



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 577

Pretoria, 18 July 2013

No. 36673

*N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes*



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

**IMPORTANT NOTICE**

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

**CONTENTS • INHOUD**

No.

Page  
No. Gazette  
No.**GENERAL NOTICES****Environmental Affairs, Department of***General Notices*

735	National Environmental Management: Air Quality Amendment Bill, 2013: Explanatory Summary .....	3	36673
736	National Environmental Management Laws Amendment Bill, 2013: Explanatory summary .....	11	36673
737	National Environmental Management: Waste Amendment Bill, 2013 .....	24	36673

---

## GENERAL NOTICES

---

### NOTICE 735 OF 2013

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS

#### EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY AMENDMENT BILL, 2013

The Minister of Water and Environmental Affairs intends introducing the National Environmental Management: Air Quality Amendment Bill, 2013 in Parliament during August 2013. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

A copy of the draft Bill can also be obtained from Mr Sibusiso Shabalala.

E-mail address: [sshabalala@environment.gov.za](mailto:sshabalala@environment.gov.za) or Tel: (012) 310 3449.

**BOMO EDITH EDNA MOLEWA**

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY AMENDMENT BILL, 2013**

### **1. OBJECTS OF BILL**

The objects of the Bill is to amend the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (the Act), so as to so as to substitute certain sections; to align the establishment of the National Air Quality Advisory Committee with the requirements of the National Environmental Management Act, 1998; to change the timeframes on the submission of the priority area air quality management plan to the Minister for approval; to provide for the consequences of unlawful commencement of listed activity; to provide for monitoring, evaluation and reporting on the implementation of the pollution prevention plan; to provide for the Minister as licensing authorities in situations where the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission licence, where the applications are trans-boundary, where the air activity forms part of national priority project, where the activity is also related to the environmental impact and waste management activities authorised by the Minister; to delete cross references to the Environmental Conservation Act, 1989; to clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission licence; to clarify a criteria on fit and proper person for the purposes of applications for atmospheric emission licences; to create an offence for non-compliance with controlled fuels standards; to provide for the development of regulations on the procedure and criteria for administrative fines; to delete certain obsolete provisions.

## **2. BACKGROUND**

2.1 The purpose of the Act was to replace the outdated Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965). The Act brings air quality management in line with the Constitution allocation of functions between the three spheres of government. In the main, the Act provides for a more effective regulatory regime, including the establishment of national norms and standards, a framework for air quality management planning and reporting regime and numerous regulatory instruments for the control of air pollution and compliance and enforcement.

2.2 The Act has been in operation since 2005. The National Department of Environmental Affairs and the provincial departments responsible for environmental affairs have identified certain provisions of the Act that have become obsolete.

## **3. CLAUSE BY CLAUSE ANALYSIS**

### **3.1 Clause 1: Amendment of section 1**

Clause 1 seeks to correct the definitions for "Department" and "Minister". The definition for "Environment Conservation Act" is deleted as due to the amendments, it will no longer be used in the Act.

### **3.2 Clause 2: Amendment of section 13**

Clause 2 seeks to amend section 13 of the Act to align the establishment of the National Air Quality Advisory Committee with the requirements of section 3A of NEMA.

### **3.3 Clause 3: Amendment of section 19**

Clause 3 amends section 19(1)(b) to change the period for submitting an priority area air quality management plan to the Minister for approval from six months to 24 months as it is not possible in practice to complete and consult on the plan within six months.

### **3.4 Clause 4: Insertion of section 22A**

Clause 4 inserts section 22A to provide for the consequences of unlawful conducting of listed activities.

### **3.5 Clause 5: Amendment of section 29**

Clause 5 Seeks to provide for monitoring, evaluation and reporting requirements on the implementation of the approved pollution prevention plan.

### **3.6 Clause 6: Amendment of section 36**

Clause 6 seeks to extend the powers of the National Minister responsible for environmental affairs to provide for situations where the applicant for atmospheric emission licence is the provincial organ of state, who has been delegated by the municipality the power to issue Atmospheric Emission Licences, or where the listed activity falls under two provinces, or whenever the air quality activity forms part of any strategic infrastructure project approved by Cabinet, or where the activity is also related to the activities listed under the National Environmental Management Act, 1998 and National Environmental Management: Waste Act, 2008 authorised by the Minister. The amendment also provide for the issuing of an integrated environmental authorisation for activities listed under the National Environmental Management Act,

1998, National Environmental Management: Waste Act, 2008 and the Act. This amendment further provides for the Minister and the relevant licensing authorities to enter into an agreement regarding certain activities that may be authorised either by the Minister or the relevant licensing authority.

