



THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS
THIRD AMENDMENT BILL [B32B OF 2013]


Presentation to the Select Committee on
Land and Environmental Affairs on
28 February 2014



Legal Authorisations and Compliance Inspectorate




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OUTLINE

- List of Acronyms
- Purpose of the presentation
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- Introduction and Background
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- Implications of the Agreement and legislative amendments
- Implementation date and actions for implementation
- Concluding Remarks



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LIST OF ACRONYMS

- DEA – Department of Environmental Affairs
- DMR – Department of Mineral Resources
- EA – Environmental Authorisation
- EIA – Environmental Impact Assessment
- MPRDA – Minerals and Petroleum Resources Development Act
- NEMA – National Environmental Management Act
- SEMA – Specific Environmental Management Act
- NEMLA Bill– National Environmental Laws Third Amendment Bill
- NEMWA – National Environmental Management: Waste Act



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PURPOSE OF THE PRESENTATION

- To outline the Agreement reached between the Minister of Water & Environment and the Minister of Mineral Resources regarding the Environmental function of mining.
- To explain the implications and benefits of the Agreement
- To summarise the amendments proposed in the National Environmental Management Laws Bill



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PROBLEM STATEMENT

- Environmental aspects of exploration, prospecting, mining and production activities (mining activities) were previously excluded from the scope of NEMA and were regulated in terms of the MPRDA.
- Activities relating to mining were however identified as requiring environmental authorisation under NEMA
- As both laws have their own processes and information requirements this situation lead to duplication, a lack of integration and confusion in the mining sector and long delays and lead times for authorisations.



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PROBLEM STATEMENT

- In 2010, the “Strategy for Sustainable Growth and Meaningful Transformation of South Africa’s Mining Industry” was adopted.
- The Strategy identified amongst others fragmented licensing mechanisms as one of the key binding constraints to the global competitiveness of the industry.
- In 2008 the Minister responsible for Water and the Environment and the Minister responsible for Mineral Resources came to an agreement to align the environmental function of mining



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THE AGREEMENT ON THE ENVIRONMENTAL FUNCTION FOR MINING

- The agreement is entitled *One Environmental System* for the country with respect to mining. The agreement was reiterated in 2011/3 and further agreements were reached.
- The agreement has the following outcomes:
 - all environment related aspects would be regulated through one environmental system under the environmental legislation (National Environmental Management, National Water, Air Quality and Waste Acts) and that all environmental provisions would be repealed from the Mineral and Petroleum Resources Development Act.
 - the Minister responsible for Water and Environment sets the environmental regulatory framework and norms and standards, and the Minister responsible for Mineral Resources will implement the provisions of the Environmental Acts and the subordinate legislation as far as it relates to mining activities;



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THE AGREEMENT ON THE ENVIRONMENTAL FUNCTION FOR MINING

- the Minister responsible for Mineral Resources will issue environmental authorisations for mining activities in terms of the principal Act, and that the Minister responsible for Environmental Affairs will be the appeal authority for these authorisations;
- the Minister responsible for Environment, the Minister responsible for Mineral Resources and the Minister responsible for Water agree on fixed time-frames for the consideration and issuing of the environmental authorisations in their respective legislation and also agreed to synchronise the time frames.



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EFFECTING THE AGREEMENT

- This agreement was originally initiated in 2006. In order to operationalize the Agreement, amendments were made to both Acts in 2008 and passed by Parliament
- The National Environmental Management Amendment Act, 2008 was brought into effect on 1 May 2009
- The provisions in National Environmental Management Amendment Act, 2008 as far as they relate to mining will, in terms of section 14 of the Act, only enter into force 18 month after the Mineral and Petroleum Resources Development Amendment Act, 2008
- The Mineral and Petroleum Resources Development Amendment Act, 2008 entered into force on the 7 June 2013
- The two Acts will therefore be fully effective on 8 December 2014.



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NEMA & MPRD AMENDMENT BILLS OF 2013

- However, these amendments did not include alignment with the Water, Waste and Air Quality Acts and it was agreed to strengthen the amendments of these Acts, the National Environmental Management and the Mineral and Petroleum Resources Development Amendment Act.
- The refinement of the 2008 Agreement between the Minister of Mineral Resources and the Minister of Water and Environment included further alignment and streamlining of the environmental requirements for mining and have been captured in the Mineral and Petroleum Resources Amendment Bill and the National Environmental Laws Third Amendment Bill which are currently before Parliament and the National Water Amendment Bill.



