**NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL – CLAUSE BY CLAUSE DISCUSSION - TEXT SUGGESTIONS**

|  | **Clause of Bill**  **Section of Act** | | **Summarised Comment** | | | **Proposed text** | **DEA Proposed text** | |
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| 1 | Clause 1; section 1: audit | | During consultation with stakeholders it became clear that there is confusion around the auditing requirement. This is not intended to be a purely financial audit, thus the term requires a definition to clarify the current confusion. | | | No proposed text provided | **“ “audit”** as contemplated in section 24(P) and 44 means a review of the scientific and engineering acceptability of the measures and the adequacy of related costs associated with undertaking progressive rehabilitation, decommissioning, closure and post closure activities for specified and listed activities, including the pumping and treatment of extraneous and polluted water where relevant;” | |
| 2 | Clause 1; section 1 financial provision | | Bank guarantee to be changed to refer to “financial guarantee” | | | Reference to the term “*bank guarantee*” in the NEMA definition of “*financial provision*” should be amended to refer to “*financial guarantee*”.  Response: Amended as suggested | **“financial provision”** means the amount which is required to be set aside in terms of this Act, guaranteeing the availability of sufficient funds to undertake **[the-**  **a) rehabilitation of the adverse environmental impacts of the listed or specified activities;**  **(b) rehabilitation of the impacts of the prospecting, exploration, mining or production activities, including the pumping and treatment of polluted or extraneous water;**  **(c) decommissioning and** **closure of the operations;**  **(d) remediation of latent or residual environmental impacts which become known in the future;**  **(e) removal of building structures and other objects; or**  **(f) remediation of any other negative environmental impacts;]**  decommissioning, closure and post closure activities for listed and specified activities to ensure the mitigation, remediation and rehabilitation of adverse environmental impacts including latent and residual environmental impacts and the pumping and treatment of extraneous and polluted water, where relevant”; | |
| 3 | Propose that the term “primary processing...” should be abandoned and that instead the current manner of reference is retained, namely: listed or specified activities for, or directly related to, a prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit. | | | Refer to:  “listed or specified activities for, or directly related to, a prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit.”  Response: Retention permit, reconnaissance permit and technical co-operation permit do not require environmental authorisation so not included. |
|  | Term should not be limited to mining only but must include all impacts | | | No text provided |
|  | Reword paragraph (d) | | | “(d) monitoring, mitigation and remediation of latent or residual environmental impacts which become known in the future during post closure monitoring” |
|  | Replace “or” with “and” between paragraphs (a) to (f) | | | Use “and” and delete “or” |
|  | Add reference to holders of old order mining rights | | | See DEA proposed text |
|  | DEA addition: add reference to affiliate, parent company guarantee and rehabilitation company in terms of the Income Tax Act | | |
|  | Latent to be deleted/retained as inserted | | |
|  | Applicants and holders of environmental authorisations and MPRDA rights and permits to be referenced | | |
|  | DEA: reduce definition and move some text to section 24P | | |
|  | Mitigation to be added | | | No text provided |
|  | Remediation to be added | | | No text provided |
| 4 | Clause 1; section 1 | | Latent impact to be defined | | | No text provided | See text for clause 8; section 24P | |
| 5 | Clause 1; section 1 | | Rehabilitation to be defined | | | No text provided but requested defined terms to include relevant concepts such as biodiversity offsets, if implemented |
| 6 | Clause 1; section 1 | | Mitigation to be defined | | | No text provided: requested to be defined widely |
| 7 | Clause 1; section 1 | | Remediation to be defined | | | No text provided: Define remedy wide enough to include compensatory and offset methods of remediation. |
| 8 | Clause 1; section 1 | | Residual impact to be defined | | | No text provided but requested that it is defined in NEMA so that it has the same meaning when applied under different regulations published in terms of NEMA |
| 9 | Clause 1/Section 1 (Definitions) | | Insert the definition of a municipality, municipal manager and municipal council that is aligned to the Municipal Systems Act, 2000 | | | **Supported: No text proposed** | **'municipal council'** means a municipal council referred to in section 157 (1) of the Constitution;  **'municipality'**, when referred to as-  (a) an entity, means a municipality as described in section 2 of the Municipal Systems Act 32 of 2000; and  (b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998);  **'municipal manager'** means a person appointed in terms of section 82 of the Municipal Structures Act; | |