### **3.7 Clause 7: Amendment of section 38**

Clause 7 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA regulations and notices in terms of this section have been repealed.

### **3.8 Clause 8: Amendment of section 39**

Clause 8 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA Regulations and notices in terms of this section have been repealed.

### **3.9 Clause 9: Amendment of section 40**

Clause 8 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA Regulations and notices in terms of this section have been repealed. Section 40 of the Act has further been amended to clarify the intention of this section.

### **3.10 Clause 10: Amendment of section 41**

Clause 10 seeks to provide for a period of validity of 1 year for provisional atmospheric emission licence from the date of commissioning.

### **3.11 Clause 11: Amendment of section 49**

Clause 11 seeks to clarify the intention of section 49 to mean that where a juristic person employs a director or manager, that was previously employed by another juristic person and which juristic person contravened air quality legislation or its licence was suspended, the current juristic person could be found to be not fit and proper person.

### **3.12 Clause 12: Amendment of section 51**

In order to ensure compliance with the provisions of the Act, clause 12 inserts that not complying with section 28 of the Act is an offence.

### **3.13 Clauses 13: Amendment of section 53**

This is a consequential amendment necessitated by the insertion of section 22A. Clause 13 seeks to provide the Minister with a legal mandate to develop regulations on the procedure and criteria to be followed in the determination of an administrative fine.

### **3.14 Clause 14: Repeal of sections 62**

Section 62 deals with transitional provisions regarding listed activities. The national list of emission standards has been published. Clauses 14 seek to repeal sections 62 of the Act as it is no longer relevant.

### **3.15 Clause 15: Repeal of section 63**

Section 63 deals with the transitional provisions regarding ambient air quality standards. These air quality standards have finally been published. Clause 15 seeks to repeal section 63 of the Act as it became obsolete.

### **3.16 Clause 16: Repeal of schedule 2**

Schedule 2 sets out the transitional ambient air quality standards. In light of the fact that the Department seek to repeal section 63 of the Act, schedule 2 thus became obsolete.

## **4. FINANCIAL IMPLICATIONS FOR THE STATE**

There would be no financial implications for the Department.

## **5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The amendments do not require new structures or capacity within the Department.

## **6. COMMUNICATION IMPLICATIONS**

Appropriate communication measures will be implemented by the Government Communication and Information System.

## **7. PROVINCIAL IMPLICATIONS**

Where the applicant for atmospheric emission licence is the provincial organ of state or where the listed activity falls under two provinces, the licensing authority will be the National Department of Environmental Affairs.

## **8. CONSTITUTIONAL IMPLICATIONS**

None

## **9. PARLIAMENTARY PROCEDURE**

9.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Part A or B of schedule 4 of the Constitution, to wit "environment" and "air pollution", respectively.

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

**NOTICE 736 OF 2013****DEPARTMENT OF ENVIRONMENTAL AFFAIRS****EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS  
AMENDMENT BILL, 2013**

The Minister of Water and Environmental Affairs intends introducing the National Environmental Management Laws Amendment Bill, 2013 in Parliament during August 2013. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

A copy of the draft Bill can also be obtained from Mr Sibusiso Shabalala.

E-mail address: [sshabalala@environment.gov.za](mailto:sshabalala@environment.gov.za) or Tel: (012) 310 3449.

**BOMO EDITH EDNA MOLEWA**

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

ca080513

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2013**

### **1. PURPOSE OF BILL**

The purpose of the Bill is to amend certain provisions under the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA), and the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA).

### **2. BACKGROUND**

2.1. The NEMA is the environmental framework legislation which provides for environmental management in the Republic. However, prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area are currently still excluded from the scope of NEMA, since they are regulated in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA). Currently, prospecting, mining, exploration or production activities require approval in terms of the MPRDA and, if ancillary activities constitute a listed activity in terms of section 24(2)(a) of NEMA, it also requires an environmental authorization.

