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No. 46602

THE PRESIDENCY

No. 2203 **24 June 2022**

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

Act No. 02 of 2022: National Environmental Management Laws Amendment Act, 2022

DIE PRESIDENSIE

No. 2203 **24 Junie 2022**

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 02 va Nasionale O 2022



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

—————
(English text signed by the President)
(Assented to 21 June 2022)
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ACT**To amend the—**

- **National Environmental Management Act, 1998**, so as to correct the citation to the definition of “Constitution”; to add new definitions of “audit”, “black”, “environmental management instrument”, “indigenous knowledge practitioner”, “latent environmental impacts”, “mining activity” and “mitigate”, “municipal council”, “municipality”, “municipal manager”, “rehabilitate”; to correct the definition of “environmental mineral resources inspector”; to provide clarity to the definition of “financial provision”; to add a new environmental management principle promoting diversity in the sector; to provide clarity on what an environmental management instrument is; to use the term environmental management instrument consistently in the Act, to remove a duplicated provision for making regulations for laying down the procedures for the adoption of environmental management instruments; to provide for a register and making available the register of all environmental management instruments adopted in terms of the Act; to provide clarity that the Minister responsible for mineral resources is responsible for mining activities as defined; to clarify that the MEC can be regarded as the competent authority for processing environmental authorisation applications for national priorities in the event that Cabinet has identified that the Minister should be the competent authority, when there is agreement between the Minister and the relevant MEC; to provide for agreement between the Minister, Minister responsible for mineral resources or MEC regarding processing of environmental authorisation applications; to provide for simultaneous submission of the National Environmental Management Act and specific environment management Act applications for purposes of the one environmental system; to provide for simultaneous submission of National Environmental Management Act and specific environmental management Act applications in order to enable integrated environmental authorisations; to provide for a trigger for the simultaneous submission of National Environmental Management Act or specific environmental management Act applications after acceptance of an application in terms of the Mineral and Petroleum Resources Development Act, 2002; to provide clarity that a successor in title or person who controls the land upon which an unlawful activity has been

commenced, undertaken or conducted may also lodge a section 24G application relating to an environmental authorisation or a waste management licence; to increase the maximum amount payable for a section 24G administrative fine; to empower the Minister to prescribe the information that must be contained in an environmental management programme; to provide clarity on consultation to be undertaken and to enable an environmental assessment practitioner to undertake the consultation with an organ of state on applications for environmental authorisation; to provide clarity on what is to be audited in relation to financial provisioning; to provide the Minister with the power to prescribe instances for which financial provisioning is required; to provide clarity that an applicant or holder of an environmental authorisation, holder and holder of an old order right relating to mining activities must provide financial provision for progressive rehabilitation, mitigation, decommissioning, mine closure and the management of post-closure environmental impacts; to identify the vehicles which must be used when providing the financial provision; to allow the Minister responsible for mineral resources or Minister responsible for water affairs access to the financial provision to undertake rehabilitation if the holder of an environmental authorisation for a mining activity, holder or holder of an old order right fails to do so; to make it clear that the financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure and post-closure activities as prescribed; to allow for periods for review of the financial provision and the publication of the review decision to be prescribed; to make it a compulsory requirement for the rehabilitation which can be undertaken annually to be undertaken; to provide for the Minister responsible for mineral resources in consultation with the Minister and the Minister responsible for water affairs to approve an annual drawdown of funds as prescribed for rehabilitation purposes within a certain timeframe before decommissioning and closure; to require the transfer of financial provision to the Minister responsible for mineral resources on the issuing of a closure certificate; to require the Minister responsible for mineral resources to access funds, on the issuing of a closure certificate, provided for the rehabilitation of latent environmental impacts in the case where the vehicle is insurance; to include the holder of an environmental authorisation for a mining activity, holder and holder of an old order right and owner of works, under the provisions related to environmental liability and the requirement to plan, manage and implement mine closure procedures; to provide clarity that residue stockpiles and residue deposits must be managed in terms of this Act; to provide clarity that a section 28(4) directive may also be issued to an owner of the land, a person in control of the land or a person that has a right to use the land in question; to empower a municipal manager to issue section 28(4) directives; to empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from an organ of state that executes regulatory functions; to empower an MEC to designate environmental management inspectors to undertake compliance and enforcement actions in respect of provincial environmental legislation; to empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors; to provide alignment between the powers and duties of environmental mineral and petroleum inspectors and environmental management inspectors and the training they are required to attend prior to designation; to provide clarity that the conducting of a "search" is not the primary purpose of an environmental management inspector undertaking a routine inspection; to empower an environmental management inspector to detain an item for further analysis or verification for purposes of determining compliance or not with applicable legal requirements; to provide clarity that the Minister's power to develop regulations on admission of guilt fines contextualises the related provisions of the Criminal Procedure Act, 1977; to empower the Minister responsible for mineral resources, the Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of

this Act; to provide clarity on circumstances in which an appeal against a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment does not automatically suspend it; to provide clarity that an appeal or objection against a directive or compliance notice must be lodged at the appropriate appeal or objection authority; to correct references and cross-references to offences and penalties; to make failure to comply with certain financial provisioning requirements an offence and to update the list of offences and penalties; and to clarify that prospecting, exploration and production operations form part of the one environmental system agreement;

- National Environmental Management: Protected Areas Act, 2003, so as to provide for the Chief Financial Officer of the South African National Parks to be a member of the Board; to provide for the criteria under which a section 48 permission may be issued or rejected; and to create a new offence for non-compliance with section 48A which prohibits certain activities in marine protected areas; to rectify incorrect references to offences;
- National Environmental Management: Biodiversity Act, 2004, so as to provide clarity on the definition of “control” and to insert definitions of “eradicate” and “well-being”; to ensure that indigenous biological resources are used sustainably; to ensure that certain species remain in State custody despite escape from a protected area; to empower the Minister to prohibit certain activities that may negatively impact on the well-being of an animal; to provide for the Chief Financial Officer of the South African National Biodiversity Institute to be a member of the Board; to provide clarity on measures to be undertaken to eradicate listed invasive species; to provide clarity on the steps, actions or methods to be undertaken to either control or eradicate listed invasive species; and to ensure that the MECs responsible for environmental affairs follow the consultation process set out in sections 99 and 100 before exercising a power in terms of a provision under the Act;
- National Environmental Management: Air Quality Act, 2004, so as to provide the Minister with discretion to establish the National Air Quality Advisory Committee; to provide clarity on the consequences of unlawful commencement of a listed activity; to provide clarity that a provincial organ of state is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality or both a metropolitan and district municipality; to provide for textual amendment to section 36(5)(d); and to provide for revocation or suspension of an atmospheric emission licence;
- National Environmental Management: Integrated Coastal Management Act, 2008, so as to allow for the removal of structures erected prior to commencement of the Act and to repeal Chapter 9 in order to align appeals with section 43 of the National Environmental Management Act, 1998;
- National Environmental Management: Waste Act, 2008, so as to move all definitions from Schedule 3 to section 1; to provide for textual amendment to the definitions of “residue deposits”, “residue stockpiles” and “waste”; to add definitions for “commercial value” and “trade in” as it relates to the definition of “waste”; to provide for the exclusion of residue stockpiles and residue deposits from the provisions of the Act; to provide for the Waste Management Bureau to be established as a public entity; to provide for the simultaneous submission of the site assessment report and remediation plan relating to contaminated land; to provide clarity that the Minister must keep a national register of all contaminated land areas; to provide clarity that the Minister responsible for mineral resources is responsible for implementation of the waste management system in so far as it relates to a waste management activity that is a mining activity as defined; to empower the Minister to take a decision in the place of the provincial licensing authority under certain circumstances; to provide for the payment of processing fee for the variation of a waste management licence; to increase the fines that could be imposed in terms of regulations made under the Act; to provide clarity that there will be no exemptions provided from obtaining a waste management licence; and to repeal Schedule 3;

- **National Environmental Management Amendment Act, 2008, so as to clarify the instances prior to 8 December 2014 when the requirements of the Act are regarded as having been fulfilled; and to provide clarity that an appeal against an environmental management programme or plan lodged in terms of the Mineral and Petroleum Resources Development Act must be finalised under that Act;**
 - **To provide for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the National Environmental Management: Waste Act, 2008; to provide for transitional provisions regarding the continuation of the Waste Management Bureau;**
- and to provide for matters connected therewith.**

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

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004, section 1 of Act 44 of 2008, section 1 of Act 62 of 2008, section 1 of Act 14 of 2009, section 1 of Act 30 of 2013 and section 1 of Act 25 of 2014 5

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

- (a) by the insertion after the definition of “assessment” of the following definition: 10
 - “ **‘audit’**, when used in sections 24P and 24PA, means a review of the scientific and engineering acceptability of the measures and the adequacy of related costs associated with financial provision, as prescribed;”;
- (b) by the insertion after the definition of “best practicable environmental option” of the following definition: 15
 - “ **‘black’**, when used in section 2(4)(gA), has the meaning assigned to “black people” in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);”;
- (c) by the substitution for the definition of “Constitution” of the following definition: 20
 - “ **‘Constitution’** means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];”;
- (d) by the insertion after the definition of “environmental management inspector” of the following definition: 25
 - “ **‘environmental management instrument’** means—
 - (i) environmental management framework;
 - (ii) strategic environmental assessment;
 - (iii) spatial tool;
 - (iv) environmental management programme;
 - (v) environmental risk assessment;
 - (vi) environmental feasibility assessment;
 - (vii) norm or standard;

- (viii) minimum information requirements; or
- (ix) any other relevant environmental management instrument, as may be developed in time;";
- (e) by the substitution for the definition of "environmental mineral resource inspector" of the following definition: 5
 - "**'environmental mineral [resource] and petroleum inspector'** means a person designated as an environmental mineral [resource] and petroleum inspector in terms of section 31BB;";
- (f) by the substitution for the definition of "financial provision" of the following definition: 10
 - "**'financial provision'** means the amount which is to be provided in terms of this Act by a holder, holder of an old order right or applicant, guaranteeing the availability of funds to fulfil the obligation to undertake progressive rehabilitation, decommissioning, closure and post-closure activities including the pumping and treatment of polluted or extraneous water to ensure that the State does not become liable for those costs which should be covered by a holder, holder of an old order right or applicant;"; 15
- (g) by the insertion after the definition of "holder of an old order right" of the following definition: 20
 - "**'indigenous knowledge practitioner'** has the meaning assigned to it in section 1 of the Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 (Act No. 6 of 2019);";
- (h) by the insertion after the definition of "international environmental instrument" of the following definition: 25
 - "**'latent environmental impacts'**, when used in sections 24P and 24PA, means impacts which are existing and defined, but not yet developed and will manifest post-closure;";
- (i) by the insertion after the definition of "Mineral and Petroleum Resources Development Act, 2002" of the following definition: 30
 - "**'mining activity'** means an activity which requires a permission, right, permit or consent in terms of the Mineral and Petroleum Resources Development Act, 2002, including hydraulic fracturing and reclamation;";
- (j) by the insertion after the definition of "Minister responsible for mineral resources" of the following definitions: 35
 - "**'municipal council'** means a municipal council referred to in section 157(1) of the Constitution;
 - 'municipality'**, when referred to as—
 - (a) an entity, means a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and 40
 - (b) a geographic area, means a municipal area determined in terms of section 21 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998); 45
 - 'municipal manager'** means a person appointed in terms of section 54A(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
 - 'mitigate'** when used in section 24P and 24PA, means to alleviate, reduce or make less severe;"; 50
- (k) by the insertion after the definition of "regulation" of the following definition:
 - "**'rehabilitate'**, when used in sections 24P and 24PA, means to restore to the approved end use of land;"; and
- (l) by the deletion of the definition "spatial development tool".