| 10 | Clause 1/Section 1 (Definitions) | | The term, “Minister responsible for water affairs” needs to be defined | | | **Not supported** |  | |
|  | Clause 3: section 24(2)(c) | Reference should be made to the existing defined term “*spatial development tool*” | | | | Insert “development” | Response: Retain spatial tool and insert this term in section 24(5)(bA) as an environmental management instrument.  ‘(c) geographical areas based on environmental attributes, and specified in spatial tools or environmental management instruments,  adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which **[specified]** activities contemplated in paragraphs (a) and (b) may be excluded from the  requirement to obtain an environmental authorisation from the competent authority, but which must comply with the requirements  set in such adopted spatial tools or environmental management instruments, if any;’ | |
| 11 | Clause 3: section 24(2A) | | | No comment | | No text provided | ‘‘(i) not accept any further application for an environmental authorisation for the identified listed or specified activity in the identified geographical area until such time that the prohibition or restriction has been lifted; and’’; | |
| 12 | Clause 3: sections 24(5)(bA) and (5)(5A)). | | | The term “*environmental management instruments*” should be defined | | No text provided | Response: previous deletion of the list retained with small amendments in text  ‘‘*(b*A*)* laying down the procedure to be followed for the preparation,  evaluation, adoption and review of **[prescribed]** environmental  management instruments, including  any conditions set out in such instruments, if  any apply, including—  (i) environmental management frameworks;  (ii) strategic environmental assessments;  (iii) **[environmental impact assessments]** spatial tools;  (iv) environmental management programmes;  (v) environmental risk assessments;  (vi) environmental feasibility assessments;  (vii) norms or standards;  (viii) spatial development tools;  (viiiA) minimum information requirements; or  (ix) any other relevant environmental management instrument that may be developed in time;’ | |
| 13 | Clause 3; section 24(5)(bB) | | | No comment | | No text provided | Delete paragraph *(b*B*)* subsection (5) of; | |
| 14 | Clause 3: section 24(5A) | | | Supported but add that the register must be made publically available | | No text provided | ‘‘(5A) The Minister must keep a register of all environmental management instruments adopted in terms of this Act and make it publically available.’’. | |
| 15 | Clause 4; section 24C | | | The dispensation created by the One Environmental System as referred to in section 50A of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”) which, amongst other things, affords the Minister of Mineral Resources the power to make decisions on applications for prior environmental authorisation in terms of sections 24(2) and 24D of NEMA, is conceptually flawed and incorrect in law. It creates an untoward and unfairly biased environmental governance dispensation for the mining sector alone. Section 50A of NEMA is Constitutionally flawed. | | All references to the one environmental system must be deleted. | No amendment | |
| 16 | Clause 4; section 24C(2A) | | | No comment | | No text provided | ‘‘The Minister responsible for mineral resources must be identified as the  competent authority in terms of subsection (1) where the listed or specified activity is, or is directly related to—’’; | |
| 17 | Clause 4; section 24C(2A)(b) | | | “primary processing” be omitted in favour of use of the above defined terms in the MPRDA | | No text provided | Response: Term primary processing retained.  (b) “extraction and primary processing of a mineral or petroleum resource;“ | |
| 18 | Clause 4; section 24C(2B) | | | No comment | | No text provided | ‘‘*(a)* Notwithstanding the other provisions of this section, and in the event of the Minister not being the competent authority, the Minister must be identified as the competent authority where a Cabinet decision stipulates that the Minister must be the competent authority for activities related to a matter declared as a national priority or matters related to such national priority, unless otherwise agreed to in terms of subsection (3).’’ | |
| 19 | Clause 4: section 24C(3)(a) | | | allow the Minister and a MEC to agree that applications for activities contemplated in s24C(2B), i.e. activities related to matters declared as a national priority, may be dealt with by a MEC. | | No text provided | Response: added as suggested  ‘(a) contemplated in **[subsection]** subsections (2) and (2B) may be dealt with by the MEC;’’; and | |