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Background

- The Portfolio Committee of **Water and Environmental Affairs** and the Portfolio Committee for Mineral Resources have been engaged since last year in a series of Joint Meetings to finalise the alignment of all legislative instruments, including existing legislation, and subordinate legislation in the form of regulations and amendments thereto to give effect to the agreement concluded in 2008 between **the three Departments, namely** the Department of Environmental Affairs, Department of Water Affairs and the Department of Mineral Resources.
- These Joint Meetings resolved, in 2013, to convert these agreements into legislative amendments to the current legislation being administered by the three Department's and to integrate and align all the time frames and all procedures within the different pieces of legislation



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Background

- The purpose being for the application of environmental law in mining areas in a well co-ordinated, structured and synchronised manner. This gives effect to the "one environmental system" and the agreed time frame for the processing of the respective authorisations is 300 days and a further 90 days for internal appeal process to the respective Minister's.
- These legislative amendments include the Mineral and Petroleum Resources Development Amendment Bill, 2013 and its Regulations, as well as the National Environmental Management Laws Bill, 2013 and its Regulations.
- The DWA joined this process at a later stage when its water policy framework and the National Water Act, 1998 were undergoing extensive public consultations.



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Background

- The PCWEA , while considering the National Environmental Laws Third Amendment Bill, 2013 and the Mineral and Petroleum Resources Development Amendment Bill, 2013 realized that it was imperative to effect certain technical amendments to the National Water Act in order to achieve the goal of an integrated regulatory framework for water, mining and environment by specifically providing for the alignment of the timeframes for the processing of the respective applications within 300 days and for the appeals to be adjudicated within 90 days.
- The Minister of Water and Environmental Affairs and the Minister for Mineral Resources and their respective Departments were consulted on this approach to introduce a Committee Bill and were in full support of this process.



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Motivation for Committee Bill

- Accordingly, the Portfolio Committee of **Water and Environmental Affairs** has deemed it prudent to initiate a Committee Bill. The National Water Act, 2014 (Act No. 3 of 2014) to effect certain amendments to the National Water Act, 1998.



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Purpose of the proposed Committee Bill

- The purpose of the technical amendments to the relevant sections of the National Water Act seeks to achieve the alignment and synchronisation of timeframes and processes for the processing of water use licences, environmental authorisations, licences under the specific environmental management Acts and other licences, permits, rights in terms of the Mineral and Petroleum Resources Development Act
- Make provision for a synchronised internal appeal process to the Minister of Water and Environmental Affairs rather than the current appeal process being the Water Tribunal. This will ensure that all appeals will be finalised within 90 days after the receipt of an appeal.



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AMENDMENTS IN SUMMARY

- Clause 1 amends section 1 of NEMA (Definitions)
- (s1) "Applicant " means a person who has submitted an application for an environmental authorisation and paid the prescribed fee.
 - Applicant who **intends** to submit an application no longer an applicant
 - Remove the requirement that the application for an EA must be submitted simultaneously with an application for a right or permit to the MPRDA

AMENDMENTS IN SUMMARY

- Definition of “environmental management inspector” – corrected
- Definition of “environmental mineral resource inspector” inserted
- Definitions for “community”, “exploration area”, “mining area”, “production area”, “prospecting area”, “Minister responsible for mineral resources” and “Regional Mining Development and Environmental Committee” has been deleted.

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AMENDMENTS IN SUMMARY

- **'financial provision'** means **the insurance, bank guarantee, trust fund or cash** that applicants for an environmental authorisation must provide in terms of this Act, guaranteeing the availability of sufficient funds to undertake rehabilitation, decommissioning and closure of operations, remediation of latent or residual impacts that become known in the future , the removal of building structures and other objects, etc.

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AMENDMENTS IN SUMMARY

- Clause 2 amends Section 24 5(b)(vi)

The Minister is given the power to make regulations, laying down procedures to be followed in respect of the management and control of residue stockpiles and residue deposits.

The words “on a prospecting, mining, exploration and production area” have been removed.

