

NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

(English text signed by the President)

[Assented To: 19 November 1998]
[Commencement Date: 29 January 1999]

as amended by:

National Environmental Management Act 56 of 2002
Mineral and Petroleum Resources Development Act 28 of 2002
National Environmental Management Amendment Act 46 of 2003
[with effect from 1 May 2005]
National Environmental Management Amendment Act 8 of 2004
[with effect from 7 January 2005]

National Environmental Management Amendment Act 62 of 2008
[with effect from 1 May 2009, except for the provisions relating to prospecting, mining exploration and production and related activities which only comes into operation 18 months after the date of commencement of the Mineral and Petroleum Resources Development Amendment Act, 2008]

National Environmental Management Laws Amendment Act 44 of 2008
[with effect from 11 September 2009]

National Environmental Management Laws Amendment Act 14 of 2008
[with effect from 18 September 2009]

ACT

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

[Long title amended by s. 3 of Act 56/2002 and substituted by s. 13 of Act 46/2003]

Preamble -

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 wellbeing;

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

inequality in the distribution of wealth and resources, and the resultant poverty, are among the important causes as well as the results of environmentally harmful practices;

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 cooperate 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 decisionmaking 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 cooperative 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:

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1. Definitions

- (1) In this Act, unless the context requires otherwise -

“activities”, when used in [Chapter 5](#), means, policies, programmes, processes, plans and projects;

[Definition of “activities” substituted by s. 1 of Act 56/2002 and s. 1 of Act 62/2008]

“Agenda 21” means the document by that name adopted at the United Nations Conference of Environment and Development held in Rio de Janeiro, Brazil in June 1992;

“aircraft” means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;

[Definition of “aircraft” inserted by s. 1 of Act 46/2003]

“applicant” means a person who has submitted-

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

[Definition of “applicant” inserted by s. 1 of Act 62/2008]

“assessment”, when used in [Chapter 5](#), means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to decision-making;

[Definition of “assessment” inserted by s. 1 of Act 8/2004]

“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;

“commence”, when used in [Chapter 5](#), means the start of any physical activity, including site preparation and any other activity on the site in furtherance of a listed activity or specified activity, but does not include any activity required for the purposes of an investigation or feasibility study as long as such investigation or feasibility study does not constitute a listed activity or specified activity;

[Definition of “commence” inserted by s. 1 of Act 8/2004 and substituted by s. 1 of Act 62/2008]

“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;

“community”-

- (a) means any group of persons or a part of such a group who share common interests, and who regard themselves as a community; and
- (b) in relation to environmental matters pertaining to prospecting, mining, exploration, production or related activity on a prospecting, mining, exploration or production area, means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that where as a consequence of the provisions of this Act. negotiations or consultations with the community is required, the community shall include the members or

part of the community directly affected by prospecting, mining, exploration or production on land occupied by such members or part of the community;

[Definition of “community” substituted by s. 1 of Act 62/2008]

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

[Definition of “competent authority” inserted by s. 1 of Act 8/2004]

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“delegation”, in relation to a duty, includes an instruction to perform the duty;

[Definition of “delegation” inserted by s. 1 of Act 46/2003]

“Department” means the Department of Environmental Affairs and Tourism;

“development footprint”, in respect of land, means any evidence of its physical transformation as a result of the undertaking of any activity;

[Definition of “development footprint” inserted by s. 1 of Act 62/2008]

“Director-General” means the Director-General of Environmental Affairs and Tourism;

“ecosystem” means a dynamic system of plant, animal and micro-organism communities and their nonliving environment interacting as a functional unit;

“environment” means the surroundings within which humans exist and that are made up of -

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;
- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing;

“environmental assessment practitioner”, when used in [Chapter 5](#), means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments,

environmental management plans or any other appropriate environmental instruments introduced through regulations;
[Definition of “environmental assessment practitioner” inserted by s. 1 of Act 8/2004]

“environmental authorisation”, when used in [Chapter 5](#), means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a specific environmental management Act;

[Definition of “environmental authorisation” inserted by s. 1 of Act 8/2004 and substituted by s. 1 of Act 62/2008]

“environmental implementation plan” means an implementation plan referred to in [section 11](#);

“environmental management cooperation agreement” means an agreement referred to in [section 35](#) (1);

“environmental management inspector” means a person designated as an environmental management inspector in terms of section 31B or 31C;
[Definition of “environmental management inspector” inserted by s. 1 of Act 46/2003]

“environmental management plan” means a management plan referred to in [section 11](#);

“environmental management programme” means a programme required in terms of [section 24](#);

[Definition of “environmental management programme” inserted by s. 1 of Act 62/2008]