Amendment of section 2 of Act 107 of 1998

2. Section 2 of the National Environmental Management Act, 1998, is hereby amended by the insertion in subsection (4) after paragraph (q) of the following paragraph:

“(qA) The full participation of previously disadvantaged professionals, with specific emphasis on black professionals and indigenous knowledge practitioners in the environmental management sector, must be recognised and their participation in the sector promoted.” 5

Amendment of section 24 of Act 107 of 1998, as amended by section 2 of Act 8 of 2004, section 2 of Act 62 of 2008, section 5 of Act 30 of 2013 and section 2 of Act 25 of 2014 10

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

(a) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs: 15

“(b) geographical areas based on environmental attributes, and as specified in **[spatial development tools]** an environmental management instrument, adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which specified activities may not commence without an environmental authorisation from the competent authority; 20

(c) geographical areas based on environmental attributes, and specified in **[spatial tools or]** an environmental management **[instruments]** instrument, adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which **[specified]** activities contemplated in paragraphs (a) and (b) may be excluded from the requirement to obtain an environmental authorisation from the competent authority, but which must comply with the requirements set in such environmental management instrument, if any;” 25

(b) by the substitution in subsection (2A) for subparagraph (i) of paragraph (b) of the following subparagraph: 30

“(i) not accept any further application for an environmental authorisation for the identified listed or specified activity in the identified geographical area until such time that the prohibition or restriction has been lifted;” 35

(c) by the substitution in subsection (5) for paragraph (bA) of the following paragraph: 40

“(bA) laying down the procedure to be followed for the preparation, evaluation, adoption and review of **[prescribed]** environmental management instruments, including any conditions set out in such instrument, if any condition applies[, including— 40

- (i) **environmental management frameworks;**
- (ii) **strategic environmental assessments;**
- (iii) **environmental impact assessments;**
- (iv) **environmental management programmes;** 45
- (v) **environmental risk assessments;**
- (vi) **environmental feasibility assessments;**
- (vii) **norms or standards;**
- (viii) **spatial development tools;**
- (viiiA) **minimum information requirements; or** 50
- (ix) **any other relevant environmental management instrument that may be developed in time];”;**

(d) by the deletion in subsection (5) of paragraph (bB); and

(e) by the insertion after subsection (5) of the following subsection: 55

“(5A) The Minister must keep a register of all environmental management instruments adopted in terms of this Act and make it publicly available.”

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

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

- (a) by the substitution for subsection (2A) of the following subsection: 5
 - “(2A) The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection (1) where the listed or specified activity is [**directly related to—**
 - (a) **prospecting or exploration of a mineral or petroleum resource;** 10
 - or**
 - (b) **extraction and primary processing of a mineral or petroleum resource]** a mining activity.”;
- (b) by the substitution in subsection (2B) for paragraph (a) of the following paragraph:
 - “(a) Notwithstanding the other provisions of this section, and in the event of the Minister not being the competent authority, the Minister must be identified as the competent authority where a Cabinet decision stipulates that the Minister must be the competent authority for activities related to a matter declared as a national priority or matters related to such national priority, unless otherwise agreed to in terms of subsection (3).”;
- (c) by the substitution for subsection (3) of the following subsection:
 - “(3) The Minister, the Minister responsible for mineral resources and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities— 25
 - (a) contemplated in [subsection] subsections (2) and (2B) may be dealt with by the MEC or the Minister responsible for mineral resources;
 - (b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister or the Minister responsible for mineral resources.”;
- (d) by the addition of the following subsections: 30
 - “(11) A person who requires an environmental authorisation which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts, must simultaneously submit those applications to the relevant competent authority or licensing authority, as the case may be, indicating in each application all other licences, authorisations and permits applied for. 35
 - (12) A person who wishes to apply for a mining activity which also involves an activity that requires a licence, permit or authorisation in terms of any of the specific environmental management Acts, must simultaneously apply for an environmental authorisation after the acceptance, where such acceptance is applicable, of the application in terms of the Mineral and Petroleum Resources Development Act, 2002. 40
 - (13) If the competent authority or licensing authority contemplated in subsections (11) and (12), as the case may be, is the same authority to consider and decide the application for an environmental authorisation under this Act and the application under a specific environmental management Act, an integrated decision must be issued in accordance with section 24L.”. 45

Amendment of section 24G of Act 107 of 1998, as substituted by section 6 of Act 62 of 2008 and section 9 of Act 30 of 2013 50

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

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraphs: 55

- “(b) has commenced, undertaken or conducted a waste management activity without a waste management licence in terms of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)[,];
- (c) is in control of, or successor in title to, land on which a person— 5
- (i) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1); or
 - (ii) has commenced with, undertaken or conducted a waste management activity in contravention of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), 10
- the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be[,]—
- (aa) **[may]** must direct the applicant to— 15
- [(i)] (A) immediately cease the activity pending a decision on the application submitted in terms of this subsection, except if there are reasonable grounds to believe the cessation will result in serious harm to the environment;
 - [(ii)] (B) investigate, evaluate and assess the impact of the activity on the environment; 20
 - [(iii)] (C) remedy any adverse effects of the activity on the environment;
 - [(iv)] (D) cease, modify or control any act, activity, process or omission causing pollution or environmental degradation; 25
 - [(v)] (E) contain or prevent the movement of pollution or degradation of the environment;
 - [(vi)] (F) eliminate any source of pollution or degradation;
 - (G) undertake public participation which is appropriate to bring the unlawful commencement, undertaking or conducting of a listed, specified or waste management activity to the attention of interested and affected parties, and to provide them with a reasonable opportunity to comment on the application in accordance with relevant elements of public participation as prescribed in terms of this Act; and 30 35
 - [(vii)] (H) compile a report containing—
 - [(aa)] (AA) a description of the need and desirability of the activity;
 - [(bb)] (BB) 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 and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity; 40 45
 - [(cc)] (CC) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment of the activity; and 50
 - [(dd)] (DD) 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 the issues raised have been addressed, if applicable; 55
 - [(ee) **compile an environmental management programme; or]** and

- [(viii)] *(bb)* may direct the applicant to compile an environmental management programme or to provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC, as the case may be, may deem necessary.”; 5
- (b) by the substitution for subsection (4) of the following subsection:
 - “(4) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed [R5] R10 million and which must be determined by the competent authority, before the Minister, Minister responsible for mineral resources or MEC concerned may act in terms of subsection (2)(a) or (b).”; and 10
- (c) by the substitution in subsection (6) for paragraph (a) of the following paragraph:
 - “(a) the environmental management inspector’s, environmental mineral and petroleum inspector’s or the South African Police Services’ authority to investigate any transgression in terms of this Act or any specific environmental management Act;”. 15

Amendment of section 24N of Act 107 of 1998, as amended by section 5 of Act 25 of 2014 20

6. Section 24N of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) The environmental management programme must contain[—] information that is prescribed. 25
- [(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 (1A), including environmental impacts or objectives in respect of—** 25
 - (i) **planning and design;** 30
 - (ii) **pre-construction and construction activities;** 30
 - (iii) **the operation or undertaking of the activity in question;**
 - (iv) **the rehabilitation of the environment;**
 - (v) **closure, if applicable;**
 - (b) **details of—** 35
 - (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;** 40
 - (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;** 45
 - (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** 50
 - (g) **a description of the manner in which it intends to—** 50
 - (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** 55
 - (iii) **comply with any prescribed environmental management standards or practices.]”.**

Amendment of section 24O of Act 107 of 1998, as amended by section 11 of Act 30 of 2013 and amended by section 6 Act 25 of 2014

7. Section 24O of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for the heading of the following heading: 5
 “**Criteria to be taken into account by competent authorities when considering applications and consultation requirements**”;
- (b) by the substitution for subsection (2) of the following subsection; 10
 “(2) The Minister, the Minister responsible for mineral resources [or], an MEC or an environmental assessment practitioner must consult with every [State department] organ of state that administers a law relating to a matter affecting the environment when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation.”;
- (c) by the deletion of subsection (2A); and 15
- (d) by the substitution for subsection (3) of the following subsection: 20
 “(3) [A State department] An organ of state consulted in terms of subsection (2) must submit comment within 30 days from the date on which the Minister, Minister responsible for mineral resources[,] or MEC[,] or environmental assessment practitioner requests such [State department] organ of state in writing to submit comment.”.

Substitution of section 24P of Act 107 of 1998, as amended by section 7 of Act 25 of 2014

8. The following section is hereby substituted for section 24P of the National Environmental Management Act, 1998: 25

“Financial provision for remediation of environmental damage

- 24P.** (1) In this section, ‘review’ means a formal assessment of the financial provisioning with the intention of instituting change, if necessary.
- (2) The Minister, or an MEC in concurrence with the Minister, may prescribe the instances for which financial provision must be set aside. 30
 - (3) Where prescribed, an applicant, must, before the competent authority issues an environmental authorisation, determine the financial provision which is required for undertaking progressive rehabilitation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water, where relevant. 35
 - (4) Where prescribed, the applicant, holder of an environmental authorisation, holder or holder of an old order right must provide financial provision for progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water, where relevant, to ensure the mitigation and rehabilitation of adverse environmental impacts, including latent environmental impacts. 40
 - (5) A holder of an environmental authorisation, holder or holder of an old order right must annually undertake, as prescribed, the mitigation, remediation and rehabilitation measures. 45
 - (6) The financial provisioning vehicles which must be used when providing the financial provision include—
 - (a) cash deposited into an account administered by the Minister responsible for mineral resources;
 - (b) insurance from an institution that is registered in terms of the applicable insurance sector legislation; 50
 - (c) a financial guarantee from an institution that is registered in terms of the applicable financial sector legislation;
 - (d) a trust fund established for the sole purposes of subsection (4); and

- (e) any other vehicle, including any condition applicable to such a vehicle, identified by the Minister by notice in the *Gazette* in concurrence with the Minister of Finance and the Minister responsible for mineral resources, and including, but not limited to—
 - (i) a closure rehabilitation company; 5
 - (ii) a parent company guarantee; and
 - (iii) an affiliate company guarantee.
- (7) The financial provisioning vehicles contemplated in subsection (6) may be used in combination as required.
- (8) (a) Where the Minister, the Minister for mineral resources or the MEC is not satisfied with the determination or review of the financial provision, the Minister, the Minister responsible for mineral resources or the MEC may appoint an independent party to conduct an assessment of the determination or review on their behalf. 10
- (b) Any costs in respect of such assessment must be borne by the applicant, holder of the environmental authorisation, holder or holder of an old order right. 15
- (9) If any holder of an environmental authorisation, holder or holder of an old order right fails to undertake such mitigation, remediation and rehabilitation of such impact, as prescribed, the Minister responsible for mineral resources, the Minister responsible for water affairs or MEC may, upon written notice to such holder, use all or part of the financial provision contemplated in this section to undertake mitigation, remediation and rehabilitation as the Minister, the Minister responsible for mineral resources or the MEC deems appropriate. 20 25
- (10) The financial provision may only be used for the purposes of progressive rehabilitation, decommissioning, closure, post closure, as prescribed, to ensure mitigation, remediation and rehabilitation of adverse environmental impacts for which it was provided and shall not be used for any other purposes. 30
- (11) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (2) and all amounts arising from that provision.”.

