

PROPOSED AMENDMENTS TO THE MINERAL AND PETROLEUM RESOURCES

AMENDMENT BILL 2013

[B15-2013]

CLAUSE 1

1. On page 3, in line 23, after "mineral" to insert "mineral product".
2. On page 3, from line 44, to omit the definition of "concentration of rights".
3. On page 3, line 35, after "persons" to insert "within a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)".
4. On page 4, line 5, "minerals", to insert ", mineral product or form of petroleum".
5. On page 4, from line 8, to omit the definition of "developmental pricing conditions".
6. On page 4, after line 10, to insert the following definition:

" 'differentiated pricing' means the discounted price at which mining companies will sell minerals to domestic mineral beneficiating entities, the level of discount of which will be determined on a value chain basis;"

7. On page 4, from line 17, to omit the definition of "free carried interest" and to substitute with the following definition:

" 'free carried interest' means the interest derived from holding shares of which the holder enjoys all the rights of a shareholder but has no obligation to subscribe or contribute equity capital for the shares;"

8. On page 4, after line 46, to insert the following definition:

" 'historic residues or stockpiles' means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is or was stockpiled, stored or accumulated for potential re-use, or which is or was disposed of, by the holder of any right or title (including common law ownership) other than a prospecting right, mining right, mining permit, exploration right or production right issued in terms of this Act;"

9. On page 5, in line 15, to omit "reclamation permit".

10. On page 5, in line 53, to omit "subsection" and to substitute "paragraph".

11. On page 5, from line 59, to omit the definitions of "reclamation operation" and "reclamation permit":

**CLAUSE 2**

1. On page 6, in line 56, after "promote" and to insert "optimal".

**CLAUSE 3**

1. On page 7, in line 12, to omit "retain".

**CLAUSE 5**

1. Clause rejected.

**NEW CLAUSE**

1. That the following be a new Clause:

**"Invitation for applications**

9. (1) The Minister may by notice in the *Gazette*, invite applications (including in respect of land relinquished or abandoned or which was previously subject to any right, permit or permission in terms of

this Act, which has been cancelled or relinquished or which has been abandoned, or which has lapsed) for reconnaissance permissions, reconnaissance permit, prospecting rights, exploration rights, mining rights, technical co-operation permit, production rights and mining permits, in respect of any area of land, block or blocks, and may prescribe in such notice the period within which any application may be lodged with the Regional Manager and the procedures which shall apply in respect of such lodgment.

(2) Any person may, after identifying an area of land, block or blocks and the type of mineral, mineral product or form of petroleum in or on such area or land, request the Minister to invite applications in such area of land, block or blocks in terms of subsection (1).

(3) Applications received in terms of subsection (1) shall be processed in accordance with the provisions of the Act, including the terms and conditions upon which applications may be accepted, rejected, granted or refused.

(4) Any invitation referred to in subsection (1) must not include any mineral, mineral product or form of petroleum and land in respect of which another person holds a right or permit (excluding a reconnaissance permit or reconnaissance permission and an application made in terms of section 11 (2A)), or an application for a right or permit

which has already been lodged prior to such invitation, and which remains to be granted or refused."

**CLAUSE 6**

1. On page 8, from line 12, to omit "within 30 days from the date of the notice" and to substitute "to the Regional Manager within the prescribed period".
2. On page 8, in line 19, after "objection" to insert "and comments".
3. On page 8, from line 20, to omit "within 30 days from date of such referral" and to substitute "within the prescribed period".

**CLAUSE 8**

- P1*
1. On page 10, line 13, to omit "prior" and to substitute "prior". *(inclusive!)*
  2. On page 10, from line 14, to omit "and subject to such conditions as the Minister may determine" and to substitute "as prescribed".

*no longer unfettered ministerial discretion*

**CLAUSE 11**

1. On page 11, from line 23, to omit paragraph (c).

2. On page 11, in line 42, after "apply", to insert ",where necessary,".
3. On page 11, from line 37, to omit "60 days of the date of the notice" and to substitute "the prescribed period".

