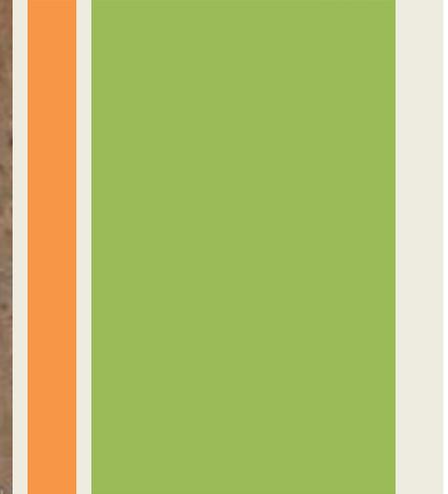


 Centre for
Environmental Rights
Advancing Environmental Rights in South Africa

CONSERVATION SOUTH AFRICA 
Member of the CI Network 

FJE the federation for a sustainable environment

 **GROUNDWORK**
environmental justice action 



Mine closure, rehabilitation and retention of financial provision (s43)

A personal experience in Sierra Leone...

- After large companies disappeared...
- Open access small mining – digging pits and washing ores
- Clearing vegetation, siltation & severe erosion making the land unsuitable for agriculture
- Disease, some fatal to young children, thrives in stagnant pools
- Tough, unregulated conditions are unsafe and become a hub for other illicit and dangerous activities
- No regional or sustainable economic benefit





A brief input...

- Mine closure context
- Key Issues and Suggestions for MPRDA
 - Section 1
 - Section 3
 - Section 6
- A final vision



We recognise the role of mining in the SA's Sustainable Economy and support legislation and mining companies to:

- *Plan thoroughly
- *Operate responsibly
- *Develop and implement restoration systems that leave functional ecosystems
- *Make positive and lasting contributions to the communities and environment they mine in.

SUPPORTING SUCCESSFUL CLOSURE!!



Why is the MPRDA Revision on
Closure Important....

RISK MITIGATION



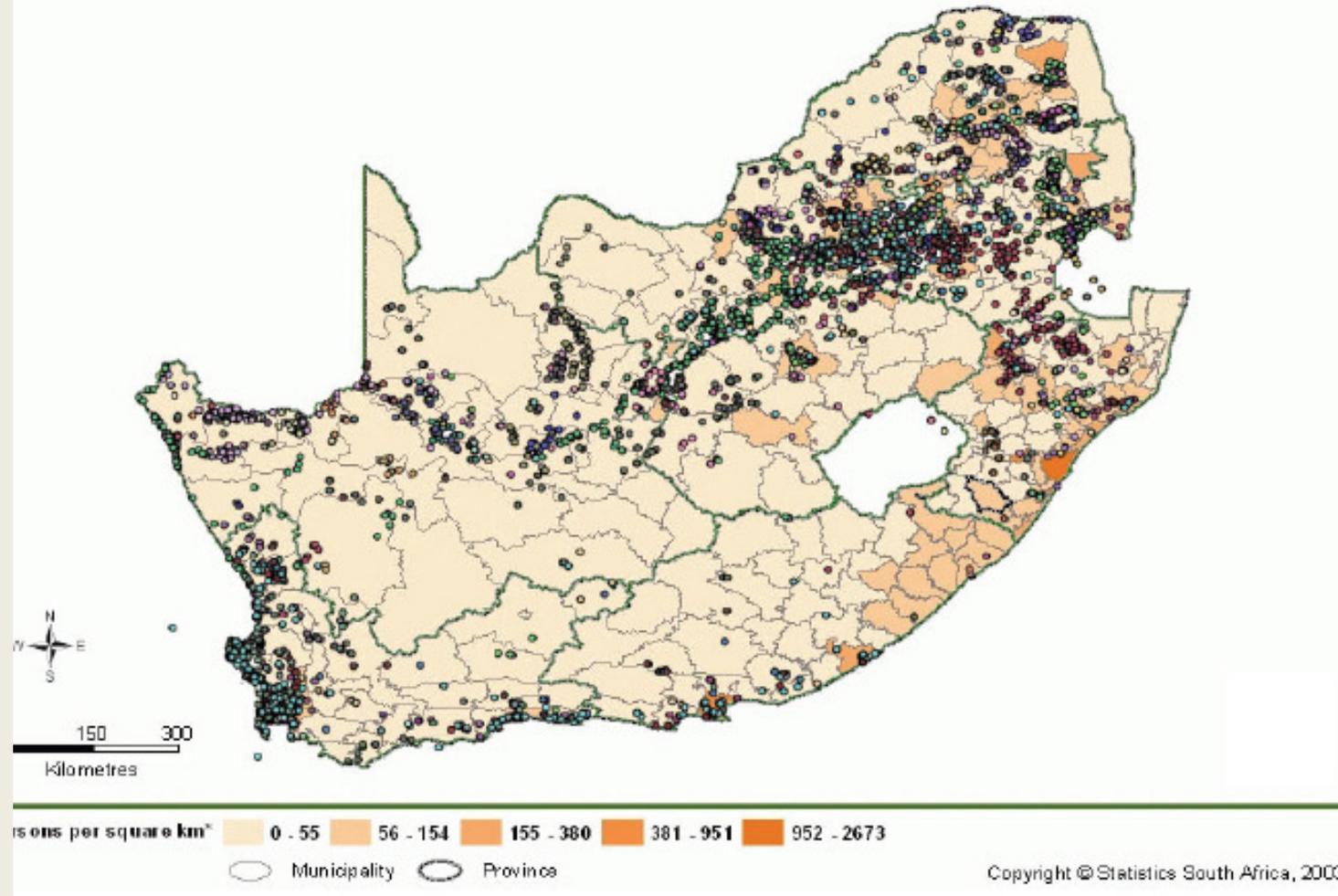
Large companies sell large liabilities to smaller companies and wash their hands of secondary degradation..

