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THE PRESIDENCY

No. 22

9 January 2009

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

No. 62 of 2008: National Environmental Management Amendment Act, 2008.



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

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 5 January 2009.)*

ACT

To amend the National Environmental Management Act, 1998, so as to insert certain definitions and to substitute others; to further regulate environmental authorisations; to empower the Minister of Minerals and Energy to implement environmental matters in terms of the National Environmental Management Act, 1998, in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area; to align environmental requirements in the Mineral and Petroleum Resources Development Act, 2002, with the National Environmental Management Act, 1998, by providing for the use of one environmental system and by providing for environmental management programmes, consultation with State departments, exemptions from certain provisions of the National Environmental Management Act, 1998, financial provision for the remediation of environmental damage, the management of residue stockpiles and residue deposits, the recovering of cost in the event of urgent remedial measures and the issuing of closing certificates as it relates to the conditions of the environmental authorisation; 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, 2008

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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;”;

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(b) the insertion after the definition of “**aircraft**” of the following definition:
“ ‘**applicant**’ means a person who has submitted—

(a) or who intends to submit an application for an environmental authorisation; or

(b) an application for an environmental authorisation simultaneously with his or her application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;”;

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- (c) 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;” 5
- (d) the substitution for the definition of **“community”** of the following definition:
“‘community’— 10
(a) means any group of persons or a part of such a group who share common interests, and who regard themselves as a community; and
(b) in relation to environmental matters pertaining to prospecting, mining, exploration or production or related activity on a prospecting, mining, exploration or production area, means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that where as a consequence of the provisions of this Act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by prospecting, mining, exploration or production on land occupied by such members or part of the community;” 15 20
- (e) 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;” 25
- (f) the substitution for the definition of **“environmental authorisation”** of the following definition:
“‘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;” 30
- (g) the insertion after the definition of **“environmental management plan”** of the following definition:
“‘environmental management programme’ means a programme required in terms of section 24;” 35
- (h) the insertion after the definition of **“evaluation”** of the following definition:
“‘exploration area’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”
- (i) the insertion after the definition of **“hazard”** of the following definitions: 40
“‘holder’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
‘holder of an old order right’ has the meaning assigned to ‘holder’ in item 1 of Schedule II to the Minerals and Petroleum Resources Development Act, 2002; 45
‘integrated environmental authorisation’ means an authorisation granted in terms of section 24L;
‘interested and affected party’, for the purposes of Chapter 5 and in relation to the assessment of the environmental impact of a listed activity or related activity, means an interested and affected party contemplated in section 24(4)(a)(v), and which includes— 50
(a) any person, group of persons or organisation interested in or affected by such operation or activity; and
(b) any organ of state that may have jurisdiction over any aspect of the operation or activity;” 55

- (j) the insertion after the definition of “**MEC**” of the following definitions:
- “**‘mine’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
‘Mineral and Petroleum Resources Development Act, 2002’ means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
‘mining area’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (k) the substitution for the definition of “**Minister**” of the following definition:
- “**‘Minister’**, in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, means the Minister of Environmental Affairs and Tourism;”;
- (l) the insertion after the definition of “**Minister**” of the following definition:
- “**‘Minister of Minerals and Energy’** means the Minister responsible for the implementation of environmental matters relating to prospecting, mining, exploration, production and related activities within a mining, prospecting, exploration or production area;”;
- (m) the insertion after the definition of “**organ of state**” of the following definition:
- “**‘owner of works’** has the meaning contemplated in paragraph (b) of the definition of “owner” in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);”;
- (n) 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);”;
- (o) the insertion after the definition of “**prescribe**” of the following definitions:
- “**‘production area’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
‘prospecting area’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (p) the insertion after the definition of “**provincial head of department**” of the following definitions:
- “**‘public participation process’**, in relation to the assessment of the environmental impact of any application for an environmental authorisation, means a process by which potential interested and affected parties are given opportunity to comment on, or raise issues relevant to, the application;
‘Regional Mining Development and Environmental Committee’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (q) the insertion after the definition of “**regulation**” of the following definitions:
- “**‘residue deposit’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
‘residue stockpile’ has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (r) 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;” and

(s) the addition of the following subsection:

“(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.”

