take any steps, such steps may only be taken by-
- (a) the person referred to in subsection (1)(c)(iv) if no steps have been taken by any of the other persons listed in subsection (1)(c);
  - (b) the person referred to in subsection (1)(c)(iii) if no steps have been taken by any of the persons listed in subsection (1)(c)(i) and (c)(ii);
  - (c) the person referred to in subsection (1)(c)(ii) if no steps have been taken by the person listed in subsection (1)(c)(i):

Provided that any relevant authority may nevertheless take such steps if it is necessary to do so in the circumstances and no other person referred to in subsection (1)(c) has yet taken such steps.

- (3) The responsible person or, where the incident occurred in the course of that person's employment, his or her employer must forthwith after knowledge of the incident, report through the most effective means reasonably available-
- (a) the nature of the incident;
  - (b) any risks posed by the incident to public health, safety and property;
  - (c) the toxicity of substances or by-products released by the incident; and
  - (d) any steps that should be taken in order to avoid or minimise the effects of the incident on public health and the environment to-
    - (i) the Director-General;
    - (ii) the South African Police Services and the relevant fire prevention service;
    - (iii) the relevant provincial head of department or municipality; and
    - (iv) all persons whose health may be affected by the incident.
- (4) The responsible person or, where the incident occurred in the course of that person's employment, his or her employer, must, as soon as reasonably practicable after knowledge of the incident-
- (a) take all reasonable measures to contain and minimise the effects of the incident, including its effects on the environment and any risks posed by the incident to the health, safety and property of persons;
  - (b) undertake clean-up procedures;
  - (c) remedy the effects of the incident;
  - (d) assess the immediate and long-term effects of the incident on the environment and public health;
- (5) The responsible person or, where the incident occurred in the course of that person's employment, his or her employer, must, within 14 days of the incident, report to the Director-General, provincial head of department and municipality such information as is available to enable an initial evaluation of the incident, including-

- (a) the nature of the incident;
  - (b) the substances involved and an estimation of the quantity released and their possible acute effect on persons and the environment and data needed to assess these effects;
  - (c) initial measures taken to minimise impacts;
  - (d) causes of the incident, whether direct or indirect, including equipment, technology, system, or management failure; and
  - (e) measures taken and to be taken to avoid a recurrence of such incident.
- (6) A relevant authority may direct the responsible person to undertake specific measures within a specific time to fulfil his or her obligations under subsections (4) and (5): Provided that the relevant authority must, when considering any such measure or time period, have regard to the following:
- (a) the principles set out in section 2;
  - (b) the severity of any impact on the environment as a result of the incident and the costs of the measures being considered;
  - (c) any measures already taken or proposed by the person on whom measures are to be imposed, if applicable;
  - (d) the desirability of the state fulfilling its role as custodian holding the environment in public trust for the people;
  - (e) any other relevant factors.
- (7) A verbal directive must be confirmed in writing at the earliest opportunity, which must be within seven days.
- (8) Should—
- (a) the responsible person fail to comply, or inadequately comply with a directive under subsection (6);
  - (b) there be uncertainty as to who the responsible person is; or
  - (c) there be an immediate risk of serious danger to the public or potentially serious detriment to the environment,
- a relevant authority may take the measures it considers necessary to—
- (i) contain and minimise the effects of the incident;
  - (ii) undertake clean-up procedures; and
  - (iii) remedy the effects of the incident.
- (9) A relevant authority may claim reimbursement of all reasonable costs incurred by it in terms of subsection (8) from every responsible person jointly and severally.

- (10) A relevant authority which has taken steps under subsections (6) or (8) must, as soon as reasonably practicable, prepare comprehensive reports on the incident, which reports must be made available through the most effective means reasonably available to-
- (a) the public;
  - (b) the Director-General;
  - (c) the South African Police Services and the relevant fire prevention service;
  - (d) the relevant provincial head of department or municipality; and
  - (e) all persons who may be affected by the incident.

[Part 2 Heading deleted by Act 46 of 2003]

- (11) A person who contravenes or fails to comply with subsection (3), (4), (5) or (6) is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year, or to both such a fine and such imprisonment.

[(11) Added by s.13 of Act 14 of 2009]

### 31. Access to environmental information and protection of whistle-blowers

- (1) [(1) Deleted by s.14 of Act 14 of 2009]
- (2) [(2) Deleted by s.14 of Act 14 of 2009]
- (3) [(3) Deleted by s.14 of Act 14 of 2009]
- (4) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of an environmental risk and the disclosure was made in accordance with subsection (5);
- (5) Subsection (4) applies only if the person concerned-
- (a) disclosed the information concerned to-
    - (i) a committee of Parliament or of a provincial legislature;
    - (ii) an organ of state responsible for protecting any aspect of the environment or emergency services;
    - (iii) the Public Protector
    - (iv) the Human Rights Commission;
    - (v) any attorney-general or his or her successor;
    - (vi) more than one of the bodies or persons referred to in subparagraphs (i) to (v);
  - (b) disclosed the information concerned to one or more news media and on clear and convincing grounds believed at the time of the disclosure-
    - (i) that the disclosure was necessary to avert an imminent and serious threat to the environment, to ensure that the threat to the environment was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or

- (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure;
- (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure, other than the procedure contemplated in paragraph (a) or (b), for reporting or otherwise remedying the matter concerned; or
- (d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.
- (6) Subsection (4) applies whether or not the person disclosing the information concerned has used or exhausted any other applicable external or internal procedure to report or otherwise remedy the matter concerned.
- (7) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (4).
- (8) No person may threaten to take any action contemplated by subsection (4) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (4).