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AMENDMENTS IN SUMMARY

- S24(bA) has been amended to include “minimum information requirements” under environmental instruments.
- Once developed applicants for EAs will upfront know what minimum information will be required from them

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AMENDMENTS IN SUMMARY

- Mining will be subjected to an **Environmental Authorisation** process (EIA ito NEMA; with air emission and waste licences ito Air Quality and Waste Acts).
- This will replace the Environmental Management Plan or Programme (EMP or EMPR) process undertaken as a pre-condition for the Mining Permit or Right in terms of the MPRDA and the NEMA process for ancillary listed activities.
- The **mining right and mining permit** will follow the MPRDA authorisation process and are issued by Minister DMR.
- The Minister DMR may appoint Mineral Resource Inspectors, with all the powers of an environmental management inspector to enforce compliance with environmental laws as far as it relates to mining.
- The Environmental Authorisation and Water Use License processes would be triggered by the application for the mining right.
- Therefore processes will run in parallel to align and streamline the issuing of various decisions.



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AMENDMENTS IN SUMMARY

- Clause 3 amends s2C(2A) states that the Minister responsible for mineral resources is the competent authority in terms of subsection (1) where the listed or specified activity is or is directly related to—
 - prospecting or exploration of a mineral or petroleum resource; or
 - the extraction and primary processing of a mineral or petroleum resource.
- Whenever a decision on an application for an environmental authorisation is not made within the time-frames applicable to that process, the applicant may apply to the Minister responsible for environmental affairs to facilitate the process of taking the decision by the Minister of Mineral Resources, or where appropriate, to take the decision.

AMENDMENTS IN SUMMARY

- Clause 4 amends S 24L - A competent authority, empowered under Chapter 5 of the National Environmental Management Act, 1998, to issue an environmental authorisation and any other authority empowered under a specific environmental management Act may agree to issue an **integrated environmental authorisation**.
- S24N determines that the submission of **an environmental management programme** must be required **before deciding** an application for an environmental authorisation.
- The environmental management programme must, contain **measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of polluted or extraneous water or ecological degradation** which may occur **inside and outside the boundaries** of the operations in question.



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AMENDMENTS IN SUMMARY

- Clause 5 amends section 24N of the NEMA to strengthen the provisions regulating environmental damages.
- The NEMLA Bill requires that the environmental management programme must be submitted before deciding an application for an environmental authorisation.
- The environmental management programme must contain measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of polluted or extraneous water or ecological degradation which may occur inside and outside the boundaries of the operations in question.



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AMENDMENTS IN SUMMARY

- This clause clearly states that the person issued with an environmental authorisation is responsible for any environmental damage, pollution, pumping and treatment of polluted or extraneous water or ecological degradation as a result of his or her operations to which such right, permit or environmental authorisation relates.

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AMENDMENTS IN SUMMARY

- The clause further states that notwithstanding the Companies Act, 2008, or the Close Corporations Act, 1984, the directors of a company or members of a close corporation are jointly and severally liable for any negative impact on the environment, including damage, degradation or pollution, advertently or inadvertently caused by the company or close corporation which they represent.

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AMENDMENTS IN SUMMARY

- Clause 6 amends s240 A new subsection (2A) is inserted to stipulate that where a matter relates to prospecting, exploration, mining or production, the request for comment by the Minister responsible for mineral resources must be submitted by registered mail to the Director-General of the State department or provincial head of department that administers a law relating to a matter that affects the environment.

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AMENDMENTS IN SUMMARY

- Clause 6 amends section 240
- 240(3) The amendment requires a comment period of **30 days** (as opposed to the current 40 days) between State departments with respect to an application for an environmental authorisation.
- The Regional Mining Development and Environmental Committee will not play a role in the decision-making process and any reference to this Committee has been removed from NEMA.

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AMENDMENTS IN SUMMARY

Cause 7 amends s24P

-S 24P(1) An applicant must comply with the prescribed financial provision before an EA is issued.

-s24P(3) Every holder must **annually**—

- **assess his or her environmental liability** in a prescribed manner **and must increase his or her financial provision** to the satisfaction of the Minister responsible for mineral resources; and
- **submit an audit report** to the Minister responsible for Mineral Resources on the adequacy of the financial provision from an independent auditor.



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AMENDMENTS IN SUMMARY

- s24P(5) The **requirement to maintain and retain the financial provision remains in force notwithstanding the issuing of a closure certificate** to the holder or owner concerned and the Minister responsible for mineral resources may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation **in respect of latent, residual or any other environmental impacts, including the pumping of polluted or extraneous water, for a prescribed period.**



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AMENDMENTS IN SUMMARY

- Clause 8 amends section 24R
- 24R(1) Every holder, holder of an old order right and owner of works **remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate** to the holder or owner concerned.



