



ASSOCIATION OF CEMENTITIOUS MATERIAL PRODUCERS

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# **NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY AMENDMENT BILL- 13 AUGUST 2013**

**Parliament**  
**17<sup>th</sup> September 2013**

**Dr Dhiraj Rama**

# NEMA: AQ BILL



## CONTENTS

1. Introduction ACMP
2. Alignment of the establishment of the National Air Quality Advisory Committee with the requirements of the National Environmental Management Act, 1998
3. Timeframes on the submission of the priority area air quality management plan to the Minister for approval
4. Amendments to provide for the consequences of unlawful commencement of listed activity; Amendments to provide for the consequences of unlawful commencement of listed activity;
5. Monitoring, evaluation and reporting on the implementation of the pollution prevention plan
6. Minister as licensing authority in the various instances identified
7. Cross references to the Environmental Conservation Act, 1989
8. To clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission license
9. Criteria for a fit and proper person for the purpose of applications for atmospheric emission licenses
10. Offence for non-compliance with controlled fuel standards
11. General editorial
12. Conclusions



## 1. INTRODUCTION: Who is the ACMP?

The ACMP acts as an umbrella body for six South African clinker and cementitious material producer companies, specifically guiding and representing their interests in the fields of

- environmental stewardship,
- health and safety practices, and
- community and stakeholder interaction

All members produce cement in **compliance with SABS standards**

The ACMP's member companies include



- ❖ AfriSam: [www.afrisam.com](http://www.afrisam.com)
- ❖ Lafarge South Africa: [www.lafarge.com](http://www.lafarge.com)
- ❖ NPC-CIMPOR: [www.cimpor.com](http://www.cimpor.com)
- ❖ Pretoria Portland Cement Company Ltd: [www.ppc.co.za](http://www.ppc.co.za)
- ❖ Cemlock(Gauteng) Pty Ltd
- ❖ I.D.M. Cement (Pty) Ltd: [www.vibro.co.za](http://www.vibro.co.za)





## ACMP- COMMUNICATION PARTNER OF THE WBCSD-CSI



**ACMP- Communication partner  
of the WBCSD-CSI**



## INTRODUCTION (CONT)

### Our members

- Believe that the Air Quality Act is important to inform sustainable development
- Appreciate the current progress made by the Department to
  - ❖ The opportunity to inform the amendments process
  - ❖ Align air quality management to the different Spatial tools (GIS spatial mapping/SEAs/EMFs)
  - ❖ The review of the environmental impact assessment management process
  - ❖ Law reform processes: Eg (amendments: exclusion of activities, delisting of small insignificant

### Challenge:

The current *implementation process* does not take into account internationally documented scientifically sound published information to inform **sectoral approaches**, particularly in the context of aligning waste permits and the air quality licenses.

- Any change in the use of approved alternate fuels and resources would require amendment to the AEL despite being in compliance with the waste permit and the necessary EIA approval
- Air emission license decision-making not integrated with for example waste management permitting requirements
- Same predictable concerns raised during the public participation process as well during the appeals process.

### Opportunities

Thus, in general there are opportunities for improved integrated approaches to be adopted and the support of the Advisory Forum to be established is highly appreciated.



**2. ALIGNMENT OF THE ESTABLISHMENT OF THE NATIONAL AIR QUALITY ADVISORY COMMITTEE WITH THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

<b>ISSUE</b>	<b>RECOMMENDATION</b>
<p>It is noted that the proposed amendment of s13 will establish an Air Quality Advisory Committee in terms of the Air Quality Act and no longer as a subcommittee of the National Environmental Advisory Forum (NEAF) (in terms of NEMA).</p> <p>The ACMP acknowledges the effort being undertaken by DEA to recognize air quality issues of significant merit to warrant it's own structure as NEAF has to date not been established.</p>	<ul style="list-style-type: none"><li>• The principles of cooperative governance must be adhered to in its operation to ensure holistic environmental management</li><li>• Mandate and roles and responsibilities must be clearly defined particularly in providing leadership to unblock challenges faced with the permitting process across the different Authorities</li></ul>



### 3. TIMEFRAMES ON THE SUBMISSION OF THE PRIORITY AREA AIR QUALITY MANAGEMENT PLAN TO THE MINISTER FOR APPROVAL

<b>ISSUE</b>	<b>RECOMMENDATION</b>
<p>The statement by the Department that it is impossible to complete the report with proper consultation within the current timeframe is correct.</p>	<p>The response to address the challenge is appreciated by the ACMP.</p>