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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] or the Minister of Minerals and Energy, as the case may be, except in respect of those activities that may commence without having to obtain an environmental authorisation in terms of this Act.

(1A) Every applicant must comply with the requirements prescribed in terms of this Act in relation to—

- (a) steps to be taken before submitting an application, where applicable;
- (b) any prescribed report;
- (c) any procedure relating to public consultation and information gathering;
- (d) any environmental management programme;
- (e) the submission of an application for an environmental authorisation and any other relevant information; and
- (f) the undertaking of any specialist report, where applicable.

(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 paragraphs (a) and (b) that may commence without an environmental authorisation, but that must comply with prescribed norms or standards;

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.

(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—

(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;]

(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;

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

[(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**

(v) 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 those information and participation procedures; and

(b) must include, with respect to every application for an environmental authorisation and where applicable—

(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;

[(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 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] investigation, assessment and evaluation of the impact of any proposed listed or specified activity on any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), excluding the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act;

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

[(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;

[(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 5
- (i)(vi) ~~[that]~~ consideration of environmental attributes identified in the compilation of information and maps ~~[as]~~ contemplated in subsection (3) **[are considered]**; and 10
- (vii) provision for the adherence to requirements that are prescribed in a specific environmental management Act relevant to the listed or specified activity in question.
- (4A) Where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, subsection (4)(b) is applicable. 15
- (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; 20
- (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 consid- 25
 - eration and processing of applications for environmental authorisations;
 - [(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;]** 30
 - (iv) applications to the competent authority by any person to be exempted from the provisions of any regulation in respect of a specific activity; 35
 - (v) appeals against decisions of competent authorities;
 - (vi) the management and control of residue stock piles and deposits on a prospecting, mining, exploration and production area;
 - (vii) consultation with land owners, lawful occupiers and other interested or affected parties; 40
 - (viii) mine closure requirements and procedures, the apportionment of liability for mine closure and the sustainable closure of mines with an interconnected or integrated impact resulting in a cumulative impact;
 - (ix) financial provision; and 45
 - (x) monitoring and environmental management programme performance assessments;
- (bA) laying down the procedure to be followed for the preparation, evaluation and adoption of prescribed environmental management instruments, including— 50
- (i) environmental management frameworks;
 - (ii) strategic environmental assessments;
 - (iii) environmental impact assessments;
 - (iv) environmental management programmes;
 - (v) environmental risk assessments; 55
 - (vi) environmental feasibility assessments;
 - (vii) norms or standards;
 - (viii) spatial development tools; or
 - (ix) any other relevant environmental management instrument that may be developed in time; 60
- (c) prescribing fees, after consultation with the Minister of Finance, to be paid for—

- (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;
- (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; 5
- (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; 10
- (f) requiring that competent authorities maintain a registry of applications for, and records of decisions in respect of, environmental authorisations; 15
- (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; 20
- (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. 25

(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.

(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. 30

(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. 40

(b) Authorisations obtained after any investigation, assessment and communication of the potential impacts or consequences of activities, including an exemption granted in terms of section 24M or permits obtained under any law for a listed activity or specified activity in terms of this Act, may be considered by the competent authority as sufficient for the purposes of section 24(4), provided that such investigation, assessment and communication comply with the requirements of section 24(4)(a) and, where applicable, comply with section 24(4)(b). 45