“evaluation”, when used in [Chapter 5](#), means the process of ascertaining the relative importance or significance of information, in the light of people’s values, preferences and judgements, in order to make a decision;
[Definition of “evaluation” inserted by s. 1 of Act 8/2004]

“exploration area” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “exploration area” inserted by s. 1 of Act 62/2008]

“financial year” means a period commencing on 1 April of any year and ending on 31 March of the following year;

“hazard” means a source of or exposure to danger;

“holder” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “holder” inserted by s. 1 of Act 62/2008]

“holder of an old order right” has the meaning assigned to ‘holder’ in [item 1 of Schedule II](#) to the Minerals and Petroleum Resources Development Act, 2002;

[Definition of “holder of an old holder right” inserted by s. 1 of Act 62/2008]

“integrated environmental authorisation” means an authorisation granted in terms of [section 24L](#);

[Definition of “integrated environmental authorisation” inserted by s. 1 of Act 62/2008]

“interested and affected party”, for the purposes of [Chapter 5](#) and in relation to the assessment of the environmental impact of a listed activity or related activity, means an interested and affected party contemplated in [section 24\(4\)\(a\)\(v\)](#), and which includes-

(a) any person, group of persons or organisation interested in or affected by such operation or activity; and

(b) any organ of state that may have jurisdiction over any aspect of the operation or activity;

[Definition of “interested and affected party” inserted by s. 1 of Act 62/2008]

“international environmental instrument” means any international agreement, declaration, resolution, convention or protocol which relates to the management of the environment;

“listed activity”, when used in [Chapter 5](#), means an activity identified in terms of [section 24\(2\)\(a\)](#) and (d);

[Definition of “listed activity” inserted by s. 1 of Act 8/2004]

“listed area”, when used in [Chapter 5](#), means a geographical area identified in terms of [section 24\(2\)\(b\)](#) and (c);

[Definition of “listed area” inserted by s. 1 of Act 8/2004]

“MEC” means the Member of the Executive Council to whom the Premier has assigned responsibility for environmental affairs;

[Definition of “MEC” substituted by s. 1 of Act 8/2004]

“mine” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “mine” inserted by s. 1 of Act 62/2008]

“Mineral and Petroleum Resources Development Act, 2002” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

[Definition of “Mineral and Petroleum Resources Development Act, 2002” inserted by s. 1 of Act 62/2008]

“mining area” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “mining area” inserted by s. 1 of Act 62/2008]

“Minister”, in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, means the Minister of Environmental Affairs and Tourism;

[Definition of “Minister” substituted by s. 1 of Act 62/2008]

“Minister of Minerals and Energy” means the Minister responsible for the implementation of environmental matters relating to prospecting, mining, exploration, production and related activities within a mining, prospecting, exploration or production area;

[Definition of “Minister of Minerals and Energy” inserted by s. 1 of Act 62/2008]

“national department” means a department of State within the national sphere of government;

“norms or standards”, when used in [Chapter 5](#), means any norm or standard contemplated in [section 24\(10\)](#);

[Definition of “norms or standards” inserted by s. 1 of Act 62/2008]

“organ of state” means organ of state as defined in the Constitution;

“owner of works” has the meaning contemplated in paragraph (b) of the definition of “owner” in [section 102](#) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

[Definition of “owner of works” inserted by s. 1 of Act 62/2008]

“person” includes a juristic person;

“pollution” means any change in the environment caused by -

- (i) substances;
- (ii) radioactive or other waves; or
- (iii) noise, odours, dust or heat,

emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or wellbeing or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

“prescribe” means prescribe by regulation in the *Gazette*;

“production area” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “ production area” inserted by s. 1 of Act 62/2008]

“prospecting area” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “ prospecting area” inserted by s. 1 of Act 62/2008]

“provincial head of department” means the head of the provincial department responsible for environmental affairs;

“public participation process”, in relation to the assessment of the environmental impact of any application for an environmental authorisation, means a process by which potential interested and affected parties are given opportunity to comment on, or raise issues relevant to, the application;

[Definition of “public participation process” inserted by s. 1 of Act 62/2008]

“Regional Mining Development and Environmental Committee” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “Regional Mining Development and Environmental Committee” inserted by s. 1 of Act 62/2008]

“regulation” means a regulation made under this Act;

“residue deposit” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “residue deposit” inserted by s. 1 of Act 62/2008]

“residue stockpile” has the meaning assigned to it in [section 1](#) of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “residue stockpile” inserted by s. 1 of Act 62/2008]

“review”, when used in [Chapter 5](#), means the process of determining whether an assessment has been carried out correctly or whether the resulting information is adequate in order to make a decision;