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AMENDMENTS IN SUMMARY

- Clause 9 inserts a new section 24S to clarify that residue stockpiles and residue deposits must be managed in accordance with the provisions of the National Environmental Management: Waste Act, 2008.

AMENDMENTS IN SUMMARY

- The Minister and Director-General of Mineral Resources have been given the following powers to enable them to enforce the Act:
 - (Clause 10) s28(1) The Director-General may issue directives and has been given all the powers that relates thereto.
 - (clauses 11 & 12) s31D The Minister may appoint environmental mineral resource inspectors, who has the same powers as the environmental management inspectors (EMIs) (green scorpions).
- However if the environmental mineral resource inspectors are unable to fulfil the function, the two Ministers can agree that EMIs be appointed for the purpose.



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AMENDMENTS IN SUMMARY

- If a complainant alleges that a specific compliance monitoring and enforcement function relating to prospecting, exploration, mining and production has been inadequate or has not been implemented, the complainant must submit his or her complaint to the Minister of Mineral Resources.
- In the event that the complainant is not satisfied with the response from the Minister of mineral resources, the complainant may approach the Minister of Environmental Affairs.
- The Act set out a process to be followed and may result in an EMI to be appointed to fulfill the function.



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AMENDMENTS IN SUMMARY

- Clause 13 amends section 42A to give the provincial heads of departments to delegate a power or duty conferred on him or her to a holder of an office in the relevant provincial department.

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AMENDMENTS IN SUMMARY

- Clause 14 amends Section 43
 - (1A) has been amended to identify the Minister the appeal authority in respect of a decision made by the Minister responsible for Mineral Resources or a person acting under his or her delegated authority
 - (7) suspends an environmental authorisation, exemption, directive, or any other decision made in terms of the principal act or any other specific environmental management Act
 - (8-11) provides for the lodging of an appeal against a directive issued in terms of section 28(4) of the principle Act within 30 days of receiving the directive and the procedures for lodging and considering such an appeal



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AMENDMENTS IN SUMMARY

- Clause 15 amends section 44 which deals with the Ministers power to make regulations. The following regulations relating to financial provisioning have been added
 - (aE) on assessment and determination of environmental liability
 - (aF) auditing and reporting of environmental liability
 - (aG) amendment of the financial provision: and
 - (aH) any other matter necessary to facilitate the implementation of financial provisions.



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AMENDMENTS IN SUMMARY

- Clause 16 amends section 47 – Extension of timeframes
 - 47CA restricts to the ability of the Minister responsible for Mineral Resources to grant exemption or to condone failure by a person to comply with the time period in the Act to “exceptional circumstances”

AMENDMENTS IN SUMMARY

- Section 47CB deals with extension and condonation of appeals relating to prospecting, exploration, mining or production
 - (1) and (2) deals with circumstances for providing extension and condoning failure to meet timeframes is limited to “exceptional circumstances”, the timeframes for accepting applications is limited to 30 days
 - (3) deals with the factors for the Minister responsible for Mineral Resources to take into account when considering the request for extension or condonation. The factors are stringent in nature
 - (4) limits the time period for which condonation can be given to period equal to the time period initially allowed for that step



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AMENDMENTS IN SUMMARY

- Clause 17 - Section 50A sets out the Agreement and identifies the manner in which future amendments to matters related to the Agreement must be made
 - Requires that there is concurrence between the Minister, the Minister responsible for Water Affairs and the Minister responsible for Mineral resources
 - Requires that the amendment must be tabled in parliament prior to the steps being taken to effect the changes, to allow Parliament to express its view on the proposed amendment



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AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT IN SUMMARY

- Clause 18 (section 1) Definitions – two mining related definitions have been added:
 - Residue deposit – meaning as assigned in the MRPD
 - Residue stock pile – meaning as assigned in the MRPD
- Clause 19 (section 4) remove the previous exclusion and therefore includes residue stock piles and residue deposits within the scope of NEMWA.



