

REPUBLIC OF SOUTH AFRICA

**NATIONAL ENVIRONMENTAL
MANAGEMENT AMENDMENT
BILL**

(As introduced in the National Assembly as a section 76 Bill; Bill published in Government Gazette No. 25052 of 3 June 2003) (The English text is the official text of the Bill)

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 29—2003]

ISBN 0 621 33820 6

No. of copies printed 1 800

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 define certain expressions; to provide for the administration and enforcement of certain national environmental management laws; 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

1. Section 1 of the National Environmental Management Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the insertion—
- (a) after the definition of “Agenda 21” of the following definition: 5
 “**‘aircraft’** means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;”;
 - (b) after the definition of “Constitution” of the following definition: 10
 “**‘delegation’**, in relation to a duty, includes an instruction to perform the duty;”;
 - (c) after the definition of “environmental management cooperation agreement” of the following definition: 15
 “**‘environmental management inspector’** means a person designated as an environmental management inspector in terms of section 31B or 31C;”;
 - (d) after the definition of “regulation” of the following definition: 20
 “**‘specific environmental management Acts’** means—
 - (i) the National Environmental Management: Biodiversity Act, 2003; and
 - (ii) the National Environmental Management: Protected Areas Act, 2003, and includes any regulations or other subordinate legislation made in terms of any of those Acts;”;
 - (e) after the definition of “this Act” of the following definition: 25
 “**‘vessel’** means any waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transporting anything by water.”

Amendment of heading to Part 1 of Chapter 7 of Act 107 of 1998

2. Part 1 of Chapter 7 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“Part 1

Environmental hazards, access to information and protection of whistleblowers”. 5

Deletion of heading after section 30 of Act 107 of 1998

3. The following heading after section 30 of the principal Act is hereby deleted:

“[Part 2

Information, enforcement and compliance]”. 10

Insertion of Part in Chapter 7 of Act 107 of 1998

4. The following Part is hereby inserted in Chapter 7 of the principal Act after section 31:

“Part 2

Application and enforcement of Act and specific environmental management Acts 15

Application

31A. (1) This Part applies to the enforcement of this Act and the specific environmental management Acts.

(2) In this Part, unless inconsistent with the context, a word or expression to which a meaning has been assigned in a specific environmental management Act has, in relation to the administration or enforcement of that Act, the meaning assigned to it in that Act. 20

(3) For the purposes of this Part, Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), is deemed to include an offence committed in terms of this Act or a specific environmental management Act. 25

Designation of environmental management inspectors by Minister

31B. (1) The Minister may—

(a) designate as an environmental management inspector, any staff member of— 30

- (i) the Department; or
- (ii) any other organ of state; and

(b) at any time withdraw a designation made in terms of paragraph (a).

(2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister and the relevant organ of state. 35

Designation of environmental management inspectors by MEC

31C. (1) An MEC may—

(a) designate as an environmental management inspector, any staff member of— 40

- (i) the department responsible for environmental management in the province;
- (ii) any other provincial organ of state; or
- (iii) any municipality in the province; and

(b) at any time withdraw a designation made in terms of paragraph (a).

(2) A designation in terms of subsection (1)(a)(ii) or (iii) may only be made by agreement between the relevant MEC and the relevant provincial organ of state or municipality.

Mandates

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

- (a) this Act;
- (b) a specific environmental management Act;
- (c) specific provisions of this Act or a specific environmental management Act;
- (d) this Act and all specific environmental management Acts; or
- (e) any combination of those Acts or provisions of those Acts.

(2) An MEC may designate a person as an environmental management inspector for the enforcement of only those provisions of this Act or any specific environmental management Act—

- (a) which are administered by the MEC or a provincial organ of state; or
- (b) in respect of which the MEC or a provincial organ of state exercises or performs assigned or delegated powers or duties.

(3) A person designated as an environmental management inspector may exercise any of the powers given to environmental management inspectors in terms of this Act that are necessary for the inspector's mandate in terms of subsection (1) and that may be specified by the Minister or MEC by notice in writing to the inspector.

Prescribed standards

31E. (1) The Minister may prescribe—

- (a) qualification criteria for environmental management inspectors; and
- (b) training that must be completed by environmental management inspectors.

(2) The Minister may only prescribe criteria and training in terms of subsection (1) after consultation with the Minister responsible for safety and security.

Proof of designation

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

(2) When exercising any powers or performing any duties in terms of this Act or a specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card and the notice issued to the inspector in terms of section 31D(3).