| 20 | Clause 4; section 24C(11) | | | Require an applicant to indicate other applications submitted/required | | Add: “indicating in each application, all other licences, authorisations and permits applied for, or which will be applied for the intended development or related activity.” | ‘‘(11) A person who requires an environmental authorisation which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts must simultaneously submit those applications to the relevant competent authority or licensing authority, as the case may be, indicating in each application, all other licences, authorisations and permits applied for.” | |
| 21 | Clause 4; section 24C(12) | | | The use of environmental authorisation as well as licences and permits should be clarified with reference to the definition of “*environmental authorisation*”. | | No text provided, clarity requested on environmental authorisations versus permits and licences.  Response: must retain reference to environmental authorisations; clarified wording in accordance with comments made elsewhere regarding editorial mistake of mining (extraction) not being included (see below). | 12) A person who wishes to apply for an environmental authorisation for listed or specified activities for, or directly related to, prospecting or  exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts, must simultaneously apply for an environmental authorisation after the acceptance of the application for a right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002.” | |
| 22 |  | | | DEA: Editorial mistake in NEMLA4 wording as only includes prospecting and exploration, not mining (extraction) itself. | | See proposed DEA text |
| 23 | Clause 4; section 24C(13) | | | No comments received | | N/A | (13) If the competent authority or licensing authority contemplated in subsections (11) and (12), as the case may be, is the same authority to consider and decide the application for an environmental authorisation under this Act and the application under a specific environmental  management Act, an integrated decision must be issued in accordance with section 24L.’ | |
| 24 | Clause 5/Section 24G (Consequences of unlawful commencement of activity) | | | S24G should be repealed in its entirety due to the fact that is creates a perverse incentive and is abused | | **Not supported** |  | |
| 25. | Section 24G, in its current form does not require reasonable public participation; and is therefore unconstitutional, unlawful and invalid | | **Supported: No proposed text** | 24G. Consequences of unlawful commencement of activity (1)  On application by a person who—  (*a*) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F (1);  (*b*) has commenced, undertaken or conducted a waste management activity without a waste management licence in terms of section 20 (*b*) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008),  (1A ) An application in terms of subsection (1) may also be submitted by a person in control of, or successor in title to, land on which a person—  (a) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1);  (b) has commenced with, undertaken or conducted a waste management activity without a waste management licence in contravention of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).  the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, [**may]** must direct the applicant to—   1. immediately cease the activity pending a decision on the application submitted in terms of this subsection; 2. undertake public participation as required by the Minister, Minister responsible for Mineral resources or MEC concerned. 3. investigate, evaluate and assess the impact of the activity on the environment; 4. remedy any adverse effects of the activity on the environment;   (iv) cease, modify or control any act, activity, process or omission causing pollution or environmental degradation;   1. contain or prevent the movement of pollution or degradation of the environment;   (vi) eliminate any source of pollution or degradation;  (vii) compile a report containing—  (*aa*) a description of the need and desirability of the activity;  (*bb*) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;  (*cc*) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;  (*dd*) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed;  (*ee*) an environmental management programme; **[or]** and  (vii) provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC, as the case may be, may deem necessary.  (2)  The Minister, Minister responsible for mineral resources or MEC concerned must consider any report or information submitted in terms of [subsection (1)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfkm) and thereafter may—  (*a*) refuse to issue an environmental authorisation; or  (*b*) issue an environmental authorisation to such person to continue, conduct or undertake the activity subject to such conditions as the Minister, Minister responsible for mineral resources or MEC may deem necessary, which environmental authorisation shall only take effect from the date on which it has been issued; or  (*c*) direct the applicant to provide further information or take further steps prior to making a decision provided for in [paragraph (*a*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl3) or [(*b*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl4)*.