



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

NEMA / MPRDA AND NWA AMENDMENTS

Presentation to the Portfolio
Committee on 8 October 2013

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NEMLA 3

- Must be read with:
 - The National Environmental Management Act, 1998
 - The National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008)
 - The National Environmental Management: Waste Act, 2008
 - The Mineral and Petroleum Resources Development Act, 2002



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NEMLA 3

- Mineral Petroleum Resources Development Amendment Bill, B15 – 2013
- The Bill mainly gives further effect to the agreement reached in 2008 and subsequent agreements reached

NEMLA 3

- Amend definition of environmental management inspector (EMI) to include EMIs designated in terms of section 31BA (correction)
- Include a definition for environmental management resources inspector (new) and include an empowering provision allowing the Minister of Mineral Resources to designate Mineral Resources Inspectors who will have the powers of EMIs.
- Amend the definition of Minister of Mineral Resources (update designation and remove reference to mining , prospecting, exploration and production area.)

NEMLA 3

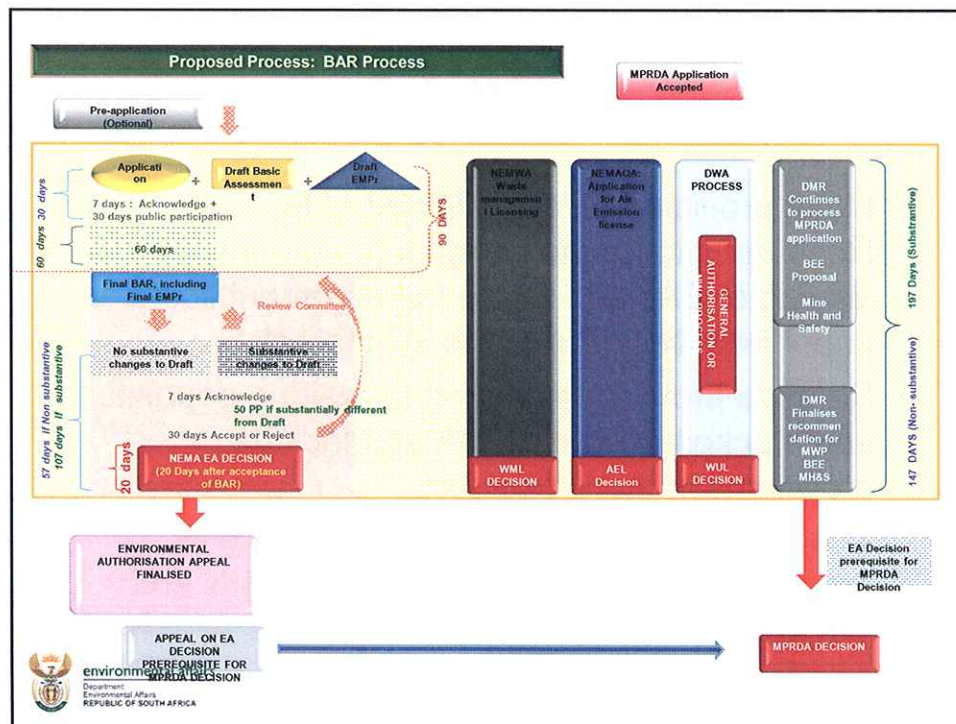
- Reduce the time period in section 24O (consultation with state departments) from 40 days to 30 days to fit in the overall time period for the issuing of an environmental authorisation.
- To provide transitional provisions for appeals
- To remove the provision relating to in-process appeals in NEMA.(s43(1B))