Functions of inspectors

31G. (1) An environmental management inspector within his or her mandate in terms of section 31D—

- (a) must monitor and enforce compliance with a law for which he or she has been designated in terms of that section;
- (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute—
 - (i) an offence in terms of such law;
 - (ii) a breach of such law; or
 - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.

(2) An environmental management inspector—

- (a) must carry out his or her duties and exercise his or her powers—
 - (i) in accordance with any instructions issued by the Minister or MEC, as the case may be; and

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

General powers

- 31H.** (1) An environmental management inspector, within his or her mandate in terms of section 31D, may—
- (a) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute—
 - (i) an offence in terms of a law for which that inspector has been designated in terms of that section;
 - (ii) a breach of such law; or
 - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;
 - (b) issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;
 - (c) inspect, or question a person about, any document, book or record or any written or electronic information—
 - (i) which may be relevant for the purpose of paragraph (a); or
 - (ii) to which this Act or a specific environmental management Act relates;
 - (d) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph (c), or remove such document, book, record or written or electronic information in order to make copies or extracts;
 - (e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;
 - (f) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in—
 - (i) committing an offence in terms of the law for which that inspector has been designated in terms of section 31D;
 - (ii) breaching such law; or
 - (iii) breaching a term or condition of a permit, authorisation or other instrument issued in terms of such law;
 - (g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation;
 - (h) dig or bore into the soil;
 - (i) take samples;
 - (j) remove any waste or other matter deposited or discharged in contravention of the law for which that inspector has been designated in terms of section 31D or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or
 - (k) carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific environmental management Act.
- (2) A written notice issued in terms of subsection (1)(b) must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.
- (3) A person who receives a written notice in terms of subsection (1)(b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act or a specific environmental management Act.
- (4) An environmental management inspector must—

- (a) provide a receipt for—
 - (i) any document, book, record or written or electronic information removed in terms of subsection (1)(d); or
 - (ii) any specimen, article, substance or other item removed in terms of subsection (1)(f); and
 - (b) return anything removed within a reasonable period or, subject to section 34D, at the conclusion of any relevant criminal proceedings.
- (5) In addition to the powers set out in this Part, an environmental management inspector, within his or her mandate in terms of section 31D, has all the powers assigned in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977, to a police official who is not a commissioned officer.

Seizure of items

- 31I.** (1) The provisions of sections 30 to 34 of the Criminal Procedure Act, 1977, apply to the disposal of anything seized in terms of this Part, subject to such modifications as the context may require.
- (2) When an item is seized in terms of this Part, the environmental management inspector may request the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the inspector, and if the person refuses to take the item to the designated place, the inspector may do so.
- (3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management inspector may immobilise it by removing a part.
- (4) An item seized in terms of this section, including a part of a vehicle, vessel or aircraft referred to in subsection (3), must be kept in such a way that it is secured against damage.
- (5) An environmental management inspector may—
- (a) in the case of a specimen of a threatened or protected species or alien species being imported into the Republic, at the port of entry, request the person responsible for the import or that person's agent, to produce the original copies of the import permit, together with such other documentation as may be required; and
 - (b) in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit, request the person responsible for the export or re-export or that person's agent to produce the original copy of the export or re-export permit, together with such other documentation as may be required.

Powers to stop, enter and search vehicles, vessels and aircraft

- 31J.** (1) An environmental management inspector, within his or her mandate in terms of section 31D, may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal—
- (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit—
 - (i) an offence in terms of the law for which that inspector has been designated in terms of section 31D; or
 - (ii) a breach of such law or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or
 - (b) contains or conveys a thing which may serve as evidence of such offence or breach.
- (2) An environmental management inspector may, without a warrant, seize anything contained in or on any vehicle, vessel, aircraft or pack-animal that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.
- (3) The provisions of section 31I apply to anything seized in terms of subsection (2), subject to such modifications as the context may require.

- (4) An environmental management inspector may, for the purpose of implementing subsection (1), at any time, and without a warrant—
- (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or
 - (b) if necessary and possible, force the driver or pilot to stop or land, as the case may be. 5
- (5) An environmental management inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in section 31H.
- (6) An environmental management inspector may apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint. 10
- (7) An environmental management inspector has, within his or her mandate in terms of section 31D, all the powers of a member of the South African Police Service in terms of section 13(8) of the South African Police Service Act, 1995. 15