DEVELOPMENT OPPORTUNITY



Job opportunities from restoration efforts are lost and companies fail to make real contributions to the social and economic well-being of their communities.
HAIR-DRESSING, GUESTHOUSES, AND SMALL-SCALE MINING ARE NOT SUFFICIENT REPLACEMENTS FOR MEETING NATIONAL DEVELOPMENT OBJECTIVES!

Illustration 1: Correlation between abandoned mines in South Africa and population density



In 2009, nearly 6000 mines identified by the Auditor General Requiring National Clean-up Action of at least R30 Billion...WHY CREATE MORE??



Key issues in the MPRDA Amendment....

Current situation MPRDA s.43(1) (Legal responsibility)

The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, **remains responsible** for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance to the conditions of the environmental authorisation and the management and sustainable closure thereof, **until the Minister has issued a closure certificate** in terms of this Act to the holder or owner concerned.

What's proposed in the Bill's s.43(1) (Legal responsibility)

The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, **remains responsible** for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance with the conditions of the environmental authorisation and the management and sustainable closure thereof, **notwithstanding the issuing of a closure certificate** by the Minister in terms of this Act to the holder or owner concerned.

Legal responsibility (s.43(1)) remains with the Mining Company

- We applaud this amendment
- The “polluter pays” principle is grounded in section 24 of the Constitution
- It is prescribed in section 28 of NEMA
- Section 19 of the National Water Act, 1998 is aligned with the Constitution and NEMA
- The amendment of section 43(1) aligns the MPRDA with these pieces of legislation

...mitigating risk to the state and its constituencies

Obligation to apply for closure s.43(3)

- The MPRDA prescribes circumstances when a mining company must apply for a closure certificate. Many mines do not apply for closure because they consider the obligations on closure more onerous than what is colloquially referred to as “care and maintenance”. This has detrimental consequences for environmental degradation as implementation of the EMPR is de-prioritised. To address this problem, we propose an insertion in section 43(3) that required a right holder to make application for a closure certificate on the “cessation of the prospecting or mining operation, or the deemed cessation of such operation”.