2.2. The NEMA and MPRDA have their own processes and information requirements and there is currently a lack of integration of these processes. In order to facilitate an integrated approach to prospecting, mining, exploration or production activities, the Department of Environmental Affairs (DEA) and the then

Department of Minerals and Energy (now Department of Mineral Resources) entered into discussions and, during 2008 agreed on **“One Environmental System”** for the country, which in essence means that all environmental related activities would be regulated through one system which is NEMA. The agreement was translated into the amendment of the NEMA and the MPRDA.

2.3. In 2008, the NEMA was amended by the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA) to, amongst others, empower the Minister of Mineral Resources to implement environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. The MPRDA was amended by the Mineral and Petroleum Resources Development Amendment Act, 2008 (Act No. 49 of 2008) (MPRDAA) to, amongst others, make the Minister of Mineral Resources the responsible authority for implementing environmental matters in terms of NEMA as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area.

2.4. However, the commencement date of the NEMAA was subject to the date of commencement of the MPRDAA. The NEMAA was assented to by the President on 09 January 2009 and came into effect on 01 May 2009. The MPRDAA was assented to by the President on 21 April 2009, but to date has not come into effect. During 2012, the Ministers of Water and Environmental Affairs and Mineral Resources agreed that the Amendment Acts must be implemented to give effect to the 2008 agreement.

2.5. The Bill proposes amendments to certain provisions under the NEMA and NEMAA in order to give effect to the **“One Environmental System”** by empowering the Minister of Mineral Resources to implement environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. The Bill further proposes amendments to the NEMWA to allow the Minister of Water and Environmental Affairs to develop regulations on the environmental management of residue deposits and stock piles for implementation by the Minister of Mineral Resources.

### **3. OBJECTS OF BILL**

#### **3.1. National Environmental Management Act, 1998**

##### **Clause 1: Amendment of section 1**

Sections 31B, 31BA and 31C of NEMA currently allow the Minister of Water and Environmental Affairs or MECs responsible for environmental affairs to designate officials in national, provincial and local government as environmental management inspectors (EMIs). The definition of "environmental management inspector" only refers to sections 31B and 31C. This clause amends the definition of "environmental management inspector" to also refer to section 31BA of NEMA. The clause also inserts the definition of "environmental mineral resources inspector" to clarify that the environmental mineral resources inspectors will be designated by the Minister of Mineral Resources to enforce certain provisions of NEMA and National Environmental Management: Waste Act, 2008.

The clause further delete the definitions of "residue deposits and stock piles" under NEMA and inserts those definitions under the NEMWA in order to empower the Minister of Water and Environmental Affairs to develop regulations on the environmental management and control of residue deposits and stock piles for implementation by the Minister of Mineral Resources.

**Clause 2: Amendment of section 24**

Section 24(5)(b)(vi) provides the Minister of Water and Environmental Affairs with a legal mandate to develop regulations on the management and control of residue stock piles and deposits on a mining area. In line with the principle of **"One Environmental System"** this is a consequential amendment to ensure that regulations or norms and standards are developed either in terms of NEMA or specific environmental management Act, where necessary. In this regard, the development of waste related regulations must be undertaken under the NEMWA. This clause deletes the legal power of the Minister to develop regulations on the management of residue stock piles and deposits under NEMA and insert such power under the NEMWA.

**Clause 3: Amendment of section 24C**

Section 24C of NEMA sets out the competent authorities (Minister and MECs responsible for environmental affairs) for the listed or specifies activities. This clause amends section 24C of NEMA to indicate that the Minister of Mineral Resources is the competent authority for the prospecting, mining, exploration, production activity on a mining area. The Minister of Mineral Resources mandate will be for all activities directly related to the application applied for in terms of the

Mineral and Petroleum Resources Development Act, 2002 (whether it is right or permit) and will be related to the area as applied for in terms of the Mineral and Petroleum Resources Development Act, 2002.

If a powerline is built, the Minister of Mineral Resources will be the competent authority for that portion of the powerline directly related to the mine (linked to the footprint of the mine as applied for). Section 24C of NEMA will apply to any other activities that are not related to mining i.e. Province or Department of Environmental Affairs will be the competent authority for those applications. The Minister of Mineral Resources mandate will be for all environmental impact assessment related aspects and will include NEMA, and National Environmental Management: Waste Act, 2008 as far as an environmental authorization is required for mining as applied for in terms of the MPRDA.