[Definition of “review” inserted by s. 1 of Act 8/2004]

“spatial development tool”, when used in [Chapter 5](#), means a spatial description of environmental attributes, developmental activities and developmental patterns and their relation to each other;

[Definition of “spatial development tool” inserted by s. 1 of Act 62/2008]

“specific environmental management Acts” means -

(i) the National Environmental Management: Biodiversity Act, 2003; and

(ii) the National Environmental Management: Protected Areas Act, 2003,

and includes any regulations or other subordinate legislation made in terms of any of those Acts;

[Definition of “specific environmental management Acts” inserted by s. 1 of Act 46/2003]

“specific environmental management Act” means –

- (a) the Environment Conservation Act, 1989 (Act No.73 of 1989);
- (b) the National Water Act, 1998 (Act No. 36 of 1998);
- (c) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);
- (d) the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004; or
- (e) the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004),

and includes any regulations or other subordinate legislation made in terms of any of those Acts.

[Definition of “specific environmental management Act” inserted by s. 1 of Act 8/2004]

“specified activity”, when used in [Chapter 5](#), means an activity as specified within a listed geographical area in terms of [section 24\(2\)\(b\)](#) and (c);

[Definition of “specified activity” inserted by s. 1 of Act 8/2004]

“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;

“sustainable development” means the integration of social, economic and environmental factors into planning, implementation and decisionmaking so as to ensure that development serves present and future generations;

“this Act” includes the schedules, and regulations and any notice issued under the Act.

“vessel” means any waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transporting anything by water.

[Definition of “vessel” inserted by s. 1 of Act 46/2003]

- (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
 - (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.

(5) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act.

[Subs. (5) added by s. 1 of Act 62/2008]

CHAPTER 1

NATIONAL ENVIRONMENTAL MANAGEMENT PRINCIPLES

2. Principles

- (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;
 - (b) serve as the general framework within which environmental management and implementation plans must be formulated;
 - (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
 - (e) guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment.
- (2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.

- (3) Development must be socially, environmentally and economically sustainable.
- (4) (a) Sustainable development requires the consideration of all relevant factors including the following:
 - (i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
 - (ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
 - (iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;
 - (iv) that waste is avoided, or where it cannot be altogether avoided, minimised and reused or recycled where possible and otherwise disposed of in a responsible manner;
 - (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;
 - (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
 - (viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are 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 effects 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.
- (d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human wellbeing 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.
- (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.
- (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.
- (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.
- (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 coordination and harmonisation of policies, legislation and actions relating to the environment.
- (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.
- (o) The environment is held in public trust for the people, 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.
- (q) The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.
- (r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

CHAPTER 2

INSTITUTIONS

3A. Establishment of for a or advisory committees

- (a) establish any forum or advisory committee;
- (b) determine its composition and functions; and
- (c) determine, in consultation with the Minister of Finance, the basis and extent of the remuneration and payment of expenses of any member of such forum or committee".

CHAPTER 3

PROCEDURES FOR COOPERATIVE GOVERNANCE

11. Environmental implementation plans and management plans

- (1) Every national department listed in [Schedule 1](#) as exercising 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](#) as exercising 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.
- (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.
- (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;
 - (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, 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.
- (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.

12. Purpose and objects of environmental implementation plans and environmental management plans

The purpose of environmental implementation and management plans is to -

- (a) coordinate 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 -
 - (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 cooperative government in [Chapter 3](#) of the Constitution;
- (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.

13. Content of environmental implementation plans

- (1) Every environmental implementation plan must contain:
 - (a) a description of policies, plans and programmes that may significantly affect the environment;
 - (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 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 make regulations for the purpose of giving effect to subsection (1) (b) and (c).

14. Content of environmental management plans

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 cooperation 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](#).

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

- (1) Every environmental implementation plan and every environmental management plan must be submitted for approval to the Minister or MEC, as the case may be."

- (2) 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.
- (3) The exercise of functions by organs of state may not be delayed or postponed on account of -
 - (a) the failure of any organ of state to submit an environmental implementation plan;
 - (b) any difference or disagreement regarding any environmental implementation plan and the resolution of that difference or disagreement; or
 - (c) the failure of any organ of state to adopt and publish its environmental implementation or management plan.