...ensuring contribution to job creation, environmental protection, and long-term development objectives

Current situation MPRDA s.43(6) (retention of financial provision)

When the Minister issues a certificate he or she must return such portion of the financial provision contemplated in section 41 as the Minister may deem appropriate to the holder of the prospecting right, mining right, retention permit or mining permit in question, but **may retain any portion of such financial provision for latent and or residual environmental impact which may become known in the future.**

What's proposed in the Bill's s.43(6) (retention of financial provision)

When the Minister issues a certificate he or she **may retain any portion of such financial provision** for latent and residual safety, health or environmental impact which may become known in the future **for a period of 20 years after issuing a closure certificate.**

Why 20 years???

- Impacts of mining operations differ from one mineral to another, one environment to another and one operation to another. The stipulated period of 20 years may be too long or too short, depending on the circumstances.
- The retention of financial provision to address **actual environmental damage inflicted** by the operation should be proportionate to rather than subordinate to the billions of rand spent on risk for a profitable return.
- The retention period **must be for the predicted life of the impacts** (e.g. the expected time of mine decant, etc) as assessed on cessation of the mining operation and linked to cost of an environmental authorised closure plan that is aligned with the environmental and development objectives of the country. This can be done based on **probability assessments** of the impact as occurs in the Health and Insurance Sectors.

An example...

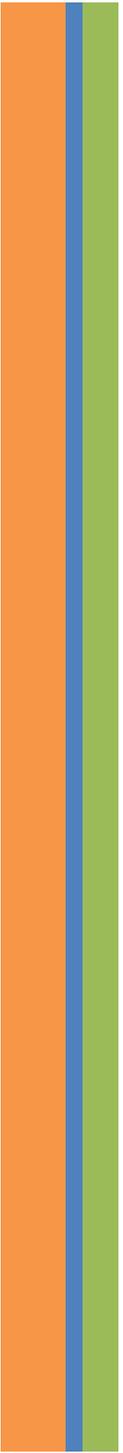
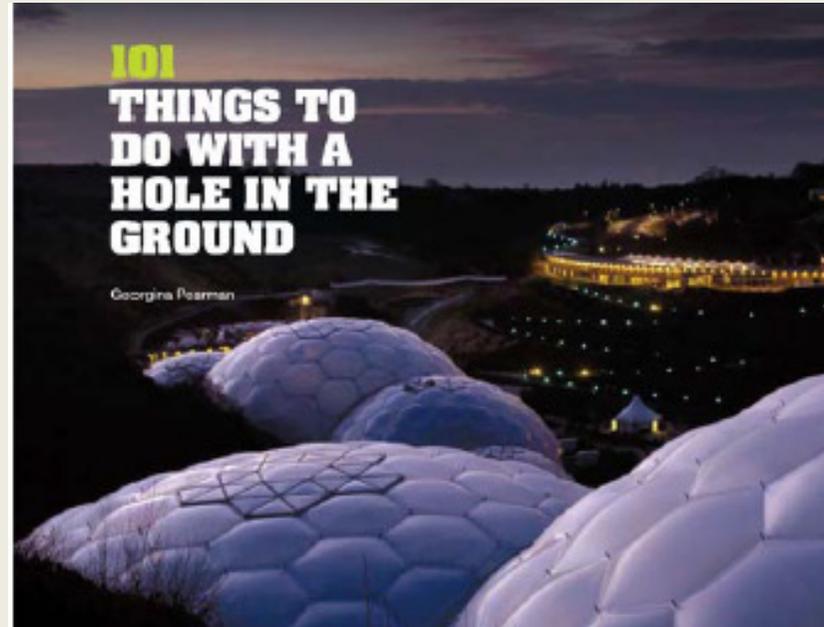
- SA government will spend an estimated R1,2-billion to clean up acidic water threatening to spill out from abandoned gold mines under Johannesburg – this comes out of the taxpayer's pocket.
 - The toxic liquid has already been flowing out of mines to the west of the city.
 - The acid water is currently about 600 metres below the city's surface, but is rising at a rate of between 0.6 and 0.9 metres a day.
 - It can have catastrophic consequences for the Johannesburg central business district if not stopped in time.
-
- Most of these mines stopped operating longer than 20 years ago.



Where there's a **will**,
there's a way...

Closure can be a tool for job
creation and development...

it can't be made to be easy to
walk away and leave the bill!!









Questions?