*  (3)  The Minister, Minister responsible for mineral resources or MEC may as part of his or her decision contemplated in [subsection (2) (*a*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl3), [(*b*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl4) or [(*c*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl5) direct a person to—  (*a*) rehabilitate the environment within such time and subject to such conditions as the Minister, Minister responsible for mineral resources or MEC may deem necessary; or  (*b*) take any other steps necessary under the circumstances.  (4)  A person contemplated in [subsection (1)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfkm) must pay an administrative fine, which may not exceed **[R5]** R10 million and which must be determined by the competent authority, before the Minister, Minister responsible for mineral resources or MEC concerned may act in terms of [subsection (2) (*a*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl3) or [(*b*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl4)*.*  (5)  In considering a decision contemplated in [subsection (2)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl2), the Minister, Minister responsible for mineral resources or MEC may take into account whether or not the applicant complied with any directive issued in terms of [subsection (1)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfkm) or [(2)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl2).  (6)  The submission of an application in terms of [subsection (1)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfkm) or the granting of an environmental authorisation in terms of [subsection (2) (*b*)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfl4) shall in no way derogate from—  (*a*) the environmental management inspector’s or the South African Police Services’ authority to investigate any transgression in terms of this Act or any specific environmental management Act;  (*b*) the National Prosecuting Authority’s legal authority to institute any criminal prosecution.  (7)  If, at any stage after the submission of an application in terms of [subsection (1)](http://dea.mylexisnexis.co.za/Content/Content?navigationString=%7b%22DomainId%22:%22xih5d%22,%22DomainPath%22:%22zb/jilc/kilc/ebsg/kcsg/lcsg/xih5d%22,%22ZoneId%22:7%7d&tokenString=%7b%22TokenID%22:%22ddc0b936-e8d4-4af3-9798-68e0f35032a8%22,%22SubscriberID%22:%2210495374%22,%22DeviceID%22:%22df3e3ae0-5cd9-4017-8cef-ee7b17897b8b%22%7d#gfkm), it comes to the attention of the Minister, Minister for mineral resources or MEC, that the applicant is under criminal investigation for the contravention of or failure to comply with section 24F (1) or section 20 (*b*) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), the Minister, Minister responsible for mineral resources or MEC may defer a decision to issue an environmental authorisation until such time that the investigation is concluded and—  (*a*) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure;  (*b*) the applicant concerned is acquitted or found not guilty after prosecution in respect of such contravention or failure has been instituted; or  (*c*) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review. | |
| 26. | The intended expansion of the S24G application to include not only persons that commenced with listed or specified activities, but also “successors-in-title or persons in control of” is:   * conceptually flawed; * no legal justification; * open-ended and undefined (in control of); * has major legal ramifications for organs of state that own vast tracts of land throughout the country e.g (Transnet); * not appropriate; as they are categories of persons that unlawfully commenced. | | **Not supported** |
| 27. | Clause 5/Section 24G (Consequences of unlawful commencement of activity) | | | If S24G is expanded to include “successors-in-title or persons in control of”, then the Act should be amended to exempt them from the payment of a fine. | | **Not supported** |  | |
