

NEMLAA: COMMENCEMENT OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT ACT 2 OF 2022

Hi there

The President determined that the National Environmental Management Laws Amendment Act, 2022, save for sections 11, 35(a), 57, 60, 61(c) 61(j), 61(k), 62, 63, 64, 65, 66, 72,76, 77, 86, 87, and 88, came into operation on the date of publication of the Proclamation in the Gazette.

More information:

The National Environmental Management Laws Amendment Act 2 of 2022:

- Amends 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;

The following sections are therefore amended:

1. Definitions
2. Principles
24. Environmental authorisations
- 24C. Procedure for identifying competent authority
- 24G. Consequences of unlawful commencement of activity
- 24N. Environmental management programme
- 24O. Criteria to be taken into account by competent authorities when considering applications
- 24P. Financial provision for remediation of environmental damage
- 24R. Mine closure on environmental authorisation
28. Duty of care and remediation of environmental damage
- 31B. Designation of environmental management inspectors by Minister

31BA. Designation of environmental management inspectors by Minister responsible for water affairs
31BB. Designation of environmental mineral resource inspectors by Minister responsible for mineral resources
31C. Designation of environmental management inspectors by MEC
31D. Mandates
31E. Prescribed standards
31F. Proof of designation
31G. Functions of inspectors
31H. General powers
31I. Seizure of items
31J. Powers to stop, enter and search vehicles, vessels and aircraft
31K. Routine inspections
31L. Power to issue compliance notices
31M. Objections to compliance notice
31N. Failure to comply with compliance notice
31O. Powers of South African Police Service members
31P. Duty to produce documents
31Q. Confidentiality
34E. Treatment of seized live specimens
34G. Admission of guilt fines
42B. Delegation by Minister responsible for mineral resources
43. Appeals
49A. Offences
49B. Penalties
50A. Future amendments in respect of environmental matters in so far as it relates to the Agreement
Schedule 3

The following new sections are inserted:

24PA. Financial provisioning for mining
42C. Delegation of powers and duties by Minister responsible for water affairs
42D. Delegation of powers and duties by Municipal Manager

The following section is repealed:

24S. Management of residue stockpiles and residue deposits

- √ **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;

The following sections are amended:

48. Prospecting and mining activities in protected area
57. Composition of Governing board
89. Offences and penalties

- √ **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;

The following sections are amended:

1. Definitions
2. Objectives of Act
3. State’s trusteeship of biological diversity
13. Composition of Governing Board

- 73. Duty of care relating to listed invasive species
- 75. Control and eradication of listed invasive species
- 97. Regulations by Minister
- 99. Consultation
- 100. Public participation
- 101. Offences

Insertion of the following new section:

9A. Prohibition of certain activities

- √ **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;

The following sections are amended:

13. National Air Quality Advisory Committee
 22A. Consequences of unlawful conduct of listed activity resulting in atmospheric emission
 36. Licensing authority
 53. Regulations by Minister

Insertion of the following new section:

47A. Revocation of suspension of atmospheric emission licenses

- √ **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;

The following section is amended:

60. Repair or removal of structures within coastal zone

Repeal of the following sections:

Chapter 9 Appeals

- √ **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;

The following sections are therefore amended:

1. Definitions
 4. Application of Act
 34A. Establishment of Waste Management Bureau
 36. Identification and notification of investigation areas

- 37. Consequences of identification and notification of investigation areas
- 38. Consideration of site assessment reports
- 41. Contaminated land register
- 43. Licensing authority
- 52. Transfer of waste management licences
- 54. Variation of waste management licences
- 67. Offences
- 69. Regulations by Minister
- 71. General regulatory powers
- 74. General regulatory powers
- 75. Consideration of applications for exemption
- 76. Decisions on applications for exemption
- 77. Review and transfer of exemptions

Substitution of sections 34C – 34I with the following sections:

- 34C. Minister’s supervisory powers
- 34F. General Powers
- 34G. Governing board, composition and membership
- 34H. Qualifications
- 34I. Appointment procedure
- 34J. Chairperson
- 34K. Term of Office
- 34L. Conditions of Appointment

Substitution of certain expressions:

“Minister of Water Affairs and Forestry”, wherever it occurs, substituted with the expression “Minister responsible for water affairs”

Insertion of the following new sections:

- 34M. Conduct of members
- 34N. Termination of membership
- 34O. Removal from Office
- 34P. Filling of vacancies
- 34Q. Meetings
- 34R. Quorum and decisions
- 34T. Committees
- 34U. Delegation of powers and duties
- 34V. Appointment of Chief Executive Officer
- 34W. Employment of staff
- 34X. Funding
- 34Y. Investments
- 34Z. Winding-up or dissolution of Bureau

Repealed:

- 43A. Residue Stockpiles and Residue Deposits
- 69A. Regulations for Bureau
- Schedule 3 Defined Wastes

- √ **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;
- Provides for transitional provisions regarding residue stockpiles and residue deposits approved in terms of the National Environmental Management: Waste Act, 2008;
- Provides for transitional provisions regarding the continuation of the Waste Management Bureau; and
- Provides for matters connected therewith.

Publication details:

Published under Proclamation Notice 125, Government Gazette 48869 of 30 June 2023.

Where do I access this information?

https://implex.co.za/wp-content/uploads/2023/07/ENV-NEMA-NEMLAA-G46602-GovN2203-June2022_1.pdf

What are the practical implications of these changes?

The Implex Team will be hosting an on-line workshop on 25 July 2023, dealing compliance implications as well as the way forward. For more information, please, contact Lebo Sedupane, lebo@implex.co.za .

We trust that this information will serve to be of some assistance to you, and look forward to your positive feedback!

Implex regards,
Marlize



"Innovation comes only from readily and seamlessly sharing information rather than hoarding it." Tom Peters