## **Part 2: Application and enforcement of Act and any specific environmental management Act**

[Heading Amended by s.15 of Act 14 of 2009]

### **31A. Application**

- (1) This Part applies to the enforcement of this Act and any specific environmental management Act.  
[(1) Amended by s.16 of Act 14 of 2009]
- (2) In this Part, unless inconsistent with the context, a word or expression to which a meaning has been assigned in a specific environmental management Act has, in relation to the administration or enforcement of that Act, the meaning assigned to it in that Act.
- (3) For the purposes of this Part, Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), is deemed to include an offence committed in terms of this Act or a specific environmental management Act.

### **31B. Designation of environmental management inspectors by Minister**

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

**31BA. Designation of environmental management inspectors by Minister of Water Affairs and Forestry**

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

[Section 31BA inserted by s. 4 Act No. 44 of 2008]

**31C. Designation of environmental management inspectors by MEC**

- (1) An MEC may—
  - (a) designate as an environmental management inspector, any staff member of—
    - (i) the department responsible for environmental management in the province;
    - (ii) any other provincial organ of state; or
    - (iii) any municipality in the province; and
  - (b) at any time withdraw a designation made in terms of paragraph (a).
- (2) A designation in terms of subsection (1)(a)(ii) or (iii) may only be made by agreement between the relevant MEC and the relevant provincial organ of state or municipality.

**31D. Mandates**

- (1) When designating a person as an environmental management inspector, the Minister, the Minister of Water Affairs and Forestry or MEC must, subject to subsection (2), determine whether the person concerned is designated for the enforcement of—
  - (a) this Act;
  - (b) a specific environmental management Act;
  - (c) specific provisions of this Act or a specific environmental management Act;
  - (d) this Act and all specific environmental management Acts; or
  - (e) any combination of those Acts or provisions of those Acts.
- (2) An MEC may designate a person as an environmental management inspector for the enforcement of only those provisions of this Act or any specific environmental management Act—
  - (a) which are administered by the MEC or a provincial organ of state; or

- (b) in respect of which the MEC or a provincial organ of state exercises or performs assigned or delegated powers or duties.
- (3) A person designated as an environmental management inspector may exercise any of the powers given to environmental management inspectors in terms of this Act that are necessary for the inspector's mandate in terms of subsection (1) and that may be specified by the Minister, the Minister of Water Affairs and Forestry or MEC by notice in writing to the inspector.

[Section 31D substituted by s. 5 Act No. 44 of 2008]

### 31E. Prescribed standards

- (1) The Minister may prescribe—
  - (a) qualification criteria for environmental management inspectors; and
  - (b) training that must be completed by environmental management inspectors.
- (2) The Minister may only prescribe criteria and training in terms of subsection (1) after consultation with the Minister responsible for safety and security.

### 31F. Proof of designation

- (1) A prescribed identity card must be issued to each person designated as an environmental management inspector.
- (2) When exercising any powers or performing any duties in terms of this Act or a specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card referred to in subsection (1).

[(2) Amended by s.17 of Act 14 of 2009]

### 31G. Functions of inspectors

- (1) An environmental management inspector within his or her mandate in terms of section 31D—
  - (a) must monitor and enforce compliance with a law for which he or she has been designated in terms of that section;
  - (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute—
    - (i) an offence in terms of such law;
    - (ii) a breach of such law; or
    - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.
- (2) An environmental management inspector—
  - (a) must carry out his or her duties and exercise his or her powers—
    - (i) in accordance with any instructions issued by the Minister or MEC, as the case may be; and
    - (ii) subject to any limitations and in accordance with any procedures that may be prescribed; and

- (b) may be accompanied by an interpreter or any other person whose assistance may reasonably be required;
- (c) must exercise his or her powers in a way that minimises any damage to, loss or deterioration of any premises or thing.

### 31H. **General powers**

- (1) An environmental management inspector, within his or her mandate in terms of section 31D, may—
  - (a) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute—
    - (i) an offence in terms of a law for which that inspector has been designated in terms of that section;
    - (ii) a breach of such law; or
    - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;
  - (b) issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;
  - (c) inspect, or question a person about, any document, book or record or any written or electronic information—
    - (i) which may be relevant for the purpose of paragraph (a); or
    - (ii) to which this Act or a specific environmental management Act relates;
  - (d) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph (c), or remove such document, book, record or written or electronic information in order to make copies or extracts;
  - (e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;
  - (f) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in—
    - (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; or
    - (iii) breaching a term or condition of a permit, authorisation or other instrument issued in terms of such law;
  - (g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection;  
[(g) Amended by s.18 of Act 14 of 2009]
  - (h) dig or bore into the soil;
  - (i) take samples;



- (j) remove any waste or other matter deposited or discharged in contravention of the law for which that inspector has been designated in terms of section 31D or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or
  - (k) carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific environmental management Act.
- (2) A written notice issued in terms of subsection (1)(b) must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.
- (3) A person who receives a written notice in terms of subsection (1)(b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act or a specific environmental management Act.
- (4) An environmental management inspector must—
- (a) provide a receipt for—
    - (i) any document, book, record or written or electronic information removed in terms of subsection (1)(d); or
    - (ii) any specimen, article, substance or other item removed in terms of subsection (1)(f); and
  - (b) return anything removed within a reasonable period or, subject to section 34D, at the conclusion of any relevant criminal proceedings.
- (5) In addition to the powers set out in this Part, an environmental management inspector must be regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)—
- (a) to comply with his or her mandate in terms of section 31D; and
  - (b) within the area of jurisdiction for which he or she has been designated.