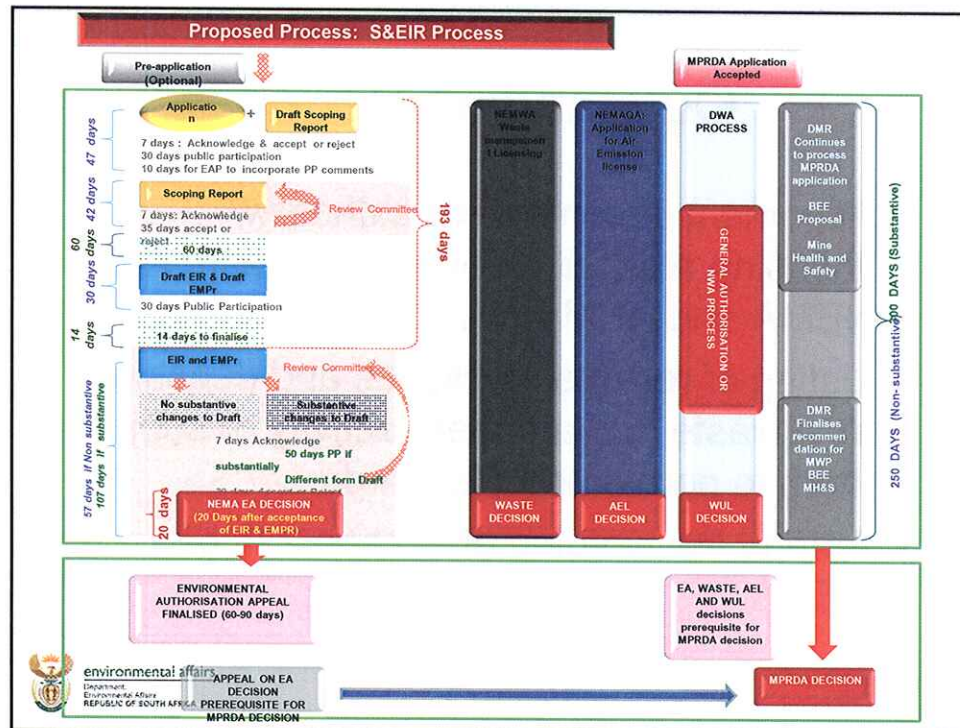
NEMLA 3

- Make provision for the Minister of Mineral Resources to be the competent authority for the issuing of EAs and waste management licences under both NEMA and the Waste Act
- Remove provisions relating to residue deposits and stockpiles from NEMA and include provisions in the Waste Act.
- The Bill amends the Waste Act to make its provisions applicable to residue deposits and stockpiles.

Draft Regulations

- Appeal Regulations
- Exemption Regulations
- EIA Regulations (listing notices)





WATER LEGISLATION

- No amendments are required to the National Water Act with respect to the licensing process.
- There is a policy process currently under way at DWA.
- Regulations have been drafted to allow the alignment of permitting systems.
- NWA (Chapter 15 - sections 146-150) and schedule 6) – separate appeal process for mine appeals.

Outstanding issues

- Alignment of competent authority/ licensing authority provision – Waste Act, NEMA and NEM:AQA
- Listing of residue stockpiles and deposits as a waste management activity or subject them to norms and standards
- Amend the wording of section 24L of NEMA

Outstanding issues

- Exploration & production of offshore gas and oil – s74 of the MPRDA
- Financial provisions
- Finalise matrix

Additional legislative amendments required in terms of the NEMA

Section	Issue	Proposed text
1	Review definition of "applicant" – remove (b) because it is superfluous and not correct	"applicant" means a person who has submitted <u>or who intends to submit</u> an application for an environmental authorisation to the competent authority and has paid the prescribed fee; [(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;]

Additional legislative amendments required in terms

Section	Issue	Proposed text
1	Check definition of "community". Include "community" interested and affected party definition. Should definition of "community" be amended.	"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 environmental matters pertaining to prospecting, mining, exploration, production or related activity on a prospecting, mining, exploration or production area, means <u>an interested and affected party and</u> 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 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;

Additional legislative amendments required in terms

Section	Issue	Proposed text
1	Regional Mining Development and Environmental Committee.	Remove reference to Regional Mining Development and Environmental Committee which is still used in sections 24N and 24O of the Act as it will not play any role in terms of decisions.
24O(2)	Replace Minister with EAP or insert EAP.	"(2) The Minister, the Minister of Minerals and Energy, an MEC [or] identified competent authority <u>or an environmental assessment practitioner</u> must consult with every State department that administers a law relating to a matter affecting the environment when he or she considers an application for an environmental authorisation."

