

REPUBLIC OF SOUTH AFRICA

**NATIONAL ENVIRONMENTAL
MANAGEMENT
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 30142 of 3 August 2007)
(The English text is the official text of the Bill)*

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

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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.

BILL

To amend the National Environmental Management Act, 1998, so as to insert certain definitions and to substitute others; to further regulate environmental authorisations; and to effect certain textual alterations; 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 60 of Act 39 of 2004 and section 3 of National Environment Laws Amendment Act, 2007 5

1. Section 1 of the National Environmental Management Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by—

(a) the substitution for the definition of “**activities**” of the following definition:
“**‘activities’ [includes], when used in Chapter 5, means** policies, programmes, processes, plans and projects;” 10

(b) the substitution for the definition of “**commence**” of the following definition:
“**‘commence’**, when used in Chapter 5, means the start of any physical activity, including site preparation and any other activity on the site in furtherance of a listed activity or specified activity, but does not include any activity required for the purposes of an investigation or feasibility study as long as such investigation or feasibility study does not constitute a listed activity or specified activity;” 15

(c) the substitution for the definition of “**competent authority**” of the following definition:
“**‘competent authority’**, in respect of— 20

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

(b) the evaluation of the environmental impact and the granting, amending or refusing of an environmental authorisation in respect of mining, prospecting and petroleum exploration and production, means the Minister of Minerals and Energy;” 25

- (d) the insertion after the definition of “**Department**” of the following definition:
 “ **‘development footprint’**, in respect of land, means any evidence of its physical transformation as a result of the undertaking of any activity;”;
- (e) the substitution for the definition of “**environmental authorisation**” of the following definition: 5
 “ **‘environmental authorisation’**, when used in Chapter 5, means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a specific environmental management Act;”;
- (f) the insertion after the definition of “**hazard**” of the following definition: 10
 “ **‘integrated environmental authorisation’** means an authorisation granted in terms of section 24L;”;
- (g) the insertion after the definition of “**national department**” of the following definition:
 “ **‘norms or standards’**, when used in Chapter 5, means any norm or standard contemplated in section 24(10);”;
- (h) the insertion after the definition of “**review**” of the following definition:
 “ **‘spatial development tool’**, when used in Chapter 5, means a spatial description of environmental attributes, developmental activities and developmental patterns and their relation to each other;”;
- (i) the addition of the following subsection: 20
 “(5) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act.”. 25

Substitution of section 24 of Act 107 of 1998, as substituted by section 2 of Act 8 of 2004

2. The following section is hereby substituted for section 24 of the principal Act:

“Environmental authorisations

24. (1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential **[impact] consequences for or impacts** on the environment of listed activities or specified activities must be considered, investigated, assessed and reported on to the competent authority **[charged by this Act with granting the relevant environmental authorisation]**. 35

(2) The Minister, **[and every]** or an MEC with the concurrence of the Minister, may identify—

- (a) activities which may not commence without environmental authorisation from the competent authority;
- (b) geographical areas based on environmental attributes, and as specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may not commence without environmental authorisation from the competent authority;
- (c) geographical areas based on environmental attributes, and specified in spatial development tools adopted in the prescribed manner by the environmental authority, in which specified activities may be excluded from authorisation by the competent authority;
- (d) **[individual or generic existing activities which may have a detrimental effect on the environment and in respect of which an application for an environmental authorisation must be made to the competent authority]** activities contemplated in paragraph (a) that may commence without an environmental authorisation, but that must comply with prescribed norms or standards: 50

Provided that where an activity falls under the jurisdiction of another Minister or MEC, a decision in respect of paragraphs (a) to (d) must be taken after consultation with such other Minister or MEC. 55

(3) The Minister, **[and every]** or an MEC with the concurrence of the Minister, may compile information and maps that specify the attributes of

the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority.

