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**PORTFOLIO COMMITTEE ON ENVIRONMENTAL AFFAIRS**

**IMPLEMENTATION OF THE ONE ENVIRONMENTAL SYSTEM IN RESPECT OF MINING ACTIVITIES**

**1. PURPOSE**

The purpose of the submission is to provide the Portfolio Committee on Environmental Affairs with progress, challenges and solutions relating to the implementation of the **“One Environmental System”**.

**2. BRIEF BACKGROUND AND PROBLEM STATEMENT**

2.1. Mining was previously excluded from the scope of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA). The environmental management provisions in relation to mining activities were included in the Mineral and Petroleum Development Resources Act, 2002 (MPRDA). These laws each had their own process and information requirements and there was a lack of integration of these processes. As a result, there were high costs for applicants due to duplication of activities and studies. The two Ministers (Department of Environmental Affairs (DEA) and Department of Mineral Resources (DMR)) then agreed that it was not desirable that there were different environmental management systems for mining activities.

2.2. It was accordingly agreed that there should be one environmental system that includes the mining activities prescribed by the Minister responsible for Environmental Affairs. During 2002 – 2014 an agreement was reached between the Ministers of Mineral Resources, Environmental Affairs and Water Affairs and Sanitation (DWS) on an integrated mine-environmental management system and to amend the MPRDA, NEMA, National Environmental Management: Waste Act (NEMWA), National Environmental Management: Air Quality Act (NEMAQA) and National Water Act (NWA) to make provision for the One Environmental System. The agreement implied that environmental issues resulting from mining, prospecting, production and related activities will be regulated in terms of the NEMA, whilst Minister of Mineral Resources will be the competent authority in terms of NEMA.

2.3. The agreement further required the following:

* the **repeal of all the mine environmental management provisions**, through the MPRD Amendment Act;
* transfer of MPRDA environmental provisions to NEMA **to create a unified law and system covering environmental impact management**.

2.4. Regarding the **“One Environmental System”** the position is as follows:

* Mining activities are subjected to an environmental authorisationprocess in terms of NEMA;
* Minister of Environmental Affairs prescribes environmental legislative framework and is the appeal authority for appeals in respect of mining related environmental authorisations;
* Minister of Mineral Resources is the competent authority to issue environmental authorisations and waste management licences under NEMA and NEMWA in respect of mining activities and activities ancillary thereto;
* Minister of Mineral Resources appoints Environmental Mineral Resource Inspectors, with all the powers of an environmental management inspector to enforce environmental laws as far as it relates to mining;
* Minister of Water and Sanitation issues water use licences relating to mining activities;
* All licences or authorisations under NEMA, NEMWA, NEMAQA and NWA must be **simultaneously processed and issued within 300 days**. Appeals in respect of environmental authorisations, waste management licences, atmospheric emission licences, permits in terms of the Biodiversity Act and water use licences have to be finalised within 90 days from the date of the receipt of the appeal. Only thereafter the mining right or permit is considered.

**3. INTER-DEPARTMENTAL PROJECT IMPLEMENTATION COMMITTEE (IPIC)**

3.1 As a result, the three Ministers established an Inter-Departmental Project Implementation Committee (IPIC) consisting of officials from DEA, DMR and DWS. The initial task of the IPIC was to ensure all legislative amendments in the various pieces of legislation are undertaken and to ensure that the administrative processes are reviewed and aligned to ensure that the Minister of Mineral Resources is provided with the necessary legal mandate and capacity to perform such function. After 8 December 2014, the task of the IPIC is to monitor the effective and efficient implementation of the One Environmental System. Where challenges are uncovered the IPIC must resolve them, if not, escalate to Ministers’ forum.

3.2. The IPIC is accountable to the three Ministers and has the following task teams comprised of officials from the three Departments:

* **Appeals and Legislative Amendments** – streamline Acts, regulations and appeals processes;
* **Enforcement** – coordinate the compliance and enforcement initiatives;
* **Co-ordinated Timeframes** – coordinate time frames and processes, training and issues pertaining to practical implementation in respect of licencing;
* **Capacity** - capacity to ensure effective implementation;
* **Communication** – developed a comprehensive communication strategy for the project;
* **Joint Planning** – sharing and co-ordination of planning and spatial information relating to mining, protected areas, world heritage sites and other areas of possible overlaps.

**4. ONE ENVIRONMENTAL SYSTEM AND REGULATORY TOOLS**

4.1. The amendments to MPRDA and the key regulations under NEMA to facilitate the implementation of the One Environmental System commenced on 8 December 2014.