#### CLAUSE 12

1. On page 12, from line 9, to omit paragraph (g) and to substitute with the following paragraph:  

"(g) the applicant has, where necessary, submitted proof of application for a licence for use of water in terms of the applicable legislation."
2. On page 12, from line 18, to omit paragraph (b).

#### CLAUSE 13

1. On page 12, in line 36, after "include" to insert" proof of application for".

#### CLAUSE 14

1. On page 13, after line 3, to insert the following:

(a) by the substitution in subsection (1) for paragraph (a) and (b) respectively of the following paragraphs:

"(a) subject to section 18, the exclusive right to apply for **[and be granted]** a renewal of the prospecting right in respect of the mineral and prospecting area in question.

(b) subject to section (2), the exclusive right to apply for **[and be granted]** a mining right in respect of the mineral and prospecting area in question; and";"

#### CLAUSE 15

1. On page 13, in line 31, to omit "section 16(4)(c)" and to substitute "section 16(4)(a)".
2. On page 13, from line 26, to omit "subject to such conditions as the Minister may determine" and to substitute "as prescribed".

#### CLAUSE 17

1. On page 13, from line 53, to omit paragraph (c).
2. On page 14, in line 15, to omit "180 days of the notice" and to substitute "the prescribed period".

3. On page 14, in line 17, after "(d)" to insert "where necessary".

#### **CLAUSE 18**

1. On page 14, from line 42, to omit paragraph (i) and to substitute with the following paragraph:  
    "*(i)* the applicant has, where necessary, submitted proof of application for a licence for use of water in terms of the applicable legislation."
2. On page 14, in line 47, to omit "; and" and to substitute with a full stop.
3. On page 14, from line 48, to omit paragraph (b).
4. On page 14, in line 61, to omit "; and" and to substitute with a full stop.
5. On page 15, from line 1, to omit paragraph (b).

#### **CLAUSE 19**

1. On page 15, in line 18, after "include" to insert "proof of application for".

## CLAUSE 21

1. On page 16, in line 17, to omit "[~~may~~] must" and to substitute "may".
  
2. On page 16, from line 20, to omit paragraphs (b) and (c) and to substitute with the following:
  - (b) by the substitution for subsection (2) of the following subsection:

"(2) The Minister must, after consulting a Minister of a relevant state department—

(a) designate any mineral, mineral products or form of petroleum for local beneficiation; and

(b) after taking into consideration the national developmental imperatives and the need to maintain viable, sustainable and meaningful transformation of mineral and upstream petroleum industries, publish such percentage per mineral commodity or form of petroleum and the differentiated pricing conditions in respect of such percentage of raw minerals or mineral products as may be required for local beneficiation in the prescribed manner.";
  
3. On page 16, in line 28, to omit "determine" and to substitute "publish".

4. On page 16, in line 29, to omit "developmental pricing conditions" and to substitute "differentiated pricing".
5. On page 16, in line 33, to omit "(2C)" and to substitute "(2B)".
6. On page 16, from line 34, to omit "by the Minister".
7. On page 16, from line 40, to omit "subject to such conditions as the Minister may determine" and to substitute "as prescribed".

#### **CLAUSE 22**

1. On page 16, from line 54, to omit paragraph (c).
2. On page 17, in line 18, after "apply" to insert "where necessary".
3. On page 17, from line 29, to omit paragraph (f) and to substitute:  
"(f) the applicant has, where necessary, provided proof of application for a licence for use of water in terms of the applicable legislation."