[Sub.s (5) substituted by s. 6 Act No. 44 of 2008]

### 31I. **Seizure of items**

- (1) The provisions of sections 30 to 34 of the Criminal Procedure Act, 1977, apply to the disposal of anything seized in terms of this Part, subject to such modifications as the context may require.
- (2) When an item is seized in terms of this Part, the environmental management inspector may request the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the inspector, and if the person refuses to take the item to the designated place, the inspector may do so.
- (3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management inspector may immobilise it by removing a part.

- (4) An item seized in terms of this section, including a part of a vehicle, vessel or aircraft referred to in subsection (3), must be kept in such a way that it is secured against damage.
- (5) An environmental management inspector may—
  - (a) in the case of a specimen of a threatened or protected species or alien species being imported into the Republic, at the port of entry, request the person responsible for the import or that person's agent, to produce the original copies of the import permit, together with such other documentation as may be required; and
  - (b) in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit, request the person responsible for the export or re-export or that person's agent to produce the original copy of the export or re-export permit, together with such other documentation as may be required.

### 31J. Powers to stop, enter and search vehicles, vessels and aircraft

- (1) An environmental management inspector, within his or her mandate in terms of section 31D, may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal—
  - (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit—
    - (i) an offence in terms of the law for which that inspector has been designated in terms of section 31D; or
    - (ii) a breach of such law or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or
  - (b) contains or conveys a thing which may serve as evidence of such offence or breach.
- (2) An environmental management inspector may, without a warrant, seize anything contained in or on any vehicle, vessel, aircraft or pack-animal 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.
- (3) The provisions of section 31I apply to anything seized in terms of subsection (2), subject to such modifications as the context may require.
- (4) An environmental management inspector may, for the purpose of implementing subsection (1), at any time, and without a warrant—
  - (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or
  - (b) if necessary and possible, force the driver or pilot to stop or land, as the case may be.
- (5) An environmental management inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in section 31H.
- (6) An environmental management inspector may apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint.

- (7) An environmental management inspector has, within his or her mandate in terms of section 31D, all the powers of a member of the South African Police Service in terms of section 13(8) of the South African Police Service Act, 1995.

**31K. Routine inspections**

- (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—  
[(1) Amended by s.19 of Act 14 of 2009]
- (a) the legislation for which that inspector has been designated in terms of section 31D; or
- (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.
- (2) An environmental management inspector, within his or her mandate in terms of section 31D, may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any residential premises for the purposes of ascertaining compliance with—
- (a) the legislation for which that inspector has been designated in terms of section 31D; or
- (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.
- (3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the Acts for which that inspector has been designated in terms of section 31D.
- (4) An environmental management inspector may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if—
- (a) the person in control of the premises consents to the entry and inspection; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.
- (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 or 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.  
[(5) Amended by s.19 of Act 14 of 2009]
- (6) The provisions of section 31I apply to anything seized in terms of subsection (5), subject to such modifications as the context may require.

- (7) An environmental management inspector may exercise on such business or residential premises or land building, land, premises, vehicle, vessel, aircraft, pack-animals, container, bag, box, item and the like any of the powers mentioned in section 31H.

[(7) Amended by s.19 of Act 14 of 2009]

### 31L. **Power to issue compliance notices**

- (1) An environmental management inspector, within his or her mandate in terms of section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied—
- (a) with a provision of the law for which that inspector has been designated in terms of section 31D; or
- (b) with a term or condition of a permit, authorisation or other instrument issued in terms of such law.
- (2) A compliance notice must set out—
- (a) details of the conduct constituting non-compliance;
- (b) any steps the person must take and the period within which those steps must be taken;
- (c) any thing which the person may not do, and the period during which the person may not do it; and
- (d) the procedure to be followed in lodging an objection to the compliance notice with the Minister or MEC, as the case may be.
- (3) An environmental management inspector may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.
- (4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance notice in terms of subsection (5).
- (5) A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M may make representations to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.

### 31M. **Objections to compliance notice**

- (1) Any person who receives a compliance notice in terms of section 31L may object to the notice by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister or MEC may determine.
- (2) After considering any representations made in terms of subsection (1) and any other relevant information, the Minister or MEC, as the case may be—
- (a) may confirm, modify or cancel a notice or any part of a notice; and
- (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

**31N. Failure to comply with compliance notice**

- (1) A person who fails to comply with a compliance notice commits an offence.
- (2) If a person fails to comply with a compliance notice, the environmental management inspector must report the non-compliance to the Minister or MEC, as the case may be, and the Minister or MEC may—
  - (a) revoke or vary the relevant permit, authorisation or other instrument which is the subject of the compliance notice;
  - (b) take any necessary steps and recover the costs of doing so from the person who failed to comply; and
- (3) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding five million rand or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

[Sub.s (3) inserted by s. 7 Act No. 44 of 2008]

- (c) [(c) Deleted by s.20 of Act 14 of 2009]

**31O. Powers of South African Police Service members**

- (1) A member of the South African Police Service has, in respect of an offence in terms of this Act or a specific environmental management Act, all the powers of an environmental management inspector in terms of this Part excluding the power to conduct routine inspections in terms of section 31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O.
- (2) Notwithstanding subsection (1), the Minister or MEC, as the case may be, may, with the concurrence of the Minister responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 31K to 31O.