Insertion of section 24PA in Act 107 of 1998

9. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 24P: 35

“Financial provision for mining

- 24PA.** (1) A holder of an environmental authorisation for a mining activity, holder or holder of an old order right must—
- (a) maintain and retain a financial provision until a closure certificate is issued by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002; 40
 - (b) review and adjust the environmental liability, as prescribed;
 - (c) at the intervals as prescribed, subject the financial provision and the basis of the calculations to an independent audit; 45
 - (d) at the intervals as prescribed, submit to the Minister responsible for mineral resources an audit report;
 - (e) publish, at the intervals as prescribed, the review decision in a provincial newspaper as well as a newspaper distributed within the municipal area within which the mining operation is located, and indicate where the review can be obtained; and 50
 - (f) annually undertake the mitigation and rehabilitation measures, as prescribed.

(2) The Minister responsible for mineral resources may, in consultation with the Minister and Minister responsible for water affairs, approve an annual drawdown of the financial provision in the prescribed manner to support final decommissioning and closure for a period not exceeding 10 years before the final decommissioning and closure. 5

(3) The financial provision provided in respect of latent environmental impacts or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, must be transferred to the Minister responsible for mineral resources upon the issuing of a closure certificate, unless otherwise prescribed. 10

(4) Where the financial provisioning vehicle used for the financial provision in respect of latent environmental impacts or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, is insurance, the Minister responsible for mineral resources must access the funds on issuing the closure certificate. 15

(5) If any person contemplated in subsection (1) fails to mitigate and rehabilitate environmental impacts, as prescribed, the Minister responsible for mineral resources or the Minister responsible for water affairs may, upon written notice to such person, use all or part of the financial provision contemplated in this section to rehabilitate or manage the environmental impact in question.”. 20

Amendment of section 24R of Act 107 of 1998, as amended by section 8 of Act 25 of 2014

10. Section 24R of the National Environmental Management Act, 1998, is hereby amended— 25

(a) by the substitution for subsection (1) of the following subsection:
 “(1) Every holder, holder of an environmental authorisation for a mining activity, 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 polluted or extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned.”; 30

(b) by the deletion of subsection (2); and 35

(c) by the substitution for subsection (3) of the following subsection:
 “(3) Every holder, holder of an environmental authorisation for a mining activity, 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.”. 40

Repeal of section 24S of Act 107 of 1998, as inserted by section 9 of Act 25 of 2015

11. Section 24S of the National Environmental Management Act, 1998, is hereby repealed.

Amendment of section 28 of Act 107 of 1998, as amended by section 12 of Act 14 of 2009, section 12 of Act 30 of 2013 and section 10 of Act 25 of 2014 45

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

(a) by the substitution in substitution (3) for paragraph (d) of the following paragraph:
 “(d) contain or prevent the movement of pollutants or the [causant] cause of degradation;” 50

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

- “(4) The Director-General, the Director-General of the department responsible for mineral resources [**or**], a provincial head of department or a municipal manager of a municipality may, **after having given adequate opportunity to affected persons to inform him or her of their relevant interests,** direct any person [**who is causing, has caused or may cause significant pollution or degradation of the environment**] referred to in subsection (2) to—
- (a) cease any activity, operation or undertaking;
 - (b) investigate, evaluate and assess the impact of specific activities and report thereon;
 - (c) commence taking specific measures before a given date;
 - (d) diligently continue with those measures; and
 - (e) complete those measures 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.”;**
- (c) by the insertion after subsection (4) of the following subsection:
- “(4A) Before issuing a directive contemplated in subsection (4), the Director-General, the Director-General of the department responsible for mineral resources, a provincial head of department or a municipal manager of a municipality must give adequate notice in writing to the person to whom the directive is intended to be issued, of his or her intention to issue the directive and provide such person with a reasonable opportunity to make representations in writing: Provided that the Director-General, the Director-General of the department responsible for mineral resources, a provincial head of department or a municipal manager of a municipality may, if urgent action is necessary for the protection of the environment, issue the directive referred to in subsection (4), and give the person on whom the directive was issued an opportunity to make representations as soon as is reasonable thereafter.”;
- (d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
- “The Director-General, the Director-General of the department responsible for mineral resources [**or**], a provincial head of department or a municipal manager of a municipality, when considering any measure or time period envisaged in subsection (4), must have regard to the following[—]:”;
- (e) by the substitution for subsection (7) of the following subsection:
- “(7) Should a person fail to comply, or inadequately comply, with a directive issued under subsection (4), the Director-General, the Director-General of the department responsible for mineral resources [**or**], a provincial head of department or a municipal manager of a municipality may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.”;
- (f) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
- “Subject to subsection (9), the Director-General, the Director-General of the department responsible for mineral resources [**or**], a provincial head of department or a municipal manager of a municipality may recover costs for reasonable remedial measures undertaken or to be undertaken under subsection (7), before or after such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—”;
- (g) by the substitution for subsection (9) of the following subsection:

- “(9) The Director-General, the Director-General of the department responsible for mineral resources [or], a provincial head of department or a municipal manager of a municipality, may in respect of the recovery of costs under subsection (8), claim proportionally from any person who benefited from the measures undertaken under subsection (7).”;
- (h) by the substitution for subsection (12) of the following subsection:
- “(12) Any person may, after giving the Director-General, the Director-General of the department responsible for mineral resources [or], a provincial head of department or a municipal manager of a municipality, 30 days’ notice, apply to a competent court for an order directing the Director-General, the Director-General of the department responsible for mineral resources [or], any provincial head of department or a municipal manager of a municipality, to take any of the steps listed in subsection (4) if the Director-General, the Director-General of the department responsible for mineral resources [or], provincial head of department or a municipal manager of a municipality, fails to inform such person in writing that he or she has directed a person contemplated in subsection [(8)] (4) to take one of those steps, and the provisions of section 32(2) and (3) shall apply to such proceedings, with the necessary changes.”.

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

13. Section 31B of the of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:
- “(ii) any other organ of state that executes a regulatory function; and”.

Amendment of section 31BA of Act 107 of 1998, as inserted by section 4 of Act 44 of 2008

14. Section 31BA of the of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1)(a) for subparagraphs (i) and (ii) of the following subparagraphs:
- “(i) the Department [of Water Affairs and Forestry] responsible for water affairs; or
- (ii) any other organ of state that executes a regulatory function; and”.

Amendment of section 31BB of Act 107 of 1998, as inserted by section 11 of Act 25 of 2014

15. Section 31BB of the National Environmental Management Act, 1998, is hereby amended—
- (a) by the substitution for the heading of the following heading:
- “**Designation of environmental mineral [resource] and petroleum inspectors by Minister responsible for mineral resources**”;
- (b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) designate as an environmental mineral [resource] and petroleum inspector, any staff member of [the Department of Mineral Resources]—
- (i) the department responsible for mineral resources; or
- (ii) any other organ of state that executes a regulatory function; and”;
- (c) by the addition of the following subsection:
- “(2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister responsible for mineral resources and the relevant organ of state.”.

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

16. Section 31C of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph: 5
 “(ii) any other provincial organ of state that executes a regulatory function; and”.

Amendment of section 31D of Act 107 of 1998, as amended by section 12 of Act 25 of 2014

17. Section 31D of the National Environmental Management Act, 1998, is hereby amended— 10

- (a) by the substitution in subsection (1) for paragraphs (d) and (e) of the following paragraphs, respectively: 10
 - “(d) this Act and all specific environmental management Acts; **[or]** 15
 - (e) **[any combination of those Acts or provisions of those Acts.]** any provincial Act that substantively deals with environmental management; or”; 15
- (b) by the addition in subsection (1) of the following paragraph:
 - “(f) any combination of the Acts contemplated in this subsection or combination of the provisions of the said Acts.”; 15
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 20
 - “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 or any provincial Act that substantively deals with environmental management—”; 25
- (d) by the substitution for subsection (2A) of the following subsection:
 - “(2A) The Minister responsible for mineral resources may designate a person as an environmental mineral **[resource]** and petroleum inspector for the compliance monitoring and enforcement of the provisions of this Act or a specific environmental management Act in respect of which powers are conferred on him or her.”; 30
- (e) by the insertion after subsection (3) of the following subsection:
 - “(3A) An environmental management inspector and environmental mineral and petroleum inspector must exercise any power bestowed on them in terms of this Act in accordance with any applicable duty provided for in this Act.”; 35
- (f) by the substitution for subsection (4) of the following subsection:
 - “(4) Despite the provisions in subsections (2A) and (3), the Minister may, **[with the concurrence of]** after consultation with the Minister responsible for mineral resources, [if the environmental mineral resource inspectors are unable or not adequately able to fulfil the compliance and enforcement functions,] if it is necessary to address significant harm to the environment caused by prospecting, exploration, mining or production activities, [designate] direct the environmental management inspectors to implement or support the implementation of these functions in terms of this Act or a specific environmental management Act in respect of which powers have been conferred on the Minister responsible for mineral resources.”; and 40
- (g) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words: 50
 - “Subsequent to subsection (7), the Minister may, **[in concurrence]** after consultation with the Minister responsible for mineral resources, within a reasonable period of time and where appropriate, direct the environmental management inspectors to—”.

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

18. Section 31E of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:
 - “(a) qualification criteria for environmental management inspectors and environmental mineral and petroleum inspectors; and
 - (b) training that must be completed by environmental management inspectors and environmental mineral and petroleum inspectors.”; 10
- and
- (b) by the addition of the following subsection:
 - “(3) The Minister may prescribe a Code of Conduct applicable to all designated environmental management inspectors and environmental mineral and petroleum inspectors.”. 15

Substitution of section 31F of Act 107 of 1998, as amended by section 17 of Act 14 of 2009

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

“Proof of designation 20

31F. (1) A prescribed identity card must be issued to each person designated as an environmental management inspector or an environmental mineral and petroleum inspector.

(2) When exercising any powers or performing any duties in terms of this Act [or], a specific environmental management Act or a provincial Act that substantively deals with environmental management, an environmental management inspector or environmental mineral and petroleum inspector must, on demand by a member of the public, produce the identity card referred to in subsection (1).”.