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AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT IN SUMMARY

- Clause 20 inserts a new section 20A in the NEMWA to enable the Minister responsible for environmental affairs to prohibit the granting of a waste management licence in a particular geographic area if it is necessary to ensure the protection of the environment, conservation of resources, sustainable development or human health and well-being

AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT IN SUMMARY

- Clause 21 inserts Section 43(1A) & (1B) – licencing authority
 - The Minister responsible for mineral resources is recognised as the licensing authority where a waste management activity is related to prospecting, exploration, extraction and primary processing of a mineral resource
 - The Minister responsible for mineral resources is to issue that licence with the provision of the Act

*include
residue
stockpiles*

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AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT IN SUMMARY

- Clause 22 inserts section 43A.
 - (1) makes provision for the management of residue deposits and residue stockpiles, it restricts the siting of these residue deposits and stockpiles to areas as determined in the environmental management plan or environmental management programme and allows for the Minister to prescribe the manner of management
 - (2) places a restriction on the ability of a person to temporarily or permanently deposit any residue stockpiles or residue deposits on a site other than the site which has been identified in subsection (1)



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AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT IN SUMMARY

- Clause 23 amends section 67 – Offences
 - Siting or managing a residue deposit or residue stockpile in contradiction of Section 43 has been identified as an offence
- Clause 24 amends section 69 - Regulations by Minister
 - a provision to allow the Minister to make regulations related to the management and control of residue stockpiles and residue deposits from mining activities has been included



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AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT IN SUMMARY

- Clause 25 inserts a new section 79A to allow the Minister responsible for mineral resources to delegate a function entrusted on him or her to the Director-General of the Department responsible for mineral resources or a holder of a specific office in the relevant Department.
- Clause 26 amends section 12 of the National Environmental Management Amendment Act, 2008 to clarify that appeals lodged in terms of section 96 of the MPRDA must be processed and finalised in terms of the MPRDA.

AMENDMENTS TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT IN SUMMARY

- Clauses 27, 28 and 29 amend section 13, 14 and Schedule to the NEMAA to prevent it to be implemented after the coming into effect of this NEMLA Bill and to prevent the environmental function as far as it relates to mining to revert to the Minister responsible for environmental affairs.
- The NEMLA Bill will come into effect three months from the date of publication by the President in the Gazette in terms of section 81 of the Constitution.

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IMPACT OF AMENDMENTS

- Mining authorisation, water use license and environmental authorisation will be issued within the much shorter allocated timeframes, which are binding on all, including the applicant.
- **Within 300 days of submitted an application for a mining right a decision can be issued should that decision be appealed the period before decision making is 390 days;**
- Another major benefit will be the promotion of compliance through providing and better coordinating the licensing systems.
- There are joint initiatives by the Departments which include but not limited to; participation in the Inter-departmental Implementation Committee on integrating the licensing systems, alignment in the drafting of legislation, joint inspections for compliance monitoring on NWA, MPRDA and NEMA, consideration of mining and sensitive areas, etc.



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IMPACT OF AMENDMENTS

- Mining Rights/Permits, Environmental Authorisations and Water Use licences will follow the same timeframes which have been identified in amendments currently being made to the Environmental Impact Assessment Regulations;
- A synchronised system for environmental authorization between the National Water Act, the MPRDA, NEMA, National Environmental Management: Air Quality Act, 2004, National Water Act, 1998 and NEMWA;
- Systems run in parallel and decisions are issued simultaneously;
- This arrangement provides a case study to investigate the coordination of other Acts to provide certainty to developers;
- NEMA, in the latest Bill, now allows for the of minimum information requirements, which will provide proactive guidance to applicants on information requirements and will ensure consistency of information requests between competent authorities;



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IMPACT OF AMENDMENTS

- This arrangement supports the Infrastructure Bill in that the timeframes for decision making on environmental authorisations can be confirmed in the Bill and simultaneous submission of applications can be achieved;
- All the Acts now provide for an internal appeal procedure and the appeal timeframes between the acts are aligned and run in parallel;
- The appeal time-frames apply strict time frames to appellants submitting appeals and the authority considering appeals and limits condonation applications;
- The appeal process must be finalised prior to the mining right being made effective and construction commencing
- The new regulations will make provision of the automatic closure of projects where the applicant does not meet time frames