## 4. AMENDMENTS TO PROVIDE FOR THE CONSEQUENCES OF UNLAWFUL COMMENCEMENT OF LISTED ACTIVITY



ISSUE	RECOMMENDATION
<p><b>Section 22A</b> provides for an impact assessment process to be conducted for an unlawful activity and an associated administrative fine to be paid, which requires the compilation of a report which inter-alia requires the following details:</p> <ul style="list-style-type: none"> <li>• Need and desirability of the activity</li> <li>• Impacts of the activity including cumulative impacts</li> <li>• Mitigation measures</li> <li>• Public participation process</li> <li>• Any other information required by the Authority</li> <li>• Administrative fine: S4.22A.4. This is to be determined by the licensing authority and must not exceed R5million.</li> </ul>	<p>The relationship and alignment to section 24G of NEMA needs to be clarified. It must be clarified if “rectification” in terms of NEMA and NEMAQA would be required for the same activity. That is, would 2 administrative fines be applicable as different Authorities may be involved. We see this as a double penalty</p> <p><b>Integrated environmental authorization procedure:</b> The following 2 scenarios should be accounted for and dealt with separately,</p> <ol style="list-style-type: none"> <li>1. Where an application for an AEL is dependent on the EIA process for rectification the 24G should apply, while</li> <li>2. Where an activity does not require an EIA authorisation the administrative fine in terms of 22A would apply.</li> </ol> <p><b>Impacts of the activity including cumulative impacts, mitigation measures, public participation:</b></p> <ul style="list-style-type: none"> <li>• The need and extent for the above-mentioned must be determined based on the contravention</li> <li>• A distinction must be made between contraventions of permits conditions vs an illegal situation where no permit, studies, permissions have been obtained and illegal commencement of the activity has taken place</li> <li>• Exemptions should be allowed if the non compliance is small</li> <li>• It is also not clear how cumulative impacts will be assessed and the extent of specialist studies required.</li> </ul> <p><b>Any other information required by the Authority</b> Authority should carefully motivate this prior to the request being made</p>
<p><b>Section 53(l)(A)</b> provides for the procedure and criteria to be followed in the determination of an administrative fine in terms of section 22A</p>	<p><b>Administrative fine:</b> The maximum fine should be aligned with Section 24G(2A) of NEMA which provides for an administrative fine not exceeding R1 million. There must be a consistency across the country and to ensure common approach across all competent Authorities. Thus, the Department must urgently finalise the procedure and criteria for the determination of fines in consultation with all stakeholders</p>



## 5. MONITORING, EVALUATION AND REPORTING ON THE IMPLEMENTATION OF THE POLLUTION PREVENTION PLAN

<b>ISSUE</b>	<b>RECOMMENDATION</b>
Noted, but not sure if this would be in addition to the approved plan requirements	Clarification required as there should not be two plans



## 6. MINISTER AS LICENSING AUTHORITY IN THE VARIOUS INSTANCES IDENTIFIED

ISSUE	RECOMMENDATION
<p>The ACMP appreciates the Department's approach to an integrated environmental authorisation procedure as contemplated in this amendment as it would result in the issuance of an EIA authorisation, atmospheric emission license (AEL), and Waste license all at the same time under the specified circumstances.</p>	<ul style="list-style-type: none"><li>• It is our understanding that the Minister becomes the licensing Authority and not the Province if the matter is delegated by Local Authorities to the Provincial Authority</li><li>• However, it is important that our comments reflected for S22A above as well as comments in Number 7 below be addressed to ensure an efficient integrated environmental authorisation procedure<ul style="list-style-type: none"><li>• S22: Non compliance matters,</li><li>• S36: Hazardous waste management</li></ul></li></ul>



## 7. CROSS REFERENCES TO THE ENVIRONMENTAL CONSERVATION ACT, 1989

ISSUE	RECOMMENDATION
<p>This amendment is noted.</p> <p>The amendment of section 36 by the inclusion of subsection 5 implies that activities that involve hazardous waste will become the competency of the National Department. In the cement sector, the co-processing of hazardous waste is installation specific and may result on some kilns being regulated under the National Department and others being regulated by the local Authorities. This will result in additional licensing fees and a disjointed approach to managing ambient air quality if different Authorities regulate the different types of kilns at the same site.</p>	<ul style="list-style-type: none"><li>• “Entire facilities” be managed by a single licensing authority to avoid unnecessary administrative burden, duplicate license fees and disparate operational requirements.</li><li>• This section must be aligned with NEMA section 24K, which deals with integrated permitting.</li><li>• This provision should be applicable to all scenarios where more than one license is required.</li></ul>



## 8. TO CLARIFY THAT APPLICATIONS MUST BE BROUGHT TO THE ATTENTION OF INTERESTED AND AFFECTED PARTIES SOON AFTER THE SUBMISSION TO THE LICENSING AUTHORITY; TO PROVIDE FOR A VALIDITY PERIOD OF PROVISIONAL ATMOSPHERIC EMISSION LICENSE

ISSUE	RECOMMENDATION
<p><b>Amendment of section 41</b></p> <p>Section 41 amended by the addition of the following subsection:</p> <p>“(3)A provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of the listed activity.”</p>	<ul style="list-style-type: none"><li>• For the purposes of this amendment, a definition of commissioning must be included.</li><li>• A period of 1 year for commissioning may not be sufficient for complex operations.<ul style="list-style-type: none"><li>• The amendment allow for instances where operational challenges are demonstrated and appropriate validity period included in the provisional atmospheric emission license to take into account commencement and commissioning challenges.</li></ul></li></ul>



## 9. CRITERIA FOR A FIT AND PROPER PERSON FOR THE PURPOSE OF APPLICATIONS FOR ATMOSPHERIC EMISSION LICENSES

<b>ISSUE</b>	<b>RECOMMENDATION</b>
<p>By substituting and with OR after (c), it is our understanding that the accountable person could be a technically competent person employed as fit and proper to manage the atmospheric emission licence and becomes the accountable person for compliance purposes</p>	<p>This is to be confirmed</p>



## 10. OFFENCE FOR NON-COMPLIANCE WITH CONTROLLED FUEL STANDARDS

<b>ISSUE</b>	<b>RECOMMENDATION</b>
Amendments to controlled fuels were not clearly identified in the Bill	Reference to controlled fuels need to be made.



## 11. GENERAL

<b>ISSUE</b>	<b>RECOMMENDATION</b>
Amendment of section 49 The amendment reads “that person has...”,	Editorial amendment required The amendment should read “that person is...” instead of “that person has...”

## 12. CONCLUSION

- The work towards amending the Air Quality Act is commendable
- The current effort to improve systems across all spheres of government is encouraging.
  
- However, in conclusion we would like to recommend
  - The Department establish the National Air Quality Advisory Committee urgently to improve
    - The air management licensing procedures across the different spheres of government,
    - Harmonise the different environmental regulatory requirements such as the EIAs and the waste permits.



Thank you!