Routine inspections

- 31K.** (1) An environmental management inspector, within his or her mandate in terms of section 31D, and subject to subsection (2), may, at any reasonable time, without a warrant, enter and inspect any building, land or premises for the purposes of ascertaining compliance with— 20
- (a) the legislation for which that inspector has been designated in terms of section 31D; or
 - (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation. 25
- (2) An environmental management inspector, within his or her mandate in terms of section 31D, may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any residential premises for the purposes of ascertaining compliance with— 30
- (a) the legislation for which that inspector has been designated in terms of section 31D; or
 - (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation. 35
- (3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the Acts for which that inspector has been designated in terms of section 31D. 40
- (4) An environmental management inspector may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if—
- (a) the person in control of the premises consents to the entry and inspection; or 45
 - (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.
- (5) While carrying out a routine inspection, an environmental management inspector may seize anything in or on any business or residential premises or land that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act. 50
- (6) The provisions of section 31I apply to anything seized in terms of subsection (5), subject to such modifications as the context may require. 55
- (7) An environmental management inspector may exercise on such business or residential premises or land any of the powers mentioned in section 31H.

Power to issue compliance notices

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

Objections to compliance notice

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

Failure to comply with compliance notice

- 31N.** (1) A person who fails to comply with a compliance notice commits an offence.
- (2) If a person fails to comply with a compliance notice, the environmental management inspector must report the non-compliance to the Minister or MEC, as the case may be, and the Minister or MEC may—
- (a) revoke or vary the relevant permit, authorisation or other instrument which is the subject of the compliance notice;
 - (b) take any necessary steps and recover the costs of doing so from the person who failed to comply; and
 - (c) report the matter to a Director of Public Prosecutions.

Powers of South African Police Service members

- 31O.** (1) A member of the South African Police Service has, in respect of an offence in terms of this Act or a specific environmental management Act, all the powers of an environmental management inspector in terms of this Part excluding the power to conduct routine inspections in terms of section

31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O.

(2) Notwithstanding subsection (1), the Minister or MEC, as the case may be, may, with the concurrence of the Minister responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 31K to 31O.

Duty to produce documents

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, must produce that document at the request of an environmental management inspector.

Confidentiality

31Q. (1) It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act or a specific environmental management Act, except—

- (a) if the information is disclosed in compliance with the provisions of any law;
- (b) if the person is ordered to disclose the information by a court;
- (c) if the information is disclosed to enable a person to perform a function in terms of this Act or a specific environmental management Act; or
- (d) for the purposes of the administration of justice.

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

Insertion of heading before section 32 of Act 107 of 1998

5. The following heading is hereby inserted in the principal Act before section 32:

“Part 3

Judicial matters”.

Amendment of section 32 of Act 107 of 1998

6. Section 32 of the principal Act is hereby amended by—

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

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

- (b) the substitution for subsection (2) of the following subsection:

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

- (c) the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

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

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Insertion of sections 34A to 34G in Act 107 of 1998

7. The following sections are hereby inserted in the principal Act after section 34:

“ Offences relating to environmental management inspectors

34A. (1) A person is guilty of an offence if that person—

- (a) hinders or interferes with an environmental management inspector in the execution of that inspector’s official duties;
- (b) pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector;
- (c) furnishes false or misleading information when complying with a request of an environmental management inspector; or
- (d) fails to comply with a request of an environmental management inspector.

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(2) A person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

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Award of part of fine recovered to informant

34B. (1) A court which imposes a fine for an offence in terms of this Act or a specific environmental management Act may order that a sum of not more than one-fourth of the fine be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.

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(2) A person in the service of an organ of state or engaged in the implementation of this Act or a specific environmental management Act is not entitled to such an award.

Cancellation of permits

34C. (1) The court convicting a person of an offence in terms of this Act or a specific environmental management Act may—

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

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Forfeiture of items

34D. (1) The court convicting a person of an offence in terms of this Act may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of or in connection with the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.

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(2) The provisions of section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.

(3) The Minister must ensure that any specimen forfeited to the State in terms of subsection (1) is—

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- (a) repatriated to the country of export or origin as appropriate, at the expense of the person convicted of the offence involving that specimen;
- (b) deposited in an appropriate institution, collection or museum, if—
 - (i) the specimen is clearly marked as a seized specimen; and
 - (ii) the person convicted of the offence does not benefit or gain from such deposit; or
- (c) otherwise disposed of in an appropriate manner.

Treatment of seized live specimens

34E. Pending the institution of any criminal proceedings in terms of this Act or a specific environmental management Act or the resolution of such proceedings, a live specimen that has been seized in terms of this Part must be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

Security for release of vehicles, vessels or aircraft

34F. (1) If a vehicle, vessel or aircraft is seized in terms of this Act and is kept for the purposes of criminal proceedings, the owner or agent of the owner may at any time apply to a court for the release of the vehicle, vessel or aircraft.