Amendment of section 31G of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 30

20. Section 31G of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “An environmental management inspector or an environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D—”; 35
- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:
 - “(aA) may access and inspect any property, object or pack-animal for the purposes of ascertaining compliance with the legislation for which that inspector has been designated in terms of section 31D and for ascertaining compliance with a term or condition of a permit, authorisation or other instrument issued in terms of relevant legislation.”; 40
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “An environmental management inspector or a mineral and petroleum inspector—”; and 45
- (d) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:
 - “(i) in accordance with any instructions issued by the Minister, Minister responsible for mineral resources, Minister responsible for water affairs or MEC, as the case may be;”. 50

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

21. Section 31H of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5
 “An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may—”;
- (b) by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words: 10
 “question a person about any act or omission **[in respect of which there is a reasonable suspicion that it might]** that may constitute—”;
- (c) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 15
 “(b) upon reasonable suspicion, 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;”;
- (d) by the substitution in subsection (1)(c) for subparagraph (ii) of the following subparagraph: 20
 “(ii) to which this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management, relates;”;
- (e) by the substitution in subsection (1) for paragraphs (j) and (k) of the following paragraphs, respectively: 25
 “(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]** 30
 (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]** issue a lawful instruction in the execution of his or her mandate;”;
- (f) by the addition in subsection (1) of the following paragraph: 35
 “(l) 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 or a provincial Act that substantively deals with environmental management.”;
- (g) by the substitution for subsection (2) of the following subsection: 40
 “(2) A written notice issued in terms of subsection (1)(b) must **[be in the]** correspond substantially with 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.”;
- (h) by the substitution for subsection (3) of the following subsection: 45
 “(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 50
 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 or a provincial Act that substantively deals with environmental management.”;
- (i) by substitution in subsection (4) for the words preceding paragraph (a) of the following words: 55
 “An environmental management inspector or environmental mineral and petroleum inspector must—”;
- (j) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 60

“In addition to the powers set out in this Part, an environmental management inspector or environmental mineral and petroleum 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)”. 5

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

22. Section 31I of the National Environmental Management Act, 1998, is hereby amended— 10

- (a) by the substitution for subsection (2) of the following subsection: 10
 - “(2) When an item is seized in terms of this Part, the environmental management inspector or environmental mineral and petroleum inspector may [**request**] instruct 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.”; 15
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management inspector or environmental mineral and petroleum inspector may immobilise it by removing a part.”; and 20
- (c) by the substitution for paragraphs (a) and (b) of subsection (5) of the following paragraphs, respectively:
 - “(a) in the case of a specimen of threatened or protected species or alien species being imported into the Republic, at the port of entry, [**request**] instruct 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 25
 - (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**] instruct 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.”. 30 35

Amendment of section 31J of Act 107 of 1998, as amended by section 15 of Act 30 of 2013

23. Section 31J of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40
 - “An environmental management inspector or environmental mineral and petroleum 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 or any other mechanism of transport, on reasonable suspicion that that vehicle, vessel, aircraft, pack animal or other mechanism of transport—”; 45
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “An environmental management inspector or environmental mineral and petroleum inspector may, without a warrant, seize a vehicle, vessel, aircraft, pack-animal or any other mechanism of transport or anything contained in or on any vehicle, vessel, aircraft, pack-animal or other mechanism of transport—”; 50
- (c) by the substitution in subsection (2) for the words following paragraph (d) of the following words: 55

- “in terms of this Act **[or]**, a specific environmental management Act or a provincial Act that substantively deals with environmental management.”;
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 5
 “An environmental management inspector or environmental mineral and petroleum inspector may for the purpose of implementing subsection (1), at any time, and without a warrant—”;
- (e) by the substitution for subsection (5) of the following subsection: 10
 “(5) An environmental management inspector or environmental mineral and petroleum inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the power mentioned in section 31H.”; and
- (f) by the substitution for subsection (6) of the following subsection: 15
 “(6) An environmental management inspector or environmental mineral and petroleum 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 68 of 1995), to establish a roadblock or a checkpoint.”.

Amendment of section 31K of Act 107 of 1998, as amended by section 19 of Act 14 of 2009 20

24. Section 31K of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25
 “An environmental management inspector or environmental mineral and petroleum 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—”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 35
 “An environmental management inspector or environmental mineral and petroleum 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—”;
- (c) by the substitution for subsection (3) of the following subsection: 40
 “(3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector or an environmental mineral and petroleum 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.”;
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 45
 “An environmental management inspector or environmental mineral and petroleum inspector may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if—”;
- (e) by the substitution for subsection (5) of the following subsection: 50
 “(5) While carrying out a routine inspection, an environmental management inspector or environmental mineral and petroleum inspector may **[seize anything in or on any, including but not limited to business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item that may be used as** 55

evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.]—

- (a) upon reasonable suspicion that an offence in terms of the law for which that inspector has been designated in terms of section 31D has been committed, seize anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item that may be used as evidence in the prosecution of any person for an offence in terms of this Act, a specific environmental management Act or a provincial Act that substantively deals with environmental management; and
- (b) detain, for a reasonable period of time, anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purpose of ascertaining compliance with the legislation for which that inspector has been designated in terms of sections 31B, 31BA and 31C, as the case may be.”; and
- (f) by the substitution for subsection (7) of the following subsection:
 - “(7) An environmental management inspector or environmental mineral and petroleum inspector may exercise on such building, land, premises, vessel, aircraft, pack animals, container, bag, box, item and the like any of the powers mentioned in section 31H.”.

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

25. Section 31L of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may issue a compliance notice **[in]** which must correspond substantially with the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied—”;
- (b) by the substitution in subsection (2) of paragraph (d) of the following paragraph:
 - “(d) the procedure to be followed in lodging an objection to the compliance notice with the Minister, Minister responsible for mineral resources, Minister responsible for water affairs [or], MEC or municipal council, as the case may be.”;
- (c) by the substitution for subsection (3) of the following subsection:
 - “(3) An environmental management inspector or environmental mineral and petroleum inspector may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.”; and
- (d) by the substitution for subsections (4) and (5) of the following subsections, respectively:
 - “(4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister, Minister responsible for mineral resources, Minister responsible for water affairs [or], MEC or a municipal council 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, Minister responsible for mineral resources, Minister responsible for water affairs [or], MEC or a municipal council, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.”.

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

26. Section 31M of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 5

“(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], the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister [or], the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council may determine.”; and 10
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 15

“After considering any representations made in terms of subsection (1) and any other relevant information, the Minister [or], the Minister responsible for mineral resources, the Minister responsible for water affairs, MEC or municipal council, as the case may be—”.

Amendment of section 31N of Act 107 of 1998, as amended by section 7 of Act 44 of 2008 and section 20 of Act 46 of 2003 20

27. Section 31N of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

- “If a person fails to comply with a compliance notice, the environmental management inspector or an environmental mineral and petroleum inspector must report the non-compliance to the Minister, Minister responsible for mineral resources, Minister responsible for water affairs, [or] MEC or municipal council, as the case may be, and [the Minister or MEC] they may—”.

Amendment of section 31O of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 30

28. Section 31O of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 35

“(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 or a provincial Act that substantively deals with environmental management, all the powers of an environmental management inspector or environmental mineral and petroleum 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.”; and 40
- (b) by the substitution for subsection (2) of the following subsection: 45

“(2) Notwithstanding subsection (1), the Minister, Minister responsible for mineral resources, Minister responsible for water affairs 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.”.

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

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

“Duty to produce documents” 5

31P. 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 or a provincial Act that substantively deals with environmental management, must produce that document [at the request] on instruction of an environmental management inspector or an environmental mineral and petroleum inspector.” 10

Amendment of section 31Q of Act 107 of 1998, as amended by section 21 of Act 14 of 2009 and section 17 of Act 30 of 2013

30. Section 31Q of the National Environmental Management Act, 1998, is hereby amended— 15

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

“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[,], or a provincial Act that substantively deals with environmental management, except—”; and 20

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

“(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 a provincial Act that substantively deals with environmental management; or” 25

Substitution of section 34E of Act 107 of 1998, as inserted by section 7 of Act 46 of 2003 30

31. The following section is hereby substituted for section 34E of the National Environmental Management Act, 1998:

“Treatment of seized live specimens

34E. (1) 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] may be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it. 35

(2) For the purposes of this Chapter, seized live specimens may be disposed of in terms of section 30(a) of the Criminal Procedure Act, 1977.” 40

Amendment of section 34G of Act 107 of 1998, as inserted by section 7 of Act 46 of 2003

32. Section 34G of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 45

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

Amendment of section 42B of Act 107 of 1998, as inserted by section 9 of Act 62 of 2008

33. Section 42B of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 5
 - “(1) The Minister [**of Minerals and Energy**] responsible for mineral resources 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**] responsible for mineral resources; 10
 - (b) any officer in the Department [**of Minerals and Energy.**] responsible for mineral resources; or
 - (c) any organ of state, by agreement with that organ of state.”;
- (b) by the substitution in subsection (2) for paragraphs (c) and (d) of the following paragraphs, respectively: 15
 - “(c) does not prevent the performance of the function by the Minister responsible for mineral resources himself or herself; [**and**]
 - (d) [**may be withdrawn by the Minister**] may include the power to subdelegate[.]”;
- (c) by the addition in subsection (2) of the following paragraphs: 20
 - “(e) may be withdrawn by the Minister responsible for mineral resources, subject to any rights that may have accrued to any person; and
 - (f) does not divest the Minister responsible for mineral resources of the responsibility for the performance of the function.”; and 25
- (d) by the addition of the following subsection:
 - “(3) The Minister responsible for mineral resources may confirm, vary or revoke any decision taken in consequence of a delegation or subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.”. 30

Insertion of sections 42C and 42D in Act 107 of 1998

34. The following sections are hereby inserted in the National Environmental Management Act, 1998, after section 42B:

“Delegation of powers and duties by Minister responsible for water affairs 35

42C. (1) The Minister responsible for water affairs may delegate a power or duty vested in him or her in terms of this Act to an official in the department responsible for water affairs.

- (2) A delegation in terms of subsection (1)— 40
 - (a) must be in writing;
 - (b) may be subject to conditions;
 - (c) does not prevent the exercise of the power or the performance of the duty by the Minister responsible for water affairs personally;
 - (d) may include the power to subdelegate;
 - (e) may be withdrawn by the Minister responsible for water affairs, subject to any rights that may have accrued to any person; and 45
 - (f) does not divest the Minister responsible for water affairs of the responsibility for the exercise of the power or the performance of the duty.

Delegation of powers and duties by municipal manager 50

42D. (1) The municipal manager of a municipality may delegate a power or duty vested in him or her in terms of this Act to an official in the municipality.

- (2) A delegation in terms of subsection (1)—

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) does not prevent the exercise of the power or the performance of the duty by the municipal manager personally;
- (d) may be withdrawn by the municipal manager, subject to any rights that may have accrued to any person; and
- (e) does not divest the municipal manager of the responsibility for the exercise of the power or the performance of the duty.”.