16. Compliance with environmental implementation plans and environmental management plans

- (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.

terms of [section 31D](#) or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or

- (k) carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific environmental management Act.
- (2) A written notice issued in terms of subsection (1)(b) must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.
- (3) A person who receives a written notice in terms of subsection (1)(b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act or a specific environmental management Act.
- (4) An environmental management inspector must -
 - (a) provide a receipt for -
 - (i) any document, book, record or written or electronic information removed in terms of subsection (1)(d); or
 - (ii) any specimen, article, substance or other item removed in terms of subsection (1)(f); and
 - (b) return anything removed within a reasonable period or, subject to [section 34D](#), at the conclusion of any relevant criminal proceedings.
- (5) In addition to the powers set out in this Part, an environmental management inspector must be regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of Chapters 2,5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No.51 of 1997) -
 - (a) to comply with his or her mandate in terms of section 31D; and
 - (b) within the area of jurisdiction for which he or she has been designated.

31I. Seizure of items

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

31J. Powers to stop, enter and search vehicles, vessels and aircraft

- (1) An environmental management inspector, within his or her mandate in terms of [section 31D](#), may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal -
 - (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit -
 - (i) an offence in terms of the law for which that inspector has been designated in terms of [section 31D](#); or
 - (ii) a breach of such law or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or

- (b) contains or conveys a thing which may serve as evidence of such offence or breach.
- (2) An environmental management inspector may, without a warrant, seize anything contained in or on any vehicle, vessel, aircraft or pack-animal that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.
- (3) The provisions of [section 31I](#) apply to anything seized in terms of subsection (2), subject to such modifications as the context may require.
- (4) An environmental management inspector may, for the purpose of implementing subsection (1), at any time, and without a warrant -
 - (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or
 - (b) if necessary and possible, force the driver or pilot to stop or land, as the case may be.
- (5) An environmental management inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in section 31H.
- (6) An environmental management inspector may apply to the National or Provincial Commissioner of Police for written authorisation in terms of [section 13](#)(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint.
- (7) An environmental management inspector has, within his or her mandate in terms of [section 31D](#), all the powers of a member of the South African Police Service in terms of [section 13](#)(8) of the South African Police Service Act, 1995.

31K. Routine inspections

- (1) An environmental management inspector, within his or her mandate in terms of [section 31D](#), and subject to subsection (2), may at any reasonable time conduct routine inspections and, without a warrant, enter and inspect any building, land or premises or search, including but not limited to, any vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purposes of ascertaining compliance with -
 - (a) the legislation for which that inspector has been designated in terms of [section 31D](#); or

- (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.
- (2) An environmental management inspector, within his or her mandate in terms of [section 31D](#), may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any residential premises for the purposes of ascertaining compliance with -
 - (a) the legislation for which that inspector has been designated in terms of [section 31D](#); or
 - (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.
- (3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the Acts for which that inspector has been designated in terms of [section 31D](#).
- (4) An environmental management inspector may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if -
 - (a) the person in control of the premises consents to the entry and inspection; or
 - (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.
- (5) While carrying out a routine inspection, an environmental management inspector may seize anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container bag, box, or item that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.
- (6) The provisions of [section 31I](#) apply to anything seized in terms of subsection (5), subject to such modifications as the context may require.
- (7) An environmental management inspector may exercise on such building, land, premises, vehicle, vessel, aircraft, pack-animals, container, bag, box, item and the like any of the powers mentioned in [section 31H](#).

31L. Power to issue compliance notices

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

31M. Objections to compliance notice

- (1) Any person who receives a compliance notice in terms of [section 31L](#) may object to the notice by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister or MEC may determine.

- (2) After considering any representations made in terms of subsection (1) and any other relevant information, the Minister or MEC, as the case may be -
 - (a) may confirm, modify or cancel a notice or any part of a notice; and
 - (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

31N. Failure to comply with compliance notice

- (1) A person who fails to comply with a compliance notice commits an offence.
- (2) If a person fails to comply with a compliance notice, the environmental management inspector must report the non-compliance to the Minister or MEC, as the case may be, and the Minister or MEC may -
 - (a) revoke or vary the relevant permit, authorisation or other instrument which is the subject of the compliance notice;
 - (b) take any necessary steps and recover the costs of doing so from the person who failed to comply; and
- (3) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding five million rand or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

31O. Powers of South African Police Service members

- (1) A member of the South African Police Service has, in respect of an offence in terms of this Act or a specific environmental management Act, all the powers of an environmental management inspector in terms of this Part excluding the power to conduct routine inspections in terms of [section 31K](#) and the power to issue and enforce compliance notices in terms of [sections 31L](#) to 31O.
- (2) Notwithstanding subsection (1), the Minister or MEC, as the case may be, may, with the concurrence of the Minister responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in [sections 31K](#) to 31O.

31P. Duty to produce documents

Any person to whom a permit, licence, permission, certificate, authorisation or any other document has been issued in terms of this Act or a specific environmental

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

31Q. Confidentiality

- (1) It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act or a specific environmental management Act, except -
- (a) if the information is disclosed in compliance with the provisions of any law;
 - (b) if the person is ordered to disclose the information by a court;
 - (c) if the information is disclosed to enable a person to perform a function in terms of this Act or a specific environmental management Act; or
 - (d) for the purposes of the administration of justice.