(4) Procedures for the investigation, assessment and communication of the potential **[impact]** consequences or impacts of activities on the environment— 5

(a) must ensure, **[as a minimum,]** with respect to every application for an environmental authorisation—

[(a) investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;] 10

(i) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;

(ii) that the findings and recommendations flowing from an investigation, the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to any proposed policy, programme, process, plan or project; 15 20

(iii) that a description of the environment likely to be significantly affected by the proposed activity is contained in such application; and

[(b) (iv) investigation of the potential **[impact] consequences for or impacts on the environment of the activity **[and its alternatives on the environment]** and assessment of the significance of **[that] those** potential **[impact]** consequences or impacts; and** 25

(b) may include, with respect to every application for an environmental authorisation— 30

(i) investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity; 35

[(c)(ii) investigation of mitigation measures to keep adverse consequences or impacts to a minimum[, as well as the option of not implementing the activity];

[(d)(iii) public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in such information and participation procedures; 40

[(e)(iv) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information; 45

[(f)(v) investigation and formulation of arrangements for the monitoring and management of consequences for or impacts on the environment, and the assessment of the effectiveness of such arrangements after their implementation; 50

[(g) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;

(h) that the findings and recommendations flowing from such investigation, the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to the proposed policy, programme, plan or project; and 55 60

- (i)](vi) **[that]** consideration of environmental attributes identified in the compilation of information and maps **[as]** contemplated in subsection (3) **[are considered]**; and
- (vii) conditions that requirements, prescribed in a specific environmental management Act relevant to the listed activity or specified activity, are adhered to. 5
- (5) The Minister, **[and every]** or an MEC with the concurrence of the Minister, may make regulations consistent with subsection (4)—
- (a) laying down the procedure to be followed in applying for, the issuing of, and monitoring compliance with, environmental authorisations; 10
- (b) laying down the procedure to be followed **[and the institutional arrangements]** in respect of—
- (i) the efficient administration and processing of environmental authorisations;
- (ii) fair decision-making and conflict management in the consideration and processing of applications for environmental authorisations; 15
- [(iii) the preparation and evaluation of environmental impact assessments, strategic environmental assessments, environmental management plans and any other relevant environmental management instruments that may be developed in time;]** 20
- (iv) applications to the competent authority by any person to be exempted from the provisions of any regulation in respect of a specific activity; and 25
- (v) appeals against decisions of competent authorities;
- (bA) laying down the procedure to be followed for the preparation, evaluation and adoption of prescribed environmental management instruments, including—
- (i) environmental management frameworks; 30
- (ii) strategic environmental assessments;
- (iii) environmental impact assessments,
- (iv) environmental management plans;
- (v) environmental risk assessments;
- (vi) environmental feasibility assessments; 35
- (vii) norms or standards;
- (viii) spatial development tools; or
- (ix) any other relevant environmental management instrument that may be developed in time;
- (c) prescribing fees, after consultation with the Minister of Finance, to be paid for— 40
- (i) the consideration and processing of applications for environmental authorisations; and
- (ii) the review of documents, processes and procedures by specialists on behalf of the competent authority; 45
- (d) requiring, after consultation with the Minister of Finance, the provision of financial or other security to cover the risks to the State and the environment of non-compliance with conditions attached to environmental authorisations;
- (e) specifying that **[environmental impact assessments, or other]** specified tasks performed in connection with an application for an environmental authorisation[,] may only be performed by an environmental assessment practitioner registered in accordance with the prescribed procedures; 50
- (f) requiring that competent authorities maintain a registry of applications for, and records of decisions in respect of, environmental authorisations; 55
- (g) specifying that a contravention of a specified regulation is an offence and prescribing penalties for the contravention of that regulation;
- (h) prescribing minimum criteria for the report content for each type of report and for each process that is contemplated in terms of the regulations in order to ensure a consistent quality and to facilitate efficient evaluation of reports; 60

