



Portfolio Committee of Environmental Affairs
Parliament of South Africa
Cape Town
8001

Attention: Ms. T Madubela

Per Email: tmadubela@parliament.gov.za

Dear Ms. Madubela

RE: COMMENTS: NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL

1. Transnet welcomes the opportunity to provide comments on the National Environmental Management Laws Amendment Bill ("the Bill").

Re: Ad Clause 5(b): Section 24G of the National Environmental Management Act, 1998

2. This clause provides that a section 24G application may be submitted by a person in control of, or successor in title to, land on which a person has commenced with a listed or specified activity without an environmental authorisation. This is concerning in that organs of state, by way of example, own vast vacant land throughout the country. Most of such vacant land is in obscure areas, making it impossible for landowners to monitor land usage and deploy security personnel to control access to such land. There are instances where illegal activities are conducted on such land, which landowners have neither sanctioned or are aware of. Having regard to this potential risk, Transnet is of the view that the current section 24G(1) of the National Environmental Management Act, 1998 ("NEMA") is sufficient in that the responsibility to apply Section 24G should be with the person who commenced with listed activities and not the person in control or successor in title to land. It is worthy to note that a Section 24G application has major legal ramifications since with proven non-compliance, a person may be liable to a fine not exceeding R5 million.

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Re: Ad clause 7(a): Section 240 of the National Environmental Management Act, 1998

3. The above clause deals with the criteria to be taken into account by competent authorities when considering applications. Clause 7(a) provides that, the Minister responsible for mineral resources, an MEC or an Environmental Assessment Practitioner ("EAP") must consult with every State department that administers a law relating to a matter affecting the environment when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation.

The basis for the inclusion of an EAP in the consideration of environmental authorisations applications is unclear. An EAP is not an organ of state nor a competent authority and their involvement in the consideration of environmental authorisation applications is therefore questionable. An EAP has a distinct and unique role which is clearly stated in Regulation 13 of the Environmental Impact Assessment Regulations, 2014. Transnet therefore recommends that the above amendments should be reconsidered.

Re: Ad clause 8: Section 24P of the National Environmental Management Act, 1998

4. The above clause provides that if the minister responsible for mineral resources is not satisfied with the assessment or review and financial provisioning contemplated in this clause, the minister responsible for mineral resources may appoint an independent assessor or "reviewer" to conduct the assessment or review and determine the financial provisioning. The clause further provides that the costs of the appointment of the reviewer or assessor will be borne by the applicant or the holder of the environmental authorisation.
5. It is unclear as to who the "reviewer" is as contemplated in the Bill since the latter phrase is not defined in NEMA. Transnet recommends that the role and functions as well as the criteria for the appointment of the assessor or reviewer, should be clearly stated in the Bill in order to ensure that there is no ambiguity and confusion on the reviewers' role. The further requirement that any cost in respect of an assessment or review must be carried by the applicant or the holder of the environmental authorisation in question is in our view unfair and it is our recommendation that competent authority should be the person to carry the costs of the review if it intends



to review the financial provisioning. It must be borne in mind that the applicant or holder of the environmental authorisation has no control over the costs that are incurred in terms of the review.

Re: Ad clause 11. Section 28 of the National Environmental Management Act, 1998

6. In terms of the Bill, a municipal manager is given powers to issue a directive. The intention of affording the municipal manager such power is unclear. As it stands, municipal managers are afforded recognition and powers in terms of municipal By-laws, and enforcement of the provisions of national legislation is enacted by Municipalities through municipal by-laws. NEMA is a national piece of legislation and should therefore afford powers to the appropriate functionaries, at national level, and to an extent, to provincial authorities. As the Bill stands, it appears that the municipal manager is conferred with extra powers that should be conferred through By-laws. It is therefore Transnet's view that the inclusion of the municipal manager be reviewed and reconsidered.
7. We thank you for the opportunity to comment on the National Environmental Management Laws Amendment Bill.

Kind Regards

Mr. Ndiphiwe Silinga
Acting Chief Corporate and Regulatory Officer

Date: 17/04/2018