(1A) Subsection (1) does not apply to information that pertains to-

- (a) environmental quality or the state of the environment;
 - (b) any risks posed to the environment, public safety and the health and well-being of people; or
 - (c) compliance with or contraventions of any environmental legislation by any person.
- (2) A person convicted of an offence in terms of this section is liable to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

[Part 2 inserted by s. 4 of Act 46/2003]

Part 3 : Judicial matters

[Heading inserted by s. 5 of Act 46/2003]

32. Legal standing to enforce environmental laws

- (1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in [Chapter 1](#), or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources -
- (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;
 - (d) in the public interest; and
 - (e) in the interest of protecting the environment.
[Sub-s. (1) amended by s. 6 of Act 46/2003]
- (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 of this Act, including a principle contained in [Chapter 1](#), or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources, if the court is of the opinion that the person or group of persons acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought.
[Sub-s. (2) substituted by s. 6 of Act 46/2003]
- (3) Where a person or group of persons secures the relief sought in respect of any breach or threatened breach of any provision of this Act, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment, a court may on application -
- (a) award costs on an appropriate scale to any person or persons entitled to practice 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
 - (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.
[Sub-s. (3) amended by s. 6 of Act 46/2003]

33. Private prosecution

- (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.

- (2) The provisions of [sections 9](#) to 17 of the Criminal Procedure Act, 1977 (Act No. 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 -
- (a) the person prosecuting privately does so through a person entitled to practice as an advocate or an attorney in the Republic;
 - (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 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.
- (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:
- (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 is barred from prosecuting except with the leave of the court concerned.

34. Criminal proceedings

- (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.
- (2) Upon proof of such amount, the court may give judgment therefor in favour of the organ of state or other person concerned against the convicted person, and such judgment shall 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.
- (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 -
 - (a) the award of damages or compensation or a fine equal to the amounts assessed; or
 - (b) that such remedial measures as the court may determine must be undertaken by the convicted person.
- (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.
- (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 subsection, 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.

- (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.
- (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.
- (8) Any such manager, agent, employee or director may be so convicted and sentenced in addition to the employer or firm.
- (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.
- (10) (a) The Minister may amend Part (a) of [Schedule 3](#) by regulation.
 - (b) An MEC may amend Part (b) of [Schedule 3](#) in respect of the province of his or her jurisdiction by regulation.

34A. Offences relating to environmental management inspectors

- (1) A person is guilty of an offence if that person -

- (a) hinders or interferes with an environmental management inspector in the execution of that inspector's official duties;
 - (b) pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector;
 - (c) furnishes false or misleading information when complying with a request of an environmental management inspector; or
 - (d) fails to comply with a request of an environmental management inspector.
- (2) A person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

[S. 34A inserted by s. 7 of Act 46/2003]

34B. Award of part of fine recovered to informant

- (1) A court which imposes a fine for an offence in terms of this Act or a specific environmental management Act may order that a sum of not more than one-fourth of the fine be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.
- (2) A person in the service of an organ of state or engaged in the implementation of this Act or a specific environmental management Act is not entitled to such an award.

[S. 34B inserted by s. 7 of Act 46/2003]

34C. Cancellation of permits

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

[S. 34C inserted by s. 7 of Act 46/2003]

34D. Forfeiture of items

- (1) The court convicting a person of an offence in terms of this Act or any of the specific environmental Acts may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of or in connection with the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.
- (2) The provisions of [section 35](#) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.
- (3) The Minister must ensure that any specimen forfeited to the State in terms of subsection (1) is -
 - (a) repatriated to the country of export or origin as appropriate, at the expense of the person convicted of the offence involving that specimen;
 - (b) deposited in an appropriate institution, collection or museum, if -
 - (i) the specimen is clearly marked as a seized specimen; and
 - (ii) the person convicted of the offence does not benefit or gain from such deposit; or
 - (c) otherwise disposed of in an appropriate manner.

[S. 34D inserted by s. 7 of Act 46/2003]

34E. Treatment of seized live specimens

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

[S. 34E inserted by s. 7 of Act 46/2003]

34F. Security for release of vehicles, vessels or aircraft

- (1) If a vehicle, vessel or aircraft is seized in terms of this Act and is kept for the purposes of criminal proceedings, the owner or agent of the owner may at any time apply to a court for the release of the vehicle, vessel or aircraft.
- (2) A court may order the release of the vehicle, vessel or aircraft on the provision of security determined by the court.