#### **CLAUSE 27**

1. On page 19, in line 18, after "submit" to insert "the prescribed".

**NEW CLAUSE**

1. That the following be a new clause:

**Amendment of section 38B of Act 49 of 2008**

**28.** Section 38B of the Principal Act is hereby amended—

- (a) by the substitution in subsection (1) of the following subsection:

"(1) An environmental management plan or environmental management programme approved in terms of this Act before and at the coming into effect of the National Environmental Management Amendment Act, [~~1998~~] 2013, shall be deemed to have been approved and an environmental authorisation been issued in terms of the National Environmental Management Act, 1998.";

- (b) by the insertion after subsection (3) of the following subsection:

"(4) All pending applications lodged in terms of this Act prior to the coming into operation of the National Environmental Management Amendment Act, 2013, shall be processed in terms of this Act as if the National Environmental Management Amendment Act, 2013, is not in operation."

**CLAUSE 29**

1. Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause to follow clause 28.

**"Management of historic residue stockpiles and residue deposits**

29. (1) In order to promote orderly and optimal development of mineral resources and guarantee security of tenure, all historic residue stockpiles and residue deposits currently not regulated under this Act belong to the owners thereof and shall continue in force for a period of two years from the date on which the Mineral and Petroleum Resources Development Amendment Act, 2013 is promulgated.

(2) The holder of mining right or mining permit who owns historic residue deposits or residue stockpiles which are located within the mining area has an exclusive right to apply for an amendment of the mining works programme in terms of section 102 to include such deposits and stockpiles into the right.

(3) The holder referred to in subsection (2) must process the residue deposits and residue stockpiles in terms of the amended mining works programme.

(4) The owner of any historic residue deposit and residue stockpile located outside the mining area has an exclusive right to apply in the prescribed manner, at the office of the Regional Manager in whose region the residue deposit or residue stockpile is situated, for a mining right or mining permit, as the case may be, within a period of two years from the date of commencement of Mineral and Petroleum Resources Development Amendment Act, 2013.

(5) The mining right or mining permit, as the case may be, is valid for a period specified in such a right or permit, which period may not exceed 30 years depending on the circumstances of each case taking into account the nature and extent of the residue deposit and residue stockpile.

(6) The Minister must grant a such mining right or mining permit in terms of subsection (4) if the applicant satisfies the requirements contemplated in section 23 or 27, as the case may be.

(7) The holder must lodge the mining right or mining permit within the prescribed period from the date of execution at the Mineral and Petroleum Titles Registration Office for recording or registration, as the case may be.

(8) Upon execution, recording or registration of the mining right or mining permit, as the case may be, the historic residue deposit or residue stockpile shall be deemed to be regulated in terms of this Act.

(9) In cases of historic residue deposits and residue stockpiles located outside the mining area and where the owner fails to apply for a mining right or mining permit within the period referred to in subsection (4), the custodianship of the minerals in such historic residues and stockpiles shall revert back to the State and the State shall be entitled to invite applications thereon in terms of section 9.

### CLAUSE 30

1. On page 20, from line 47 to omit "notwithstanding the issuing of a closure certificate by the Minister and to substitute "until the Minister has issued a closure certificate".
2. On page 20, after line 49, to insert the following subsection;

"(1A) Despite the issuing of the closure certificate the holder or owner referred to subsection (1) remains liable for any latent and/or residual environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water which may become known in the future."

3. On page 21, from line 9, to omit "60 days" and to substitute "the prescribed period".
4. On page 21, from line 21, to omit "safety, health or".
5. On page 21, from line 22 to omit:  
"for a period of 20 years after issuing a closure certificate" and to substitute  
"for such period, as the Minister may determine having regard to the  
circumstances relating to the relevant operation, which portion and period  
must be determined in the prescribed manner".

#### **CLAUSE 34**

1. On page 22, in line 39, after "suspended", to insert "or cancelled".

#### **CLAUSE 35**

1. On page 23, line 6, after "scheme" to insert "and zoned for residential purposes".

#### **CLAUSE 49**

1. On page 28, after line 45, to insert the following:
  - (a) by the substitution for subsection (1) for paragraph (c) of the following paragraph:

"(c) the reconnaissance will not result in unacceptable pollution, ecological degradation or damage to the environment and that the environmental authorisation, where necessary, is issued;"

2. On page 28, from line 53, to omit "seven years including the exclusive marketing period" and to substitute "one year".