Other references:

www.postminingalliance.org

www.Edenproject.org



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Legacy of poor rehabilitation of mining sites

- In 2009 the Auditor General estimated the bill for cleaning up existing abandoned mines to top R30 billion. This figure will continue to grow unless mining companies and governments act quickly to close loopholes in the process to fund clean mine closure.
- The incidence of acid mine drainage (AMD) and the high number of derelict and ownerless (D&O) mines, as well as dangerous sinkholes and collapsing entry points, particularly in the Witwatersrand gold fields, have effectively brought the consequences of inadequate environmental rehabilitation in the mining sector into sharp focus.
- “Mining companies are legally obliged to set aside money to rehabilitate mined areas and clean-up pollution in the long term. However, this system is currently failing South Africans. The estimated bill for cleaning up the AMD in the Witwatersrand is over R2 billion. Tax payers are expected to foot most of these costs, as the polluting mines have in many cases stopped operating.” - WWF’s Freshwater Programmes Senior Manager, Christine Colvin

Legacy of poor rehabilitation of mining sites contd.

- “South Africa’s mining industry is the one of the largest in the world and mining accounts for nearly a fifth of the country’s Gross Domestic Product. While jobs and revenue generated by mining are essential to the South African economy, the costs of mining borne by the environment, mine neighbours, downstream water-users and the tax payer are an unacceptable consequence of a poorly managed sector.

“Additionally, the impacts of abandoned mines on the environment are often felt by rural communities who do not have access to basic municipal services (such as piped and treated water supply), and are therefore directly reliant on natural resources for their food and water. These communities are the most vulnerable. For these reasons we urge government to act now to prevent further degradation of our rivers and aquifers”. – Colvin

- The “polluter pays” principle dictates that legal responsibility for the environmental impacts of mining endures until those impacts are remediated.
- Ensuring that financial provision to address those impacts is secured until they have been remediated is the only way to ensure that the legacy just described, is not perpetuated.

Retention of financial provision (and why 20 years is inappropriate (s.43(6)))

- This amendment is problematic, the stipulated period of 20 years may be too long or too short, depending on the circumstances as the impacts of mining operations differ from one mineral to another, one environment to another and one operation to another
- The retention period must be for the predicted life of the impacts (e.g. the expected time of mine decant, etc) as assessed on cessation of the mining operation and (linked to cost of an environmental authorised closure plan that is aligned with the environmental and development objectives of the country) –
- This case by case assessment should be collated into probability standards or schedule for differing retention periods for types of mines and minerals for future regulations
- We have heard from industry players at these hearings that retention of financial provision is unrealistic and disproportionately harsh, with the suggestion that this will cripple these companies. We would ask the portfolio committee to be circumspect about submissions of this nature. The same players ask the portfolio committee to appreciate that they spend billions of rand on exploration when little is known about the existence of the resource. We submit that retention of financial provision to address **actual environmental damage inflicted** by the operation should be proportionate to rather than subordinate to the billions of rand spent on risk for a profitable return.

- After 10 Years



Figure 22: Plume migration after 10 years

- After 20 years...



Figure 23: Plume migration after 20 years

- After 40 years...



Figure 24: Plume migration after 40 years

- After 80 years...

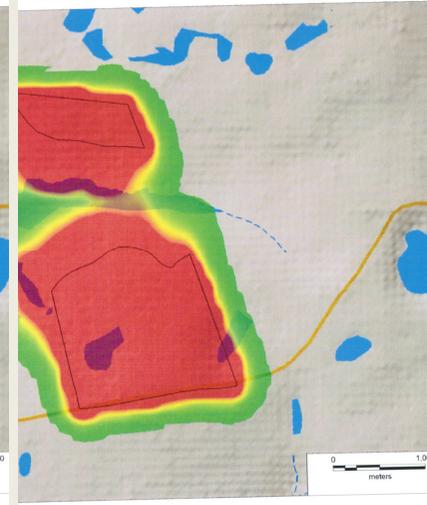


Figure 25: Plume migration after 80 years

Another example of why 20 years limit is inappropriate (43(6))...

- Above is a modelled impact of the expansion of the impact zone (in green) of a sulphur plume from a coal mine.
- If provisioning only mitigates impact for 20 years, who pays for the next 60?