Any activities that are triggered in terms of NEMA on a footprint for which a mining right or permit is issued but that are unrelated to mining will not be for the Minister of Mineral Resources mandate e.g. if a landowner wants to build a dam on his property, which falls within the mining area, the Minister of Mineral Resources will not be the competent authority as this is unrelated to mining. The Minister of Mineral Resources will not be the licensing authority responsible for atmospheric emission licenses as this is the responsibility of municipalities and such decisions are taken after completion of the environmental impact assessment process.

**Clause 4: Amendment of section 24O**

Section 24O(3) require a consultation period of 40 days between State departments with respect to an application for an environmental authorisation. The provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), require as a minimum a period of 30 days for consultation with any interested and affected parties. The proposed amendment will ensure that section 24O(3) is in line with the provisions of the Promotion of Administrative Justice Act.

**Clause 5: Insertion of section 31BB**

Sections 31B, 31BA and 31C of NEMA currently only allow the Minister of Water and Environmental Affairs or MECs responsible for environmental affairs to designate officials in national, provincial and local government as EMIs. The function of the EMI is to monitor and enforce compliance with NEMA or a specific environmental management Act. The Minister of Mineral Resources will be the competent authority for application for environmental authorisation on prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. Therefore, it is also important for the Minister of Mineral Resources to enforce those environmental authorisation issued by him or her. The current provisions of NEMA does not empower the Minister of Mineral Resources to enforce compliance with environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area.

This amendment will empower the Minister of Mineral Resources to designate officials within the Department of Mineral Resources subject to certain conditions,

as environmental mineral resources inspectors responsible for compliance monitoring and enforcement of environmental provisions under NEMA and NEMWA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area.

**Clause 6: Amendment of section 31D**

This is a consequential amendment to empower the Minister of Mineral Resources to designate environmental mineral resources inspectors to monitor compliance and enforce specific provisions of NEMA and NEMWA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. The amendment further ensures alignment of the cross referencing in section 31D.

**Clause 7: Amendment of section 43**

In terms of the 2008 agreement the Minister of Water and Environmental Affairs will be the appeal authority against a decision taken by the Minister of Mineral Resources regarding environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. During, 2012, the Departments of Environmental Affairs and Mineral Resources discussed and agreed that there were no "in process appeals". This clause deletes section 43(1B) of NEMA.

Therefore, an aggrieved person appeals against an administrative decision to grant or reject an application for environmental authorisation. Accordingly, section 43(1A) of NEMA allows any person to appeal to the Minister responsible for

environmental affairs against a decision taken by the Minister of Mineral Resources in respect of an environmental authorisation or environmental management programme on a prospecting, mining, exploration or production area. The amendment provides legal clarity that the Minister of Water and Environmental Affairs is the appeal authority for decisions taken by the Minister of Mineral Resources in respect of an environmental authorisation or environmental management programme on a prospecting, mining, exploration or production area.

### **3.2. *National Environmental Management: Waste Act, 2008***

#### **Clause 8: Amendment of section 1**

The definitions of "residue deposits and residue stock piles" were deleted under NEMA, and this clause inserts those definitions under the NEMWA. This is a consequential amendment related to the Minister's legal power to develop regulations on the environmental management of residue stock deposits and stock piles under the NEMWA.

#### **Clause 9: Amendment of section 4**

Section 4 excludes the environmental management of residue deposits and stock piles under the jurisdiction of the NEMWA. However, in line with the 2008 agreement environmental norms and standards and regulations must be developed either in terms of NEMA or a specific environmental management Act for implementation by the Minister of Mineral Resources. This clause will ensure that the regulatory tools for management and control of residue deposits and stock piles are developed under the NEMWA for implementation by the Minister of Mineral Resources.

**Clause 10: Amendment of section 43**

This clause inserts subsection (1A) to ensure that the Minister of Mineral Resources continues as the licensing authority for those waste management activities involving residue deposits and residue stock piles on a mining area. The management and control of the residue deposits and residue stock piles must comply with the regulations to be developed under the NEMWA.

**Clause 11: Amendment of section 69**

This clause inserts paragraph (iA) empowering the Minister of Water and Environmental Affairs to develop regulations on the management and control of residue deposits and residue stock piles on a mining area for implementation by the Minister of Mineral Resources.