**31P. Duty to produce documents**

Any person to whom a permit, licence, permission, certificate, authorisation or any other document has been issued in terms of this Act or a specific environmental management Act, must produce that document at the request of an environmental management inspector.

**31Q. Confidentiality**

- (1) It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act or a specific environmental management Act, except—
  - (a) if the information is disclosed in compliance with the provisions of any law;
  - (b) if the person is ordered to disclose the information by a court;
  - (c) if the information is disclosed to enable a person to perform a function in terms of this Act or a specific environmental management Act; or

(d) for the purposes of the administration of justice.

(1A) Subsection (1) does not apply to information that pertains to-

- (a) environmental quality or the state of the environment;
- (b) any risks posed to the environment, public safety and the health and well-being of people; or
- (c) compliance with or contraventions of any environmental legislation by any person.

[ (1A) Added by s.21 of Act 14 of 2009 ]

(2) A person convicted of an offence in terms of this section is liable to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

[Part 2 inserted by Act 46 of 2003]

### 32. **Legal standing to enforce environmental laws**

(1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources—

[Subsection (1) amended by Act 46 of 2003]

- (a) in that person's or group of person's own interest;
- (b) in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;
- (c) in the interest of or on behalf of a group or class of persons whose interests are affected;
- (d) in the public interest; and
- (e) in the interest of protecting the environment.

(2) A court may decide not to award costs against a person who, or group of persons which, fails to secure the relief sought in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources, if the court is of the opinion that the person or group of persons acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought.

[Subsection 2 amended by Act 46 of 2003]

(3) Where a person or group of persons secures the relief sought in respect of any breach or threatened breach of any provision of this Act, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment, a court may on application—

[Subsection 3 amended by Act 46 of 2003]

- (a) award costs on an appropriate scale to any person or persons entitled to practise as advocate or attorney in the Republic who provided free legal assistance or representation to such person or group in the preparation for or conduct of the proceedings; and

- (b) order that the party against whom the relief is granted pay to the person or group concerned any reasonable costs incurred by such person or group in the investigation of the matter and its preparation for the proceedings.

### 33. **Private prosecution**

- (1) Any person may-

- (a) in the public interest; or
- (b) in the interest of the protection of the environment,

institute and conduct a prosecution in respect of any breach or threatened breach of any duty, other than a public duty resting on an organ of state, in any national or provincial legislation or municipal bylaw, or any regulation, licence, permission or authorisation issued in terms of such legislation, where that duty is concerned with the protection of the environment and the breach of that duty is an offence.

- (2) The provisions of sections 9 to 17 of the Criminal Procedure Act, 1977 (Act 51 of 1977) applicable to a prosecution instituted and conducted under section 8 of that Act must apply to a prosecution instituted and conducted under subsection (1): Provided that if-
  - (a) the person prosecuting privately does so through a person entitled to practise as an advocate or an attorney in the Republic;
  - (b) the person prosecuting privately has given written notice to the appropriate public prosecutor that he or she intends to do so; and
  - (c) the public prosecutor has not, within 28 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence,
    - (i) the person prosecuting privately shall not be required to produce a certificate issued by the Attorney-General stating that he or she has refused to prosecute the accused; and
    - (ii) the person prosecuting privately shall not be required to provide security for such action.
- (3) The court may order a person convicted upon a private prosecution brought under subsection (1) to pay the costs and expenses of the prosecution, including the costs of any appeal against such conviction or any sentence.
- (4) The accused may be granted an order for costs against the person prosecuting privately, if the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal and the court finds either:
  - (a) that the person instituting and conducting the private prosecution did not act out of a concern for the public interest or the protection of the environment; or
  - (b) that such prosecution was unfounded, trivial or vexatious.
- (5) When a private prosecution is instituted in accordance with the provisions of this Act, the Attorney-General is barred from prosecuting except with the leave of the court concerned.

### 34. Criminal proceedings

- (1) Whenever any person is convicted of an offence under any provision listed in Schedule 3 and it appears that such person has by that offence caused loss or damage to any organ of state or other person, including the cost incurred or likely to be incurred by an organ of state in rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.
- (2) Upon proof of such amount, the court may give judgement therefor in favour of the organ of state or other person concerned against the convicted person, and such judgement shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court.
- (3) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order-
  - (a) the award of damages or compensation or a fine equal to the amount so assessed; or
  - (b) that such remedial measures as the court may determine must be undertaken by the convicted person.

[(3) Amended by s.22 of Act 14 of 2009]
- (4) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may, upon application by the public prosecutor or another organ of state, order such person to pay the reasonable costs incurred by the public prosecutor and the organ of state concerned in the investigation and prosecution of the offence.
- (5) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, and the act or omission of the manager, agent or employee occurred because the employer failed to take all reasonable steps to prevent the act or omission in question, then the employer shall be guilty of the said offence and, save that no penalty other than a fine may be imposed if a conviction is based on this sub-section, liable on conviction to the penalty specified in the relevant law, including an order under subsections (2), (3) and (4), and proof of such act or omission by a manager, agent or employee shall constitute prima facie evidence that the employer is guilty under this subsection.
- (6) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, he or she shall be liable to be convicted and sentenced in respect thereof as if he or she were the employer.
- (7) Any person who is or was a director of a firm at the time of the commission by that firm of an offence under any provision listed in Schedule 3 shall himself or herself be guilty of the said offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (2),(3) and (4), if the offence in question resulted from the failure



of the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence: Provided that proof of the said offence by the firm shall constitute prima facie evidence that the director is guilty under this subsection.

