

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT BILL

(As introduced in the National Assembly)

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 101—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP NASIONALE OMGEWINGSBESTUUR

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN OMGEWINGSAKE EN TOERISME)

[W 101—98]

ISBN 0 621 28487 4

BILL

To provide 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; and to provide for matters connected therewith.

WHEREAS many inhabitants of South Africa live in an environment that is harmful to their health and wellbeing;

everyone has the right to an environment that is not harmful to his or her health or well-being;

the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;

sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations;

everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
prevent pollution and ecological degradation;
promote conservation; and
secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

the environment is a functional area of concurrent national and provincial legislative competence, and all spheres of government and all organs of state must co-operate with, consult and support one another;

AND WHEREAS it is desirable—

- that the law develops a framework for integrating good environmental management into all development activities;
- that the law should promote certainty with regard to decision-making by organs of state on matters affecting the environment;
- that the law should establish principles guiding the exercise of functions affecting the environment;
- that the law should ensure that organs of state maintain the principles guiding the exercise of functions affecting the environment;
- that the law should establish procedures and institutions to facilitate and promote co-operative government and intergovernmental relations;
- that the law should establish procedures and institutions to facilitate and promote public participation in environmental governance;
- that the law should be enforced by the State and that the law should facilitate the enforcement of environmental laws by civil society;

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

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SCHEDULES

Definitions

1. (1) In this Act, unless the context requires otherwise—
- (i) “activities” when used in Chapter 5 means policies, programmes, plans and projects; (i)
 - (ii) “best practicable environmental option” means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term; (ii) 5
 - (iii) “commercially confidential information” means commercial information, the disclosure of which would prejudice to an unreasonable degree the commercial interests of the holder: Provided that details of emission levels and waste products must not be considered to be commercially confidential notwithstanding any provision of this Act or any other law; (xxv) 10
 - (iv) “Committee” means the Committee for Environmental Co-ordination referred to in section 7; (xii)
 - (v) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act no. 108 of 1996); (ix) 15
 - (vi) “Department” means the Department of Environmental Affairs and Tourism; (iii)
 - (vii) “Director-General” means the Director-General of Environmental Affairs and Tourism; (iv) 20
 - (viii) “ecosystem” means a dynamic system of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit; (x)
 - (ix) “environment” means the aggregate or any component of the plants, living organisms other than humans, land, water and atmosphere of the earth and the interrelationship that exists among and between the foregoing, and includes their physical and aesthetic properties that influence the health and well-being of humans; (xv) 25
 - (x) “environmental implementation plan” means an implementation plan referred to in section 11; (xviii) 30
 - (xi) “environmental management plan” means a management plan referred to in section 11; (xvi)
 - (xii) “environmental management co-operation agreement” means an agreement referred to in section 35(1); (xvii)
 - (xiii) “financial year” means a period commencing on 1 April of any year and ending on 31 March of the following year; (vi) 35
 - (xiv) “Forum” means the National Environmental Advisory Forum referred to in section 3; (vii)
 - (xv) “hazard” means a source of or exposure to danger; (viii)
 - (xvi) “international environmental instrument” means any international agreement, declaration, resolution, convention or protocol which relates to the management of the environment; (xi) 40
 - (xvii) “MEC” means the Member of the Executive Council to whom the Premier has assigned the performance in the province of the functions entrusted to a MEC by or under such a provision; (xiii) 45
 - (xviii) “Minister” means the Minister of Environmental Affairs and Tourism; (xiv)
 - (xix) “national department” means a department of State within the national sphere of government; (xv)
 - (xx) “organ of state” means organ of state as defined in the Constitution; (xxiv)
 - (xxi) “person” includes a juristic person; (xx) 50
 - (xxii) “prescribe” means prescribe by regulation in the *Gazette*; (xxii)
 - (xxiii) “provincial head of department” means the head of the provincial department responsible for environmental affairs; (xxi)
 - (xxiv) “regulation” means a regulation made under this Act; (xxii)
 - (xxv) “state land” means land which vests in the national or a provincial government, and includes land below the high water mark and the Admiralty Reserve, but excludes land belonging to a local authority; (xxiii) 55
 - (xxvi) “sustainable development” means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations; (xxvi) and 60
 - (xxvii) “this Act” includes the schedules, and regulations and any notice issued under the Act. (xxvi)
- (2) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.

(3) A reasonable interpretation of a provision which is consistent with the purpose of this Act must be preferred over an alternative interpretation which is not consistent with the purpose of this Act.

(4) Neither—

- (a) a reference to a duty to consult specific persons or authorities, nor 5
- (b) the absence of any reference in this Act to a duty to consult or give a hearing, exempts the official or authority exercising a power or performing a function from the duty to act fairly.

CHAPTER 1

NATIONAL ENVIRONMENTAL MANAGEMENT PRINCIPLES 10

Principles

2. (1) The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and—
- (a) shall apply alongside all other appropriate and relevant considerations, including the State's responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination; 15
 - (b) serve as the general framework within which environmental management and implementation plans must be formulated; 20
 - (c) serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment;
 - (d) serve as principles by reference to which a conciliator appointed under this Act must make recommendations; and 25
 - (e) guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment.
- (2) Development must be sustainable and may not harm the health and wellbeing of present and future generations. 30
- (3) (a) Sustainable development requires the consideration of all relevant factors including the following:
- (i) that the disturbance of ecosystems and loss of biological diversity is avoided, or, where it cannot be altogether avoided, is minimised and remedied;
 - (ii) that pollution and degradation of the environment is avoided, or, where it cannot be altogether avoided, is minimised and remedied; 35
 - (iii) that cultural heritage sites are respected and their disturbance is minimised and remedied where it cannot be altogether avoided;
 - (iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner; 40
 - (v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
 - (vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised; 45
 - (vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and 50
 - (viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where it cannot be altogether prevented, be minimised and remedied.
- (b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the affects 55

of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.

(c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons. 5

(d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.

(e) Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle. 10

(f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured. 15

(g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.

(h) Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means. 20

(i) The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment. 25

(j) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.

(k) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

(l) There must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment. 30

(m) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.

(n) Global and international responsibilities relating to the environment must be discharged in the national interest. 35

(o) The environment is held in public trust for the people, and the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.

(p) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment. 40

CHAPTER 2

INSTITUTIONS

Part 1: National Environmental Advisory Forum 45

Establishment, objects and functions of National Environmental Advisory Forum

3. (1) The National Environmental Advisory Forum is hereby established.

(2) The object of the Forum is to inform the Minister of the views of stakeholders regarding the application of the principles set out in section 2 and advise him or her on the setting and achievement of objectives and priorities for environmental governance. 50

(3) The Forum may, on its own initiative and after consultation with the Director-General, draw the Minister's attention to any matter concerning environmental management requiring attention, and the Minister may refer matters for consideration by the Forum.

Composition

4. (1) The Forum consists of at least five but not more than 12 members appointed by the Minister.
- (2) The Minister appoints persons who represent stakeholders, and persons who have experience, expertise or skills necessary to enable the Forum to carry out its functions: 5
Provided that the Minister must take into account the desirability of appointing persons disadvantaged by unfair discrimination and ensuring representation of vulnerable and disadvantaged persons.
- (3) Before persons contemplated in subsection (2) are appointed, the Minister must— 10
- (a) invite nominations from organised labour, organised business, non-governmental organisations and community-based organisations in a manner that he or she may consider appropriate, and invite nominations from others by notice in the *Gazette* and at least two nationally distributed newspapers, specifying a period within which nominations must be submitted; 15
 - (b) stipulate in such notice, the procedure to be adopted regarding such nominations; and
 - (c) consult with the MECs.
- (4) The Minister appoints the chairperson of the Forum.
- (5) (a) Each member of the Forum designates an alternate to take his or her place if he or she is unable to attend a meeting of the Forum. 20
- (b) The Minister may appoint a replacement for a member who vacates his or her office in terms of section 5(3), and the Minister may invite nominations from the sector or organisation that nominated such member.
- (6) The replacement must serve for the balance of the term of the person he or she replaces. 25

Conditions of appointment to Forum

5. (1) A member of the Forum holds office for a period of two years.
- (2) At the expiry of his or her term of office a member may be appointed for one further term. 30
- (3) A member or replacement member of the Forum must vacate his or her office if—
- (a) the Minister at any time terminates such term of office for good reason;
 - (b) he or she can no longer perform his or her duties on the Forum;
 - (c) he or she is convicted of a criminal offence, involving dishonesty, and is sentenced to imprisonment without the option of a fine; 35
 - (d) he or she is absent from more than two consecutive meetings of the Forum without the leave of the chairperson; or
 - (e) he or she resigns by way of written notice to the Minister.
- (4) Members of the Forum and members of a committee of the Forum may be paid such remuneration and allowances for their services as the Minister may determine with the concurrence of the Minister of Finance. 40
- (5) If any member of the Forum or his or her spouse has a direct or indirect financial interest in any matter before the Forum, he or she shall disclose such interest and may not take part in any discussion regarding such matter.