- (i) prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in, the review process; and
- (j) prescribing any other matter necessary for dealing with **[making]** and evaluating applications for environmental authorisations.
- (6) An MEC may make regulations in terms of subsection (5) only in respect of listed activities and specified activities or areas in respect of which the MEC is the competent authority. 5
- (7) Compliance with the procedures laid down by the Minister or an MEC in terms of subsection (4) does not **[remove the need to obtain an authorisation, other than an environmental authorisation, for that activity]** absolve a person from complying with any other statutory requirement to obtain authorisation from any organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity in question. 10
- (8) (a) Authorisations **[or permits]** obtained under any other law for an activity listed or specified in terms of this Act does not absolve the applicant from obtaining authorisation under this Act **[and any such other authorisations or permits may only be considered by the competent authority if they are in compliance with subsection (4)(d)]** unless an authorisation has been granted in the manner contemplated in section 24L. 15 20
- (b) Authorisations obtained after any investigation, assessment and communication of the potential consequences of activities required for environmental authorisations, including an exemption granted in terms of section 24M or permits obtained under any law for an activity identified in terms of this Act, may be considered by the competent authority as sufficient for the purposes of this Act. 25
- (9) Only the Minister may make regulations in accordance with subsection (5) stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential consequences for or impacts on the environment by activities, for the purpose of complying with subsection (1), where the activity **[will affect]**— 30
- (a) **[more than one province or traverse]** has a development footprint that falls within the boundaries of more than one province or traverses international boundaries; or
- (b) will affect compliance with obligations resting on the Republic under customary international law or a convention. 35
- (10) (a) The Minister, or an MEC with the concurrence of the Minister, may—
- (i) develop or adopt norms or standards for activities listed in terms of subsection (2)(d); 40
- (ii) prescribe the use of the developed or adopted norms or standards in order to meet the requirements of this Act; and
- (iii) prescribe procedures and criteria to be used by the competent authority for the monitoring of such activities in order to determine compliance with the prescribed norms or standards. 45
- (b) Norms or standards contemplated in paragraph (a) must provide for rules, guidelines or characteristics—
- (i) that may commonly and repeatedly be used; and
- (ii) against which the performance of activities or the results of those activities may be assessed for the purposes of achieving the objects of this Act. 50
- (c) The process of developing norms or standards contemplated in paragraph (a) must, as a minimum, include—
- (i) publication of the draft norms or standards for comment in the relevant *Gazette*; 55
- (ii) consideration of comments received; and
- (iii) publication of the norms or standards to be prescribed.
- (d) The process of adopting norms or standards contemplated in paragraph (a) must, as a minimum, include—

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

Substitution of section 24C of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004

3. The following section is hereby substituted for section 24C of the principal Act:

“Procedure for identifying [the] competent authority

24C. (1) When listing or specifying activities in terms of section 24(2) the Minister, or **[the] an MEC** with the concurrence of the Minister, must identify the competent authority responsible for granting environmental authorisations in respect of those activities.

(2) The Minister must be identified as the competent authority in terms of subsection (1) if the activity—

- (a) has implications for international environmental **[policy or international environmental]** commitments or relations;
 - (b) will take place within an area **[identified in terms of section 24(2)(b) or (c) as a result of the obligations resting on the Republic in terms of any]** protected by means of an international environmental instrument, other than—
 - (i) any area falling within the sea-shore[,] or within 150 meters seawards from the high-water mark, whichever is the greater;
 - (ii) a conservancy[,];
 - (iii) a protected natural environment[,];
 - (iv) a proclaimed private nature reserve[,];
 - (v) a natural heritage site[, or];
 - (vi) the buffer zone or transitional area of a biosphere reserve; or
 - (vii) the buffer zone or transitional area of a world heritage site;
 - (c) **[will affect more than one province or traverse]** has a development footprint that falls within the boundaries of more than one province or traverses international boundaries;
 - (d) is undertaken, or is to be undertaken, by—
 - (i) a national department;
 - (ii) a provincial department responsible for environmental affairs or any other organ of state performing a regulatory function and reporting to the MEC; or
 - (iii) a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government; or
 - (e) will take place within a national proclaimed protected area or other conservation area under control of a national authority.
- (3) The Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities—
- (a) contemplated in subsection (2) may be dealt with by the MEC;
 - (b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister.”.