- (8) Any such manager, agent, employee or director may be so convicted and sentenced in addition to the employer or firm.
- (9) In subsection (7) and (8)-
  - (a) "firm" shall mean a body incorporated by or in terms of any law as well as a partnership; and
  - (b) "director" shall mean a member of the board, executive committee, or other managing body of a corporate body and, in the case of a close corporation, a member of that close corporation or in the case of a partnership, a member of that partnership.
- (10)(a) The Minister may amend Part (a) of Schedule 3 by regulation.
- (b) An MEC may amend Part (b) of Schedule 3 in respect of the province of his or her jurisdiction by regulation.

#### **34A. Offences relating to environmental management inspectors**

- (1) A person is guilty of an offence if that person—
  - (a) hinders or interferes with an environmental management inspector in the execution of that inspector's official duties;
  - (b) pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector;
  - (c) furnishes false or misleading information when complying with a request of an environmental management inspector; or
  - (d) fails to comply with a request of an environmental management inspector.
- (2) A person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

#### **34B. Award of part of fine recovered to informant**

- (1) A court which imposes a fine for an offence in terms of this Act or a specific environmental management Act may order that a sum of not more than one-fourth of the fine be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.
- (2) A person in the service of an organ of state or engaged in the implementation of this Act or a specific environmental management Act is not entitled to such an award.

#### **34C. Cancellation of permits**

- (1) The court convicting a person of an offence in terms of this Act or a specific environmental management Act may—

- (a) withdraw any permit or other authorisation issued in terms of this Act or a specific environmental management Act to that person, if the rights conferred by the permit or authorisation were abused by that person;
- (b) disqualify that person from obtaining a permit or other authorisation for a period not exceeding five years;
- (c) issue an order that all competent authorities authorised to issue permits or other authorisations be notified of any disqualification in terms of paragraph (b).

#### 34D. **Forfeiture of items**

- (1) The court convicting a person of an offence in terms of this Act or any of the specific environmental Acts may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of or in connection with the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.

[(1) Amended by s.23 of Act 14 of 2009]

- (2) The provisions of section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.
- (3) The Minister must ensure that any specimen forfeited to the State in terms of subsection (1) is—
  - (a) repatriated to the country of export or origin as appropriate, at the expense of the person convicted of the offence involving that specimen;
  - (b) deposited in an appropriate institution, collection or museum, if—
    - (i) the specimen is clearly marked as a seized specimen; and
    - (ii) the person convicted of the offence does not benefit or gain from such deposit; or
  - (c) otherwise disposed of in an appropriate manner.

#### 34E. **Treatment of seized live specimens**

Pending the institution of any criminal proceedings in terms of this Act or a specific environmental management Act or the resolution of such proceedings, a live specimen that has been seized in terms of this Part must be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

#### 34F. **Security for release of vehicles, vessels or aircraft**

- (1) If a vehicle, vessel or aircraft is seized in terms of this Act and is kept for the purposes of criminal proceedings, the owner or agent of the owner may at any time apply to a court for the release of the vehicle, vessel or aircraft.
- (2) A court may order the release of the vehicle, vessel or aircraft on the provision of security determined by the court.
- (3) The amount of the security must at least be equal to the sum of—
  - (a) the market value of the vehicle, vessel or aircraft;

- (b) the maximum fine that a court may impose for the alleged offence; and
- (c) costs and expenses incurred or reasonably foreseen to be incurred by the State in connection with prosecuting the offence and recoverable in terms of this Act.
- (4) If the court is satisfied that there are circumstances which warrant a lesser amount of security, it may order the release of the vehicle, vessel or aircraft subject to the provision of security for such lesser amount.

#### 34G. **Admission of guilt fines**

- (1) 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.
- (2) An environmental management inspector who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue to the alleged offender a written notice referred to in section 56 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (3) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount—
  - (a) prescribed for the offence; and
  - (b) which a court would presumably have imposed in the circumstances.
- (4) The provisions of sections 56, 57 and 57A of the Criminal Procedure Act, 1977, apply subject to such modifications as the context may require, to written notices and admission of guilt fines referred to in this section.

[Subsection 34A to 34G inserted by Act 46 of 2003]

#### 34H. **Jurisdiction**

Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act or any specific Environmental Management Acts.

[34H Inserted by s.24 of Act 14 of 2009]

### **CHAPTER 8 ENVIRONMENTAL MANAGEMENT CO-OPERATION AGREEMENTS**

#### 35. **Conclusion of agreements**

- (1) The Minister and every MEC and municipality, may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act.
- (2) Environmental management co-operation agreements must-
  - (a) only be entered into with the agreement of-

- (i) every organ of state which has jurisdiction over any activity to which such environmental management co-operation agreement relates;
  - (ii) the Minister and the MEC concerned;
- (b) only be entered into after compliance with such procedures for public participation as may be prescribed by the Minister; and
- (c) comply with such regulations as may be prescribed under section 45.
- (3) Environmental management cooperation agreements may contain-
- (a) an undertaking by the person or community concerned to improve on the standards laid down by law for the protection of the environment which are applicable to the subject matter of the agreement;
  - (b) a set of measurable targets for fulfilling the undertaking in (a), including dates for the achievement of such targets; and
  - (c) provision for-
    - (i) periodic monitoring and reporting of performance against targets;
    - (ii) independent verification of reports;
    - (iii) regular independent monitoring and inspections;
    - (iv) verifiable indicators of compliance with any targets, norms and standards laid down in the agreement as well as any obligations laid down by law;
  - (d) the measures to be taken in the event of non-compliance with commitments in the agreement, including where appropriate penalties for non-compliance and the provision of incentives to the person or community.