Functioning of Forum 45

6. (1) The Minister may—
- (a) by regulation published in the *Gazette* lay down rules for the functioning of the Forum, including—
 - (i) a constitution for the Forum and its publication in the *Gazette*;
 - (ii) the manner and timing of reports by the Forum; and 50
 - (iii) consultation with the Director-General;
 - (b) with the concurrence of the Minister of Finance make available funds for the functioning of the Forum for purposes other than the payment of remuneration referred to in section 5(4), from—

- (i) money appropriated by Parliament for this purpose; and
 - (ii) funds obtained from donations or grants.
- (2) The Director General may—
- (a) designate as many officers and employees as he or she may deem necessary to assist the Forum in the performance of its work. 5
 - (b) engage persons on contract to assist the Forum in the performance of its work.
- (3) The Minister must present an annual report to Parliament on the work of the Forum, including the following:
- (a) the work plan for the next year;
 - (b) information and recommendations submitted; and 10
 - (c) financial report and budget.

Part 2: Committee for Environmental Co-ordination

Establishment, objects and functions of Committee

7. (1) The Committee for Environmental Co-ordination is hereby established.
- (2) The object of the Committee is to promote the integration and co-ordination of environmental functions by the relevant organs of state, and in particular to promote the achievement of the purpose and objectives of environmental implementation plans as set out in section 12. 15
- (3) The functions of the Committee shall include the following:
- (a) scrutinising, reporting and making recommendations on the environmental implementation plans submitted to it in accordance with section 15; 20
 - (b) investigating and making recommendations regarding the assignment and delegation of functions between organs of state under this Act or any other law affecting the environment and regarding the practical working arrangements, including memoranda of understanding, between the organs of state represented by members and other organs of state; 25
 - (c) investigating and recommending the establishment of mechanisms in each province, with the concurrence of the MEC, for providing a single point in the province for the receipt of applications for authorisations, licences and similar permissions required for activities under legal provisions concerned with the protection of the environment where such authorisations, licences or permissions are required from more than one organ of state, and procedures for the co-ordinated consideration of such applications by the organs of state concerned; 30
 - (d) making recommendations to co-ordinate the application of integrated environmental management as contemplated in Chapter 5, including co-operation in environmental assessment procedures and requirements and making determinations regarding the prevention of duplication of efforts as contemplated in section 24(4); 35
 - (e) making recommendations aimed at securing compliance with the principles set out in section 2 and national norms and standards contemplated in section 146(2)(b)(i) of the Constitution; 40
 - (f) making recommendations regarding the harmonisation of the environmental functions of all relevant national departments and spheres of government; and
 - (g) advising the Minister on providing guidelines for the preparation of environmental management plans and environmental implementation plans. 45

Composition of Committee

8. (1) The Committee comprises:
- (a) the Director-General: Environmental Affairs and Tourism, who acts as chairperson; 50
 - (b) the Director-General: Water Affairs and Forestry;
 - (c) the Director-General: Minerals and Energy;

- (d) the Director-General: Land Affairs;
 - (e) the Director-General: Constitutional Development;
 - (f) the Director-General: Housing;
 - (g) the Director-General: Agriculture;
 - (h) the provincial heads of department appointed by the Minister with the concurrence of the MEC; and 5
 - (i) any other Director-General appointed by the Minister with the concurrence of the Minister under whose portfolio that Department falls.
- (2) (a) The Committee may co-opt persons to assist it in carrying out its functions.
 (b) The Committee may invite persons to attend its meetings and to assist it in carrying out its functions. 10
- (3) In making the appointments as contemplated in subsection (2)(a), the Committee must give due consideration to representation by the sphere of local government.
- (4) Every member of the Committee referred to in subsection (1), must appoint an alternate member with the necessary authority from his or her department or provincial government. 15
- (5) The alternate member appointed under subsection (4) must act in such member's absence or inability to act as member of the Committee.

Meetings of Committee, sub-committees and working groups

9. (1) The Committee meets at least four times a year. 20
- (2) The Director-General determines:
- (a) the procedure for convening meetings of the Committee;
 - (b) the quorum for meetings;
 - (c) procedures at meetings; and
 - (d) records the Committee must keep. 25
- (3) The Director-General furnishes the Minister with copies of the minutes of all meetings, within three weeks of such meetings.
- (4) The Committee may establish *ad hoc* and permanent sub-committees to assist the Committee in the performance of its functions, and such sub-committees may include persons who need not necessarily be members of the Committee. 30
- (5) The Committee may establish *ad hoc* working groups to assist a sub-committee in the performance of its functions, and such working groups may include persons who need not necessarily be members of the sub-committee.

Report of Committee

10. (1) The Committee presents an annual report on its activities to the Minister on the following: 35
- (a) the work of the Committee and the work plan for the next year;
 - (b) comments submitted to the Director-General on the environmental implementation and environmental management plans received;
 - (c) recommendations made in respect of environmental implementation and environmental management plans received; 40
 - (d) recommendations made in order to secure compliance with the principles set out in section 2 and national norms and standards; and
 - (e) any other matter relevant to the co-ordination of policies, plans and programmes that may affect the environment. 45
- (2) Upon the request of members of the public, the Committee must make copies available of the report contemplated in subsection (1).

CHAPTER 3

PROCEDURES FOR CO-OPERATIVE GOVERNANCE

Environmental implementation plans and management plans 50

11. (1) Every national department listed in Schedule 1 that exercises functions which

may affect the environment and every province must prepare an environmental implementation plan within one year of the promulgation of this Act and at least every four years thereafter.

(2) Every national department listed in Schedule 2 that exercises functions involving the management of the environment must prepare an environmental management plan within one year of the promulgation of this Act and at least every four years thereafter. 5

(3) Every national department that is listed in both Schedule 1 and Schedule 2 may prepare a consolidated environmental implementation and management plan.

(4) Every organ of state referred to in subsections (1) and (2) must, in its preparation of an environmental implementation plan or environmental management plan, and before submitting such plan take into consideration every other environmental implementation plan and environmental management plan already adopted with a view to achieving consistency among such plans. 10

(5) The Minister may by notice in the *Gazette*—

(a) extend the date for the submission of any environmental implementation plans and environmental management plans for periods not exceeding 12 months; 15

(b) on application by any organ of state, or on his or her own initiative with the agreement of the relevant Minister where it concerns a national department, and after consultation with the Committee, amend Schedules 1 and 2.

(6) The Director-General must, at the request of a national department or province assist with the preparation of an environmental implementation plan. 20

(7) The preparation of environmental implementation plans and environmental management plans may consist of the assembly of information or plans compiled for other purposes and may form part of any other process or procedure.

(8) The Minister may issue guidelines to assist provinces and national departments in the preparation of environmental implementation and environmental management plans. 25

Purpose and objects of environmental implementation plans and environmental management plans

12. The purpose of environmental implementation and management plans is to— 30

(a) co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, and of provincial and local spheres of government, in order to: 35

(i) minimise the duplication of procedures and functions; and

(ii) promote consistency in the exercise of functions that may affect the environment;

(b) give effect to the principle of co-operative government in Chapter 3 of the Constitution; 40

(c) secure the protection of the environment across the country as a whole;

(d) prevent unreasonable actions by provinces in respect of the environment that are prejudicial to the economic or health interests of other provinces or the country as a whole; and

(e) enable the Minister to monitor the achievement, promotion, and protection of a sustainable environment. 45

Content of environmental implementation plans

13. (1) Every environmental implementation plan must contain:

(a) a description of policies, plans and programmes that may significantly affect the environment; 50

(b) a description of the manner in which the relevant national department or province will ensure that the policies, plans and programmes referred to in paragraph (a) will comply with the principles set out in section 2 as well as any national norms and standards as envisaged under section 146(2)(b)(i) of the Constitution and set out by the Minister, or by any other Minister, which 55

- have as their objective the achievement, promotion, and protection of the environment;
- (c) a description of the manner in which the relevant national department or province will ensure that its functions are exercised so as to ensure compliance with relevant legislative provisions, including the principles set out in section 2, and any national norms and standards envisaged under section 146(2)(b)(i) of the Constitution and set out by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of the environment; and
- (d) recommendations for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in Chapter 5.
- (2) The Minister may, after consultation with the Committee, make regulations for the purpose of giving effect to subsections (1)(b) and (c).

Content of environmental management plans

- 14.** Every environmental management plan must contain—
- (a) a description of the functions exercised by the relevant department in respect of the environment;
- (b) a description of environmental norms and standards, including norms and standards contemplated in section 146(2)(b)(i) of the Constitution, set or applied by the relevant department;
- (c) a description of the policies, plans and programmes of the relevant department that are designed to ensure compliance with its policies by other organs of state and persons;
- (d) a description of priorities regarding compliance with the relevant department's policies by other organs of state and persons;
- (e) a description of the extent of compliance with the relevant department's policies by other organs of state and persons;
- (f) a description of arrangements for co-operation with other national departments and spheres of government, including any existing or proposed memoranda of understanding entered into, or delegation or assignment of powers to other organs of state, with a bearing on environmental management; and
- (g) proposals for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in Chapter 5.