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

35. Section 43 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the insertion after subsection (1B) of the following subsection—
 - “(1C) Any person may appeal against a decision made by the licensing authority contemplated in section 36(1) or 47A of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), in the case of municipalities, to the municipal council.”; and
- (b) by the substitution for subsections (7), (8) and (9) of the following subsections, respectively:
 - “(7) An appeal under this section suspends an environmental authorisation, exemption[,**directive,**] or any other decision made in terms of this Act or any other specific environmental Act, or any provision or condition attached thereto, except for a directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act. 20 25
 - (8) A person who receives a directive in terms of section 28(4) may lodge an appeal against the decision made by the Director-General or any person acting under his or her delegated authority, the Director-General of the department responsible for mineral resources or any person acting under his or her delegated authority, [or] the provincial head of department or any person acting under his or her delegated authority or the municipal manager of a municipality or any person acting under his or her delegated authority, to the Minister, the Minister responsible for mineral resources [or], the MEC or the municipal council, as the case may be, within thirty days of receipt of the directive, or within such longer period as the Minister, the Minister responsible for mineral resources [or], MEC or municipal council may determine. 30 35
 - (9) [Notwithstanding] Despite subsection (7) [and], pending the finalisation of the appeal, the Minister, Minister responsible for mineral resources [or], the MEC or municipal council, as the case may be, may, on application and on good cause shown, direct that [any part or provision of the directive not be suspended, but only strictly in exceptional circumstances and where there is an imminent threat to human health or the environment.]— 40 45
 - (a) the environmental authorisation, exemption or any other decision made in terms of this Act or any other specific environmental management Act, or any provision or condition attached thereto may wholly or in part, not be suspended; or
 - (b) the directive or any administrative enforcement notice that is aimed at addressing significant harm to the environment, issued in terms of this Act or any other specific environmental management Act or part thereof, be suspended.”. 50

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

36. Section 49A of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph: 5
 “(bA) fails to comply with any provision identified as an offence in such applicable norm or standard, in which case paragraph (b) does not apply.”;
- (b) by the substitution in subsection (1) for paragraphs (m), (n), (o) and (p) of the following paragraphs, respectively: 10
 “(m) hinders or interferes with an environmental management inspector or an environmental mineral and petroleum inspector in the execution of that inspector’s official duties;
 (n) pretends to be an environmental management inspector or an environmental mineral and petroleum inspector, or the interpreter or assistant of such an inspector; 15
 (o) furnishes false or misleading information when complying with [a request] an instruction of an environmental management inspector or an environmental mineral and petroleum inspector; 20
 (p) fails to comply with [a request of] an instruction from an environmental management inspector or an environmental mineral and petroleum inspector.”; and
- (c) by the addition in subsection (1) of the following paragraphs: 25
 “(q) fails to comply with section 24P(3), (4), (5), (6) or (10);
 (r) fails to comply with section 24PA(1) or (3).”.

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

37. Section 49B of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 30
 “(1) A person convicted of an offence in terms of section 49A(1)(a), (b), (bA), (c), (d), (e), (f) [or (g)], (g), (q) or (r) is liable to a fine not exceeding R10 million or imprisonment not exceeding 10 years, or to both such fine and such imprisonment.”; and 35
- (b) by the substitution for subsection (3) of the following subsection: 40
 “(3) A person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine not exceeding R1 million or imprisonment for a period not exceeding one year, or to both [a] such fine and such imprisonment.”.

Amendment of section 50A of Act 107 of 1998, as inserted by section 17 of Act 25 of 2014

38. Section 50A of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 45
 “An agreement for the purpose of subsection (1) means the Agreement reached between the Minister, the Minister responsible for water affairs and the Minister responsible for mineral resources titled the *One Environmental System* for the country with respect to prospecting, 50
 exploration, mining or production, which entails—”; and
- (b) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs: 55
 “(b) that the Minister sets the regulatory framework and norms and standards, and that the Minister responsible for mineral resources will implement the provisions of the principal Act and the

subordinate legislation as far as it relates to prospecting, exploration, mining or production operations;

- (c) that the Minister responsible for mineral resources will issue environmental authorisations in terms of the principal Act for prospecting, exploration, mining or production operations, and that the Minister will be the appeal authority for these authorisations; and”.

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

39. Schedule 3 to the National Environmental Management Act, 1998, is hereby amended—

- (a) by the repeal in part (a) of line 5;
- (b) by the substitution in line 17 of part (a) for column 3 the following column:
“Section 45(1), 46(1), 47(2), 47(3), 48(1), 48A(1), 50(5), read with sections 89(1)(b), (c) and (d) and 50A”;
- (c) by the substitution in line 21 of part (a) for column 3 of the following column:
“Sections 7B, 7C read with 79(1)(j), (k), 13(3) read with 79(1)(l), 13(1A) read with 79(2)(j), 79(2)(k), 15 read with 79(2)(d), 59 read with 79(2)(e), 60 read with 79(2)(a), 65 read with 79(1)(m), 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)] 92 read with 79(1)(n), 95 read with 79(2)(h), 79(2)(i), 96 read with 79(1)(o), 79(2)(a)”;
- (d) by the substitution in line 4 of part (b) for column 3 of the following column:
“Section 86(1) in so far as it relates to contraventions of sections 26, **[41]** 44(1)(b)(ii) and 44(1)(c) to (e), 52(a), 57(a), 58(b) and 62(1)”.

Amendment of section 48 of Act 57 of 2003, as substituted by section 18 of Act 31 of 2004 and section 21 of 2014

40. Section 48 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“Despite other legislation, no person may conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) in a protected environment without the written permission of the Minister **[and the Cabinet member responsible for mineral and energy affairs]**; or”;
- (c) by the substitution for subsections (2) and (3) of the following subsections, respectively:
“(2) The Minister, after consultation with the Cabinet member responsible for mineral **[and energy affairs]** resources, must review all mining activities which were lawfully conducted in areas indicated in subsection (1) (a), (b) and (c) immediately before this section took effect.
(3) The Minister, after consultation with the Cabinet member responsible for mineral **[and energy affairs]** resources, may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment or for the environmental protection of the area concerned.”;

- (d) by the substitution for subsection (4) of the following subsection:
- “(4) A person who wishes to apply for permission under subsection (1)(b) to conduct commercial prospecting, mining, exploration, production or activities related to prospecting, mining, exploration or production, must immediately on receipt of an environmental authorisation in terms of the National Environmental Management Act, submit his or her application in the prescribed manner to the Minister, together with—
- (a) any information, reports, studies conducted or consultation done for the environmental impact assessments process in respect of the activities under consideration in terms of Chapter 5 of the National Environmental Management Act; and
 - (b) any appeal lodged in respect of the environmental authorisation.”;
- and
- (e) by the addition of the following subsections:
- “(5) The Minister, when exercising his or her power in terms of subsection (1)(b)—
- (a) must take into account—
 - (i) the principles contained in section 2 of the National Environmental Management Act;
 - (ii) any information, reports, studies conducted or consultation done for the environmental impact assessments process in respect of the activities under consideration in terms of chapter 5 of the National Environmental Management Act;
 - (iii) any appeal contemplated in subsection (4)(b);
 - (iv) the ecological integrity of the protected environment;
 - (b) may, amongst others, take into account—
 - (i) the potential impact on ecological functioning and ecosystem services provided by the protected environment to society;
 - (ii) whether the protected environment is a biodiversity priority area for species; and
 - (iii) whether the protected environment is a strategic water resource area;
- (6) Despite subsection (4), the Minister may require the person who applies for the permission under subsection (1)(b), to provide any further information as he or she may deem necessary before making a decision.”.

Amendment of section 57 of Act 57 of 2003

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

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

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

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

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

“(a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A), 48(1), [49A(5)(b),] 48A(1) or 50(5) [or 55(2)(fA)].”;
- (b) by the deletion in subsection (1) of the word “or” at the end of paragraph (c);
- (c) by the substitution in subsection (1) for the fullstop at the end of paragraph (d) of a semi-colon;

- (d) by the addition in subsection (1) of the following paragraph:
 “(e) contravenes or fails to comply with a rule made in terms of section 55(2)(fA).”;
- (e) by the substitution for subsection (2) of the following subsection:
 “(2) A person convicted of an offence in terms of subsection (1)(a), (b), (c) or (d) is liable, in the case of a first conviction, to a fine not exceeding R5 million or imprisonment for a period not exceeding five years and, in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years or in both instances to both a fine and such imprisonment.”; and
- (f) by the insertion after subsection (2) of the following subsection:
 “(2A) A person convicted of an offence in terms of subsection (1)(e) is liable to the penalties prescribed pursuant to section 55(2)(fA).”.

Amendment of section 1 of Act 10 of 2004, as amended by section 29 of Act 14 of 2009 and section 1 of Act 14 of 2013 15

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

- (a) by the substitution for the definition of “control” of the following definition:
 “‘**control**’, in relation to **[an alien or]** invasive species, means—
- (a) **[to combat or eradicate an alien or invasive species]** the systematic destruction of all specimens of invasive species from within a specified area of, or the whole of, the Republic; or 20
- (b) where such **[eradication]** systematic destruction is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of **[an alien or]** invasive species; 25
- (b) by the insertion after the definition of “environmental management inspector” of the following definition:
 “‘**eradicate**’ means the complete removal of invasive species from within the Republic, including all living parts of that species;” and 30
- (c) by the insertion after the definition of ‘vulnerable species’ of the following definition:
 “‘**well-being**’ means the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment.”. 35

Amendment of section 2 of Act 10 of 2004

44. Section 2 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion in paragraph (a) of the word “and” at the end of subparagraph (ii); and 40
- (b) by the insertion in paragraph (a) after subparagraph (ii) of the following subparagraph:
 “(iiA) the consideration of the well-being of animals in the management, conservation and sustainable use thereof; and” . 45

Amendment of section 3 of Act 10 of 2004

45. Section 3 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

- “(2) The Minister may, by notice in the *Gazette*, specify the species and the circumstances under which the State remains the custodian of faunal biological resources that escape from land under its control.” . 50

Insertion of section 9A in Act 10 of 2004

46. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 9:

“Prohibition of certain activities

9A. The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of an animal.” 5

Amendment of section 13 of Act 10 of 2004

47. Section 13 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph: 10

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

Amendment of section 73 of Act 10 of 2004

48. Section 73 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended— 15

- (a) by the deletion in subsection (2) of paragraph (a);
 (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) take steps to control **[and]** or eradicate the listed invasive species **[and to prevent it from spreading]** as prescribed by the Minister; and” 20

- (c) by the insertion after subsection (2) of the following subsection:

“(2A) The Minister may prescribe circumstances under which a competent authority must be notified in writing of the presence or occurrence of a listed invasive species.”. 25

Amendment of section 75 of Act 10 of 2004

49. Section 75 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively: 30

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

(2) Any action taken to control **[and]** or eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment. 35

(3) The methods employed to control **[and]** or eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.”; and 40

- (b) by the addition of the following subsection:

“(6) The Minister must provide education and awareness to local communities affected by listed invasive species.”.

Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009 and section 30 of Act 14 of 2013 45

50. Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) the well-being of an animal;”. 50

Amendment of section 99 of Act 10 of 2004

51. Section 99 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister or MEC for Environmental Affairs must follow an appropriate consultative process in the circumstances.”; and
- (b) by the insertion after subsection (2) of the following subsection:
 - “(2A) The MEC must, before exercising a power in terms of subsection (1)—
 - (a) consult all Cabinet members, Members of the Provincial Executive Council and organs of state, whose areas of responsibility may be affected by the exercise of the power in the province;
 - (b) consult the Minister, in accordance with the principles of cooperative governance set out in Chapter 3 of the Constitution; and
 - (c) allow public participation in the process in accordance with section 100.”.