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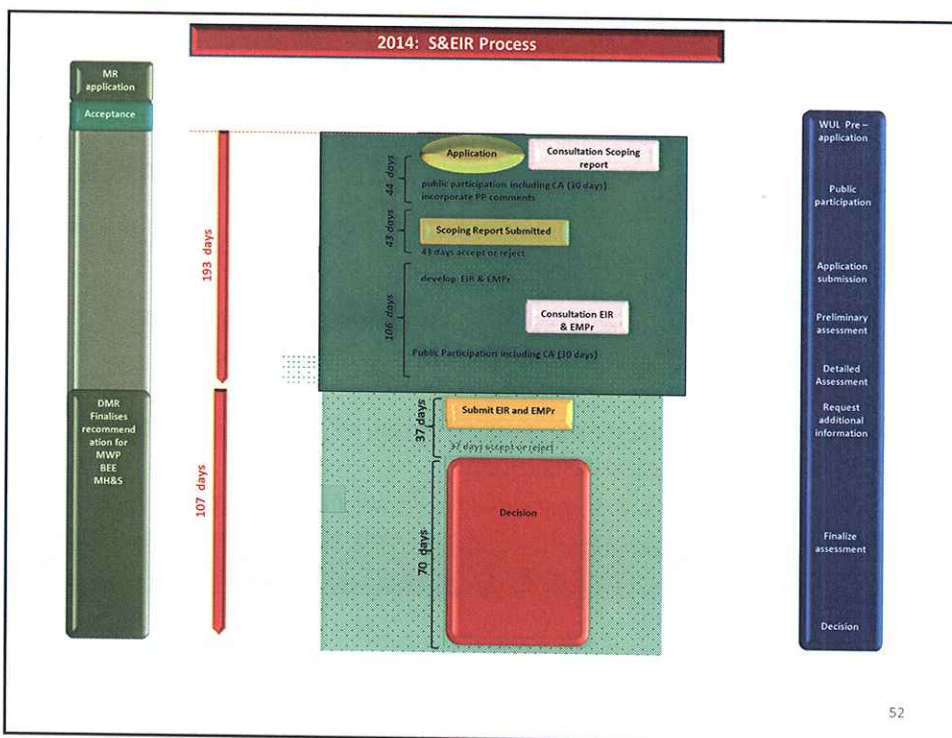


IMPACT OF AMENDMENTS

- If the amendments are passed no Department will be able to initiate laws that impact on the agreements that are now translated into law, without the concurrence of all three Ministers (water, environmental affairs and mineral resources) and without the sanction of Parliament.



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IMPLEMENTATION DATE

- The Mineral Petroleum Resources Development Amendment Act, 2008 entered into force on 7 June 2013 and therefore the period of the first 18 month alluded to above already commenced.
- The three Departments should therefore be ready to implement the legislation by **8 December 2014**, which make the NEMLA Bill urgent as it is a section 76 Bill, while the MPRDA amendment Bill is a section 75 Bill. **The NEMLA Bill changes the implementation date.**
- To ensure that the authorisation processes associated with mining are aligned, all three acts (NWA, NEMA and MPRDA) needed to be amended and aligned.



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SUBORDINATE LEGISLATION

- If order to give full effect to the Amendment Act the following subordinate regulations are being developed:
- The Department of Environmental Affairs
 - Environmental Impact Assessment regulations are being amended
 - Financial provisioning regulations are being drafted
 - Mine closure regulations are being drafted
 - Management of residue stockpiles and residue deposits are being drafted
 - Appeals Regulations
 - Exemption Regulations
- Regulations are also required under the National Water Act and the Mineral Resources Development Act



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CONCLUDING REMARKS

- It is imperative that the National Environmental Laws Amendment is processed through Parliament during this cycle as it will ensure further alignment between the various pieces of legislation to ensure a synchronized and effective licensing system.
- This enables and supports economic growth and job creation, which are major priorities for South Africa
- The current Bill will ensure that the necessary checks and balances are in place to while ensuring that the environment is protected, it will bring regulatory certainty and predictability to industry, which thus far were lacking.
- This set of amendments will bring regulatory certainty



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CONCLUDING REMARKS

- It will continue to strengthen the close working relationship between the Departments of Mineral Resources, Water Affairs and Environmental Affairs, which will be to the advantage of the country as a whole.
- Parliament's role was central to the 2008 process and Parliament's role is also central to this process.
- If the amendments are passed no Department will be able to initiate laws that impact on the agreements that are now translated into law, without the concurrence of all three Ministers (water, environmental affairs and mineral resources) and without the sanction of Parliament.
- The National Environmental Management Laws Amendment Act will also enter into force within three months of the publication of the Act in the Gazette, which will ensure that the Act will be brought into effect on a fixed date. This in itself will ensure regulatory certainty.



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