Submission, scrutiny and adoption of environmental implementation plans and environmental management plans

- 15.** (1) Every environmental implementation plan and every environmental management plan must be submitted to the Committee by a date to be set by the Minister.
- (2) (a) The Committee scrutinises every environmental implementation plan and either recommends adoption of such plan or reports to the Minister as well as every other Minister responsible for a department which is represented on the Committee and every Provincial Premier concerned on the extent to which the environmental implementation plan concerned fails to comply with—
- (i) the principles in section 2;
- (ii) the purpose and objectives of environmental implementation plans; or
- (iii) any relevant environmental management plan,
- and specifies changes needed in the environmental implementation plan concerned.
- (b) If the Committee recommends adoption of an environmental implementation plan, then the relevant organ of state must adopt and publish its plan in the relevant *Gazette* within 90 days of such approval and the plan becomes effective from the date of such publication.
- (3) Any difference or disagreement between the Committee and a national department regarding either a failure to submit or the content of an environmental implementation plan may, if it cannot be resolved by agreement between the parties concerned, be referred by the Director-General for determination by the Minister in consultation with the Ministers responsible for the Department of Land Affairs, Department of Water Affairs and Forestry, Department of Minerals and Energy and Department of Constitutional Development.

(4) Any difference or disagreement between the Committee and a province regarding either a failure to submit or the content of an environmental implementation plan may, if it cannot be resolved by agreement between the parties concerned, be referred by the Director-General to conciliation in accordance with Chapter 4 and if such conciliation fails, or where the Director-General does not refer the dispute to conciliation, to the Minister with a request for intervention in accordance with section 100 of the Constitution: Provided that such disputes shall be dealt with in accordance with the act contemplated in section 41(2) of the Constitution, once promulgated. 5

(5) A national department which has submitted an environmental management plan must adopt and publish its plan in the *Gazette* within 90 days of such submission and the plan becomes effective from the date of such publication. 10

Compliance with environmental implementation plans and environmental management plans

16. (1) (a) Every organ of state must exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the environmental implementation plan or the environmental management plan prepared, submitted and adopted by that organ of state in accordance with this Chapter: Provided that any substantial deviation from an environmental management plan or environmental implementation plan must be reported forthwith to the Director-General and the Committee. 15 20

(b) Every organ of state must report annually within four months of the end of its financial year on the implementation of its adopted environmental management plan or environmental implementation plan to the Director-General and the Committee.

(c) The Minister may, after consultation with the Committee, recommend to any organ of state which has not submitted and adopted an environmental implementation plan or environmental management plan, that it comply with a specified provision of an adopted environmental implementation plan or submitted environmental management plan. 25

(2) The Director-General monitors compliance with environmental implementation plans and environmental management plans and may— 30

(a) take any steps or make any inquiries he or she deems fit in order to determine if environmental implementation plans and environmental management plans are being complied with by organs of state; and

(b) if, as a result of any steps taken or inquiry made under paragraph (a), he or she is of the opinion that an environmental implementation plan and an environmental management plan is not substantially being complied with, serve a written notice on the organ of state concerned, calling on it to take such specified steps as the Director-General considers necessary to remedy the failure of compliance. 35 40

(3) (a) Within 30 days of the receipt of a notice contemplated in subsection (2)(b), an organ of state must respond to the notice in writing setting out any—

(i) objections to the notice; 45
(ii) steps that will be taken to remedy failures of compliance; or
(iii) other information that the organ of state considers relevant to the notice.

(b) After considering the representations from the organ of state and any other relevant information, the Director-General must within 30 days of receiving a response referred to in paragraph (a) issue a final notice—

(i) confirming, amending or cancelling the notice referred to in subsection (2)(b); 50
(ii) specify steps and a time period within which steps must be taken to remedy the failure of compliance.

(c) If, after compliance with the provisions of paragraphs (a) and (b) there still remains a difference or disagreement between the organs of state and the Director-General, the organ of state may request the Minister to refer any difference or disagreement between itself and the Director-General regarding compliance with an environmental implementation plan, or the steps necessary to remedy a failure of compliance, to conciliation in accordance with Chapter 4. 55

(d) Where an organ of state does not submit any difference or disagreement to conciliation in accordance with paragraph (c), or if conciliation fails to resolve the matter, the Director-General may within 60 days of the final notice referred to in paragraph (b) if the matter has not been submitted to conciliation, or within 30 days of the date of conciliation, as the case may be— 60

- (i) where the organ of State belongs to the provincial sphere of government, request the Minister to intervene in accordance with section 100 of the Constitution: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41(2) of the Constitution once promulgated; 5
 - (ii) where the organ of State belongs to the local sphere of government, request the MEC to intervene in accordance with section 139 of the Constitution; or
 - (iii) where the organ of state belongs to the national sphere of government refer the matter for determination by the Minister in consultation with the Ministers responsible for the Department of Land Affairs, Department of Water Affairs and Forestry, Department of Minerals and Energy and Department of Constitutional Development. 10
- (4) Each provincial government must ensure that—
- (a) the relevant provincial environmental implementation plan is complied with by each municipality within its province and for this purpose the provisions of subsections (2) and (3) must apply with the necessary changes; and 15
 - (b) municipalities adhere to the relevant environmental implementation and management plans, and the principles contained in section 2 in the preparation of any policy, programme or plan, including the establishment of integrated development plans and land development objectives. 20
- (5) The Director-General must keep a record of all environmental implementation plans and environmental management plans, relevant agreements between organs of state and any reports submitted under subsection 15(1); and such plans, reports and agreements must be available for inspection by the public.

CHAPTER 4 25

FAIR DECISION-MAKING AND CONFLICT MANAGEMENT

Reference to conciliation

17. (1) Any Minister, MEC or Municipal Council—
- (a) where a difference or disagreement arises concerning the exercise of any of its functions which may significantly affect the environment, or 30
 - (b) before whom an appeal arising from a difference or disagreement regarding the protection of the environment is brought under any law, may, before reaching a decision, consider the desirability of first referring the matter to conciliation and—
- (i) must if he, she or it considers conciliation appropriate either— 35
 - (aa) refer the matter to the Director-General for conciliation under this Act; or
 - (bb) appoint a conciliator on the conditions that he, she or it may determine; or
 - (cc) where a conciliation or mediation process is provided for under any other relevant law administered by such Minister, MEC or Municipal Council, 40 refer the matter for mediation or conciliation under such other law; or
 - (ii) if he, she or it considers conciliation inappropriate or if conciliation has failed, make a decision: Provided that the provisions of section 4 of the Development Facilitation Act, 1995 (Act No. 67, 1995) shall prevail in respect of decisions in terms of that Act and laws contemplated in subsection 1(c) thereof. 45
- (2) Anyone may request the Minister, a MEC or Municipal Council to appoint a facilitator to call and conduct meetings of interested and affected parties with the purpose of reaching agreement to refer a difference or disagreement to conciliation in terms of this Act, and the Minister, MEC or Municipal Council may, subject to section 22, appoint a facilitator and determine the manner in which the facilitator must carry out his or her tasks. 50
- (3) A court or tribunal hearing a dispute regarding the protection of the environment may order the parties to submit the dispute to a conciliator appointed by the Director-General in terms of this Act and suspend the proceedings pending the outcome of the conciliation. 55

Conciliation

- 18.** (1) Where a matter has been referred to conciliation in terms of this Act, the Director-General may, on the conditions that he or she may determine, appoint a conciliator acceptable to the parties to assist in resolving a difference or disagreement: Provided that if the parties to the difference or disagreement do not reach agreement on the person to be appointed, the Director-General may appoint a person who has adequate experience in or knowledge of conciliation of environmental disputes. 5
- (2) A conciliator appointed in terms of this Act must attempt to resolve the matter—
- (a) by obtaining such information whether documentary or oral as is relevant to the resolution of the difference or disagreement; 10
 - (b) by mediating the difference or disagreement;
 - (c) by making recommendations to the parties to the difference or disagreement; or
 - (d) in any other manner that he or she considers appropriate.
- (3) In carrying out his or her functions, a conciliator appointed in terms of this Act must take into account the principles contained in section 2. 15
- (4) A conciliator may keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of all or part of the proceedings relating to the conciliation of a matter.
- (5) Where conciliation does not resolve the matter, a conciliator may enquire of the parties whether they wish to refer the matter to arbitration and may with their concurrence endeavour to draft terms of reference for such arbitration. 20
- (6) Where such record has been kept, any member of the public may obtain a readable copy of the record and the conciliator's report upon payment of a fee as approved by Treasury. 25
- (7) (a) The conciliator must submit a report to the Director-General, the parties and the person who referred the matter for conciliation, setting out the result of his or her conciliation, and indicating whether or not an agreement has been reached.
- (b) In the event of no agreement having been reached, the report may contain his or her recommendations and reasons therefor. 30
 - (c) Where relevant, the report must contain the conciliator's comments on the conduct of the parties.
- (8) The Director-General may from time to time with the concurrence of the Minister of Finance, appoint persons or organisations with relevant knowledge or expertise to provide conciliation and mediation services. 35

Arbitration

- 19.** (1) A difference or disagreement regarding the protection of the environment may be referred to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).
- (2) Where a dispute or disagreement referred to in subsection (1) is referred to arbitration the parties thereto may appoint as arbitrator a person from the panel of arbitrators established in terms of section 22. 40

Investigation

- 20.** The Minister may at any time appoint one or more persons to assist him or her or a Municipal Council or MEC or another national Minister in the evaluation of a matter relating to the protection of the environment by obtaining such information, whether documentary or oral, as is relevant to such evaluation and to that end— 45
- (a) the Minister may by notice in the *Gazette* give such person or persons the powers of a Commission of Inquiry under the Commissions Act, 1947 (Act No. 8 of 1947);
 - (b) the Minister may make rules by notice in the *Gazette* for the conduct of the inquiry: Provided that the decision of the inquiry and the reasons therefor must be reduced to writing; 50
 - (c) the Director-General must designate, subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as many officers and

employees of the Department as may be necessary to assist such person and any work may be performed by a person other than such officer or employee at the remuneration and allowances which the Minister with the concurrence of the Minister of Finance may determine.