Amendment of section 100 of Act 10 of 2004

52. Section 100 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “The Minister or MEC for Environmental Affairs must give notice of the proposed exercise of the power referred to in section 99—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) in the *Gazette* or *Provincial Gazette*, as the case may be; and”;
- (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 - “(a) invite members of the public to submit to the Minister or MEC for Environmental Affairs, within 30 days of publication of the notice in the *Gazette* or *Provincial Gazette*, as the case may be, written representations on, or objections to, the proposed exercise of the power; and”;
- (d) by the substitution for subsection (3) and (4) of the following subsections, respectively:
 - “(3) The Minister or MEC for Environmental Affairs may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or MEC for Environmental Affairs or a person designated by the Minister or MEC for Environmental Affairs.
 - “(4) The Minister or MEC for Environmental Affairs must give due consideration to all representations or objections received or presented before exercising the power.”.

Amendment of section 101 of Act 10 of 2004

53. Section 101 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion in paragraph (b) of subsection (1) of the words “9A or” after the words “in terms of section”.

Amendment of section 13 of Act 39 of 2004, as amended by section 2 of Act 20 of 2014

54. Section 13 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister **[must]** may, by notice in the *Gazette*, establish the National Air Quality Advisory Committee in terms of this Act.”.

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

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

“Consequences of unlawful conduct of listed activity resulting in atmospheric emission 5

22A. (1) Upon application for an atmospheric emission licence by a person who—

- (a) operated, at any time prior to the commencement of this Act, a scheduled process in terms of the Atmospheric Pollution Prevention Act, without a provisional registration or registration certificate; or 10
 - (b) conducted or is conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, an activity listed in terms of section 21 which results in atmospheric emission, 15
- the relevant licensing authority must fine the applicant an administrative fine which may not exceed R10 million before the application for an atmospheric emission licence may be considered.

(2) An application contemplated in subsection (1) must be submitted in accordance with the requirements contained in section 37.

(3) On application contemplated in subsection (1), the licensing authority must direct the applicant to— 20

- (a) immediately cease the activity pending a decision on the application submitted in terms of this section;
- (aA) undertake public participation, as prescribed;
- (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health; 25
- (c) remedy any adverse effect of the activity on the environment, including the ambient air and human health;
- (d) cease, modify or control any act, activity, process or omission causing atmospheric emission; 30
- (e) eliminate any source of atmospheric emission;
- (f) compile a report containing—
 - (i) a description of the need and desirability of the activity;
 - (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity; 35
 - (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment, including the ambient air, and human health; 40
 - (iv) a description of the public participation process followed during the course of compiling the report, including all comments received from the interested and affected parties and an indication of how issues raised have been addressed; and 45
 - (v) an environmental management programme; and
- (g) provide such other information or undertake such further studies as the licensing authority may deem necessary. 50

(4) If it comes to the attention of the licensing authority that the applicant is under criminal investigation for the contravention of, or failure to comply with section 22, the licensing authority may defer a decision to issue a

- provisional atmospheric emission licence or an atmospheric emission licence until such time that the investigation is concluded and—
- (a) the National Prosecuting Authority has decided not to institute prosecution in respect of the contravention of, or failure to comply with, section 22; 5
 - (b) the applicant concerned is acquitted or found not guilty after prosecution in respect of the contravention of, or failure to comply with, section 22; or
 - (c) the applicant concerned has been convicted by a court of law of an offence in respect of the contravention of, or failure to comply with, section 22 and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review. 10
- (5) The submission of an application or the issuing of a provisional atmospheric emission licence or an atmospheric emission licence in terms of this section, or the payment of an administrative fine in terms of subsection (1), must— 15
- (a) in no way derogate from the authority of the environmental management inspector or the South African Police Service, to investigate any transgression of this Act;
 - (b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; or 20
 - (c) not indemnify the applicant from liability in terms of section 51(1)(a).".

Amendment of section 36 of Act 39 of 2004, as amended by section 5 of Act 20 of 2014 25

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

- (a) by the insertion after subsection (2) of the following subsection:
 - “(2A) A provincial organ of state must be regarded as the licensing authority if a listed activity falls within the boundaries of— 30
 - (a) more than one metropolitan municipality;
 - (b) more than one district municipality; or
 - (c) both a metropolitan and district municipality.”;
- (b) by the substitution in subsection (5) for paragraph (d) of the following paragraph: 35
 - “(d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, [or] and the Minister has been identified as the competent authority.”; and 40
- (c) by the substitution for subsection (8) of the following subsection:
 - “(8) The Minister and the licensing authority contemplated in subsections (1) to (4), or the MEC and the licensing authority contemplated in subsections (1) to (5), may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister, MEC or the relevant licensing authority contemplated in subsections (1) to [(4)] (5).”. 45

Insertion of section 47A in Act 39 of 2004

57. The following section is hereby inserted in the National Environmental Management: Air Quality Act, 2004, after section 47: 50

“Revocation or suspension of atmospheric emission licences

47A. (1) The licensing authority may, by written notice to the holder of an atmospheric emission licence, revoke or suspend that licence if the licensing authority has evidence that the licence holder has contravened a provision of this Act or a condition of the licence and such contravention may have, or is having, a significant detrimental effect on the environment, including health impacts. 5

(2) The licensing authority must before exercising the power in terms of subsection (1), in writing—

(a) consult organs of state whose areas of responsibility may be affected by the exercise of the power; and 10

(b) afford the holder of the atmospheric emission licence an opportunity to make a submission in respect of the intended revocation or suspension, which submission must be accompanied by an atmospheric impact report as contemplated in section 30 of this Act. 15

(3) The licencing authority, when consulting in terms of subsection (2), must indicate the time period within which—

(a) the organs of state must submit comments; and

(b) the holder or the atmospheric emission licence must make his or her submission to the licencing authority.”. 20

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

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

Amendment of section 60 of Act 24 of 2008 25

59. Section 60 of the National Environmental Management: Integrated Coastal Management Act, 2008, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 30

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

(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 35

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

Repeal of Chapter 9 of Act 24 of 2008

60. Chapter 9 of the National Environmental Management: Integrated Coastal Management Act, 2008, is hereby repealed. 40

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

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

(a) by the substitution for the definition of “associated structures and infrastructure” of the following definition: 45

“ ‘associated structures and infrastructure’ [, when referred to in Schedule 1,] means any building or infrastructure that is necessary for

- the functioning of a facility or waste management activity or that is used for an ancillary service or use from the facility;”;
- (b) by the insertion after the definition of “best practicable environmental option” of the following definitions:
- “**‘building and demolition waste’** means waste, excluding hazardous waste, produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition;
- ‘business waste’** means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes;”;
- (c) by the insertion after the definition of “commence” of the following definition:
- “**‘commercial value’** means the retail value a thing would have if it were offered for sale;”;
- (d) by the insertion after the definition of “disposal” of the following definition:
- “**‘domestic waste’** means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential, educational, health care, sport or recreation purposes;”;
- (e) by the insertion after the definition of “Gazette” of the following definition:
- “**‘general waste’** means waste that does not pose an immediate hazard or threat to health or to the environment, and includes—
- (a) domestic waste;
- (b) building and demolition waste;
- (c) business waste;
- (d) inert waste; or
- (e) any waste classified as non-hazardous waste in terms of the regulations made under section 69;”;
- (f) by the insertion after the definition of “general waste” of the following definition:
- “**‘hazardous waste’** means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;”;
- (g) by the insertion after the definition of “industry waste management plan” of the following definition:
- “**‘inert waste’** means waste that—
- (a) does not undergo any significant physical, chemical or biological transformation after disposal;
- (b) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and
- (c) does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant.”;
- (h) by the substitution for the definition of “recovery” of the following definition:
- “**‘recovery’** means the controlled extraction or retrieval of [any substance,] energy, or material [or object] from waste;”;
- (i) by the insertion after the definition of “recycle” of the following definitions:
- “**‘residue deposit’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
- ‘residue stockpile’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (j) by the insertion after the definition of “this Act” of the following definition:
- “**‘trade in’** means buying, selling or bartering;”;
- (k) by the substitution for the definition of “waste” of the following definition:

“ ‘waste’ means—

- (a) any substance, material or object—
 - (i) that the generator of that substance, material or object has no further use for within its own processes, whether or not it has any commercial value for the generator, but which can be re-used, recycled, recovered or traded in by any person; or
 - (ii) that is rejected, abandoned, discarded or disposed of, either temporary or permanently, or is intended to be discarded or disposed of by the generator of that substance, material or object, regardless of whether or not that substance, material or object has any commercial value for the generator or can be re-used, recycled, recovered or traded in by any person; or
- (b) any other substance, material or object that may be defined as a waste by the Minister by notice in the *Gazette*; but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste—
 - (aa) once it is re-used, recycled or recovered or traded in by the holder of that waste or portion of waste in accordance with a condition stipulated in a valid waste management licence, where applicable, or in accordance with an applicable norm or standard made in terms of this Act; or
 - (bb) where the Minister has, in the prescribed manner, excluded the holder of any waste stream or a portion of a waste stream from the definition of waste, enabling the holder thereof to trade in the excluded waste stream or portion of the excluded waste stream, provided that the holder has satisfied the requirements of proving the environmentally safe use of the waste stream or portion of waste stream by it or any other person and committed to provide the Minister with annual reports of the use thereof;”.

Amendment of section 4 of Act 59 of 2008, as amended by section 19 of Act 25 of 2014 and section 2 of Act 26 of 2014

62. Section 4 of the National Environmental Management: Waste Act, 2008, is hereby amended by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) residue deposits and residue stockpiles that are regulated under the National Environmental Management Act;”.

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

63. Section 34A of the National Environmental Management: Waste Act, 2008, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) An implementation Bureau dealing with waste management to be known as the “Waste Management Bureau” is hereby established, **within the Department,** as a juristic person.”; and
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) In the event of absence of a functional [**Bureau or a Chief Executive Officer**] Board, the powers and duties of the [**Bureau**] Board revert to the [**Director-General of the Department contemplated in section 34G(1),**] Minister who, in such a case, must exercise those powers and perform those duties until the [**Bureau**] Board is functional [**or a Chief Executive Officer is appointed**] again.”.

Substitution of section 34C of Act 59 of 2008, as inserted by section 13 of Act 26 of 2014

64. The following section is hereby substituted for section 34C of the National Environmental Management: Waste Act, 2008:

“Minister’s supervisory powers” 5

34C. (1) The Minister—

- (a) must monitor the exercise and performance by the Bureau of its powers and duties;
- (b) may set norms and standards for the exercise and performance by the Bureau of its powers and duties; 10
- (c) may issue directives to the Bureau on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning; and
- (d) must determine limits on fees charged by the Bureau in the exercise and performance of its powers and duties.