**3.3. National Environmental Management Amendment Act, 2008****Clause 12: Amendment of section 12**

Section 12 of the NEMAA does not contain provisions dealing with the transitional arrangements with respect appeals against environmental management programmes in so far as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area issued before and after commencement of the National Environmental Management Amendment Act, 2013. In terms of the 2008 agreement (NEMAA) the Minister of Mineral Resources will be the competent authority for the issuing of an environmental authorisation and environmental management programme if the application relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area. Any appeals

against the decision of the Minister of Mineral Resources will be submitted to the Minister of Water and Environmental Affairs as an appeal authority.

The amendment will provide for transitional arrangements regarding appeals against environmental management programme issued in terms of the MPRDA before the commencement date of the National Environmental Management Amendment Act, 2013, and appeals against environmental authorisation or environmental management programme in so far as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area lodged after the commencement date of the National Environmental Management Amendment Act, 2013.

#### **Clause 13: Repeal of section 13**

The Portfolio Committees which were responsible for environment and mining, in 2008, agreed at the joint meeting to insert section 13 which provided that the environmental management function regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area will revert back to the Department of Environmental Affairs after 3 years. However, the commencement date of this section was subject to the date of commencement of the MPRDAA, but to date the MPRDAA has not come into effect. In addition, the Ministers of Water and Environmental Affairs and Mineral Resources have since agreed that the Minister of Mineral Resources will be the competent authority for prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area, and such a function will be performed in terms of NEMA. Therefore, these developments make section 13 of the NEMAA obsolete.

The repeal of section 13 of the NEMAA will ensure that the Minister of Mineral Resources is the competent authority regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area, and the Minister of Water and Environmental Affairs as the appeal authority.

#### **Clause 14: Repeal of Schedule**

The Portfolio Committees which were responsible for environment and mining, in 2008, agreed at the joint meeting to insert the Schedule, read with section 13 of the NEMAA, which provided that the environmental management function regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area will revert back to the Department of Environmental Affairs after 3 years. However, the commencement date of this section was subject to the date of commencement of the MPRDAA, but to date the MPRDAA has not come into effect.

This is a consequential amendment linked to the repeal of section 13 of the NEMAA. The repeal of the Schedule to the NEMAA will ensure that the Minister of Mineral Resources is the competent authority regarding prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration, or production area, and the Minister of Water and Environmental Affairs becoming the appeal authority on the date of commencement of the NEMAA.

#### **4. DEPARTMENTS CONSULTED**

The following national and provincial Departments were consulted:

- Water Affairs;
- Mineral Resources; and
- All provincial departments responsible for environmental affairs through Environment MINMEC.

#### **5. FINANCIAL IMPLICATIONS FOR STATE**

The Bill does not create further financial liabilities to the Department of Environmental Affairs, however the Department of Mineral Resources must create capacity to implement environmental impact management as well as compliance monitoring and enforcement provisions under NEMA.

#### **6. PARLIAMENTARY PROCEDURE**

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

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

**NOTICE 737 OF 2013****DEPARTMENT OF ENVIRONMENTAL AFFAIRS****EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE  
AMENDMENT BILL, 2013**

The Minister of Water and Environmental Affairs intends introducing the National Environmental Management: Waste Amendment Bill, 2013 in Parliament during August 2013. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

A copy of the draft Bill can also be obtained from Mr Sibusiso Shabalala.

E-mail address: [sshabalala@environment.gov.za](mailto:sshabalala@environment.gov.za) or Tel: (012) 310 3449.

**BOMO EDITH EDNA MOLEWA**

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

sv020613

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE AMENDMENT BILL, 2013**

### **1. INTRODUCTION**

1.1 The purpose of the National Environmental Management: Waste Act, 2008 (Act no. 59 of 2008) (the "NEMWA"), was to reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. In this regard, the NEMWA provides for institutional arrangements and planning matters; the establishment of a national waste information system; national norms and standards for the management of waste by all spheres of government; licensing and control of waste management activities, as well as waste management measures and the remediation of contaminated land.

1.2 Since 2009, the National Department and the provincial departments responsible for waste management have identified certain implementation challenges with respect to some provisions of the NEMWA.