4.2. In giving effect to the implementation **“One Environmental System”**, the Department of Environmental Affairs published the following environmental legislation:

4.2.1. ***National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008)*** entered into force on 1 May 2009, but the provisions that gives effect to the One Environmental System commenced on 1 September 2014

4.2.2. ***National Environmental Laws Amendment Act, 2014 (Act No. 25 of 2014)*** commenced on2September 2014, and provides for further alignment to the one environmental system.

4.2.3. ***NEMA: Environmental Impact Assessment Regulations and Listing Notices, 2014 (EIA Regulations and Listing Notices)***

The EIA Regulations and Listing Notices set out the agreed timeframes of 300 days with respect to the consideration and issuing of an environmental authorisation. The Environmental Impact Assessment Regulations, 2014 and the listing notices were published on 4 December 2014 and commenced on 8 December 2014.

4.2.4. ***NEMA: Amendments to the Fees for the Consideration and Processing of Environmental Authorisations and Amendments thereto (EIA Fees)***

As of 1 April 2014 fees have been nationally prescribed for the consideration and processing of an application for, and an amendment of an environmental authorisation. The EIA Fees Regulations allow fees charged by the Department of Mineral Resources to be combined with the EIA fees where necessary in order to ensure a seamless implementation of the ***“One Environmental System”***. The EIA Fees Regulations were published and are in effect since 23 January 2015.

4.2.5. ***NEMA: Regulations Pertaining to the Financial Provision for the Rehabilitation, Closure and Post Closure of Prospecting, Exploration, Mining or Production Operations (Financial Provisioning Regulations)***

These regulations prescribe the financial resources or commitments that a mining company must set aside for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts before the Minister responsible for mineral resources may issue an environmental authorisation in a mining area. The regulations were published and are in effect since 20 November 2015.

However, soon after the publication of the Financial Provisioning Regulations industry raised various issues of concern. On 22 August 2016, the Department of Environmental Affairs met with the Chamber of Mines and Business Unity South Africa. The issues of concern raised by the industry at that meeting were, amongst others, the use of various vehicles for financial provision, the content of the appendices attached to the Financial Provisioning Regulations and the lack of clarity in relation to transitional arrangements in terms of timeframes for the coming into force of the Financial Provisioning Regulations, 2015 for holders already complying with the MPRDA provisions.

The meeting agreed that the concerns raised by industry were substantial and serious and might have impact on the compliance timeframes of February 2017 for the existing right holders. The meeting therefore agreed that the urgent concern of existing right holders of complying with the timeframe of February 2017 must be addressed in order to allow government and the industry adequate time to deal with the complex and technical concerns. The meeting further agreed that the complex and technical concerns will be finalised through a technical workshop between government and the industry.

Following the agreement of the meeting of 22 August 2016, the Minister of Environmental affairs published on 26 October 2016 an amendment to the Financial Provisioning Regulations, 2015 for implementation which has the effect that existing right holders have another 24 months before they need to comply with the Financial Provisioning Regulations, 2015.

Since September 2016 the DEA together with the DMR, the National Treasury and the South African Revenue Services have been engaged in discussions to redraft specific provisions of concern, taking into consideration industry inputs. On 8 December 2016 government and the industry held a workshop to discuss and engage on all issues of concern raised by the industry. A second workshop between government and the industry took place on 26 January 2017 to finalise all issues of concern raised by the industry.

The department’s intention is to consult with the public during February/ March 2017 on the draft amendments and to publish the final regulations for implementation by April 2017 in order to provide certainty to the industry.

4.2.6. ***National Appeal Regulations, 2014***

These regulations set out the process and procedure for the Minister as an appeal authority to process and finalise all appeals within 90 days from the date of submission of the grounds of appeal to the appeal authority taking a decision. The regulations were published and are in effect since 8 December 2014.

4.2.7. ***National Exemption Regulations, 2014***

These regulations prescribe the process to be followed for the lodging and processing of an application for exemption from the provisions of the NEMA. The regulations were published and are in effect since 8 December 2014.

4.2.8. ***NEMWA: Residue Deposits and Residue Stockpile Regulations, 2014 (Residue Deposits and Stockpile)***

These regulations provide for the planning, management and control of mine residue stockpiles and deposits in mining areas. The regulations were published and are in operation since 24 July 2015.