(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]**— 50

- (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. 60

(10) (a) The Minister, or an MEC with the concurrence of the Minister, may—

- (i) develop or adopt norms or standards for activities, or for any part of an activity or for a combination of activities, contemplated in terms of subsection (2)(d);
- (ii) prescribe the use of the developed or adopted norms or standards in order to meet the requirements of this Act; 5
- (iii) prescribe reporting and monitoring requirements; and
- (iv) 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.
- (b) Norms or standards contemplated in paragraph (a) must provide for rules, guidelines or characteristics— 10
 - (i) that may commonly and repeatedly be used; and
 - (ii) against which the performance of activities or the results of those activities may be measured for the purposes of achieving the objects of this Act. 15
- (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*; 20
 - (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*; 25
 - (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 30

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 35 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 **[national environmental policy or]** international environmental commitments or relations; 40
- (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 45 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]; 50
 - (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; 55
- (d) is undertaken, or is to be undertaken, by—
 - (i) a national department;

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- (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.
- (2A) The Minister of Minerals and Energy must be identified as the competent authority in terms of subsection (1) where the activity constitutes prospecting, mining, exploration, production or a related activity occurring within a prospecting, mining, exploration or production area.
- (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

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 or the Minister of Minerals and Energy, as the case may be, 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)(a) **[or]**;
 - (b) subsection (1)(b);
 - (c) the conditions applicable to any environmental authorisation granted for a listed activity or specified activity;
 - (d) any condition applicable to an exemption granted in terms of section 24M; or
 - (e) an approved environmental management programme.”.

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, Minister of Minerals and Energy or MEC concerned, as the case may be, may direct the applicant to—

(a) compile a report containing—

(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; 10

(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]**; 15

(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; 20

(iv) an environmental management **[plan]** programme; 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]** 25
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 30

(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)(a) or (b). 35

(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).” 40

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

7. Section 24H of the principal Act is hereby amended by the addition of the following subsection: 45

“(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.”.

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

24J. The Minister or an MEC, with the concurrence of the Minister, may publish guidelines regarding—

- (a) listed activities or specified activities; or
- (b) 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

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.

(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.

(3) The Minister or an MEC may—

- (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 and provided that section 24(4)(a) and, where applicable, section 24(4)(b) are given effect to in such process.

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—

- (a) separate authorisations; or
- (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 in terms of any other legislation that meets all the requirements stipulated in section 24(4)(a) and, where applicable, section 24(4)(b) 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 any provision of this Act, except from a provision of section 24(4)(a).

(2) The Minister of Minerals and Energy may grant an exemption from any matter contemplated in section 24(4)(b).

(3) 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 in terms of this section.

(4) The Minister, the Minister of Minerals and Energy or MEC may only grant an exemption contemplated in subsection (1) or (2), as the case may be, 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.

Environmental management programme

24N. (1) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may require the submission of an environmental management programme before considering an application for an environmental authorisation.

(1A) Where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, or where such application relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, the Minister, the Minister of Minerals and Energy, an MEC or identified competent authority must require the submission of an environmental management programme before considering an application for an environmental authorisation.

(2) The environmental management programme must contain—

- (a) information on any proposed management, mitigation, protection or remedial measures that will be undertaken to address the environmental impacts that have been identified in a report contemplated in subsection 24(1A), including environmental impacts or objectives in respect of—
 - (i) planning and design;
 - (ii) pre-construction and construction activities;
 - (iii) the operation or undertaking of the activity in question;
 - (iv) the rehabilitation of the environment; and
 - (v) closure, if applicable;
- (b) details of—
 - (i) the person who prepared the environmental management programme; and
 - (ii) the expertise of that person to prepare an environmental management programme;
- (c) a detailed description of the aspects of the activity that are covered by the environmental management programme;