Appointment of panel and remuneration 5

21. (1) The Minister may, with the concurrence of the Minister of Finance, determine remuneration and allowances, either in general or in any particular case, to be paid from money appropriated by Parliament for that purpose to any person or persons appointed in terms of this Act to render facilitation, conciliation, arbitration or investigation services, who are not in the full-time employment of the State. 10

(2) The Minister may create a panel or panels of persons from which appointment of facilitators and arbitrators in terms of this Act may be made, or contracts entered into in terms of this Act.

(3) The Minister may, pending the establishment of a panel or panels in terms of subsection (2), adopt the panel established in terms of section 31(1) of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996). 15

Relevant considerations

22. Decisions under this Act concerning the reference of a difference or disagreement to conciliation, the appointment of a conciliator, the appointment of a facilitator, the appointment of persons to conduct investigations, and the conditions of such appointment, must be made taking into account— 20

- (a) the desirability of resolving differences and disagreements speedily and cheaply;
- (b) the desirability of giving indigent parties access to conflict resolution measures in the interest of the protection of the environment; and 25
- (c) such other considerations relating to the public interest as may be relevant.

CHAPTER 5

INTEGRATED ENVIRONMENTAL MANAGEMENT

General objectives

23. (1) The purpose of this Chapter is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities. 30

(2) The general objective of integrated environmental management is to—

- (a) promote the integration of the principles of environmental management set out in section 2 into the making of all decisions which may have a significant effect on the environment; 35
- (b) identify, predict and evaluate the actual and potential biophysical, social and other relevant environmental effects, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts on the environment, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2; 40
- (c) ensure that the effects on the environment of activities receive adequate consideration before actions are taken in connection with them;
- (d) ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment; 45
- (e) ensure the consideration of environmental attributes in management and decision-making which may have a significant effect on the environment; and
- (f) identify and employ the modes of environmental management best suited to ensure that a particular activity is pursued in accordance with the principles of environmental management set out in section 2. 50

(3) The Director-General must coordinate the activities of organs of state referred to in section 24(1) to co-operate and assist in giving effect to the objectives of this section and such assistance may include training, the publication of manuals and guidelines and the co-ordination of procedures.

Implementation

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24. (1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential environmental impact of activities that require authorisation or permission by law and which may significantly affect the environment, must be considered, investigated and assessed prior to their implementation and reported to the organ of state charged by law with authorising, permitting, or otherwise allowing the implementation of an activity. 10

(2) The Minister may with the concurrence of the MEC, and every MEC may with the concurrence of the Minister, in the prescribed manner—

- (a) identify activities which may not be commenced without prior authorisation from the Minister or MEC; 15
- (b) identify geographical areas in which specified activities may not be commenced without prior authorisation from the Minister or MEC and specify such activities;
- (c) make regulations in accordance with subsections (3) and (4) in respect of such authorisations; 20
- (d) identify existing authorised and permitted activities which must be considered, assessed, evaluated and reported on; and
- (e) prepare compilations of environmental 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 organ of state charged by law with authorising, permitting or otherwise allowing the implementation of a new activity, or with considering, assessing and evaluating an existing activity: 25

Provided that where authorisation for an activity falls under the jurisdiction of another Minister, a decision in respect of paragraph (a) or (b) must be taken in consultation with such other Minister. 30

(3) Every Minister and MEC responsible for an organ of state charged by law with authorising, permitting, or otherwise allowing the implementation of an activity may make regulations laying down the procedure to be followed and report to be prepared in investigating, assessing and communicating environmental impacts for the purpose of complying with subsection (1). 35

(4) Before any regulations are prescribed under subsection (2)(c) or subsection (3) or any other law that contemplates the assessment of the potential environmental impact of activities, and notwithstanding such other law—

- (a) a Minister or MEC must submit a draft of such regulations to the Committee; 40
- (b) the Committee must within 30 days of the receipt of such draft regulations—
 - (i) determine whether the draft regulations would bring about a duplication of effort by persons initiating activities contemplated in subsection (1) in the investigation and assessment of the potential environmental effects of activities that require authorisation or permission from more than one organ of state; and 45
 - (ii) approve the draft regulations unless they would bring about such a duplication of effort; or
 - (iii) specify amendments to be made to such draft regulations in order to avoid such a duplication of effort; 50
- (c) a Minister or MEC must—
 - (i) where such draft regulations have been approved by the Committee, follow the procedure prescribed in section 47; or
 - (ii) give effect to the amendments specified by the Committee, and thereafter follow the procedure prescribed in section 47. 55

- (5) Compliance with the procedure laid down by a Minister or MEC does not remove the need to obtain authorisation for that activity from any other organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity.
- (6) The Minister may make regulations stipulating the procedure to be followed and report to be prepared in investigating, assessing and communicating environmental impacts for the purpose of complying with subsection (1) where— 5
- (a) the activity will affect the interest of more than one province or traverse international boundaries;
 - (b) the activity will affect compliance with obligations resting on the Republic under customary or conventional international law; or 10
 - (c) an activity contemplated in subsection (1) is not dealt with in regulations made under subsection (3).
- (7) The regulations referred to in this section must provide, as a minimum, procedures for— 15
- (a) investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;
 - (b) investigation of the potential environmental impact, including cumulative impacts and effects on cultural heritage and socio-economic conditions, of the proposed activity and alternatives thereto as well as an estimation of the significance of the impact; 20
 - (c) investigation of mitigation measures to keep adverse environmental impacts to a minimum, as well as the option of not implementing the policy, programme, plan or project;
 - (d) conflict resolution, independent review and public participation where appropriate in phases of the environmental assessment process; 25
 - (e) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
 - (f) investigation and formulation of arrangements for the monitoring and management of environmental impacts, and the assessment of the effectiveness of such arrangements after their implementation; 30
 - (g) co-ordination and co-operation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state; 35
 - (h) ensuring that the findings and recommendations flowing from such investigation, and 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 40
 - (i) ensuring that environmental attributes identified in the compilation of environmental information and maps as contemplated in subsection (2)(e) are considered in relation to negative environmental impacts.

CHAPTER 6

INTERNATIONAL OBLIGATIONS AND AGREEMENTS 45

Incorporation of international environmental instruments

25. (1) Where the Republic is not a party to an international environmental instrument, the Minister may make a recommendation to Cabinet and Parliament regarding accession to and ratification of an international environmental instrument, which may deal with the following: 50
- (a) available resources to ensure implementation;
 - (b) views of interested and affected parties;
 - (c) benefits to the Republic;
 - (d) disadvantages to the Republic;
 - (e) the estimated date when the instrument is to come into effect; 55
 - (f) the estimated date when the instrument will become binding on the Republic;

- (g) the minimum number of states required to sign the instrument in order for it to come into effect;
 - (h) the respective responsibilities of all national departments involved;
 - (i) the potential impact of accession on national parties;
 - (j) reservations to be made, if any; and 5
 - (k) any other matter which in the opinion of the Minister is relevant.
- (2) Where the Republic is a party to an international environmental instrument the Minister, after compliance with the provisions of section 231(2) and (3) of the Constitution, publish the provisions of the international environmental instrument in the *Gazette* and any amendment or addition to such instrument. 10
- (3) The Minister may introduce legislation in Parliament or make such regulations as may be necessary for giving effect to an international environmental instrument to which the Republic is a party, and such legislation and regulations may deal with *inter alia* the following—
- (a) the co-ordination of the implementation of the instrument; 15
 - (b) the allocation of responsibilities in terms of the instrument, including those of other organs of state;
 - (c) the gathering of information, including for the purposes of compiling and updating reports required in terms of the instrument and for submission to Parliament; 20
 - (d) the dissemination of information related to the instrument and reports from international meetings;
 - (e) initiatives and steps regarding research, education, training, awareness raising and capacity building;
 - (f) ensuring public participation; 25
 - (g) implementation of and compliance with the provisions of the instrument, including the creation of offences and the prescription of penalties where applicable; and
 - (h) any other matter necessary to give effect to the instrument.
- Report** 30
- 26.** The Minister must report to Parliament once a year regarding international environmental instruments for which he or she is responsible and such report may include details on—
- (a) participation in international meetings concerning international environmental instruments; 35
 - (b) progress in implementing international environmental instruments to which the Republic is a party;
 - (c) preparations undertaken in respect of international instruments to which the Republic is likely to become a party;
 - (d) initiatives and negotiations within the region of Southern Africa; 40
 - (e) the efficacy of co-ordination mechanisms; and
 - (f) legislative measures that have been taken and the time frames within which it is envisaged that their objectives will be achieved.