## **CHAPTER 9 ADMINISTRATION OF ACT AND SPECIFIC ENVIRONMENTAL MANAGEMENT ACTS**

[Heading amended by Act 46 of 2003]

### **36. Expropriation**

- (1) The Minister may purchase or, subject to compensation, expropriate any property for environmental or any other purpose under this Act, if that purpose is a public purpose or is in the public interest: Provided that the Minister must consult the Minister of Minerals and Energy before any mineral rights are expropriated.
- (2) The Expropriation Act, 1975 (Act No. 63 of 1975) applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriation.
- (3) Notwithstanding the provisions of subsection (2), the amount of compensation and the time and manner of payment must be determined in accordance with section 25 (3) of the Constitution, and the owner of the property in question must be given a hearing before any property is expropriated.

**37. Reservation**

The Minister may reserve State land with the consent of the Minister authorised to dispose of the land, and after consultation with any other Minister concerned, for environmental or other purposes in terms of this Act, if that purpose is a public purpose or is in the public interest.

**38. Intervention in litigation**

The Minister may intervene in litigation before a court in any matter under this Act.

**39. Agreements**

The Director-General may enter into agreements with organs of state in order to fulfil his or her responsibilities.

**40. Appointment of employees on contract**

- (1) The Director-General may appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation No 103 of 1994), when this is necessary to carry out the functions of the Department.
- (2) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees.
- (3) Such employees must be remunerated from money appropriated for that purpose by Parliament.

**41. Assignment of powers**

- (1) In this section "assignment" means an assignment as contemplated in section 99 of the Constitution.
- (2) The Minister must record all assignments referred to in subsection (1) in a Schedule to this Act and may amend that Schedule.

**42. Delegation of powers and duties by Minister and Director-General**

- (1) The Minister may delegate a power or duty vested in him or her in terms of this Act or a specific environmental management Act to—
  - (a) the Director-General;
  - (b) an MEC, by agreement with the MEC;
  - (c) the management authority of a protected area; or
  - (d) any organ of state, by agreement with that organ of state.
- (2) A delegation referred to in subsection (1)—
  - (a) must be in writing;

- (b) may be made subject to conditions;
  - (c) does not prevent the exercise of the power or the performance of the duty by the Minister himself or herself;
  - (d) may include the power to sub-delegate; and
  - (e) may be withdrawn by the Minister.
- (2A) The Minister must give notice in the Gazette of an delegation of a power or duty to an MEC, the management authority of a protected area or an organ of state.
- (2B) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.
- (2C) The Minister may not delegate a power or duty vested in the Minister in terms of this Act or a specific environmental management Act—
- (a) to make regulations;
  - (b) to publish notices in the Gazette;
  - (c) to appoint a member of a board or committee; or
  - (d) to expropriate private land.
- (3) The Director-General may delegate a power[, function] or duty vested in him or her by or under this Act or a specific environmental management Act to—
- (a) the holder of an office in the Department; or
  - (b) after consultation with a provincial head of department, an officer in a provincial administration or municipality.
- (4) The Director-General may permit a person to whom a power or duty has been delegated by the Director-General to delegate further that power or duty.
- (5) A delegation referred to in subsection (3) and the permission referred to in subsection (4)—
- (a) must be in writing;
  - (b) may be subject to conditions;
  - (c) do not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself; and
  - (d) may be withdrawn by the Director-General..

**42A. Delegation of powers by MEC**

- (1) The MEC of a province may delegate a power or duty vested in or delegated to the MEC in terms of this Act or a specific environmental management Act to—
  - (a) the head of that MEC's department;
  - (b) the management authority of a provincial or local protected area;
  - (c) a municipality, by agreement with the municipality; or
  - (d) any provincial organ of state, by agreement with that organ of state.
- (2) A delegation in terms of subsection (1)—
  - (a) must be in writing;
  - (b) may be made subject to conditions;
  - (c) does not prevent the exercise of the power or the performance of the duty by the MEC personally;
  - (d) may include the power to sub-delegate; and
  - (e) may be withdrawn by the MEC.
- (3) The MEC may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.
- (4) The MEC may not delegate a power or duty vested in the MEC in terms of this Act or a specific environmental management Act—
  - (a) to make regulations;
  - (b) to publish notices in the Gazette;
  - (c) to appoint a member of a board or committee; or
  - (d) to expropriate private land.

[Section 42A. inserted by Act 46 of 2003]

**42B. Delegation by Minister of Minerals and Energy**

- (1) The Minister of Minerals and Energy may delegate a function entrusted to him or her in terms of this Act to—
  - (a) the Director-General of the Department of Minerals and Energy; or
  - (b) any officer in the Department of Minerals and Energy.

- (2) A delegation in terms of subsection (1)—
  - (a) must be in writing;
  - (b) may be made subject to any condition;
  - (c) does not prevent the performance of the function by the Minister himself or herself; and
  - (d) may be withdrawn by the Minister.