- (d) information identifying the persons who will be responsible for the implementation of the measures contemplated in paragraph (a);
- (e) information in respect of the mechanisms proposed for monitoring compliance with the environmental management programme and for reporting on the compliance; 5
- (f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and 10
- (g) a description of the manner in which it intends to—
 - (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
 - (ii) remedy the cause of pollution or degradation and migration of pollutants; and 15
 - (iii) comply with any prescribed environmental management standards or practices.
- (3) The environmental management programme must, where appropriate—
 - (a) set out time periods within which the measures contemplated in the environmental management programme must be implemented; 20
 - (b) contain measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting area or mining area in question; and 25
 - (c) develop an environmental awareness plan describing the manner in which—
 - (i) the applicant intends to inform his or her employees of any environmental risk which may result from their work; and 30
 - (ii) risks must be dealt with in order to avoid pollution or the degradation of the environment.
- (4) The Minister of Minerals and Energy may not grant an environmental authorisation, unless he or she has considered any recommendation by the Regional Mining Development and Environmental Committee. 35
- (5) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may call for additional information and may direct that the environmental management programme in question must be adjusted in such a way as the Minister, the Minister of Minerals and Energy or the MEC may require. 40
- (6) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority may at any time after he or she has approved an application for an environmental authorisation approve an amended environmental management programme.
- (7) The holder and any person issued with an environmental authorisation— 45
 - (a) must at all times give effect to the general objectives of integrated environmental management laid down in section 23;
 - (b) must consider, investigate, assess and communicate the impact of his or her prospecting or mining on the environment; 50
 - (c) must manage all environmental impacts—
 - (i) in accordance with his or her approved environmental management programme, where appropriate; and
 - (ii) as an integral part of the reconnaissance, prospecting or mining, exploration or production operation, unless the Minister of Minerals and Energy directs otherwise; 55
 - (d) must monitor and audit compliance with the requirements of the environmental management programme;
 - (e) must, as far as is reasonably practicable, rehabilitate the environment affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and 60

- (f) is responsible for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of his or her prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting or mining area to which such right or permit relates.

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Criteria to be taken into account by competent authorities when considering applications

240. (1) If the Minister, the Minister of Minerals and Energy, an MEC or identified competent authority considers an application for an environmental authorisation, the Minister, Minister of Minerals and Energy, MEC or competent authority must—

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(a) comply with this Act;

(b) take into account all relevant factors, which may include—

(i) any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused;

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(ii) measures that may be taken—

(aa) to protect the environment from harm as a result of the activity which is the subject of the application; and

(bb) to prevent, control, abate or mitigate any pollution, substantially detrimental environmental impacts or environmental degradation;

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(iii) the ability of the applicant to implement mitigation measures and to comply with any conditions subject to which the application may be granted;

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(iv) where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment;

(v) any information and maps compiled in terms of section 24(3), including any prescribed environmental management frameworks, to the extent that such information, maps and frameworks are relevant to the application;

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(vi) information contained in the application form, reports, comments, representations and other documents submitted in terms of this Act to the Minister, Minister of Minerals and Energy, MEC or competent authority in connection with the application;

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(vii) any comments received from organs of state that have jurisdiction over any aspect of the activity which is the subject of the application; and

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(viii) any guidelines, departmental policies and decision making instruments that have been developed or any other information in the possession of the competent authority that are relevant to the application; and

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(c) take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.

(2) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority must consult with every State department that administers a law relating to a matter affecting the environment when he or she considers an application for an environmental authorisation.

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(3) A State department consulted in terms of subsection (2) must submit comment within 40 days from the date on which the Minister, Minister of Minerals and Energy, MEC or identified competent authority requests such State department in writing to submit comment.

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(4) If any State department contemplated in subsection (2) objects to the contents of an application for prospecting, mining, exploration, production or related activities in a prospecting, mining, exploration or production area, the Minister of Minerals and Energy must refer the objection to the

Regional Mining Development and Environmental Committee for consideration and recommendation.

(5) The Regional Mining Development and Environmental Committee must, within 45 days after the date of receiving such an objection, consider the objection and must make recommendations to the Minister of Minerals and Energy for a final decision.

Financial provision for remediation of environmental damage

24P. (1) An applicant for an environmental authorisation relating to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area must make the prescribed financial provision for the rehabilitation, management and closure of environmental impacts, before the Minister of Minerals and Energy issues the environmental authorisation.