However, industry raised two issues relating to the management of residue deposits and residue stockpile, namely, firstly that the management of residue deposits and residue stockpile must be based on a risk approach rather than the requirements of a waste management licence, secondly, that the future regulation of the management of residue deposits and residue stockpile must be under the NEMA and not the NEMWA.

These regulations are currently in the process of being amended to provide for a risk based approach with respect to the management of residue deposits and reside stockpile. In the future, the management of residue deposits and residue stockpile will be regulated under NEMA and not under the NEMWA. This amendment is contained in the National Environmental Management Laws Amendment Bill, 2017.

4.2.9. ***NEMWA: Amendments to the Fees Structure for the Consideration and Processing of Waste Management Licences (Waste Fees)***

As of 1 April 2014 the fees structure has been nationally prescribed for the consideration and processing of application for waste management licences, transfer and renewal thereof. The Waste Fees Regulations allow for fees charged by the DMR to be combined with the waste fees where necessary in order to ensure a seamless implementation of the ***“One Environmental System”***. The Waste Fees were published and are in effect since 23 January 2015.

**5. CHALLENGES AND SOLUTIONS**

5.1. Effective and efficient implementation of the **“One Environmental System”**is dependent on the finalisation of the following matters:

* + 1. ***Finalisation of the Mineral and Petroleum Resources Development Amendment Bill and the amendments to the Mineral and Petroleum Resources Development Regulations under Mineral and Petroleum Resources Development Act, 2002***

The Mineral and Petroleum Resources Development Amendment Act, 2008 (Act No. 49 of 2008) (MPRDAA) came into effect on 8 December 2014 and all the environmental provisions have effectively been removed from the MPRDA from that date. However, the Mineral and Petroleum Resources Development Amendment Bill, 2014 (MPRDA Bill) which amends certain provisions in the MPRDA as amended by the MPRDAA was, on 16 January 2015, referred back to Parliament by the President. On 19 October 2016 the National Assembly approved and referred the MPRDA Bill to the National Council of Provinces. The MPRDA Bill is currently awaiting approval by the National Council of Provinces. The most significant impact relates to the agreement between the respective Departments around the time-periods agreed upon and the triggers for the issuing of environmental authorisations and other rights, permits and licences, which have not been amended by the MPRDAA.

The current Mineral and Petroleum Resources Development Regulations, 2004, published under MPRDA must be amended. The amendments should remove all environmental provisions (Parts III and IV in Chapter 2), amend the appeal provisions (Chapter 3), and provide for alignment with the agreed timeframes of 300 days with respect to the consideration and issuing of a mining licence. The amendments to these regulations are not promulgated.

5.1.2. ***Finalisation of water use licence regulations under the NWA***

The DWS is also internally finalising the water use licence regulations to provide for the agreed timeframes of 300 days with respect to the consideration and issuing of a water use licences. The regulations were published for public comment on 12 February 2015 for a period of 60 days. The regulations are not yet published for implementation.

5.2. All environmental regulations in terms of NEMA were published and are in operation. As highlighted above, processes are already underway to address challenges relating to the Financial Provisioning Regulations and the Regulations for the Planning, Management and Control of Mine Residue Stockpiles and Deposits in mining areas.

5.3. Since 2014, the Department has identified a number of issues within the “**One Environmental System”** that requires further clarification in law. In this regard, the Department is currently in the process of finalising the National Environmental Management Laws Amendment Bill, 2016, which, amongst others, is aimed at the following:

* To provide for a trigger for the submission of environmental authorization and water use licence after acceptance of mining right application;
* To provide clarity that if an environmental management programme or plan was approved under MPRDA. It was also approved and an environmental authorisation was issued under NEMA;
* To provide clarity that environmental appeals lodged under MPRDA must be finalised in terms of the MPRDA;
* To provide clarity that residue deposits and residue stockpiles will no longer be regulated under the Waste Act but under the NEMA.

**6. CONCLUDING REMARKS**

6.1. The “**One Environmental System”** came into effect on 8 December 2014.

6.2. All environmental regulations in terms of NEMA were published and are in operation. Processes are already underway to address the challenges relating to the Financial Provisioning Regulations and the Regulations for the Planning, Management and Control of Mine Residue Stockpiles and Deposits in mining areas.

6.3. The Mineral and Petroleum Resources Development Amendment Bill and the amendments to the Mineral and Petroleum Resources Development Regulations, 2004 are not promulgated.

6.4. The final water use licence regulations are not yet published for implementation.

**7. RECOMMENDATIONS**

It is recommended that the Portfolio Committee notes the progress, challenges and solutions relating to the implementation of the **“One Environmental System”**.