3. On page 28, in line 55, to omit "reconnaissance permits" and replace them with the words "data produced under the reconnaissance permit"

4. On page 28, after line 56, to insert the following:

(c) by the insertion after subsection (5) of the following subsections:

"(6) The holder of the reconnaissance permit has an exclusive right to market the data collected under the reconnaissance permit for six years.

"(7) Notwithstanding the provisions of subsection (6) above, the Minister may grant a reconnaissance permit over an area with an existing reconnaissance permit, if the applicant applies different methods and technologies for petroleum data acquisition that will advance petroleum exploration."

5. On page 28, in line 61, to omit "within the first year of the permit being issued".

**CLAUSE 50**

1. On page 29, from line 17 to omit paragraph (c).

**CLAUSE 53**

1. On page 30, from line 8 to omit paragraph (c).
2. On page 30, in line 24, after "apply", to insert", where necessary,".
3. On page 30, in line 30, to omit "a period of 120 days" and to substitute "prescribed period".

**CLAUSE 54**

1. On page 30, from line 37, to omit paragraph (g) and to substitute:  
    "(g) the applicant has, where necessary, provided proof of application  
    for a licence for use of water in terms of the applicable legislation."
2. On page 30, in line 51, to omit"; and" and to substitute with a full stop.
3. On page 30, from line 52 to omit paragraph (b).

4. On page 31, from line 1 to omit subsection (7).

**CLAUSE 55**

1. On page 31, in line 24, after "included" to insert "proof of application for".

**CLAUSE 58**

1. On page 32, from line 34, to omit "14 days from the receipt of the application" and to substitute "the prescribed period".
2. On page 32, from line 42, to omit paragraph (c).
3. On page 33, from line 5, to omit "180 days from the date of the notice" and to substitute "the prescribed period".
4. On page 33, in line 9, after "apply" to insert "where necessary".

**CLAUSE 59**

1. On page 33, from line 16, to omit paragraph (j) and to substitute:  
"(j) the applicant has, where necessary, provided proof of application for a licence for use of water in terms of the applicable legislation."

2. On page 33, from line 36, to omit ",and to receive all dividends or other distributions in respect of the further interest percentage".
3. On page 33, from line 29, to omit subsections (6) and (7).

### NEW CLAUSE

1. That the following be a new Clause:

#### **"State free carried interest on exploration and production rights**

86A. (1) The State has, through the designated organ of state, a right to a 20% free carried interest in all new exploration and production rights, from the effective date of such rights, including in production rights derived from existing exploration rights.

(2) The State shall upon acquiring the free carried interest enter into a joint operating agreement with the operating petroleum company.

(3) The State free carried interest shall entitle the State to the corresponding percentage of the votes in the respective joint operating agreements and such voting rights shall be non-discriminatory relative to the other working interest owners.

(4) The Minister shall, acting on behalf of the State, appoint two representatives to the joint project committee of the exploration or production operation to represent the interest of the State.

(5) In addition to the free carried interest contemplated in subsection (1), the State is entitled to a further interest of 30% in the prescribed manner.

(6) The State interest referred to in subsections (1) and (5) shall not exceed a total of 50% per petroleum operation."

#### **CLAUSE 66**

1. On page 35, in line 34, after the semi colon, to insert "and".
2. On page 35, in line 35, to omit "must" and to substitute "may".
3. On page 35, in line 36, to omit "or a part thereof".

#### **CLAUSE 67**

1. Clause rejected.

#### **CLAUSE 68**

1. On page 36, in line 7, to omit "in terms of this Act".

2. On page 36, in line 13, after "Minister" to insert", if the decision was taken in terms of this Act,"
3. On page 36, in line 18, to omit "Water and".