(2) A court may order the release of the vehicle, vessel or aircraft on the provision of security determined by the court.

(3) The amount of the security must at least be equal to the sum of—

- (a) the market value of the vehicle, vessel or aircraft;
- (b) the maximum fine that a court may impose for the alleged offence; and
- (c) costs and expenses incurred or reasonably foreseen to be incurred by the State in connection with prosecuting the offence and recoverable in terms of this Act.

(4) If the court is satisfied that there are circumstances which warrant a lesser amount of security, it may order the release of the vehicle, vessel or aircraft subject to the provision of security for such lesser amount.

Admission of guilt fines

34G. (1) The Minister may by regulation specify offences in terms of this Act or a specific environmental management Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence.

(2) An environmental management inspector who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue to the alleged offender a written notice referred to in section 56 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(3) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount—

- (a) prescribed for the offence; and
- (b) which a court would presumably have imposed in the circumstances.

(4) The provisions of sections 56, 57 and 57A of the Criminal Procedure Act, 1977, apply subject to such modifications as the context may require, to written notices and admission of guilt fines referred to in this section.”.

Substitution of heading to Chapter 9 of Act 107 of 1998

8. The following heading is hereby substituted for the heading to Chapter 9 of the principal Act:

“CHAPTER 9

ADMINISTRATION OF ACT AND SPECIFIC ENVIRONMENTAL MANAGEMENT ACTS”.

Substitution of section 42 of Act 107 of 1998

9. The following section is hereby substituted for section 42 of the principal Act:

“Delegation of powers and duties by Minister and Director-General

42. (1) The Minister may delegate a power[, **function**] or duty vested in him or her in terms of this Act or a specific environmental management Act to— 5

- (a) **[a named officer of the Department; or]** the Director-General;
- (b) **[the holder of an office in the Department or, after consultation with the relevant Minister or MEC, the holder of an office of any other national department, provincial administration or municipality.]** an MEC, by agreement with the MEC;
- (c) the management authority of a protected area; or
- (d) any organ of state, by agreement with that organ of state.

- (2) A delegation referred to in subsection (1)—
- (a) must be in writing; 15
 - (b) may be made subject to conditions;
 - (c) does not prevent the exercise of the power[, **function**] or the performance of the duty by the Minister himself or herself; **[and]**
 - (d) may include the power to subdelegate; and
 - (e) may be withdrawn by the Minister. 20

(2A) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, the management authority of a protected area or an organ of state.

(2B) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision. 25

(2C) The Minister may not delegate a power or duty vested in the Minister in terms of this Act or a specific environmental management Act—

- (a) to make regulations; 30
- (b) to publish notices in the *Gazette*;
- (c) to appoint a member of a board or committee; or
- (d) to expropriate private land.

(3) The Director-General may delegate a power[, **function**] or duty vested in him or her by or under this Act or a specific environmental management Act to— 35

- [(a) a named officer of the Department;]**
- [(b)](a)** the holder of an office in the Department; or
- [(c)](b)** after consultation with a provincial head of department, an officer in a provincial administration or municipality. 40

(4) The Director-General may permit a person to whom a power[, **function**] or duty has been delegated by the Director-General to delegate further that power[, **function**] or duty.

(5) A delegation referred to in subsection (3) and the permission referred to in subsection (4)— 45

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) **[does]** do not prevent the exercise of the power[, **function**] or the performance of the duty by the Director-General himself or herself; and
- (d) may be withdrawn by the Director-General.”. 50

Insertion of section 42A in Act 107 of 1998

10. The following section is hereby inserted in the principal Act after section 42:

“Delegation of powers by MEC

42A. (1) The MEC of a province may delegate a power or duty vested in or delegated to the MEC in terms of this Act or a specific environmental management Act to— 55

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

Insertion of sections 47A to 47D in Act 107 of 1998

11. The following sections are hereby inserted in the principal Act after section 47:

“Regulations, legal documents and steps valid under certain circumstances

- 47A.** (1) A regulation or notice, or an authorisation, permit or other document, made or issued in terms of this Act or a specific environmental management Act—
- (a) but which does not comply with any procedural requirement of the relevant Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person;
 - (b) may be amended or replaced without following a procedural requirement of the relevant Act if—
 - (i) the purpose is to correct an error; and
 - (ii) the correction does not change the rights and duties of any person materially.
- (2) The failure to take any steps in terms of this Act or a specific environmental management Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure—
- (a) is not material;
 - (b) does not prejudice any person; and
 - (c) is not procedurally unfair.