(2) If any holder or any holder of an old order right fails to rehabilitate or to manage any impact on the environment, or is unable to undertake such rehabilitation or to manage such impact, the Minister of Minerals and Energy may, upon written notice to such holder, use all or part of the financial provision contemplated in subsection (1) to rehabilitate or manage the environmental impact in question.

(3) Every holder must annually assess his or her environmental liability and, if circumstances so require, must adjust his or her financial provision to the satisfaction of the Minister of Minerals and Energy.

(4) (a) If the Minister of Minerals and Energy is not satisfied with the assessment and financial provision contemplated in this section, the Minister of Minerals and Energy may appoint an independent assessor to conduct the assessment and determine the financial provision.

(b) Any cost in respect of such assessment must be borne by the holder in question.

(5) The requirement to maintain and retain the financial provision contemplated in this section remains in force until the Minister of Minerals and Energy issues a certificate to such holder, but the Minister of Minerals and Energy may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent or residual environmental impacts.

(6) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (1) and all amounts arising from that provision.

(7) The Minister, or an MEC in concurrence with the Minister, may in writing make subsections (1) to (6) with the changes required by the context applicable to any other application in terms of this Act.

Monitoring and performance assessment

24Q. As part of the general terms and conditions for an environmental authorisation and in order to—

(a) ensure compliance with the conditions of the environmental authorisation; and

(b) in order to assess the continued appropriateness and adequacy of the environmental management programme,

every holder and every holder of an old order right must conduct such monitoring and such performance assessment of the approved environmental management programme as may be prescribed.

Mine closure on environmental authorisation

24R. (1) Every holder, holder of an old order right and owner of works remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of extraneous water, the management and sustainable closure thereof until the Minister of Minerals and Energy has issued a closure certificate in terms of the Mineral and

Petroleum Resources Development Act, 2002, to the holder or owner concerned.

(2) When the Minister of Minerals and Energy issues a closure certificate, he or she must return such portion of the financial provision contemplated in section 24P as the Minister may deem appropriate to the holder concerned, but may retain a portion of such financial provision for any latent and or residual environmental impact that may become known in the future.

(3) Every holder, holder of an old order right or owner of works must plan, manage and implement such procedures and requirements in respect of the closure of a mine as may be prescribed.

(4) The Minister may, in consultation with the Minister of Minerals and Energy and by notice in the *Gazette*, identify areas where mines are interconnected or their impacts are integrated to such an extent that the interconnection results in a cumulative impact.

(5) The Minister may, by notice in the *Gazette*, publish strategies in order to facilitate mine closure where mines are interconnected, have an integrated impact or pose a cumulative impact.”

Insertion of section 42B in Act 107 of 1998

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

“Delegation by Minister of Minerals and Energy

42B. (1) The Minister of Minerals and Energy may delegate a function entrusted to him or her in terms of this Act to—

- (a) the Director-General of the Department of Minerals and Energy; or
- (b) any officer in the Department of Minerals and Energy.

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

- (a) must be in writing;
- (b) may be made subject to any condition;
- (c) does not prevent the performance of the function by the Minister himself or herself; and
- (d) may be withdrawn by the Minister.”

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

10. 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.

(1A) Any person may appeal to the Minister against a decision taken by the Minister of Minerals and Energy in respect of an environmental management programme or environmental authorisation.

(1B) Any person may appeal to the Minister of Minerals and Energy against a process related decision taken by a person to whom a function has been delegated by that Minister in terms of section 42B.

(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)], (1A), (1B) or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee. 5

(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. 10

(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.”. 15

Amendment of section 47 of Act 107 of 1998, as amended by section 8 of Act 8 of 2004

11. Section 47 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection: 20

“(3) Notwithstanding subsection (2), any regulation made in terms of section 24(5)(bA) must be submitted to Parliament 30 days prior to publication.”.