(2) The Bureau must exercise its powers and perform its duties subject to the policy determined under section 34B and any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).” 15

Substitution of sections 34F, 34G, 34H, 34I, 34J, 34K and 34L of Act 59 of 2008, as inserted by section 13 of Act 26 of 2014 20

65. The following sections are hereby substituted for sections 34F, 34G, 34H, 34I, 34J, 34K and 34L of the National Environmental Management: Waste Act, 2008:

“General powers

34F. The Bureau may, for the purpose of performing its duties—

- (a) appoint its own staff, subject to section 34X; 25
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire, or dispose of, any right in, or to, movable or immovable property, or hire or let any property, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999); 30
- (d) open and operate its own bank accounts;
- (e) invest any of its money, subject to section 34W;
- (f) charge fees for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 34E; 35
- (g) collect royalties resulting from any discoveries, inventions or computer programmes;
- (h) insure itself against—
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act; 40
- (i) perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and
- (j) institute or defend any legal action.

Governing board, composition and membership

34G. (1) The Bureau is governed by a Board consisting of— 45

- (a) not fewer than seven and not more than nine members appointed in terms of section 34I;
- (b) the Director-General or an official of the Department designated by the Director-General; and
- (c) the Chief Executive Officer of the Bureau. 50

- (2) The Minister—
 - (a) must determine the number of members to be appointed in terms of subsection (1)(a); and
 - (b) may alter the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs. 5
- (3) The Board takes all decisions in the performance of the duties and exercise of powers of the Bureau, except—
 - (a) those decisions taken in consequence of a delegation in terms of section 34U; or 10
 - (b) where the Public Finance Management Act provides otherwise.

Qualifications

- 34H.** (1) A member of the Board must—
 - (a) be a fit and proper person to hold office as a member; and
 - (b) have appropriate qualifications and experience in the field of waste management. 15
- (2) The following persons are disqualified from becoming or remaining members of the Board:
 - (a) A person holding office as a member of Parliament, a provincial legislature or a municipal council; or 20
 - (b) a person who has been removed from office in terms of section 34O.

Appointment procedure

- 34I.** (1) Whenever it is necessary to appoint members of the Board referred to in section 34G(1)(a), the Minister must—
 - (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and 25
 - (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.
- (2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by—
 - (a) the personal details of the nominee; 30
 - (b) the nominee's qualifications or experience; and
 - (c) any other information that may be prescribed.
- (3) The Minister must, subject to subsection (4), appoint—
 - (a) the required number of persons from the list compiled in terms of subsection (1)(b); and 35
 - (b) if such list is inadequate, any suitable person.
- (4) When making appointments the Minister must—
 - (a) consult the MECs for Environmental Affairs; and 40
 - (b) have regard to the need for appointing persons to promote representivity.
- (5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise in the field of waste management, and have gender representation and other categories. 45

Chairperson

- 34J.** (1) Whenever necessary, the Minister must appoint a member of the Board as the Chairperson of the Board.
- (2) The Chairperson is appointed for a period determined by the Minister which may, in the case of a member referred to in section 34K(1)(a), not extend beyond the period of his or her term as a member. 50
- (3) The Minister may appoint a member of the Board as acting chairperson of the Board if—
 - (a) the Chairperson is absent for a substantial period; or 55
 - (b) the appointment of a Chairperson is pending.

Term of office

34K. Members of the Board referred to in section 34G(1)(a)—

<p>(a) are appointed for a period of three years or, if section 34P(2) applies, for a term determined in terms of that section;</p> <p>(b) on completion of that term, are eligible for reappointment for one additional term of three years; and</p> <p>(c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.</p>	5
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Conditions of appointment

34L. (1) The Minister must determine the conditions of employment of members of the Board referred to in section 34G(1)(a). 10

<p>(2) (a) The Minister may, with the concurrence of the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the government.</p> <p>(b) The remuneration and allowances of the members of the Board contemplated in paragraph (a) must be paid by the Bureau.</p> <p>(3) (a) Members who are in the employ of the government are not entitled to remuneration and allowances, but must be compensated for out-of-pocket expenses by the Bureau.</p> <p>(b) The members of the Board referred to in paragraph (a) are appointed on a part-time basis.”.</p>	15 15 20
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Insertion of sections 34M, 34N, 34O, 34P, 34Q, 34R, 34S, 34T, 34U, 34V, 34W, 34X, 34Y and 34Z in Act 59 of 2008

66. The following sections are hereby inserted in the National Environmental Management: Waste Act, 2008, after section 34L: 25

“Conduct of members

34M. (1) A member of the Board—

<p>(a) must perform the duties of office in good faith and without favour or prejudice;</p> <p>(b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that Board member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;</p> <p>(c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and</p> <p>(d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Bureau.</p> <p>(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.</p>	30 35 40
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Termination of membership

34N. (1) A member of the Board referred to in section 34G(1)(a) ceases to be a member when that person—

<p>(a) is no longer eligible in terms of section 34H to be a member;</p> <p>(b) resigns; or</p> <p>(c) is removed from office in terms of section 34O.</p> <p>(2) A member may resign only by giving at least three months’ written notice to the Minister, but the Minister may accept a shorter period in a specific case.</p>	45 50
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Removal from office

34O. (1) The Minister may, subject to due process of law, remove a member of the Board referred to in section 34G(1)(a) from office, but only on the ground of—

- (a) misconduct, incapacity or incompetence;
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on good cause shown;
- (c) insolvency; or
- (d) conviction of a criminal offence without the option of a fine.

(2) A member of the Board may be removed from office on the grounds of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.

(3) The Minister may suspend a member under investigation in terms of this section.

Filling of vacancies

34P. (1) A vacancy in the Board is filled—

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 34J(1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section 34G(1)(a), by following the procedure set out in section 34I.

(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating Chairperson or member.

Meetings

34Q. (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a Board meeting at a time and place set out in the request.

(2) The Chairperson presides at meetings of the Board, but if the Chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.

Procedures

34R. (1) The Board may determine its own procedures subject to the provisions of this Act.

(2) The Board must keep records of its proceedings and of the decisions taken.

Quorum and decisions

34S. (1) A majority of the members of the Board serving at any relevant time constitutes a quorum for a meeting of the Board.

(2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

Committees

34T. (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.

(2) When appointing members to a committee, the Board is not restricted to members of the Board.

(3) The Board—

- (a) must determine the duties of a committee;

- (b) must appoint a chairperson and other members of a committee;
 - (c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
 - (d) must determine a working procedure of a committee. 5
- (4) The Board may dissolve a committee at any time.
- (5) (a) Section 34L, read with the necessary changes as the context may require, applies to the terms and conditions of employment of committee members.
- (b) A staff member of the Bureau appointed to a committee serves on the committee subject to the terms and conditions of that person's employment. 10

Delegation of powers and duties

- 34U.** (1) When necessary for the proper performance of its duties, the Board may, subject to subsection (2), delegate any of its powers or duties to— 15
- (a) a member of the Board;
 - (b) a committee referred to in section 34T; or
 - (c) a staff member of the Bureau.
- (2) The following powers and duties may not be delegated by the Board:
- (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 34V(1) or (2); 20
 - (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 34V(3);
 - (c) the determination of an employment policy in terms of section 34W(1); and 25
 - (d) the setting of financial limits in terms of section 34W(2)(a) or (3).
- (3) A delegation in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions that the Board may impose;
 - (b) must be in writing; 30
 - (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
 - (d) does not prevent the exercise of the delegated power or the carrying out of the delegated duty by the Board.
- (4) The Board may confirm, vary, revoke or withdraw any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision. 35

Appointment of Chief Executive Officer

- 34V.** (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Bureau. 40
- (2) The Chief Executive Officer—
- (a) is appointed for a term not exceeding five years; and
 - (b) may be reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five years. 45
- (3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.
- (4) The Chief Executive Officer— 50
- (a) must perform such duties and may exercise such powers as the Board may delegate to him or her; and
 - (b) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner as the Board may determine. 55

- (5) (a) The Chairperson of the Board may appoint another employee of the Bureau as acting Chief Executive Officer for a period not exceeding six months, whenever—
- (i) the Chief Executive Officer is for any reason absent or unable to perform his or her duties; or
 - (ii) there is a vacancy in the office of the Chief Executive Officer.
- (b) Whilst acting as Chief Executive Officer, such employee—
- (i) has the powers and duties of the Chief Executive Officer; and
 - (ii) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).

Employment of staff

- 34W.** (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Bureau.
- (2) The Chief Executive Officer—
- (a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Bureau; and
 - (b) may appoint persons in posts on the staff establishment.
- (3) An employee of the Bureau is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of the Bureau and within the financial limits set by the Board.
- (4) (a) A person in the service of another organ of state may be seconded to the Bureau by agreement between the Chief Executive Officer and such organ of state.
- (b) Persons seconded to the Bureau perform their duties under the supervision of the Chief Executive Officer.
- (5) A person in the service of the Bureau may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

Funding

- 34X.** The funds of the Bureau consist of—
- (a) income derived by the Bureau from the performance of its duties and the exercise of its powers;
 - (b) money appropriated by Parliament;
 - (c) grants received from organs of state;
 - (d) voluntary contributions, donations and bequests;
 - (e) income derived from investments referred to in section 34Y; and
 - (f) money derived from any other source, subject to the Public Finance Management Act.

Investments

- 34Y.** The Bureau may invest any of its funds not immediately required—
- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
 - (b) in such a manner as the Minister may approve.

Winding-up or dissolution of Bureau

34Z. (1) The Bureau may not be wound up or dissolved except in terms of an Act of Parliament.

(2) Upon its winding-up or dissolution, the Bureau must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to an equivalent Schedule 3A Public Entity contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), which has the same objectives as the Bureau.”

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Amendment of section 36 of Act 59 of 2008

67. Section 36 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsection (5) of the following subsection: 10

“(5) An owner of the land that is **[significantly]** likely to be contaminated, or a person who undertakes an activity that caused the land to be **[significantly]** contaminated, must notify the Minister and MEC of that contamination as soon as that person becomes aware, of that contamination.”

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Amendment of section 37 of Act 59 of 2008

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

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 20

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

(b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: 25

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

30

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

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

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Amendment of section 38 of Act 59 of 2008

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

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

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Amendment of section 41 of Act 59 of 2008

70. Section 41 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively: 50

- “(1) The Minister must keep a national contaminated land register of **[investigation] contaminated land** areas that includes information on—
- (a) the owners and any users of **[investigation] contaminated land** areas;
 - (b) the location of **[investigation] contaminated land** areas;
 - (c) the nature and origin of the said contamination; 5
 - (d) whether **[an investigation] a contaminated land** area—
 - (i) **[is contaminated,]** presents a risk to health or the environment, and must be remediated urgently;
 - (ii) **[is contaminated,]** presents a risk to health or the environment, and must be remediated within a specified period; or 10
 - (iii) **[is contaminated,]** does not present an immediate risk, but measures are required to address the monitoring and management of that risk; **[or] and**
 - [(iv) is not contaminated;**
 - (e) **the status of any remediation activities on investigation areas; and** 15
 - (f) restrictions of use that have been imposed on the **[investigation] contaminated land** areas.
- (2) The Minister may change the status of **[an investigation] the contaminated land** area contemplated in subsection (1)(d)(i) or (ii) as provided for in subsection (1)(d)(iii) or (iv) if a remediation order has been complied with or other 20 circumstances eventuate that justify such a change.
- (3) An MEC who has identified **[an investigation] a contaminated land** area must furnish the relevant information to the Minister for recording in the national contaminated land register.”.