Consultation

47B. When in terms of this Act or a specific environmental management Act the Minister or an MEC is required to consult any person or organ of state, such consultation is regarded as having been satisfied if a formal written notification of intention to act has been made to that person or organ of state and no response has been received within a reasonable time.

Extension of time periods

47C. The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period which binds the Minister or MEC.

Delivery of documents

47D. (1) A notice or other document in terms of this Act or a specific environmental management Act may be issued to a person—

- (a) by delivering it by hand;
- (b) by sending it by registered mail—
 - (i) to that person's business or residential address; or
 - (ii) in the case of a juristic person, to its registered address or principal place of business; or
- (c) where an address is unknown despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.

(2) A notice or other document issued in terms of subsection (1)(b) or (c) must be regarded as having come to the notice of the person, unless the contrary is proved.”.

Substitution of section 49 of Act 107 of 1998

12. The following section is hereby substituted for section 49 of the principal Act:

“Limitation of liability

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

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

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

Substitution of long title of Act 107 of 1998

13. The following long title is hereby substituted for the long title of the principal Act:

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

Short title and commencement

14. This Act is called the National Environmental Management Amendment Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL, 2003

1. BACKGROUND AND OBJECTS OF BILL

The National Environmental Management Act, 1998 (NEMA) provides for co-operative environmental governance by establishing principles for decision making on matters affecting the environment, institutions that will promote co-operative governance and procedures for co-ordinating environmental functions exercised by organs of state. It is anticipated that three Bills (the specific environmental management Acts) will be introduced in Parliament during this Session. This Bill seeks to amend NEMA so as to provide for the administration and enforcement of those Acts.

2. ANCILLARY OBJECTS OF BILL

The Bill also seeks to—

- * provide for the delegation of powers by the Minister, Director-General and the MECs for environmental affairs;
- * provide for the designation of environmental management inspectors by the Minister or the MEC; and
- * provide for matters of compliance and enforcement.

3. FINANCIAL IMPLICATIONS FOR STATE

Sufficient funds are available in the current budget for the additional staff required for the enforcement of specific environmental management Acts and for the appointment of environmental inspectors. A preliminary costing exercise was undertaken to ascertain where additional costs or expenditure would arise. The study is limited to additional costs associated with the implementation of the amendments to Chapter 9 of NEMA. Existing functions and costs that are already budgeted for are discounted. EIA functions as well as functions in terms of the Air Quality Management Draft Bill and other Draft Bills were also not included.

Using current salary scales as well as other costs relating to employees (e.g. office space, equipment and furniture requirements), it was possible to ascertain an approximation of the total costs that will be incurred as a result of the implementation of the NEMA Amendment Bill. The additional staff requirements (for the Department and for provincial environmental departments) are based on 10% of a top management post (deputy director-general); 20% of a senior management post (chief director); 1 full-time middle manager; 2 full-time senior specialists; 2 administrative staff members.

The results of the calculations indicate that the implementation of the Bill will cost DEAT an additional annual cost of R1 132 273. Implementation can be phased in over a 3-5 year period. Costs would be:

Year 1 = R377 424,30

Year 2 = R754 848,60 (amount in year 1x2)

Year 3 = R1 132 273,00

It must be noted that the additional annual figure stabilises from Year 3. In essence, this means that the basic annual cost over the long term will stand at R1 132 273, which will be the total additional cost to the department irrespective of whether the phasing in or once-off approach is adopted.

The results of the calculations indicate that the implementation of the Bill will cost the nine provincial authorities an additional annual cost amounting to R9 090 765. This means that it will cost each provincial authority about R1 010 085 per annum. If the implementation of the functions were to be phased in over a period of three years, the figures for the provincial authorities together would be as follows:

| All provincial authorities | | Per provincial authority | |
|-----------------------------------|-----------------------------|---------------------------------|-----------------------------|
| Year | Additional costs (R) | Year | Additional Costs (R) |
| 1 | 3 030 225 | 1 | 336 692 |
| 2 | 6 060 510 | 2 | 673 390 |
| 3 | 9 090 765 | 3 | 1 010 085 |

The figure also stabilises from Year 3 onwards.

4. CONSULTATION

All relevant national and provincial departments were consulted and a draft bill was published for public comment in *Government Gazette* No. 24311 of 24 January 2003. Comments received have been incorporated in the Bill.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Environmental Affairs and Tourism are of the opinion that the Bill must be dealt with in accordance with the Parliamentary procedure established by section 76 of the Constitution as it falls within a functional area listed under Schedule 4.