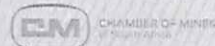
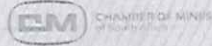


Presentation Outline



- About the Chamber of Mines
- Context
- The Chamber's submissions in respect of the proposed amendments to:
 - National Environmental Management Act 107 of 1998 (NEMA)
 - National Environmental Management: Waste Act 59 of 2008 (NEMWA)
 - National Environmental Management: Air Quality Act 39 of 2004 (NEMAQA)
 - National Environmental Management Amendment Act 62 of 2008 (NEMAA, 2008)
- Conclusions and Way Forward

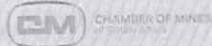
About Chamber of Mines



- Voluntary employer lobbying and advocacy organisation that supports and promotes the SA mining industry – through providing strategic support and advisory input.
- Facilitate interaction among mining employers to examine policy issues and other matters of mutual concern to crystallise and define desirable industry position.
- Members comprise:
 - 38 major mining companies
 - 32 junior mining companies
- 4 associations -Aggregates, Sands Producers Association of Southern Africa (ASPASA), South African Diamond Producers Organisation (SADPO), Association of Shaft Sinkers and SA Mining Contractors, Clay Brick Association of South Africa (CASA).
- Chamber member companies:
 - represent more than 90% of SA's mineral production by value
 - contribute around R11.3 billion in taxes per annum
 - employ around 450,000 people directly

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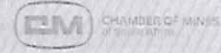
Context



- The Chamber of Mines supports the amendments of various legislation (NEMA and Specific Environmental Management Acts (“SEMA’s”) by way of the NEMLA 4 Bill.
- Important milestone towards full realisation of the “One Environmental System” as outlined in the agreement between Ministers responsible for environment, water and mineral resources.
- The NEMLA 4 Bill signifies progress made during 2017 on some of the key environmental issues of engagement between the Chamber of Mines, the Department of Environmental Affairs and the Department of Mineral Resources.
- The NEMLA 4 Bill represents a critical step towards full alignment of NEMA and SEMA’s with various regulatory developments since 2014.

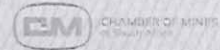
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Context



- The Chamber welcomes the exclusion of residue stockpiles and residue deposits from the ambit of the NEMWA.
- Environmental matters emanating from residue stockpiles and residue deposits previously managed in approved EMPs and EMPRs are now to be regulated in terms of the NEMA as part of the overall Environmental Authorisation of a mine.
- The Chamber supports the notion that residue stockpiles and residue deposits should not be regulated as waste matter as these facilities represent a valuable resource. Residue stockpiles and residue deposits were previously regulated by way of the MPRDA and approved EMPs and EMPRs. These legal instruments often recognised that residue stockpiles and residue deposits are a resource designated for reclamation and not disposal.
- The Chamber submits that regulation in terms of the NEMA will enable full realisation of the economic potential of these facilities.

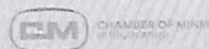
Amendments to the NEMA



The Chamber submits the following in respect of the proposed amendments:

- **Clauses 7(a) and (b) (ss24O(2) and (2A)): Consultation with State Departments**
 - In relation to s24(2), the Chamber requests the deletion of the reference to an EAP.
 - The responsibility for inter-departmental consultation should be on the competent authority. The fact that the EAP may assist with such consultation should not derogate from the fact that it is and remains the responsibility of the competent authority.

Amendments to the NEMA



The Chamber submits the following in respect of the proposed amendments:

➤ Clause 8 (s24P): Financial Provision

- The purpose of the financial provision should be to address the final closure measures and for the management of residual post closure impacts and not for "*progressive rehabilitation*". The word "*progressive*" should be deleted throughout as the funding for progressive rehabilitation is accounted for in the operational budget and does not accord with the terminology adopted in the 2015 Financial Provisioning ("FP") Regulations / the 2017 Draft FP Regulations .
- Alignment of the provisions in the NEMA with the provisions in the 2015 FP Regulations / the 2017 Draft FP Regulations is required.
- The reference to "*bank guarantee*" in the NEMA definition of "*financial provision*" should be amended to refer to "*financial guarantee*", being the term referred to in the 2015 FP Regulations / the 2017 Draft FP Regulations.
- In terms of s24R(1) the holder remains responsible for environmental liabilities notwithstanding the issuing of a closure certificate. A mechanism is required in s24P(5) whereby the holder can draw down on the financial provision which has been retained by and ceded to the Minister in terms of ss24P(5)(b) and (c); alternatively s24R(1) would need to be amended to provide that the holder's responsibility ceases on the issuing of a closure certificate, leaving it to the Minister to use the portion of financial provision which has been retained by or ceded to the Minister.

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Amendments to the NEMA



The Chamber submits the following in respect of the proposed amendments:

➤ Clause 11 (s28): Duty of Care and Remediation

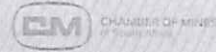
- In the proposed ss28(9) and (11), the Chamber disagrees with the deletion of proportional liability and with the replacement thereof with joint and several liability.
- The Chamber submits that the imposition of joint and several liability presumes liability in absolute terms as opposed to the principle of a degree of responsibility attributed to such a person which supports the apportionment of liability.
- The Chamber submits that the principle of proportionality linked to the degree of responsibility identified, should be retained and that reference to joint and several liability be removed.

