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THE PRESIDENCY

No. 1318

5 December 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 44 of 2008: National Environment Laws Amendment Act, 2008.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 3 December 2008.)

ACT

To provide for the Atmospheric Pollution Prevention Act, 1965, to be regarded as a specific environmental management Act until section 60 of the National Environmental Management: Air Quality Act, 2004, takes effect; to amend the Environment Conservation Act, 1989, so as to rectify certain incorrect references in the Act; to amend the National Environmental Management Act, 1998, so as to clarify an uncertainty in the Act concerning certain definitions; to authorise the Minister of Water Affairs and Forestry to designate persons as environmental management inspectors; to provide for environmental management inspectors to be regarded as peace officers as contemplated in the Criminal Procedure Act, 1977; and to provide for a penalty for the offence of failing to comply with a compliance notice in terms of section 31N of the National Environmental Management Act, 1998; and to amend the National Environmental Management: Air Quality Act, 2004, so as to substitute Schedule 1 to that Act; and to provide for matters connected therewith.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the Environment Conservation Act, 1989 (Act No. 73 of 1989);
 - (b) the National Water Act, 1998 (Act No. 36 of 1998);
 - (c) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003); 20
 - (d) the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); or
 - (e) the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), 25
- and includes any regulation or other subordinate legislation made in terms of any of those Acts.”.

Insertion of section 31BA in Act 107 of 1998

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

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

31BA. (1) The Minister of Water Affairs and Forestry may—

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

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

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

“Mandates 45

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

- (a) this Act; 50
- (b) a specific environmental management Act;
- (c) specific provisions of this Act or a specific environmental management Act;

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- (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— 5

- (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." 10

Amendment of section 31H of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 15

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

"(5) In addition to the powers set out in this Part, an environmental management inspector must be regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)— 20

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

Amendment of section 31N of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 25

7. Section 31N of the National Environmental Management Act, 1998, is hereby amended by the addition of the following subsection:

"(3) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding five million rand or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment." 30

Substitution of Schedule 1 to Act 39 of 2004

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

"SCHEDULE 1**(Section 60)****Legislation repealed**

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

Short title and commencement

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