Substitution of section 24D of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004

4. The following section is hereby substituted for section 24D of the principal Act:

“Publication of list

24D. (1) The Minister or MEC concerned, as the case may be, must publish in the relevant *Gazette* a notice **[listing]** containing a list of—

- (a) activities **[and]** or areas identified in terms of section 24(2); and
- [listing the]**

(b) competent authorities identified in terms of section 24C **[and]**.

(2) The notice referred to in subsection (1) must specify the date on which the list is to come into effect.”.

Amendment of section 24F of Act 107 of 1998, as inserted by section 3 of Act 3 of 2004

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5. Section 24F of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Notwithstanding **[the provisions of]** any other Act, no person may—

(a) commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority has granted an environmental authorisation for the activity, **and no person may continue an existing activity listed in terms of section 24(2)(d) if an application for an environmental authorisation is refused**; or

(b) commence and continue an activity listed in terms of section 24(2)(d) unless it is done in terms of an applicable norm or standard.

(2) It is an offence for any person to fail to comply with or to contravene—

(a) subsection (1) **[or]**;

(b) the conditions applicable to any environmental authorisation granted for a listed activity or specified activity; or

(c) any condition applicable to an exemption granted in terms of section 24M.”.

Substitution of section 24G of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004

6. The following section is hereby substituted for section 24G of the principal Act:

“Rectification of unlawful commencement or continuation of [listed] activity

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24G. (1) On application by a person who has committed an offence in terms of section 24F(2)(a) the Minister or MEC concerned, as the case may be, may direct the applicant to—

(a) compile a report containing one or more of the following, namely—

(i) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity **[on the environment]**, including the cumulative effects;

(ii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity **[on the environment]**;

(iii) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;

(iv) an environmental management plan; and

(b) provide such other information or undertake such further studies as the Minister or MEC, as the case may be, may deem necessary.

(2) **[Upon the payment by the person of an administration fine not exceeding R1 million as determined by the competent authority, the] The Minister or MEC concerned must consider **[the report contemplated in] any reports or information submitted in terms of subsection (1) and thereafter may—****

(a) direct the person to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and subject to such conditions as the Minister or MEC may deem necessary; or

(b) issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.

(2A) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R1 million and which must be determined by the competent authority, before the Minister or MEC concerned may act in terms of subsection (2).

(3) A person who fails to comply with a directive contemplated in subsection (2)(a) or who contravenes or fails to comply with a condition contemplated in subsection (2)(b) is guilty of an offence and liable on conviction to a penalty contemplated in section 24F(4).”.

Amendment of section 24H of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004 5

7. Section 24H of the principal Act is hereby amended by the addition of the following subsection:

“(6) The Minister may appoint as registration authorities such number of associations as are required for the purposes of this Act and may, if circumstances so require, limit the number of registration authorities to a single registration authority.”. 10

Insertion of sections 24J to 24M in Act 107 of 1998

8. The following sections are hereby inserted in the principal Act after subsection 24I:

“Implementation guidelines 15

24J. The Minister or an MEC, with the concurrence of the Minister, may publish guidelines regarding the implementation, administration and institutional arrangements of regulations made in terms of section 24(5).

Consultation between competent authorities and consideration of legislative compliance requirements of other organs of state having jurisdiction 20

24K. (1) The Minister or an MEC may consult with any organ of state responsible for administering the legislation relating to any aspect of an activity that also requires environmental authorisation under this Act in order to coordinate the respective requirements of such legislation and to avoid duplication. 25

(2) The Minister or an MEC, in giving effect to Chapter 3 of the Constitution and section 24(4)(a)(i) of this Act, may after consultation with the organ of state contemplated in subsection (1) enter into a written agreement with the organ of state in order to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires environmental authorisation under this Act. 30

(3) The Minister or an MEC may— 35
 (a) after having concluded an agreement contemplated in subsection (2), consider the relevance and application of such agreement on applications for environmental authorisations; and
 (b) when he or she considers an application for environmental authorisation that also requires authorisation in terms of other legislation take account of, either in part or in full and as far as specific areas of expertise are concerned, any process authorised under that legislation as adequate for meeting the requirements of Chapter 5 of this Act, whether such processes are concluded or not. 40

Alignment of environmental authorisations

24L. (1) If the carrying out of a listed activity or specified activity contemplated in section 24 is also regulated in terms of another law or a specific environmental management Act, the authority empowered under that other law or specific environmental management Act to authorise that activity and the competent authority empowered under Chapter 5 to issue an environmental authorisation in respect of that activity may exercise their respective powers jointly by issuing— 45

(a) separate authorisations; or 50
 (b) an integrated environmental authorisation.