Transitional provisions

12. (1) Anything done or deemed to have been done under a provision repealed or amended by this Act— 25

(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

(b) subject to paragraph (a), is considered to be an action under the corresponding provision of the principal Act as amended by this Act. 30

(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 Chapter 5 of the principal Act as if Chapter 5 had not been amended. 35

(3) Section 24G of the principal Act applies with the changes required by the context in respect of any activity undertaken in contravention of section 22 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), if such activity is a listed activity under the principal Act.

(4) An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); immediately before the date on which this Act came into operation must be regarded as having been approved in terms of the principal Act as amended by this Act. 40

(5) (a) Notwithstanding subsection (4), the Minister of Minerals and Energy may direct any holder or any holder of an old order right, if he or she is of the opinion that the prospecting, mining, exploration or production operations in question are likely to result in unacceptable pollution, ecological degradation or damage to the environment, to take such action to upgrade the environmental management plan or programme to address the deficiencies in the plan or programme as the Minister may direct in terms of the principal Act as amended by this Act. 45 50

(b) For the purposes of this subsection, “Minister of Minerals and Energy”, “holder” and “holder of an old order right” have the meanings assigned to them in section 1 of the principal Act as amended by this Act.

Amendment of principal Act in order to transfer to Minister of Environmental Affairs and Tourism power in respect of environmental matters in so far as it relates to mining

13. The principal Act as amended by this Act is amended to the extent specified in the Schedule with effect from a date 18 months after the date on which the provisions relating to prospecting, mining, exploration and production and related activities comes into operation in terms of section 14(2) of this Act. 5

Short title and commencement

14. (1) This Act is called the National Environmental Management Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 10

(2) Notwithstanding subsection (1), any provision relating to prospecting, mining, exploration and production and related activities comes into operation on a date 18 months after the date of commencement of—

(a) section 2; or

(b) the Mineral and Petroleum Resources Development Amendment Act, 2008, whichever date is the later. 15

“SCHEDULE

(Section 13)

Amendment of section 1 of Act 107 of 1998

1. Section 1 of the principal Act is hereby amended—
 - (a) by the substitution for the definition of “Minister” of the following definition: 5
“**Minister**”, in relation to all environmental matters except environmental matters relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area,] means the Minister of Environmental Affairs and Tourism;”: and 10
 - (b) by the deletion of the definition of “Minister of Minerals and Energy”.

Amendment of section 24C of Act 107 of 1998

2. Section 24C of the principal Act is hereby amended by the deletion of subsection (2A).

Amendment of section 24M of Act 107 of 1998 15

3. Section 24M of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 24R of Act 107 of 1998

4. Section 24R of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 20
“(4) The Minister may, [in] after consultation with the Minister of Minerals and Energy and by notice in the *Gazette*, identify areas where mines are interconnected or their impacts are integrated to such an extent that the interconnection results in a cumulative impact.”.

Repeal of section 42B of Act 107 of 1998 25

5. Section 42B of the principal Act is hereby repealed.

Amendment of section 43 of Act 107 of 1998

6. Section 43 of the principal Act is hereby amended—
 - (a) by the deletion of subsections (1A) and (1B); and
 - (b) by the substitution for subsection (4) of the following subsection: 30
“(4) An appeal under subsection (1)[, (1A), (1B)] or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.”.

Amendment or substitution of certain expressions

7. The principal Act is hereby amended— 35
 - (a) by the deletion of the expression “or the Minister of Minerals and Energy, as the case may be,” wherever it appears in section 24(1), section 24F(1)(a) and section 24G(1);
 - (b) by the deletion of the expression “, Minister of Minerals and Energy” wherever it appears in section 24M(4); 40
 - (c) by the deletion of the expression “, the Minister of Minerals and Energy,” wherever it appears in section 24N(1), (1A), (5) and (6) and section 24O(1) and (2); and
 - (d) by the substitution for the expression “Minister of Minerals and Energy”, wherever it appears in section 24N(4) and (7), section 24O(4) and (5), section 24P(1), (2), (3), (4) and (5) and section 24R(1) and (2), of the word “Minister”. 45