➤ Clause 22 (s31M): Objections to compliance notices

- The Minister of Mineral Resources is not an appeal authority in terms of s43 (save in respect of a directive in terms of s28(4) of the NEMA). Since an appeal in terms of s43 would lie against a compliance notice in terms of s31L, it is not clear how s31M regarding objections, and s43 regarding appeals, interrelate?

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Amendments to the NEMA



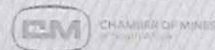
The Chamber submits the following in respect of the proposed amendments:

➤ **Clause 30 (s43): Appeals**

- The automatic suspension where an appeal is lodged is contrary to the position in the MPRDA.
- The automatic suspension of an environmental authorisation by way of an appeal (potentially without any merit) can be utilised as a delaying tactic by interested and affected parties opposed to the undertaking of prospecting or mining or petroleum operations.
- The potential for delay is exacerbated in circumstances where an appellant appeals on the basis of a single condition in an environmental authorisation which has the effect of suspending the environmental authorisation *in toto*.
- An appeal to an amended environmental authorisation will result in the suspension of that amended environmental authorisation with potentially dire consequences for sustainable and ongoing undertaking of mining.
- The Chamber submits that section 43(7) of the NEMA should be amended to exclude environmental authorisations which concern prospecting, exploration or mining operations. Alternatively, specific timeframes for the processing of applications made on good cause shown for the upliftment of a suspended environmental authorisation or parts thereof, pending resolution of an appeal should be prescribed.

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Amendments to the NEMAQA



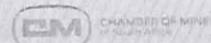
The Chamber submits the following in respect of the proposed amendments:

➤ **Clause 47 (s22A): Consequences of unlawful conduct**

- The Chamber points out that the proposed s22A will operate only when a person applies for an atmospheric emission licence.
- The existing s22A approximates to the formulation in s24G of NEMA and is preferred to the s22A proposed in the Bill.
- On the basis that section 24G of the NEMA serves as a general tool to rectify the commencement and undertaking of unlawful listed activities in the NEMA and listed waste management activities of the NEMWA and by virtue of the fact that the NEMA, NEMWA and the NEM:AQA are SEMA's, the inclusion of the rectification of the unlawful undertaking of scheduled processes and listed air emission activities into section 24G of the NEMA should be considered.

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Amendments to the NEMWA



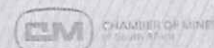
The Chamber submits the following in respect of the proposed amendments:

➤ **Clause 53 (s4): Exclusion of Residue Stockpiles and Residue Deposits**

- The Chamber proposes the consequential removal of all references to residue stockpiles and residue deposits from the ambit of the NEMWA.
- The Chamber proposes that the Regulations regarding the Planning and Management of Residue Stockpiles and Residue Deposits, 2015 (GNR 632 in Government Gazette No. 39020 dated 24 July 2015), be removed from the NEMWA and promulgated in terms of the NEMA.
- Currently, residue stockpiles and residue deposits as defined in s1 of the MPRDA do not include historic residues which were produced prior to 1 May 2004 when the MPRDA took effect.
- The Chamber proposes that the exclusion of residue stockpiles and residue deposits from the NEMWA be expanded to include historic mines and dumps created before the implementation of the MPRDA. Refer to the proposed definition of "historic residue stockpiles" in the MPRDA Amendment Bill B15D-2013.

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Amendments to the NEMWA



The Chamber submits the following in respect of the proposed amendments:

➤ **Clause 74 (Schedule 3): Sources of Waste**

- Paragraph 1 of Schedule 3 should be deleted since all of the sources relate to residue stockpiles, residue deposits or historic residue stockpiles - all of which will henceforth be governed in terms of the NEMA and no longer in terms of the NEMWA.
- Alternatively paragraph 1 of Schedule 3 could be retained on the basis that residue stockpiles and residue deposits are expressly excluded.

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Amendments to the NEMAA, 2008

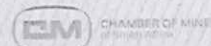


The Chamber submits the following in respect of the regulatory amendments:

➤ Clauses 75 to 78: Transitional Provisions

- The Chamber suggests that the Bill provides for the repeal of s12 of NEMAA, 2008 and the insertion into NEMA and into the NEMWA, respectively, of a consolidated version of the transitional provisions which currently appear in the said s12 and in clauses 75 to 78 of the Bill. This will provide for clarity, certainty, and accessibility of all the applicable transitional provisions.
- The proposed exclusion of the application of s12(4) and s12(4A) in s12(4B) does not resolve the problem of mining companies with approved EMPs and EMPRs which may not specify or have specified each and every listed activity or listed waste management activity ancillary to the mining. A reference to ancillary activities does not in the same way accord with the terminology used in the various listing notices under NEMA referring to activities directly related to mining. This creates uncertainty.
- The wording of the proposed s12(4B) does also not accord with section 38B(1) of the Mineral and Petroleum Resources Development Amendment Act, 2008 .

Conclusions and Way Forward



- The Parliamentary Portfolio Committee is referred to the written submissions by the Chamber dated 20 April 2018 for more detail and additional comments.
- The Chamber reiterates its thanks to the Parliamentary Portfolio Committee for affording it the opportunity of making written and oral submissions.