| 28 | Clause 6; section 24N | | | Deletion of detail supported/not supported provided that Appendix 4 to the EIA regulations is amended to ensure that nothing is lost in the deletion and furthermore that that Appendix is amended as it is currently contingent on s24N(2). | | No text provided | ‘‘(2) The environmental management programme must contain**[—]** information that is prescribed.  **[(a) information on any proposed management, mitigation, protection or**  **remedial measures that will be undertaken to address the environmental impacts that have been identified in a report contemplated in subsection (1A), including environmental impacts or objectives in respect of—**  **(i) planning and design;**  **(ii) pre-construction and construction activities;**  **(iii) the operation or undertaking of the activity in question;**  **(iv) the rehabilitation of the environment;**  **(v) closure, if applicable;**  **(b) details of—**  **(i) the person who prepared the environmental management**  **programme; and**  **(ii) the expertise of that person to prepare an environmental management programme;**  **(c) a detailed description of the aspects of the activity that are covered by the**  **environmental management programme;**  **(d) information identifying the persons who will be responsible for the implementation of the measures contemplated in paragraph (a);**  **(e) information in respect of the mechanisms proposed for monitoring compliance with the environmental management programme and for reporting on the compliance;**  **(f) as far as is reasonably practicable, measures to rehabilitate the environment**  **affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which**  **conforms to the generally accepted principle of sustainable development; and**  **(g) a description of the manner in which it intends to—**  **(i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;**  **(ii) remedy the cause of pollution or degradation and migration of pollutants; and**  **(iii) comply with any prescribed environmental management standards or practices.]** | |
| 29 | Clause 7; section 24O | | | The proposed amendment (whether “or” or “and” was intended) is at odds with the object of the section thus heading needs realignment. Also the objects of the Act require amendment.  Do not support / oppose addition of the term environmental assessment practitioner (EAP) as proposed as the task of the authority should not be made the responsibility of the EAP and this significantly dilutes the decision-maker’s obligations. it is inappropriate to place the burden on the environmental assessment practitioner to consult with other government departments. | | No text provided but proposed:   * Objectives of Act to be aligned * Heading wording to be aligned * Deletion of reference to environmental assessment practitioner   Response:   * Objectives to be aligned * Heading aligned * Reference to EAP retained. | Section 24O of the National Environmental Management Act, 1998, is hereby  amended—  (a) by the insertion, at the end of the heading, of the words “**Criteria to be taken into account by competent authorities when considering applications and consultation requirements’**;  (b) by the substitution for subsection (2) of the following subsection:  ‘‘(2) The Minister, the Minister responsible for mineral resources **[or]**, an MEC or an environmental assessment practitioner 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.’’; and  (b) by the deletion of subsection (2A). | |
| 30 | Clause 8; section 24P general | | | The word “*progressive*” should be deleted throughout as the funding for progressive rehabilitation is accounted for in the operational budget. | | No text provided but request deletion of “progressive rehabilitation” | Response: no amendment | |
| 31 | Clause 8; section 24P general | | | The term mitigate is superfluous as mitigation is conceptually included with rehabilitation and remediation | | No text provided but request deletion of the reference to “mitigate” | Response: no amendment | |
| 32 | Clause 8; section 24P general | | | Insert the words “*remediation and management of residual environmental impacts as identified in an environmental risk assessment report*” throughout Clause 8 after the newly inserted words “*...post closure...*” | | Insert the words “*remediation and management of residual environmental impacts as identified in an environmental risk assessment report*” throughout Clause 8 after the newly inserted words “*...post closure...*” | Response: Not to refer to specific reports | |
| 33 | Clause 8; section 24P general | | | Some mechanism must be provided for return of the financial provision once it becomes clear that there are no longer any residual impacts (and that pumping of polluted or extraneous water is no longer required) | | No text provided | Response: See section 24P below | |
| 34 | Clause 8; section 24P general | | | Propose insertion of a provision authorising the Minister responsible for water to access financial provision in the event that the holder or holder of a right or permit fails to rehabilitate or to manage any impact on water resources, or is unable to undertake such rehabilitation or to manage such impact. | | No text provided | Response: See section 24P below | |