**CLAUSE 69**

1. On page 36, in line 46, to omit" 18, 24 and 34" and to substitute "11(4), 21(1A), 28(1) and 28(2)(d)".

**CLAUSE 70**

1. On page 36, from line 57, to omit "as reflected in the last available annual financial statements".
2. On page 37, from line 8, to omit "as reflected in the last available annual financial statements".
3. On page 37, from line 19, to omit "as reflected in the last available annual financial statements".

4. On page 37, from line 25, to omit subsections (1A) and (1B) and to substitute with the following subsection:

"(1A) (a) (i) An authorised person in terms of section 91 may make a recommendation in writing to the Director-General that a fine be imposed on the holder which has failed to comply with any provision contemplated in section 98(iv).

(ii) The authorised person must serve a copy of the recommendation on the Holder concerned.

(iii) The holder may make written representations to the Director-General within 30 days of receipt of a copy of the recommendation;

(iv) A representation made in terms of paragraph (iii) may not be used against the holder in any criminal or civil proceedings in respect of the same set of facts.

(b) (i) The Director-General, after considering the recommendation and any representation made in terms paragraph (a)(iii), must within the prescribed period from the date of receipt of the holder's representations in terms of paragraph (a)(iii) or after expiry of the 30 day period in paragraph (a)(iii) without such representations having been made, whichever is the earlier:

(aa) disregard the recommendation;

(bb) impose a fine not exceeding R800, 000;or

(cc) refer the matter to the National Prosecuting Authority for a decision as to whether the holder should be charged with an offence.

(ii) The Director-General must in writing notify the holder of his decision made in terms of paragraph (b) and (i) within the prescribed period.

(iii) The holder may appeal the decision of the Director General to the Minister in terms of section 96.

(iv) Save if the holder has lodged an appeal in terms of paragraph (b)(iii), the holder must pay any fine imposed in terms of paragraph (b)(i)(bb) within 30 days of receipt of the Director-General's notification therefore in terms of paragraph (b)(ii).

(v) If the holder fails to pay the fine within the aforementioned period, the Director-General may apply to a Magistrate's court for the fine to be made an order of that court in terms of section 99(2).

(c) Money received by the Department in payment of administrative fines imposed in terms of paragraph (a) must be paid to a fund established and controlled by the Council for Geoscience in terms of this Act.

(d) The Council for Geoscience must in consultation with the Minister use the money in the fund for the promotion of exploration and prospecting activities in the mining and petroleum industry and matters incidental thereto."

**CLAUSE 74**

1. On page 39, in line 16, to omit "guidelines for determination of national interest in relation" and to substitute "determination of terms and conditions applicable".

2. On page 39, after line 18, to insert the following:

"(jB) procedures applicable in respect of invitation for applications in terms of section 9;

(jC) determination of the terms and conditions of the State free carried interest;

(d) by the addition after subsection (1) of the following subsection:

"(1A) The Minister shall, when making regulations as provided for in terms of regulations jA and jC, consult with affected stakeholders."

**NEW CLAUSE**

1. That the following be a new Clause:

**Amendment of item 9 of Schedule II to Act 28 of 2002, as amended by section 85 of Act 49 of 2008**

80. Item 9 of schedule II of the principal Act is hereby amended by the substitution for subitem (2) of the following subitem:

(2) The holder, user or acquirer of any reservation, permission or right to use the surface of land contemplated in subitem (1) must register such reservation, permission or right in the Mineral and Petroleum Titles Registration Office within six years from the date on which **[this Act]** the Mineral and Petroleum Resources Development Amendment Act, 2013, took effect and if such holder, user or **[occupier]** acquirer fails to register such reservation, permission or right, the reservation, permission or right

**LONG TITLE**

1. On page 1, in the fifth line of the long title, after "beneficiation of minerals" to insert ", mineral product or form of petroleum".