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

Exemptions from application of certain provisions

- 24M.** (1) The Minister or an MEC, as the case may be, may grant an exemption from the provisions of section 24(4)(b) on such conditions as may be determined by the Minister or MEC, as the case may be.
- (2) The Minister or an MEC, as the case may be, must prescribe the process to be followed for the lodging and processing of an application for exemption from section 24(4)(b).
- (3) The Minister or MEC may only grant an exemption contemplated in subsection (1) if—
- (a) the granting of the exemption is unlikely to result in significant detrimental consequences for or impacts on the environment;
 - (b) the provision cannot be implemented in practice in the case of the application in question; or
 - (c) the exemption is unlikely to adversely affect the rights of interested or affected parties.”.

Substitution of section 43 of Act 107 of 1998 as substituted by section 4 of Act 8 of 2004

9. The following section is hereby substituted for section 43 of the principal Act:

“Appeals

- 43.** (1) Any [affected] person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.
- (2) Any [affected] person may appeal to [the relevant] an MEC against a decision taken by any person acting under a power delegated by [the] that MEC under this Act or a specific environmental management Act.
- [(3) Any affected party may appeal to the Minister or MEC, as the case may be, against—**
- (a) any decision to issue or to refuse to issue an environmental authorisation or to grant an exemption in terms of Chapter 5;**
 - (b) any provision or condition of an environmental authorisation or exemption issued or granted in terms of Chapter 5;**
 - (c) any directive issued in terms of Chapter 5.]**
- (4) An appeal under [subsections] subsection (1) [to (3)] or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.
- (5) The Minister or an MEC, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.
- (6) The Minister or an MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or

make any other appropriate [order] decision, including [an order] a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(7) An appeal under this section does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or any directive, unless the Minister or an MEC directs otherwise.”. 5

Transitional provisions

10. (1) Anything done or deemed to have been done under a provision repealed or amended by this Act—

- (a) remains valid to the extent that it is consistent with the principal Act as amended by this Act until anything done under the principal Act as amended by this Act overrides it; and 10
- (b) subject to paragraph (a), is considered to be an action under the corresponding provision of the principal Act as amended by this Act. 15

(2) An application for authorisation of an activity that is submitted in terms of Chapter 5 of the principal Act and that is pending when this Act takes effect must, despite the amendment of the principal Act by this Act, be dispensed with in terms of the provisions of Chapter 5 of the principal Act as if Chapter 5 had not been amended.

Short title and commencement

11. This Act is called the National Environmental Management Amendment Act, 2007, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 20

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL, 2007

1. INTRODUCTION

The Bill seeks to amend the National Environmental Management Act, 1998 (Act No. 107 of 1998) (the Act), to refine the integrated environmental management system in order to improve the efficiency and effectiveness of the system. The Bill proposes new enabling provisions that make it possible for environmental management instruments, other than environmental impact assessments, to be introduced. The Bill also seeks to provide for agreements between organs of state in order to enable them to align regulatory processes. The Bill proposes enabling provisions in order to allow a process conducted in terms of another regulatory system to be used as basis for the granting of environmental authorisations in terms of the Act. The Bill also proposes that one integrated environmental authorisation may be issued where different Acts regulate the same activity or where multiple authorisations require a similar process.