### **2. PURPOSE OF BILL**

The purpose of this Bill is to amend the NEMWA, in order to—

- substitute certain definitions;
- clarify the spheres of government required to compile an integrated waste

- management plan;
- provide for the exclusion of the provincial department responsible for waste management in the compilation of an industry waste management plan;
  - require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans;
  - provide the Minister with a discretionary power to establish a Waste Management Agency when necessary; and
  - provide for transitional arrangements regarding authorisations issued in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989).

### **3. OBJECTS OF BILL**

#### **Clause 1: Amendment of section 1**

This amendment seeks to revise certain definitions to provide clarity and to remove any ambiguity in the NEMWA.

#### **Clause 2: Amendment of section 4**

The current provisions of the NEMWA are not applicable to the disposal of animal carcasses. This clause will ensure that the disposal of animal carcasses will be regulated under the NEMWA.

#### **Clause 3: Amendment of section 11**

This amendment provides that the National Department will not be required to prepare an integrated waste management plan, but will rather prepare the National

Waste Management Strategy setting out how the objectives of the NEMWA will be achieved. The intention of the amendment is to avoid the duplication of plans. The amendment will also provide for municipal integrated waste management plans to be submitted to the MEC for endorsement and not for approval.

**Clause 4: Amendment of section 12**

This is a consequential amendment that provides that the National Department will no longer be required to develop an integrated waste management plan.

**Clause 5: Amendment of section 13**

This amendment is consequential and provides that the reports on the implementation of the provincial integrated management plans must be submitted to the MEC for approval and to the Minister for noting.

**Clause 6: Amendment of section 28**

This amendment will provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans.

**Clause 7: Amendment of section 29**

This amendment provides that the provincial departments responsible for waste management will not be required to prepare industry waste management plans, but will have to prepare and implement integrated waste management plans. This amendment is intended to avoid the duplication of plans. The amendment further provides that the MEC responsible for waste management must act in concurrence

with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 8: Amendment of section 30**

This amendment that relates to issuing of a notice by the Minister or the MEC, specifying information to be included in the industry waste management plans, is consequential and provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 9: Amendment of section 32**

This amendment that relates to the actions of the Minister or the MEC upon receipt of the industry waste management plans, is consequential and provides for the MEC responsible for waste management to act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 10: Amendment of section 34**

This amendment that relates to the review of industry waste management plans, is consequential and provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

**Clause 11: Insertion of sections 34A and 34B**

This amendment will provide the Minister with a discretionary power, in concurrence

with the Minister responsible for finance and Minister responsible for public service and administration, to establish a Waste Management Agency to deal with the different waste streams on behalf of the Department. The Waste Management Agency acts through its Board. The Minister must make regulations in relation to, *inter alia*, the composition of the Board, functions of the Board and remuneration and allowances of Board members must monitor the performance by the Waste Management Agency of its functions.

#### **Clause 12: Repeal of section 78**

This amendment repeals section 78 of NEMWA, since all appeals will be lodged in terms of section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), and considered and processed in accordance with the national appeals regulations developed in terms of section 43 of the National Environmental Management Act, 1998.

#### **Clause 13: Insertion of section 80A**

In its current form, the NEMWA does not contain transitional arrangements in respect of the authorisations issued in terms of the Environment Conservation Act, 1989. In this regard, the relevant licensing authority does not have the legal mandate to consider any applications for review of such authorisations. This amendment will provide the relevant licensing authority with the necessary legal mandate to consider and vary such record of decisions.

#### **4. BODIES CONSULTED**

The Department has not consulted any stakeholders in relation to the Bill.

**5. FINANCIAL IMPLICATIONS FOR THE STATE**

There would be no financial implications for the Department.

**6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The amendments do not require new structures or capacity within the Department.

**7. COMMUNICATION IMPLICATIONS**

Appropriate communication measures will be implemented by the Government Communication and Information System.

**8. PROVINCIAL IMPLICATIONS**

None

**9. CONSTITUTIONAL IMPLICATIONS**

None

**10. PARLIAMENTARY PROCEDURE**

10.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Part A of schedule 4 of the Constitution, dealing with "environment" and "pollution control", respectively.

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

---

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
Publications: Tel: (012) 334-4508, 334-4509, 334-4510  
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504  
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737  
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001  
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510  
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504  
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737  
Kaapstad-tak: Tel: (021) 465-7531