Application

- 27.** (1) This Chapter applies to any international environmental instrument whether the Republic became a party to it before or after the coming into force of this Act. 45
- (2) The provisions of any international environmental instrument published in accordance with the provisions set out in this section are evidence of the contents of the international environmental instrument in any proceedings or matter in which the provisions of the instrument come into question. 50

CHAPTER 7

COMPLIANCE, ENFORCEMENT AND PROTECTION

*Part 1: Environmental hazards***Duty of care and remediation of environmental damage**

28. (1) Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such harm to the environment from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify any such harm to the environment. 5

(2) Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures, include an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which— 10

- (a) any activity or process is or was performed or undertaken; or
- (b) any other situation exists, which causes, has caused or is likely to cause significant pollution or degradation of the environment. 15

(3) The measures required in terms of subsection (1) may include measures to—

- (a) investigate, assess and evaluate the impact on the environment;
- (b) cease, modify or control any act, activity or process causing the pollution or degradation; 20
- (c) contain or prevent the movement of pollutants or causant of degradation;
- (d) eliminate any source of the pollution or degradation; or
- (e) remedy the effects of the pollution or degradation.

(4) The Director-General or a provincial head of department may, after consultation with any other organ of state concerned and after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who fails to take the measures required under subsection (1) to— 25

- (a) investigate, evaluate and assess the impact of specific activities and report thereon;
- (b) commence taking specific reasonable measures before a given date; 30
- (c) diligently continue with those measures; and
- (d) complete them before a specified reasonable date;

Provided that the Director-General or a provincial head of department may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable. 35

(5) The Director-General or a provincial head of department, when considering any measure or time period envisaged in subsection (4), must have regard to the following:

- (a) the principles set out in section 2;
- (b) the provisions of any adopted environmental management plan or environmental implementation plan; 40
- (c) the severity of any impact on the environment and the costs of the measures being considered;
- (d) any measures proposed by the person on whom measures are to be imposed;
- (e) the desirability of the State fulfilling its custodianship role to ensure that the environment is held in public trust for the people; 45
- (f) any other relevant factors.

(6) If a person required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to, use of or a limitation on use of that land in order to effect rehabilitation or remedial work, but is unable to acquire it on reasonable terms, the Minister may— 50

- (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and

(b) recover from the person for whose benefit the expropriation was effected all costs incurred.

(7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General or provincial head of department may take reasonable measures to remedy the situation. 5

(8) Subject to subsection (9), the Director-General or provincial head of department may recover all costs incurred as a result of it acting under subsection (7) from any or all of the following persons—

(a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution or degradation; 10

(b) the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner's successor in title;

(c) the person in control of the land or any person who has or had a right to use the land at the time when— 15

(i) the activity or the process is or was performed or undertaken; or

(ii) the situation came about; or

(d) any person who negligently failed to prevent—

(i) the activity or the process being performed or undertaken; or

(ii) the situation from coming about: 20

Provided that such person failed to take the measures required of him or her under subsection (1).

(9) The Director-General or provincial head of department may in respect of the recovery of costs under subsection (8), claim proportionally from any other person who benefited from the measures undertaken under subsection (7). 25

(10) The costs claimed under subsections (6), (8) and (9) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.

(11) If more than one person is liable under subsection (8), the liability must be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (4). 30

(12) Any person may, after giving the Director-General or provincial head of department 30 days' notice, apply to a competent court for an order directing the Director-General or any provincial head of department to take any of the steps listed in subsection (4) if the Director-General or provincial head of department fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps, and may recover the costs of such proceedings. 35

(13) When considering any application in terms of subsection (12), the court must take into account the factors set out in subsection (5).

Protection of workers refusing to do environmentally hazardous work 40

29. (1) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having refused to perform any work if the person in good faith and reasonably believed at the time of the refusal that the performance of the work would result in an imminent and serious threat to the environment that is not authorised by law. 45

(2) Subsection (1) applies only if the refusal was necessary to avert an imminent and serious threat to the environment, to ensure that the threat to the environment was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals or that the public interest in refusal clearly outweighed any need for not refusing to work. 50

(3) Subsection (1) applies whether or not the person refusing to work has used or exhausted any other applicable external or internal procedure or otherwise remedied the matter concerned.

(4) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (1). 55

(5) No person may threaten to take any action contemplated by subsection (1) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (1).

Control of emergency incidents

- 30.** (1) In this section—
- (a) “incident” means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious detriment to the environment, whether immediate or delayed. 5
 - (b) “responsible person” includes any person who—
 - (i) is responsible for the incident;
 - (ii) owns any hazardous substance involved in the incident; or
 - (iii) was in control of any hazardous substance involved in the incident at the time of the incident; 10
 - (c) “relevant authority” means—
 - (i) a municipality with jurisdiction over the area in which an incident occurs;
 - (ii) a provincial head of department in a province in which an incident occurs; 15
 - (iii) the Director-General;
 - (iv) any other Director-General of a national department.
- (2) Where this section authorises a relevant authority to take any steps, such steps must only be taken by— 20
- (a) the person referred to in subsection (1)(c)(iv) if no steps have been taken by any of the other persons listed in subsection (1)(c);
 - (b) the person referred to in subsection (1)(c)(iii) if no steps have been taken by any of the persons listed in subsection (1)(c)(i) and (c)(ii);
 - (c) the person referred to in subsection (1)(c)(ii) if no steps have been taken by the person listed in subsection (1)(c)(i): 25
- Provided that any relevant authority may nevertheless take such steps if it is necessary to do so in the circumstances and no other person referred to in subsection (1)(c) has yet taken such steps.
- (3) The responsible person or, where the incident occurred in the course of that person’s employment, his or her employer must forthwith after knowledge of the incident, report through the most effective means reasonably available— 30
- (a) the nature of the incident;
 - (b) any risks posed by the incident to public health, safety and property;
 - (c) the toxicity of substances or by-products released by the incident; and 35
 - (d) any steps that should be taken in order to avoid or minimise the effects of the incident on public health and the environment to—
 - (i) the Director-General;
 - (ii) the South African Police Services and the relevant fire prevention service; 40
 - (iii) the relevant provincial head of department or municipality; and
 - (iv) all persons whose health may be affected by the incident.
- (4) The responsible person must, as soon as reasonably practicable after knowledge of the incident—
- (a) take all reasonable measures to contain and minimise the effects of the incident, including its effects on the environment and any risks posed by the incident to the health, safety and property of persons; 45
 - (b) undertake clean-up procedures;
 - (c) remedy the effects of the incident;
 - (d) assess the immediate and long-term effects of the incident on the environment and public health; 50
- (5) The responsible person must, within 14 days of the incident, report to the Director-General, provincial head of department and municipality such information as is available to enable an initial evaluation of the incident, including— 55
- (a) the nature of the incident;
 - (b) the substances involved and an estimation of the quantity released and their possible acute effect on persons and the environment and data needed to assess these effects;

- (c) initial measures taken to minimise impacts;
 - (d) causes of the incident, whether direct or indirect, including equipment, technology, system, or management failure; and
 - (e) measures taken and to be taken to avoid a recurrence of such incident.
- (6) A relevant authority may direct the responsible person to undertake specific measures within a specific time to fulfil his or her obligations under subsections (4) and (5): Provided that the relevant authority must, when considering any such measure or time period, have regard to the following: 5
- (a) the principles set out in section 2;
 - (b) the severity of any impact on the environment as a result of the incident and the costs of the measures being considered; 10
 - (c) any measures already taken or proposed by the person on whom measures are to be imposed, if applicable;
 - (d) the desirability of the state fulfilling its custodianship role to ensure that the environment is held in public trust for the people; 15
 - (e) any other relevant factors.
- (7) A verbal directive must be confirmed in writing at the earliest opportunity, which must be within seven days.
- (8) Should—
- (a) the responsible person fail to comply, or inadequately comply with a directive under subsection (6); 20
 - (b) there be uncertainty as to who the responsible person is; or
 - (c) there be an immediate risk of serious danger to the public or potentially serious detriment to the environment,
- a relevant authority may take the measures it considers necessary to: 25
- (i) contain and minimise the effects of the incident;
 - (ii) undertake clean-up procedures; and
 - (iii) remedy the effects of the incident.
- (9) A relevant authority may claim reimbursement of all reasonable costs incurred by it in terms of subsection (8) from every responsible person jointly and severally. 30
- (10) A relevant authority which has taken steps under subsections (6) or (8) must, as soon as reasonably practicable, prepare comprehensive reports on the incident, which reports must be made available through the most effective means reasonably available to—
- (a) the public; 35
 - (b) the Director-General;
 - (c) the South African Police Services and the relevant fire prevention service;
 - (d) the relevant provincial head of department or municipality; and
 - (e) all persons who may be affected by the incident.