[Section 42B added by s.9 of Act 62 of 2008]

**43. Appeals**

- (1) Any person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.

[Sub.s (1) amended by s.10 of Act 62 of 2008]

- (1A) Any person may appeal to the Minister against a decision taken by the Minister of Minerals and Energy in respect of an environmental management programme or environmental authorisation.

- (1B) Any person may appeal to the Minister of Minerals and Energy against a process related decision taken by a person to whom a function has been delegated by that Minister in terms of section 42B.

[Sub.s (1A) and (1B) added by s.10 of Act 62 of 2008]

- (2) Any person may appeal to an MEC against a decision taken by any person acting under a power delegated by that MEC under this Act or a specific environmental management Act.

- (3) ..... [deleted]

- (4) An appeal under subsection (1), (1A), (1B) or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

- (5) The Minister or an MEC, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.

- (6) The Minister or an MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded.

- (7) An appeal under this section does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or an directive, unless the Minister or an MEC directs otherwise.

[43 substituted by Act 8 of 2004 and s.10 of Act 62 of 2008]

**44. Regulations in general**

- (1) The Minister may make regulations-
  - (a) dealing with any matter which under this Act must be dealt with by regulation;



- (aA) prohibiting, restricting or controlling activities which are likely to have a detrimental effect on the environment; and

[(aA) added by Act 56 of 2002]

- (b) generally, to carry out the purposes and the provisions of this Act.
- (2) The Minister may make different regulations under this Act in respect of different activities, provinces, geographical areas and owners or classes of owners of land.
- (3) The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe penalties for such offences.

#### 45. **Regulations for management co-operation agreements**

- (1) The Minister may make regulations concerning-
- (a) procedures for the conclusion of environmental management co-operation agreements, which must include procedures for public participation;
- (b) the duration of agreements;
- (c) requirements relating to the furnishing of information;
- (d) general conditions and prohibitions;
- (e) reporting procedures;
- (f) monitoring and inspection.
- (2) An MEC or municipal council may substitute his or her or its own regulations or bylaws, as the case may be, for the regulations issued by the Minister under subsection (1) above: Provided that such provincial regulations or municipal bylaws must cover the matters enumerated in subsection (1), and comply with the principles laid down in this Act.

#### 46. **Model environmental management bylaws**

- (1) The Minister may make model bylaws aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of a municipality, which may be adopted by a municipality as municipal bylaws.
- (2) Any municipality may request the Director-General to assist it with the preparation of bylaws on matters affecting the environment and the Director-General may not unreasonably refuse such a request.
- (3) The Director-General may institute programmes to assist municipalities with the preparation of bylaws for the purposes of implementing this Act.
- (4) The purpose of the model bylaws referred to in subsection (1) must be to-
- (a) mitigate adverse environmental impacts;

- (b) facilitate the implementation of decisions taken, and conditions imposed as a result of the authorisation of new activities and developments, or through the setting of norms and standards in respect of existing activities and developments; and
- (c) ensure effective environmental management and conservation of resources and impacts within the jurisdiction of a municipality in co-operation with other organs of state.
- (5) The model bylaws referred to in subsection (1) must include measures for environmental management, which may include-
  - (a) auditing, monitoring and ensuring compliance; and
  - (b) reporting requirements and the furnishing of information.

#### 47. **Procedure for making regulations**

- (1) Before making any regulations under this Act, a Minister or MEC must-
  - (a) publish a notice in the relevant Gazette-
    - (i) setting out the draft regulations; and
    - (ii) inviting written comments to be submitted on the proposed regulations within a specified period mentioned in the notice; and
  - (b) consider all comments received in accordance with paragraph (a)(ii).
- (2) The Minister must, within 30 days after promulgating and publishing any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces, and an MEC must so table the regulations in the relevant provincial legislature or, if Parliament or the provincial legislature is then not in session, within 30 days after the beginning of the next ensuing session of Parliament or the provincial legislature.  
[Subsection (3), (4), (5) and (6) deleted by Act 8 of 2004]
- (3) Notwithstanding subsection (2), any regulation made in terms of section 24(5)(bA) must be submitted to Parliament 30 days prior to publication.

[Sub.s (3) added by s.11 of Act 62 of 2008]

#### 47A. **Regulations, legal documents and steps valid under certain circumstances**

- (1) A regulation or notice, or an authorisation, permit or other document, made or issued in terms of this Act or a specific environmental management Act—
  - (a) but which does not comply with any procedural requirement of the relevant Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person;
  - (b) may be amended or replaced without following a procedural requirement of the relevant Act if—
    - (i) the purpose is to correct an error; and
    - (ii) the correction does not change the rights and duties of any person materially.

- (2) The failure to take any steps in terms of this Act or a specific environmental management Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure—
- (a) is not material;
  - (b) does not prejudice any person; and
  - (c) is not procedurally unfair.

**47B. Consultation**

When in terms of this Act or a specific environmental management Act the Minister or an MEC is required to consult any person or organ of state, such consultation is regarded as having been satisfied if a formal written notification of intention to act has been made to that person or organ of state and no response has been received within a reasonable time.

**47C. Extension of time periods**

The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period which binds the Minister or MEC.

**47D. Delivery of documents**

- (1) A notice or other document in terms of this Act or a specific environmental management Act may be issued to a person—
- (a) by delivering it by hand;
  - (b) by sending it by registered mail—
    - (i) to that person's business or residential address; or
    - (ii) in the case of a juristic person, to its registered address or principal place of business; or
  - (c) where an address is unknown despite reasonable enquiry, by publishing it once in the Gazette and once in a local newspaper circulating in the area of that person's last known residential or business address.
- (2) A notice or other document issued in terms of subsection (1)(b) or (c) must be regarded as having come to the notice of the person, unless the contrary is proved.