- (3) The amount of the security must at least be equal to the sum of -
 - (a) the market value of the vehicle, vessel or aircraft;
 - (b) the maximum fine that a court may impose for the alleged offence; and
 - (c) costs and expenses incurred or reasonably foreseen to be incurred by the State in connection with prosecuting the offence and recoverable in terms of this Act.
- (4) If the court is satisfied that there are circumstances which warrant a lesser amount of security, it may order the release of the vehicle, vessel or aircraft subject to the provision of security for such lesser amount.
[S. 34F inserted by s. 7 of Act 46/2003]

34G. Admission of guilt fines

- (1) The Minister may by regulation specify offences in terms of this Act or a specific environmental management Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence.
- (2) An environmental management inspector who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue to the alleged offender a written notice referred to in [section 56](#) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (3) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount -
 - (a) prescribed for the offence; and
 - (b) which a court would presumably have imposed in the circumstances.
- (4) The provisions of [sections 56](#), [57](#) and [57A](#) of the Criminal Procedure Act, 1977, apply subject to such modifications as the context may require, to written notices and admission of guilt fines referred to in this section.
[S. 34G inserted by s. 7 of Act 46/2003]

34H. Jurisdiction

Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act or any specific Environmental Management Acts.

CHAPTER 8

ENVIRONMENTAL MANAGEMENT COOPERATION AGREEMENTS

35. Conclusion of agreements

- (1) The Minister and every MEC and municipality, may enter into environmental management cooperation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act.
- (2) Environmental management cooperation agreements must -
 - (a) only be entered into with the agreement of -
 - (i) every organ of state which has jurisdiction over any activity to which such environmental management cooperation agreement relates;
 - (ii) the Minister and the MEC concerned;
 - (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 cooperation 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;
 - (b) a set of measurable targets for fulfilling the undertaking in (a), including dates for the achievement of such targets; and
 - (c) provision for -
 - (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;
 - (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.

CHAPTER 9

ADMINISTRATION OF ACT AND SPECIFIC ENVIRONMENTAL MANAGEMENT ACTS

[Heading substituted by s. 8 of Act 46/2003]

36. Expropriation

- (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.
[Sub-s. (1) amended by s. 110 of Act 28/2002]
- (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.

37. Reservation

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.

38. Intervention in litigation

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

39. Agreements

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

40. Appointment of employees on contract

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

41. Assignment of powers

- (1) In this section “assignment” means an assignment as contemplated in [section 99](#) of the Constitution.
- (2) The Minister must record all assignments referred to in subsection (1) in a Schedule to this Act and may amend that Schedule.

42. Delegation of powers and duties by Minister and Director-General

- (1) The Minister may delegate a power or duty vested in him or her in terms of this Act or a specific environmental management Act to -
 - (a) the Director- General;
 - (b) an MEG, by agreement with the MEC;
 - (c) the management authority of a protected area; or
 - (d) any organ of state, by agreement with that organ of state.
- (2) A delegation referred to in subsection (1) -
 - (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) does not prevent the exercise of the power or the performance of the duty by the Minister himself or herself;
 - (d) may include the power to subdelegate; and
 - (e) may be withdrawn by the Minister.

- (2A) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, the management authority of a protected area or an organ of state.
- (2B) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.
- (2C) The Minister may not delegate a power or duty vested in the Minister in terms of this Act or a specific environmental management Act -
- (a) to make regulations;
 - (b) to publish notices in the *Gazette*;
 - (c) to appoint a member of a board or committee; or
 - (d) to expropriate private land.
- (3) The Director-General may delegate a power or duty vested in him or her by or under this Act or a specific environmental management Act to -
- (a) the holder of an office in the Department; or
 - (b) after consultation with a provincial head of department, an officer in a provincial administration or municipality.
- (4) The Director-General may permit a person to whom a power or duty has been delegated by the Director-General to delegate further that power or duty.
- (5) A delegation referred to in subsection (3) and the permission referred to in subsection (4) -
- (a) must be in writing;
 - (b) may be subject to conditions;
 - (c) do not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself; and
 - (d) may be withdrawn by the Director-General.

[S. 42 substituted by s. 9 of Act 46/2003]

42A. Delegation of powers by MEC

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

[S. 42A inserted by s. 10 of Act 46/2003]

42B. Delegation by Minister of Minerals and Energy

- (1) The Minister of Minerals and Energy may delegate a function entrusted to him or her in terms of this Act to-
 - (a) the Director-General of the Department of Minerals and Energy; or

(b) any officer in the Department of Minerals and Energy.

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

(a) must be in writing;

(b) may be made subject to any condition;

(c) does not prevent the performance of the function by the Minister himself or herself; and

(d) may be withdrawn by the Minister.