Part 2: Information, enforcement and compliance 40

Access to environmental information and protection of whistle-blowers

- 31.** (1) Access to information held by the State is governed by the statute contemplated under section 32(2) of the Constitution: Provided that pending the promulgation of such statute, the following provisions shall apply:
- (a) every person is entitled to have access to information held by the State and organs of state which relates to the implementation of this Act and any other law affecting the environment, and to the state of the environment and actual and future threats to the environment, including any emissions to water, air or soil and the production, handling, transportation, treatment, storage and disposal of hazardous waste; 45 50
 - (b) organs of state are entitled to have access to information relating to the state of the environment and actual and future threats to the environment, including any emissions to water, air or soil and the production, handling, transportation, treatment, storage and disposal of hazardous waste held by any person where that information is necessary to enable such organs of state to carry out 55

their duties in terms of the provisions of this Act or any other law concerned with the protection of the environment or the sustainable use of natural resources;

- (c) a request for information contemplated in paragraph (a) can be refused only:
- (i) if the request is manifestly unreasonable or formulated in too general a manner; 5
 - (ii) if the public order or national security would be negatively affected by the supply of the information; or
 - (iii) for the reasonable protection of commercially confidential information;
 - (iv) if the granting of information endangers or further endangers the protection of the environment; and 10
 - (v) for the reasonable protection of personal privacy.

(2) Subject to subsection (3), the Minister may make regulations regarding access by members of the public to privately held information relating to the implementation of this Act and any other law concerned with the protection of the environment and may to this end prescribe the manner in which such information must be kept: Provided that such regulations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. 15

(3) The Minister must take into account—

- (a) the principles set out in section 2; 20
- (b) the provisions of subsection (1)(c);
- (c) the provisions of international law and foreign law; and
- (d) any other relevant considerations.

(4) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of an environmental risk and the disclosure was made in accordance with subsection (5); 25

(5) Subsection (4) applies only if the person concerned—

- (a) disclosed the information concerned to— 30
 - (i) a committee of Parliament or of a provincial legislature;
 - (ii) an organ of state responsible for protecting any aspect of the environment or emergency services;
 - (iii) the Public Protector
 - (iv) the Human Rights Commission; 35
 - (v) any attorney-general or his or her successor;
 - (vi) more than one of the bodies or persons referred to in subparagraphs (i) to (v);

(b) disclosed the information concerned to one or more news media and on clear and convincing grounds believed at the time of the disclosure— 40

- (i) that the disclosure was necessary to avert an imminent and serious threat to the environment, to ensure that the threat to the environment was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
- (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; 45

(c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure, other than the procedure contemplated in paragraph (a) or (b), for reporting or otherwise remedying the matter concerned; or 50

(d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.

(6) Subsection (4) applies whether or not the person disclosing the information concerned has used or exhausted any other applicable external or internal procedure to report or otherwise remedy the matter concerned. 55

(7) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (4).

(8) No person may threaten to take any action contemplated by subsection (4) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (4).

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Legal standing to enforce environmental laws

32. (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 any other statutory provision concerned with the protection of the environment or the sustainable use of natural resources—

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(a) in that person's or group of person's own interest;

(b) in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;

(c) in the interest of or on behalf of a group or class of persons whose interests are affected;

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(d) in the public interest; and

(e) in the interest of protecting the environment.

(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 or any other statutory provision concerned with the protection of the environment or the sustainable 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 the interest of the protection of the environment and that no other means had been reasonably available for obtaining the relief sought.

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(3) Where a person or group of persons secured the relief sought in respect of any breach or threatened breach of any provision of this Act or any other statutory provision concerned with the protection of the environment, a court may on application:

(a) award costs on an appropriate scale to any person or persons entitled to practise as advocate or attorney in the Republic who provided free legal assistance or representation to such person or group in the preparation for or conduct of the proceedings; and

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(b) order that the party against whom the relief is granted pay to the person or group concerned any reasonable costs incurred by such person or group in the investigation of the matter and its preparation for the proceedings.

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Private prosecution

33. (1) Any person may—

(a) in the public interest; or

(b) in the interest of the protection of the environment,

institute and conduct a prosecution in respect of any breach or threatened breach of any duty, other than a public duty resting on an organ of state, in any national or provincial legislation or municipal bylaw, or any regulation, licence, permission or authorisation issued in terms of such legislation, where that duty is concerned with the protection of the environment and the breach of that duty is an offence.

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(2) The provisions of sections 9 to 17 of the Criminal Procedure Act, 1977 (Act 51 of 1977) applicable to a prosecution instituted and conducted under section 8 of that Act must apply to a prosecution instituted and conducted under subsection (1): Provided that if—

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(a) the person prosecuting privately does so through a person entitled to practise as an advocate or an attorney in the Republic;

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(b) the person prosecuting privately has given written notice to the appropriate public prosecutor that he or she intends to do so; and

(c) the public prosecutor has not, within 28 days of receipt of such notice, stated in writing that he or she intends to prosecute for the alleged offence,

- (i) the person prosecuting privately shall not be required to produce a certificate issued by the Attorney-General stating that he or she has refused to prosecute the accused; and
- (ii) the person prosecuting privately shall not be required to provide security for such action. 5

(3) The court may order a person convicted upon a private prosecution brought under subsection (1) to pay the costs and expenses of the prosecution, including the costs of any appeal against such conviction or any sentence.

(4) The accused may be granted an order for costs against the person prosecuting privately, if the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal and the court finds either: 10

- (a) that the person instituting and conducting the private prosecution did not act out of a concern for the public interest or the protection of the environment; or
- (b) that such prosecution was unfounded, trivial or vexatious.

(5) When a private prosecution is instituted in accordance with the provisions of this Act, the Attorney-General must be barred from prosecuting except with the leave of the court concerned. 15

Criminal proceedings

34. (1) Whenever any person is convicted of an offence under any provision listed in Schedule 3 and it appears that such person has by that offence caused loss or damage to any organ of state or other person, including the cost incurred or likely to be incurred by an organ of state in rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused. 20 25

(2) Upon proof of such amount, the court may give judgement therefor in favour of the organ of state or other person concerned against the convicted person, and such judgement must be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court. 30

(3) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order the award of damages or compensation or a fine equal to the amount so assessed. 35

(4) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may, upon application by the public prosecutor or another organ of state, order such person to pay the reasonable costs incurred by the public prosecutor and the organ of state concerned in the investigation and prosecution of the offence. 40

(5) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, and the act or omission of the manager, agent or employee occurred because the employer failed to take all reasonable steps to prevent the act or omission in question, then the employer shall be guilty of the said offence and, save that no penalty other than a fine may be imposed if a conviction is based on this sub-section, liable on conviction to the penalty specified in the relevant law, including an order under subsections (2), (3) and (4), and proof of such act or omission by a manager, agent or employee shall constitute prima facie evidence that the employer is guilty under this subsection. 45 50

- (6) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, he or she shall be liable to be convicted and sentenced in respect thereof as if he or she were the employer. 5
- (7) Any person who is or was a director of a firm at the time of the commission by that firm of an offence under any provision listed in Schedule 3 shall himself or herself be guilty of the said offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (2),(3) and (4), if the offence in question resulted from the failure of the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence: Provided that proof of the said offence by the firm shall constitute prima facie evidence that the director is guilty under this subsection. 10
- (8) Any such manager, agent, employee or director may be so convicted and sentenced in addition to the employer or firm. 15
- (9) In subsection (7) and (8)—
- (a) “firm” shall mean a body incorporated by or in terms of any law as well as a partnership; and
- (b) “director” shall mean a member of the board, executive committee, or other managing body of a corporate body and, in the case of a close corporation, a member of that close corporation or in the case of a partnership, a member of that partnership. 20
- (10) (a) The Minister may amend Part (a) of Schedule 3 by regulation.
- (b) An MEC may amend Part (b) and Part (c) of Schedule 3 in respect of the province of his or her jurisdiction by regulation. 25

CHAPTER 8

ENVIRONMENTAL MANAGEMENT CO-OPERATION AGREEMENTS

Conclusion of agreements

- 35.** (1) The Minister and every MEC and municipality, may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act. 30
- (2) Environmental management co-operation agreements must—
- (a) only be entered into with the agreement of every organ of state which has jurisdiction over any activity to which such environmental management co-operation agreement relates; 35
- (b) only be entered into after compliance with such procedures for public participation as may be prescribed by the Minister; and
- (c) comply with such regulations as may be prescribed under section 45.
- (3) Environmental management co-operation agreements may contain—
- (a) an undertaking by the person or community concerned to improve on the standards laid down by law for the protection of the environment which are applicable to the subject matter of the agreement; 40
- (b) a set of measurable targets for fulfilling the undertaking in (a), including dates for the achievement of such targets; and
- (c) provision for— 45
- (i) periodic monitoring and reporting of performance against targets;
- (ii) independent verification of reports;
- (iii) regular independent monitoring and inspections;
- (iv) verifiable indicators of compliance with any targets, norms and standards laid down in the agreement as well as any obligations laid down by law; 50
- (d) the measures to be taken in the event of non-compliance with commitments in the agreement, including where appropriate penalties for non-compliance and

the provision of incentives to the person or community.compliance by the person or community concerned and incentives to the person or community concerned.

CHAPTER 9

ADMINISTRATION OF ACT

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Expropriation

36. (1) The Minister may purchase or, subject to compensation, expropriate any property for environmental or any other purpose under this Act, if that purpose is a public purpose or is in the public interest: Provided that the Minister must consult the Minister of Minerals and Energy before any mineral rights are expropriated. 10

(2) The Expropriation Act, 1975 (Act No. 63 of 1975) applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriation.