2. ANALYSIS OF BILL

2.1 Clause 1: Definitions

- 2.1.1 The definition of “activity” previously included policies, programmes, plans and projects. It is now amended to also include “processes”.
- 2.1.2 The definition of “commence” is amended to clarify the physical activities that it includes and excludes. Apart from the listed activities and specified activities, it also includes site preparation and any other activity on the site in furtherance of a listed activity or specified activity, but does not include investigations or feasibility studies.
- 2.1.3 A definition of “competent authority” is inserted to include the Minister of Minerals and Energy as a competent authority.
- 2.1.4 The definition of “environmental authorisation” is amended to ensure alignment and integration between authorisations issued in terms of the Act and any other specific environmental management Act.
- 2.1.5 A new definition of “integrated environmental authorisation” is inserted and is necessitated because of the insertion of the new clause 24L.
- 2.1.6 A new definition of “norms or standards” is inserted and is necessitated due to the insertion of a new clause 24(10).
- 2.1.7 New definitions of “development footprint” and “spatial development tool” are inserted and are necessitated due to the introduction of these concepts in the text of the Bill.
- 2.1.8 A new subsection (5) to section 1 makes it clear that if the Act does not make provision for a procedure when any administrative process needs to be conducted or decision needs to be taken, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), will apply.

2.2 Clause 2: Amendment of section 24

The abovementioned section has been amended to refine and improve the environmental management system and is aimed at improving the efficiency and effectiveness of the system. This is done by—

- (a) moving away from environmental impact assessments as the only environmental assessment tool by stating that the consequences of an activity and not only its impact must be considered;
- (b) the introduction of enabling provisions for management of environmental impacts through existing or new norms or standards;
- (c) enhancing environmental cooperation and coordination where an activity falls under the jurisdiction of more than one organ of state; and
- (d) providing enabling provisions to lay down procedures for the preparation, evaluation and adoption of prescribed environmental management instruments.

2.3 Clause 3: Amendment of section 24C

The majority of these amendments are purely to provide clarity in interpretation.

2.4 Clause 4: Amendment of section 24D

The amendments to the abovementioned section are purely editorial and are made to provide clarity during interpretation.

2.5 Clause 5: Amendment of section 24F

The amendment provides for consequential changes due to the introduction of norms and standards in the Bill. It also provides for the contravention of a norm or a standard to be an offence.

2.6 Clause 6: Amendment of section 24G

The amendment to subsection (1) of 24G makes it clear that the report could be required to contain one or more of the aspects mentioned in section 24G(1) and not necessarily all of them. It also provides that the Minister may only issue an environmental authorisation once an administrative fine has been paid.

2.7 Clause 7: Amendment of section 24H

This amendment seeks to empower the Minister to appoint registration authorities.

2.8. Clause 8: Insertion of sections 24J to 24M

- 2.8.1 Clause 24J empowers the Minister to issue guidelines regarding the implementation, administration and institutional arrangement of regulations made in terms of section 24(5).
- 2.8.2 Clause 24K provides for enabling provisions to enhance coordination between organs of state so as to prevent duplication when authorisations are required in terms of more than one Act. It also provides for agreements between organs of state to be concluded which set out such cooperation mechanisms.
- 2.8.3 The new clause 24L introduces enabling mechanisms for the integration and alignment of authorisations relating to environmental management (including permits, licences and other permissions introduced by any specific environmental management Act) and introduces enabling mechanisms for integration and alignment of environmental authorisations with authorisations issued in terms of other legislation. It also allows for a process conducted in terms of another regulatory process to be used for environmental authorisations.
- 2.8.4 The new clause 24M empowers the Minister or an MEC to exempt a person from the provisions of section 24(4)(b) of the Act under certain circumstances.

2.9 Clause 9: Amendment of section 43

By removing the limitation that only “affected persons” may appeal, the appeals provision is opened up to be used by anyone who has *locus standi* in terms of section 32 of the Act. Other editorial amendments were made to provide clarity.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. CONSULTATION

All Departments were consulted through the Cabinet process, but the following departments and statutory bodies were specifically consulted on the Bill:

- All provincial departments responsible for environmental management.
- Department of Minerals and Energy.
- Department of Public Enterprises.

- Department of Water Affairs and Forestry.
- Environment MINTEC and MINMEC.

5. PARLIAMENTARY PROCEDURE

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

5.2 The State Law Advisers are further of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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