[Sections 47A to 47D inserted by Act 46 of 2003]

**CHAPTER 10  
GENERAL AND TRANSITIONAL PROVISIONS**

**48. State bound**

This Act is binding on the State except in so far as any criminal liability is concerned.

**49. Limitation of liability**

Neither the State nor any other person is liable for any damage or loss caused by—

- (a) the exercise of any power or the performance of any duty under this Act or any specific environmental management Act; or
- (b) the failure to exercise any power, or perform any [function or] duty under this Act or any specific environmental management Act,

unless the exercise of or failure to exercise the power, or performance of or failure to perform the duty was unlawful, negligent or in bad faith..

[Section 49 amended by Act 46 of 2003]

#### 50. **Repeal of laws**

- (1) Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A, 14B, 14C, 15, 27A and 38 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are hereby repealed.
- (2) Sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) and the notices and regulations issued pursuant to sections 21 and 22 and in force on the commencement date of this Act are repealed with effect from a date to be published by the Minister in the Gazette, which date may not be earlier than the date on which regulations or notices made or issued under section 24 of this Act are promulgated and the Minister is satisfied that the regulations and notices under sections 21 and 22 have become redundant.
- (3) An application made in terms of section 21, 22 or 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), that has been submitted but not finalised when those sections are repealed, must be finalised as if those sections had not been repealed.
- (4) In order to ensure that the transition between the legal requirements of sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), and the requirements of this Act is efficient, the Minister may by notice in the Gazette list activities included in Government Notice R1182 of 5 September 1997 that will remain valid until such time as an MEC promulgates a list of activities for that province.

[Addition of subsection (3) and (4) by Act 8 of 2004]

#### 51. **Savings**

Anything done or deemed to have been done under a provision repealed by this Act-

- (a) remains valid to the extent that it is consistent with this Act until anything done under this Act overrides it; and
- (b) subject to paragraph (a) is considered to be an action under the corresponding provision of this Act.

#### 52. **Short title**

This Act is called the National Environmental Management Act, 1998.

#### 53. **Commencement**

This Act comes into operation on a date fixed by the President in the Gazette.

**SCHEDULE 1**

**Section 11(1)**

**National departments exercising functions which may affect the environment**

- \* Department of Environmental Affairs and Tourism
- \* Department of Land Affairs
- \* Department of Agriculture
- \* Department of Housing
- \* Department of Trade and Industry
- \* Department of Water Affairs and Forestry
- \* Department of Transport
- \* Department of Defence

**SCHEDULE 2**

**Section 11(2)**

**National departments exercising functions that involve the management of the environment**

- \* Department of Environmental Affairs and Tourism
- \* Department of Water Affairs and Forestry
- \* Department of Minerals and Energy
- \* Department of Land Affairs
- \* Department of Health
- \* Department of Labour

**SCHEDULE 3**

**(Section 34)**

**Part (a): National Legislation**

<b>No. and year of law</b>	<b>Short title</b>	<b>Relevant provisions</b>
Act No. 36 of 1947	Fertilisers, 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. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	Section 9, Sections 7(2)(a) to (d), 9(1)(a) to (c), 14A, 15(1)(a) and (b), 15(2), 17(4), 19(5), 20(11), 23(3), 24(2), 28(3), 29(4), 31(6), 32(2), 34(4), 37(4), 40(4) and 41(2)
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	Section 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	Sections 24F(1) and (2), 24G(3), 28(14), 30(11), 31N(1) and 34A(1)(a), (b) and (c) and (d)
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	NEM: Protected Areas Act, 2003	Sections 45(1), 46(1), 47(2), 47(3), 48(1), 50(5), read with sections 89(1), 89(1)(b), (c) and (d) and 50A
Act No. 10 of 2004	NEM: 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) and 81(1)
Act 39 of 2004	NEM: Air Quality Act, 2004	Sections 51(1)(a) to (h), 51(2) and (3)
Act No. 59 of 2008	NEM; 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), 67(2)(a), (b), (c), (d), (e)
Act No. 24 of 2008	NEM;Integrated Coastal Management Act, 2008	Sections 69 read with 79(1) (a), 70(1) read with 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)

Amended by GN731 GG 356656 September 2012

[Schedule 3 substituted by Act 8 of 2004]  
 [Schedule 3 Part (a) Substituted by s.25 of Act 14 of 2009]

**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 Ordinance No. 15 of 1974	Orange Free State Townships Natal Nature Conservation	Section 40(1)(a)(ii) 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	Cape Nature and Environmental Conservation Ordinance	Section 86(1) in so far as it relates to contraventions of sections, 41(1)(b)(ii) and (c)-(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 and 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

[Schedule 3 Part (b) Substituted by s.25 of Act 14 of 2009]

**Amendments**

- National Environmental Management Amendment Act, Act No. 56 of 2002.
- National Environmental Management Amendment Act, Act No. 8 of 2004
- National Environmental Management Amendment Act, Act No. 46 of 2003
- National Environmental Laws Amendment Act, Act No. 44 of 2008
- National Environmental Management Amendment Act, Act No. 62 of 2008
- National Environmental Laws Amendment Act, Act No. 14 of 2009