(3) Notwithstanding the provisions of subsection (2), the amount of compensation and the time and manner of payment must be determined in accordance with section 25 (3) of the Constitution, and the owner of the property in question must be given a hearing before any property is expropriated. 15

Reservation

37. The Minister may reserve State land with the consent of the Minister authorised to dispose of the land, and after consultation with any other Minister concerned, for environmental or other purposes in terms of this Act, if that purpose is a public purpose or is in the public interest. 20

Intervention in litigation

38. The Minister may intervene in litigation before a court in any matter under this Act. 25

Agreements

39. The Director-General may enter into agreements with organs of state in order to fulfil his or her responsibilities.

Appointment of employees on contract

40. (1) The Director-General may appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation No 103 of 1994), when this is necessary to carry out the functions of the Department. 30

(2) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees. 35

(3) Such employees must be remunerated from money appropriated for that purpose by Parliament.

Assignment of powers

41. (1) In this section “assignment” means an assignment as contemplated in section 99 of the Constitution. 40

(2) The Minister must record all assignments referred to in subsection (1) in a Schedule to this Act and may amend that Schedule.

Delegation

42. (1) The Minister may delegate a power, function or duty vested in him or her to—

- (a) a named officer of the Department; or
- (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.
- (2) A delegation referred to in subsection (1)— 5
 - (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) does not prevent the exercise of the power, function or duty by the Minister himself or herself; and
 - (d) may be withdrawn by the Minister. 10
- (3) The Director-General may delegate a power, function or duty vested in him or her by or under this Act to—
 - (a) a named officer of the Department;
 - (b) the holder of an office in the Department; or
 - (c) after consultation with a provincial head of department, an officer in a provincial administration or municipality. 15
- (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)— 20
 - (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) does not prevent the exercise of the power, function or duty by the Director-General himself or herself; and
 - (d) may be withdrawn by the Director-General. 25

Appeal to Minister

- 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 section 238 of the Constitution.
- (2) An appeal under subsection (1) must be noted and must be dealt with in the manner prescribed. 30

Regulations in general

- 44. (1) The Minister may make regulations—
 - (a) dealing with any matter which under this Act must be dealt with by regulation; and
 - (b) generally, to carry out the purposes and the provisions of this Act. 35
- (2) The Minister may make different regulations under this Act in respect of different activities, provinces, geographical areas and owners or classes of owners of land.
- (3) The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe penalties for such offences. 40

Regulations for management co-operation agreements

- 45. (1) The Minister may make regulations concerning—
 - (a) procedures for the conclusion of environmental management co-operation agreements, which must include procedures for public participation;
 - (b) the duration of agreements; 45
 - (c) requirements relating to the furnishing of information;
 - (d) general conditions and prohibitions;
 - (e) reporting procedures;
 - (f) monitoring and inspection.
- (2) An MEC or municipal council may substitute his or her or its own regulations or bylaws, as the case may be, for the regulations issued by the Minister under subsection (1) above: Provided that such provincial regulations or municipal bylaws must cover the matters enumerated in subsection (1), and comply with the principles laid down in this Act. 50

Model environmental management bylaws

46. (1) The Minister may make model bylaws aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of a municipality, which may be adopted by a municipality as municipal bylaws.
- (2) Any municipality may request the Director-General to assist it with the preparation of bylaws on matters affecting the environment and the Director-General may not unreasonably refuse such a request. 5
- (3) The Director-General may institute programmes to assist municipalities with the preparation of bylaws for the purposes of implementing this Act.
- (4) The purpose of the model bylaws referred to in subsection (1) must be to— 10
- (a) mitigate adverse environmental impacts;
 - (b) facilitate the implementation of decisions taken, and conditions imposed as a result of the authorisation of new activities and developments, or through the setting of norms and standards in respect of existing activities and developments; and 15
 - (c) ensure effective environmental management and conservation of resources and impacts within the jurisdiction of a municipality in co-operation with other organs of state.
- (5) The model bylaws referred to in subsection (1) must include measures for environmental management, which may include— 20
- (a) auditing, monitoring and ensuring compliance; and
 - (b) reporting requirements and the furnishing of information.

Procedure for making regulations

47. (1) Before making any regulations under this Act, a Minister or MEC must— 25
- (a) publish a notice in the relevant *Gazette*—
 - (i) setting out the draft regulations; and
 - (ii) inviting written comments to be submitted on the proposed regulations within a specified period mentioned in the notice; and
 - (b) consider all comments received in accordance with paragraph (a)(ii).
- (2) The Minister must, within 30 days after promulgating and publishing any regulations under this Act, table the regulations in the National Assembly, and an MEC must so table the regulations in the relevant provincial legislature or, if Parliament or the provincial legislature is then not in session, within 30 days after the beginning of the next ensuing session of Parliament or the provincial legislature. 30
- (3) The National Assembly or provincial legislature may by resolution disapprove of the regulations within 60 days after they have been tabled if they are inconsistent with either the purposes of this Act, the powers conferred by this Act or the Constitution or if the National Assembly or provincial legislature considers any criminal offences created or penalties prescribed for such offences inappropriate. 35
- (4) If the National Assembly or provincial legislature does not disapprove of the regulations as contemplated in subsection (3) then the regulations take effect forthwith. 40
- (5) If the National Assembly or provincial legislature disapproves of any regulation, the regulation lapses, but without affecting—
- (a) the validity of anything done in terms of the regulation before it lapsed; or
 - (b) a right or privilege acquired or an obligation or liability incurred before it lapsed. 45

CHAPTER 10

GENERAL AND TRANSITIONAL PROVISIONS

State bound

48. This Act is binding on the State except in so far as any criminal liability is concerned. 5

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
 (b) the failure to exercise any power, or perform any function or duty under this Act,
 unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith. 10

Repeal of laws

50. (1) Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A, 14B, 14C, 15, 27A and 38 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are hereby repealed. 15

(2) Sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) and the notices and regulations issued pursuant to sections 21 and 22 and in force on the commencement date of this Act are repealed with effect from a date to be published by the Minister in the *Gazette*, which date may not be earlier than the date on which regulations or notices made or issued under section 24 of this Act are promulgated and the Minister is satisfied that the regulations and notices under sections 21 and 22 have become redundant. 20

Savings

51. Anything done or deemed to have been done under a provision repealed by this Act— 25
 (a) remains valid to the extent that it is consistent with this Act until anything done under this Act overrides it; and
 (b) subject to paragraph (a) is considered to be an action under the corresponding provision of this Act. 30

Short title

52. This Act is called the National Environmental Management Act, 1998.

Commencement

53. This Act comes into operation on a date fixed by the President in the *Gazette*.

SCHEDULE 1

Section 11(1)

- * Department of Environmental Affairs and Tourism
- * Department of Land Affairs
- * Department of Agriculture
- * Department of Housing
- * Department of Trade and Industry
- * Department of Water Affairs and Forestry
- * Department of Transport
- * Department of Defence

SCHEDULE 2

Section 11(2)

- * Department of Environmental Affairs and Tourism
- * Department of Water Affairs and Forestry
- * Department of Minerals and Energy
- * Department of Land Affairs
- * Department of Health
- * Department of Labour

SCHEDULE 3

(Section 34)

National Legislation

No. and year of law	Short title	Relevant provisions
Act No. 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies	Section 18(1)(l) in so far as it relates to contraventions of sections 7 and 7bis
Act No. 71 of 1962	Animal Protection	Sections 2(1) and 2A
Act No. 45 of 1965	Atmospheric Pollution Prevention	Section 9
Act No. 15 of 1973	Hazardous Substances	Section 19(1)(a) and (b) in so far as it relates to contraventions of sections 3 and 3A
Act No. 57 of 1976	National Parks	Section 24(1)(b)
Act No. 63 of 1976	Mountain Catchment Areas	Section 14 in so far as it relates to contraventions of section 3
Act No. 63 of 1977	Health	Section 27
Act No. 73 of 1980	Dumping at Sea Control	Sections 2(1)(a) and 2(1)(b)
Act No. 6 of 1981	Marine Pollution (Control and Civil Liability)	Section 2(1)
Act No. 43 of 1983	Conservation of Agricultural Resources	Section 7
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships)	Section 3A
Act No. 73 of 1989	Environment Conservation	Section 29(2)(a) and (4)
Act No. 18 of 1998	Marine Living Resources	Section 58(1) in so far as it relates to contraventions of sections 43(2), 45, and 47, and 58(2) in so far as it relates to contraventions of international conservation and management measures
Act No. 36 of 1998	National Water	Section 151(i) and (j)

Provincial Legislation

No. and year of law	Short title	Relevant provisions
Ordinance No. 8 of 1969	Orange Free State Conservation	Section 40(1)(a) in so far as it relates to contraventions of sections 2(3), 14(2), 15(a), 16(a) and 33
Ordinance No. 9 of 1969	Orange Free State Townships	Section 40(1)(a)(ii)
Ordinance No. 15 of 1974	Natal Nature Conservation	Section 55 in so far as it relates to sections 37(1), to 49 in respect of specially protected game and to section 51 in respect of specially protected game, section 109 in so far as it relates to section 101 to section 102 and to section 104, section 185 in so far as it relates to section 152, to section 160 and to section 183, and section 208 in so far as it relates to section 194 and to section 200
Ordinance No. 19 of 1974	Cape Nature and Environmental Conservation	Section 86(1) in so far as it relates to contraventions of sections 26, 41(1)(b)(ii) and (c)-(e), 52(a), 57(a), 58(b) and 62(1)
Ordinance No. 12 of 1983	Transvaal Nature Conservation	Sections 16A, 42, 84, 96 and 98
Ordinance No. 15 of 1985	Cape Land Use Planning	Section 46(1) in so far as it relates to sections 23(1) and 39(2)
Ordinance No. 15 of 1986	Transvaal Town Planning and Townships	Sections 42, 93 and 115
Act No. 5 of 1998	Kwazulu Natal Planning and Development	Section 48

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT BILL

General background and overview

1. The Bill seeks to give effect to the management policy laid down in the White Paper on Environmental Management Policy approved by Cabinet. The most important feature of the White Paper on Environmental Management Policy is its emphasis on the principle of co-operative governance to ensure that the environmental rights in the Constitution are protected and fulfilled. The Bill employs a number of instruments to promote and give effect to co-operative governance as envisaged in section 41(2) of the Constitution.