[S. 42B inserted by s. 9 of Act 62/2008]

43. Appeals

(1) Any person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.

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

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

(2) Any person may appeal to an MEC against a decision taken by any person acting under a power delegated by that MEC under this Act or a specific environmental management Act.

(4) An appeal under subsection (1), (1A), (1B) or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

(5) The Minister or an MEC, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.

(6) The Minister or an MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded.

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

[S. 43 substituted by s. 4 of Act 8/2004 and s. 10 of Act 62/2008]

44. Regulations in general

- (1) The Minister may make regulations -
 - (a) dealing with any matter which under this Act must be dealt with by regulation;
 - (aA) prohibiting, restricting or controlling activities which are likely to have a detrimental effect on the environment; and
[Para. (aA) inserted by s. 2 of Act 56/2002]
 - (b) generally, to carry out the purposes and the provisions of this Act.
- (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.

45. Regulations for management cooperation agreements

- (1) The Minister may make regulations concerning -
 - (a) procedures for the conclusion of environmental management cooperation agreements, which must include procedures for public participation;
 - (b) the duration of agreements;
 - (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.

46. Model environmental management bylaws

- (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.
- (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 -
 - (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
 - (c) ensure effective environmental management and conservation of resources and impacts within the jurisdiction of a municipality in cooperation with other organs of state.
- (5) The model bylaws referred to in subsection (1) must include measures for environmental management, which may include -
 - (a) auditing, monitoring and ensuring compliance; and
 - (b) reporting requirements and the furnishing of information.

47. Procedure for making regulations

- (1) Before making any regulations under this Act, a Minister or MEC must -
 - (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 the National Council of Provinces, 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.
- (3) Notwithstanding subsection (2), any regulation made in terms of [section 24\(5\)\(bA\)](#) must be submitted to Parliament 30 days prior to publication.
[Sub-s. (3) deleted by s. 5 of Act 8/2004 and inserted by s. 11 of Act 62/2008]
- (4)
[Sub-s. (4) deleted by s. 5 of Act 8/2004]
- (5)
[Sub-s. (5) deleted by s. 5 of Act 8/2004]
- (6)
[Sub-s. (6) deleted by s. 5 of Act 8/2004]

47A. Regulations, legal documents and steps valid under certain circumstances

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

(b) does not prejudice any person; and

(c) is not procedurally unfair.

[S. 47A inserted by s. 11 of Act 46/2003]

47B. Consultation

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

[S. 47B inserted by s. 11 of Act 46/2003]

47C. Extension of time periods

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

[S. 47C inserted by s. 11 of Act 46/2003]

47D. Delivery of documents

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

(a) by delivering it by hand;

(b) by sending it by registered mail -

(i) to that person's business or residential address; or

(ii) in the case of a juristic person, to its registered address or principal place of business; or

(c) where an address is unknown despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.

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

[S. 47D inserted by s. 11 of Act 46/2003]

CHAPTER 10

GENERAL AND TRANSITIONAL PROVISIONS

48. State bound

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

49. Limitation of liability

Neither the State nor any other person is liable for any damage or loss caused by -

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

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

[S. 49 substituted by s. 12 of Act 46/2003]

50. Repeal of laws

- (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.
- (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.
- (3) Any application made in terms of [section 21, 22](#) or [26](#) of the Environment Conservation Act, 1989 (Act No. 73 of 1989), that has been submitted but not finalised when those sections are repealed, must be finalised as if those sections had not been repealed.

[Sub-s. (3) added by s. 6 of Act 8/2004]

- (4) In order to ensure that the transition between the legal requirements of [sections 21, 22](#) and [26](#) of the Environment Conservation Act, 1989 (Act No. 73 of 1989), and the requirements of this Act is efficient, the Minister may by notice in the *Gazette* list activities included in [Government Notice R1182 of 5](#)

[September 1997](#) that will remain valid until such time as an MEC promulgates a list of activities for that province.

[Sub-s. (4) added by s. 6 of Act 8/2004]

51. Savings

Anything done or deemed to have been done under a provision repealed by this Act

- (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.