Additional legislative amendments required in terms of the NEMA

Section	Issue	Proposed text
43(1A)	Any person may appeal to the Minister of Environmental Affairs against decision taken by the Minister of Mineral Resources.	"(1A) Any person may appeal to the Minister against a decision taken by the Minister of [Minerals and Energy] Mineral Resources or <u>any person acting under a power delegated by the Minister of Mineral Resources</u> in respect of an environmental management programme or environmental authorisation."
	Review of the Environmental management plan issued in terms of the MPRDA, before 8 December 2013 must be done in terms of NEMA.	Section 12 of the National Environmental Management Amendment Act, 2008 is hereby amended by the addition of the following subsections: "(8) <u>An environmental management programme or environmental management plan approved in terms of section 39 of the Mineral and Petroleum Resources Development Act, 2002 must be reviewed in terms of the National Environmental Management Act, 1998.</u> "

Additional legislative amendment s required in terms of the NEMA

Section	Issue	Proposed text
28(4), (5), (7), (8), (9) and (12)	The Director-General of the Department of Mineral Resources should be given powers to issue a directive in terms of section 28(4). A contravention of a criteria or condition included an instrument adopted in terms of the new s24(5)(bB) included in the National Environmental Laws Second Amendment Bill must be included in offence provisions.	Clause 12 of NEML Second Amendment Bill: Insert the words "Director General of the Department of Mineral Resources" in section 28(4), (5), (7), (8), (9), (12) of NEMA. Clause 25 of NEML Second Amendment Bill: <u>"(e) fails to comply with a criteria or condition specified by the Minister or MEC in any regulation made under section 24(5)(bB);"</u>

Additional legislative amendment s required in terms of the Waste Act

Section	Issue	Proposed text
79A	Delegation by Minister of Mineral Resources	<u>79A. Delegation by Minister of Mineral Resources</u> <u>(1) The Minister responsible for mineral resources may delegate a function entrusted to him or her in terms of this Act to-</u> <u>(a) the Director-General of the Department of Mineral Resources; or</u> <u>(b) any official or to the holder of a specific post in the Department of Mineral Resources.</u> <u>(2) A delegation in terms of subsection (1)-</u> <u>(a) must be in writing;</u> <u>(b) may be made subject to any condition;</u> <u>(c) does not prevent the performance of the function by the Minister of Mineral Resources himself or herself; and</u> <u>(d) may be withdrawn by the Minister of Mineral Resources."</u>

Additional legislative amendments - NEMWA

Section	Issue	Proposed text
	Absence of provision similar to NEML Second Amendment Bill to prohibit the undertaking of activities in specified geographical areas.	A provision similar to the newly inserted s24(2A) (clause 5(c)) in the National Environmental Management Laws Second Amendment Bill [B 13—2013] should be considered.
43	Amendment to section 43 – Align with 24C amendment. Include activities and the residue stockpiles in the listing notices.	Clause 10 of the National Environmental Management Laws Amendment Bill [B 26—2013] amends section 43 to insert subsection (1A) to ensure that the Minister of Mineral Resources continues as licensing authority for those waste management activities involving residue deposits and residue stock piles. The wording proposed for the competent authority in the NEMLA (Mining) and the NEMWA should be the same.
	Waste information system applies to stock piles.	Waste information regulations are applicable to those waste management activities listed in Annexure 1 to the regulations. Mostly is the generators hazardous waste. We may need to give the Minister of Mineral Resources the power/ obligation similar to that of the MEC in s62 of the Act.

Additional legislative amendments - NEMAQA

Section	Issue	Proposed text
40 (3)	Alignment of issuing of an Atmospheric Emission License with the time frames of the Environmental Authorisation issued by the Minister of Mineral Resources in a mining area	Where the Minister responsible for Mineral Resources is the competent authority in terms of section 24C of NEMA and an provisional Air Emission License is required in terms of this Act the Licensing Authority must decide the application within the timeframes prescribed in terms of Chapter 5 of NEMA Where the Licensing Authority fails to comply with the prescribed timeframes in terms of Chapter 5 of NEMA the MEC or Minister may intervene

Additional Amendments required under the MPRDA Amendment Bill

- Identified a number of amendments under the MPRDA

Committee Requests

- Extraordinary clause on future amendments to Acts and Regulations stipulating that amendments to specified clauses and related regulations may only be affected when both ministers concur to such changes and on approval of Parliament

Committee Requests

- Appeals: specific clauses:
 - Allow extended times by agreement between Ministers;
 - Condonation within strict parameters – can only be allowed if it does not disrupt processes;
- Commencement of sections in NEMLA3
- Appeal suspends the environmental authorisation

Committee requests

- Limit mining area – list of mining activities
- Safety Clauses – enforcement and the issuing of environmental authorisations

THANK YOU