2. The role of the Department of Environmental Affairs and Tourism as lead agent in exercising Government's custodianship of the environment must be effective and compatible with the constitutional allocation of powers. The Bill therefore acknowledges both primary policy and decision-making roles for specialised sectoral national departments, and the limits on national environmental management flowing from the constitutional allocation of powers.

3. The Department of Environmental Affairs has embarked on a comprehensive and integrated programme of environmental law reform. The Environmental Law Reform Programme consists of about 10 individual law reform projects that cover the entire spectrum of environmental legislation. The topics of these projects range from umbrella framework legislation, i.e. the National Environmental Management Bill, to sectoral legislation such as the already completed Marine Living Resources Act, and various other proposed bills on for example pollution and waste management, coastal management and biodiversity conservation. The National Environmental Management Bill defines environmental management and governance in South Africa and provides the legal framework for sectoral laws.

Chapter by chapter analysis

4. Following the customary definitions clause, the Bill starts off in Chapter I by declaring the principles to be adhered to by all spheres of government in managing the environment. For example, it is stated that natural and cultural resources must be managed and utilised on a sustainable basis for the benefit of current and future generations. Another principle declares that public participation in decision-making affecting the environment must be promoted and facilitated. These principles are derived from the White Paper and were developed in the Consultative National Environmental Policy Process (CONNAPP).

5. Chapter 2 introduces the institutions the Bill seeks to establish, and sets out the usual provisions relating to institutions, such as their composition, conditions for appointment, meetings, funding, staff etc. The bodies to be established are the National Environmental Advisory Forum and the Committee for Environmental Co-ordination. The rationale for the creation of the Forum is to place at the disposal of the Minister of Environmental Affairs and Tourism a forum comprising of a well-balanced mixture of representatives which shall inform the Minister of the views of interested and affected parties. The principal role of the Committee is to manage the fragmented performance of environmental functions by various government departments at both the horizontal and vertical levels of government, in order to promote and ensure integration and co-ordination regarding the implementation of environmental policies by Government. The mechanism for such co-ordination is to be found in the environmental implementation plans referred to below. Provision is also made for investigating and establishing a single point in each province for handing in applications for authorisations and licences, and the co-ordinated consideration of applications by all organs of state.

6. Chapter 3 deals with distribution and sharing of functions between national government departments and provincial departments. Instruments for co-ordination and alignment of functions proposed will be by means of environmental implementation plans and environmental management plans. The purpose of these will be to spell out how various departments will ensure that their policies, plans and programmes and the exercise of their powers that may affect the environment, will comply with the principles and national norms and standards that have as their object the protection of the

environment. These instruments will make it possible to give effect to the White Paper's vision of the Department of Environmental Affairs and Tourism as an environmental lead agent which respects the functional responsibilities of the national departments and the constitutional powers of provinces. They will be mechanisms through which the overlapping responsibilities of different national departments and the various spheres of government can be dealt with in a co-operative manner that reflects the need for both flexibility and predictability. The handling of any disagreements with provinces and local authorities, and between national departments are dealt with in compliance with the Constitution. The chapter further makes it possible to phase in compliance with the provision for environmental implementation plans and management plans in order to accommodate capacity constraints in Government. There must be guidelines for, and assistance with, the preparation of plans and they may form part of other planning processes.

7. Chapter 4 provides for a system of conflict management and fair decision-making by providing for a clear procedure which, while facilitating the use of conciliation, arbitration, mediation, investigation, and public access to such procedures, leaves the final decision in the hands of the province or department to whom a function was entrusted by law, subject, of course, to the normal recourse to the courts. It is proposed that the Director-General may appoint a conciliator acceptable to the parties to a dispute to resolve the dispute, for example by mediating, by fact-finding, or by making a recommendation to the parties.

8. Chapter 5 deals with the topic of environmental assessment and integrated environmental management. The main object is to integrate principles of environmental management into the planning and development process and to identify, predict and evaluate the effects which policies, programmes, proposals or projects may have on the environment. The Bill here seeks to create a system that complies with the constitutional allocation of powers and current line Ministry responsibility by making it possible for provinces and other Departments to conduct an assessment system within their areas of jurisdiction and to co-operate where appropriate. The proliferation of environmental assessment procedures where activities fall under the jurisdiction of more than one organ of state is prevented and the protection of sensitive environments is secured. Recognition is given to the development and phased introduction into law of integrated environmental management procedures. Assistance to other organs of state to achieve the objectives of integrated environmental management, includes training, the development of manuals and guidelines, and the coordination of procedure. In the interest of certainty and effectiveness this Chapter lays down minimum requirements with which all integrated environmental systems must comply.

9. Chapter 6 (International Obligations and Agreements) sets out a procedure for giving effect to international agreements to which the Republic is a party and where necessary the enactment of an agreement into law by national legislation.

10. In Chapter 7 "Compliance and Enforcement" is addressed. The Bill seeks to broaden the *locus standi* along the lines of section 38 of the Constitution so that any person may approach a competent court for relief in respect of any breach or threatened breach of any provision of law concerned with the protection of the environment or the utilisation of natural resources. The Bill further provides for private criminal prosecutions by any person acting in the public interest or in the interest of the environment. The courts are authorised to make appropriate cost orders. Provision is made for access to environmental information, and whistle-blowers are protected. In addition, provision is made for a general duty of care on every citizen, the rehabilitation and remediation of environmental damage and control of emergency incidents. The right of workers to refuse to perform environmentally hazardous work is recognized and regulated.

11. Chapter 8 provides that the Minister and every provincial government and local authority may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in the Bill. To be valid, such an agreement requires the concurrence of the level of

government or other organ of state which is responsible for the activity or geographical area affected by the agreement. This chapter also defines the content of an agreement.

12. Chapter 9, under the heading “Administration of Act”, contains various powers or duties of the Minister or Director-General, for example expropriation of property, reservation of State land for environmental purposes, agreements with other organs of state, delegations, the making of regulations, etc.

13. The last Chapter (Chapter 10) sets out general and transitional provisions, including repeal of laws, savings, short title and commencement. As far as repeals are concerned, the Bill seeks to replace the greater part of the Environment Conservation Act, 1989 (Act No. 73 of 1989). After its partial repeal, this Act will chiefly only provide for various kinds of protected areas and aspects of waste management.

Effect on the provinces and local government

14. The Bill will have the following implications for the provinces and local government:

- 14.1 The authorities within provinces and local government that are charged with environment-related functions are required to observe and adhere to the principles set out in Chapter 1 (paragraph 4 above).
- 14.2 The provincial heads of the Department dealing with environmental matters may be members of the Committee for environmental co-ordination (see paragraph 5 above, dealing with Chapter 2).
- 14.3 Provinces will be required to draw up environmental implementation plans (Chapter 3, see paragraph 6 above).
- 14.4 Provincial authorities will be required to adhere to minimum standards in developing integrated environmental management procedures (Chapter 5, paragraph 8 above).
- 14.5 Provincial governments and local authorities may take action in emergency incidents by directing the responsible person to undertake specific measures. If the person fails to comply, the authority concerned may itself take action and claim reimbursement of all reasonable costs from the responsible person. (Chapter 7, paragraph 10 above).
- 14.6 Provincial governments and local authorities may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in the Bill (Chapter 8, paragraph 11 above).
- 14.7 The Director-General may enter into agreements with provincial departments and local authorities in order to fulfil his or her obligations (Clause 41).
- 14.8 Clause 42 provides that the Minister and the Director-General may delegate functions to a provincial government or local authority.
- 14.9 Clause 46 requires the Minister to support local authorities by promulgating model bylaws which they may adopt.

Other departments and bodies consulted

15. All national departments and provincial governments were consulted. The draft Bill was published in the *Gazette* in terms of section 154 of the Constitution.

16. In the opinion of the Department of Environmental Affairs and Tourism and the State Law Advisers this Bill should be dealt with in accordance with the procedure established by section 76 of the Constitution, as it falls within a functional area listed in Schedule 4 to the Constitution, namely “Environment”.