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

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

- (a) by the substitution for subsection (1A) of the following subsection: 30

“(1A) The Minister responsible for mineral resources is the licensing authority where the waste management activity is a mining activity as defined in the National Environmental Management Act.”;
- (b) by the substitution for subsection (1B) of the following subsection: 35

“(1B) The Minister responsible for mineral resources is responsible for the implementation of the [provisions that relate to] licensing system provided for in this Chapter in so far as the matters referred to in subsection (1A) are concerned.”;
- (c) by the substitution for subsection (3) of the following subsection: 40

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

 - (a) referred to in subsection (1), may be dealt with by the MEC or the Minister responsible for mineral resources; **[or]**
 - (aA) referred to in subsection (1A), may be dealt with by the Minister; or 45
 - (b) in respect of which the MEC or the Minister responsible for mineral resources has been identified as the licensing authority, may be dealt with by the Minister.”; and
- (d) by the addition of the following subsection: 50

“(4) (a) In accordance with section 125(2)(b) of the Constitution, whenever a licensing authority, referred to in subsection (2), fails to take a decision on an application for a waste management licence within the

period prescribed by this Act, the person that applied for a waste management licence may apply to the Minister to take the decision.

(b) The person referred to in paragraph (a) must notify the MEC or the Minister responsible for mineral resources, as the case may be, in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.

(c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the MEC or the Minister responsible for mineral resources, as the case may be, in respect of the application for a waste management licence, in order to enable the Minister to take a decision.

(d) Before taking a decision contemplated in paragraph (a), the Minister must request the MEC or the Minister responsible for mineral resources, as the case may be, to provide him or her with a report within a specified period on the status and causes for the failure to make a decision in the application for waste management licence concerned.

(e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactory response or cooperation is received from the MEC or the Minister responsible for mineral resources, as the case may be, within the specified period, the Minister must, where appropriate—

- (i) inform the applicant in the event that the MEC or the Minister responsible for mineral resources, as the case may be, had complied with the relevant prescripts;
- (ii) assist the MEC or the Minister responsible for mineral resources, as the case may be, in accordance with section 125(3) of the Constitution to fulfil his or her obligations under this Act; or
- (iii) direct the MEC or the Minister responsible for mineral resources, as the case may be, to take the decision and such other steps as the Minister may deem necessary within a specified period.

(f) In the event that the MEC or the Minister responsible for mineral resources, as the case may be, fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in paragraph (e)(iii), the Minister must take the decision within a reasonable period.

(g) The Minister must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament setting out the details regarding the exercise of the power referred to in this section during the previous financial year.”

Repeal of section 43A of Act 59 of 2008

72. Section 43A of the National Environmental Management: Waste Act, 2008, is hereby repealed.

Amendment of section 52 of Act 59 of 2008

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

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

Amendment of section 54 of Act 59 of 2008

74. Section 54 of the National Environmental Management: Waste Act, 2008, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The variation of a waste management licence is subject to the payment of a prescribed processing fee.”

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Amendment of section 67 of Act 59 of 2008, as amended by section 23 of Act 25 of 2014

75. Section 67 of the National Environmental Management: Waste Act, 2008, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 10

“(a) contravenes or fails to comply with a provision of section 15, 16(1)(c), (d), (e) or (f), 20, 26(1), [43A,] or any order under section 38(2) or (3) or a notice under section 17(2) or 18(1);”; and

(b) by the insertion in subsection (1) after paragraph (f) of the following paragraph: 15

“(fA) contravenes any provision in the norm or standard contemplated in paragraph (f), in which such contravention is identified as an offence, and in such case paragraph (f) does not apply;”.

Amendment of section 69 of Act 59 of 2008, as amended by section 24 of Act 25 of 2014 20

76. Section 69 of the National Environmental Management: Waste Act, 2008, is hereby amended by the deletion in subsection (1) of paragraph (iA).

Repeal of section 69A of Act 59 of 2008

77. Section 69A of the National Environmental Management: Waste Act, 2008, is hereby repealed. 25

Amendment of section 71 of Act 59 of 2008

78. Section 71 of the National Environmental Management: Waste Act, 2008, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection: 30

“(2) Regulations made in terms of sections 69 and 70 may provide that any person who contravenes or fails to comply with a provision thereof, is guilty of an offence and liable on conviction to—

(a) imprisonment for a period not exceeding five years;

(b) a fine not exceeding five million rand, and in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment; or 35

(c) both a fine and imprisonment.”; and

(b) by the insertion after subsection (2) of the following subsection: 40

“(2A) Regulations made in terms of sections 69 and 70 may differentiate between the penalties for the contravention of the different provisions thereof, but the maximum penalty may not exceed a penalty provided for in subsection (2).”.

Amendment of section 74 of Act 59 of 2008 45

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

“(1) Any person or organ of state may apply in writing for exemption from the application of a provision of this Act—

- (a) to the Minister [~~or~~];
- (b) where the Minister responsible for mineral resources is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the Minister responsible for mineral resources; or
- (c) where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the MEC, except the exemption from the requirement to obtain a waste management licence contemplated in Chapter 5.”.

Amendment of section 75 of Act 59 of 2008

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

- “(1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may request an applicant contemplated in section 74 to furnish additional information where such information is necessary for the purposes of informing the Minister, Minister responsible for mineral resources or MEC’s decision.
- (2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must, before deciding the application, request the applicant to—
 - (a) bring the application to the attention of relevant organs of state, interested persons and the public by conducting a public participation process indicated by the Minister, Minister responsible for mineral resources or MEC; and
 - (b) [to] submit any comments received from the public following such process to the Minister, Minister responsible for mineral resources or MEC.”.

Amendment of section 76 of Act 59 of 2008

81. Section 76 National Environmental Management: Waste Act, 2008, is hereby amended—

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

“The Minister, Minister responsible for mineral resources or the MEC, as the case may be, may—”;
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“If an application is granted, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must issue a written exemption notice to the applicant stating—”;
- (c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

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

Amendment of section 77 of Act 59 of 2008

82. Section 77 National Environmental Management: Waste Act, 2008, is hereby amended—

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

“The Minister, Minister responsible for mineral resources or MEC may—”;
- (b) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) Before suspending, withdrawing or amending an exemption, the Minister, Minister responsible for mineral resources or MEC must give the person to whom the exemption was granted an opportunity to comment, in writing, on the reasons for the suspension, withdrawal or amendment. 5

(3) If an exemption has been granted in respect of a waste management activity, or part thereof, and ownership of that waste management activity is transferred, the exemption may, with the permission of the Minister, Minister responsible for mineral resources or MEC, be transferred by the holder of the exemption to the new owner of the waste management activity.”. 10

Substitution of certain expressions in Act 59 of 2008

83. The National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for the expression “Minister of Water Affairs and Forestry”, wherever it occurs, of the expression “Minister responsible for water affairs”. 15

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

84. Schedule 3 to the National Environmental Management: Waste Act, 2008, is hereby repealed.

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

Transitional provisions 20

85. The following section is hereby substituted for section 12 of the National Environmental Management Amendment Act, 2008:

“12. (1) Where, prior to 8 December 2014—

(a) an environmental authorisation or a waste management licence was required for activities directly related to— 25

(i) prospecting or exploration of a mineral or petroleum resource; or

(ii) extraction and primary processing of a mineral or petroleum resource,

and such environmental authorisation or waste management licence has been obtained; and 30

(b) a right, permit or exemption was required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) for— 35

(i) prospecting or exploration of a mineral or petroleum resource; or

(ii) extraction and primary processing of a mineral or petroleum resource,

and such right, permit or exemption has been obtained, and activities authorised in such environmental authorisation, waste management licence, right, permit or exemption commenced after 8 December 2014, such environmental authorisation, waste management licence, right, permit or exemption is regarded as fulfilling the requirements of the Act: Provided that where an application for an environmental authorisation or waste management licence was refused or not obtained in terms of the Act for activities directly related to prospecting, exploration or extraction of a mineral or petroleum resource, including primary processing, this subsection does not apply. 40

(2) Despite subsection (1), the Minister responsible for mineral resources may direct the holder of a right, permit or any old order right, if he or she is of the opinion that the prospecting, mining, exploration and production operations are likely to result in unacceptable pollution, ecological degradation or damage to the environment, to take any action to upgrade the environmental management plan or environmental management programme to address the deficiencies in the plan or programme. 45

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(3) The Minister responsible for mineral resources must issue an environmental authorisation if he or she is satisfied that the deficiencies in the environmental management plan or environmental management programme referred to in subsection (2) have been addressed and that the requirements contained in Chapter 5 of the National Environmental Management Act, 1998, have been met.” 5

Transitional provisions for residue deposits and residue stockpiles

86. (1) Despite the repeal of the relevant provisions in relation to residue stockpiles in the National Environmental Management: Waste Act, 2008, by the National Environmental Management Laws Amendment Act, 2022, any approval granted or waste management licence issued in relation to residue deposits and residue stockpiles remain valid until it lapse or replaced under the provisions of the National Environmental Management Act, 1998. 10

(2) Despite the repeal of section 69(iA) of the National Environmental Management: Waste Act, 2008, the regulations pertaining to the management of residue deposits and residue stockpiles made in terms of this section, remain operational and shall be deemed to have been made under the National Environmental Management Act, 1998. 15

Transitional provisions for Waste Management Bureau

87. (1) Anything done under the repealed provisions in Part 7A of the National Environmental Management: Waste Act, 2008, remains valid until anything done under the provisions that substitutes the provisions in Part 7A overrides it. 20

(2) The Waste Management Bureau in place at the time of the commencement of the National Environmental Management Laws Amendment Act, 2022, remains in place until the members of Board are appointed in terms of section 34G of the National Environmental Management: Waste Act, 2008, (as amended by this Amendment Act). 25

(3) The Minister may direct that the employees or the Chief Executive Officer of the Waste Management Bureau at the time of the commencement of the National Environmental Management Laws Amendment Act, 2022, be absorbed by the new structure in the same positions.

Transitional provision due to amendment of definition of “waste” 30

88. (1) Any substance, material or object, which is “waste” in terms of the amended definition of “waste”, but was not regarded as such prior to the commencement of the amended definition must be regarded as waste from the date of the commencement of the amended provision, unless it is excluded in terms of section 4 from the scope of the National Environmental Management: Waste Act, 2008. 35

(2) A person in control of the substance, material or object must within 60 days from the date of the commencement of the amended definition of “waste”, either—

- (a) apply for a waste management licence, if the person conducts an activity, which is listed in terms of section 19(1) of the principal Act;
- (b) comply with a norm or standard, if the person conducts an activity, which is listed in terms of section 19(3) of the Act, if applicable; or 40
- (c) apply for the exclusion of the substance, material or object from the definition of waste in the prescribed manner.

Short title and commencement

89. This Act is called the National Environmental Management Laws Amendment Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 45