52. Short title

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

53. Commencement

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

Schedule 1

Section 11 (1)

National departments exercising functions which may affect the environment

- * 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)

National departments exercising functions that involve the management of the environment

- * 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)

“Part (a): National Legislation

No and year of law	Short title	Relevant provisions
Act No. 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947	Section 18(1)(i), in so far as it relates to contraventions of sections 7 and 7bis
Act No. 71 of 1962	Animals Protection Act, 1962	Sections 2(1) and 2A
Act No. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	[Section 9] Sections 7(2)(a) to (d), 9(1)(a) to (c), 14A, 15(1)(a) and (b), 15(2), 17(4), 19(5), 20(11), 23(3), 24(2), 28(3), 29(4), 31(6) 32(2) 34 (4), 37(4), 40(4) and 41(2)
Act No. 63 of 1970	Mountain Catchment Areas Act, 1970	Section 14, in so far as it relates to contraventions of section 3
Act No. 15 of 1973	Hazardous Substances Act, 1973	Section 19(1)(a) and (b), in so far as it relates to contraventions of sections 3 and 3A

Act No. 63 of 1977	Health Act, 1977	Section 27
Act No. 73 of 1980	Dumping at Sea Control Act, 1980	Section 2(1)(a) and (b)
Act No. 6 of 1981	Marine Pollution (Control and Civil Liability) Act, 1981	Section 2(1)
Act No. 43 of 1983	Conservation of <u>Agricultural Resources Act, 1983</u>	Sections 6 and 7
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	Section 3A
Act No. 73 of 1989	Environment Conservation Act, 1989	[Section] Sections 19(1) and 19A read with 29(3), 20(1) and (9) read with section 29(4), 29 (2)(a) [and (4)] , 31A and 41A read with 29(3)
Act No. 18 of 1998	Marine Living Resources Act, 1998	Section 58(1), in so far as it relates to contraventions of sections 43(2), 45 and 47, and section 58(2), in so far as it relates to contraventions of international conservation and management measures
Act No. 36 of 1998	National Water Act, 1998	Section 151(1)(i) and (j)
Act No. 84 of 1998	<u>National Forests Act</u>	<u>Sections 4(8), 7(1), 10(1), 11(2)(b), 15(1)(a) and (b), 17(3) and (4), 20(3), 21(2), 21(5), 24(8), 63(1)(a), (d), (e) and (f), 63(2)(a) and (b), 63(3) to (5), 64(1) and (2)</u>
Act No. 101 of 1998	<u>National Veld and Forest Fire Act</u>	<u>Sections 10(2), 12(1), 12(2)(b), 12(14)(a), (4), 17(1), 18(1)(a), 18(2), 18(3)(b), 18(4), 18(4)(b), (25(2)(a) to (e), 25(5), (6) and (7)</u>

No and year of law	Short title	Relevant provisions
<u>Act No. 107 of 1998</u>	<u>National Environment Management Act, 1998</u>	<u>Sections 24F(1) and (2), 24G(3), 28(14), 30(11), 31N(1) and 34A (a), (b) and (c)</u>
<u>Act No. 25 of 1999</u>	<u>National Heritage Resources Act</u>	<u>Sections 27(18) and (22), (23)(b),28(3), 29(10), 32(13), (15),(16), (17), (19) and (20) 33(1) and (2), 34(1), 35(3), (4), (6) and (7)(a) 36(3), 44(2) and (3), 50(5) and (12) and 51(8)</u>
<u>Act No. 57 of 2003</u>	<u>National Environmental Management: Protected Areas Act</u>	<u>Sections 45(1), 46(1), 47(2), 47(3), 48(1), 50(5), read with sections 89(1),89(1) (b), (c) and (d) and 50A</u>
<u>Act No. 10 of 2004</u>	<u>National Environmental Management: Biodiversity Act</u>	<u>Sections 57(1) read with 101(1)(a), 65(1) read with 101(1)(a), 67(2) read with 101(1)(a), 71(1) read with 101(1)(a), 81(1)</u>
<u>Act No. 39 of 2004</u>	<u>National Environmental Management: Air Quality Act</u>	<u>Sections 51(10(a) to (h), 51(2) and (3)</u>

Part (b): 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 section 37(1), to section 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 154 in so far as it relates to section 152, section 185 in so far as it relates 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 Ordinance	Section 86(1) in so far as it relates to contraventions of sections [26,] 4[4] 1(1)(b)(ii) and (c) to (e), 52(a), 57(a), 58(b) and 62(1)
Ordinance No. 12 of 1983	[Transvaal] Gauteng Nature Conservation	Sections 16A, 17 to 45, [42], 47, 48, 51, 52, 54, 66, 71 to 78, 79, 80, 81, 83, 84, 85, 87, 88 to 93, 95, 96 [and] 98, 99, 100 and 107
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. 29 of 1992	KwaZulu Nature Conservation	Section 67 in so far as it relates to sections 59(1), 59(2), 60(1) and 62(1); section 86 in so far as it relates to sections 76, 77 and 82; and section 110 in so far as it relates to section 109
Act No. 5 of 1998	KwaZulu-Natal Planning and Development	Section 48''.