| 35 | Clause 8; section 24P general | | | The provisions surrounding financial provisioning for mining-related environmental liability should resort with the Minister of Environmental Affairs instead of the Minister responsible for Mineral Resources.  The powers given to the Minister of Mineral Resources to decide upon the adequacy of the financial provision by the holder of an environmental authorisation in respect of mining (or mining-related) activities, is incorrect. This power should reside with the Minister of Environmental Affairs. | | No text provided | Response: no amendment | |
| 36 | Clause 8; section 24P general | | | Clause 8 does not accord with the MPRDA or with the Income Tax Act. | | No text provided but alignment of wording requested. | Response: Alignment of wording throughout proposed text. | |
| 37 | Clause 8; section 24P general | | | DEA: Add a provision that financial provision can only be used for rehabilitation and not for other purposes. | | See DEA proposed text section 24P | See DEA proposed text section 24P | |
| 38 | Clause 8; section 24P general | | | Section 24P does not suit the oil and gas industry, the nature of gas and oil exploration and production does not allow annual rehabilitation, does not require annual review or audit and it will not be possible for the oil and gas industry to cede funds to DMR for latent impacts. A separate dispensation should be included to accommodate this industry to allow them to comply. | | Proposed text in definition of financial provision | Response: Need decision of government partners. | |
| 39 | Clause 8; section 24P general | | | A listed activity should be triggered for closure. | | No text provided as comment related to Regulations. | N/A | |
| 40 | Clause 1; section 1 comment addressed in clause 8, section 24P | | | Latent impact to be defined | | No text provided | **24P. Financial provision for remediation of environmental damage**  Definitions   1. In this section-   **“latent environmental impact”** means“ impacts which are existing but not yet developed or manifest, dormant;“ | |
|  |
|  | Mitigation to be defined | | No text provided: requested to be defined widely | **“mitigate”** means to alleviate or reduce, make less severe; | |
|  | Rehabilitation to be defined | | No text provided but requested defined terms to include relevant concepts such as biodiversity offsets, if implemented | **“rehabilitate”** means to restore to the approved end use of land; | |
|  | Remediation to be defined | | No text provided: Define remedy wide enough to include compensatory and offset methods of remediation. | **“remediate”** means to repair, reverse or stop damage; | |
|  | Residual impact to be defined | | No text provided but requested that it is defined in NEMA so that it has the same meaning when applied under different regulations published in terms of NEMA | **“residual environmental impact”** means impacts remaining after all actions to mitigate, rehabilitate and remediate have been undertaken;” | |
|  | During consultation with stakeholders it became apparent that there was confusion with terms used namely assessment and review. A definition for review is proposed and the term assessment deleted. | | No text provided. | **‘review’** means | |
| 41 | Clause 8; section 24P(1) | | | Limiting the obligation to comply with financial provision requirements to prospecting and exploration only is not rational, and must be an error.  Mining and production at minimum must also require compliance with these provisions.  The reach of this provision should extend beyond mineral and petroleum extraction and related activities, to other activities that have the potential to cause environmental damage.  Support the deletion of ‘negative’. | | No text provided  Response: limitation corrected | **24P. Financial provision for remediation of environmental damage**  Definitions   1. In this section-   **“latent environmental impact”** means impacts which are existing but not yet developed or manifest, dormant;  **“mitigate”** means to alleviate or reduce, make less severe;  **“rehabilitate”** means to restore to the approved end use of land;  **“remediate”** means to repair, reverse or stop damage;  **“residual environmental impact”** means impacts remaining after all actions to mitigate, rehabilitate and remediate have been undertaken; and  **review’** means  (2) The Minister, or an MEC in concurrence with the Minister, may prescribe the instances for which financial provision must be determined and set aside for listed or specified activities.  (3) Where prescribed, an applicant, must, before the competent authority issues an environmental authorisation, determine the financial provision which is required for undertaking progressive rehabilitation, decommissioning, closure and post closure activities including the pumping and treatment of extraneous and polluted water where relevant.  (4) Where prescribed, the applicant, holder of an environmental authorisation, holder, holder of an old order right is required to set aside financial provision for decommissioning, closure and post closure activities, including the pumping and treatment of extraneous and polluted water where relevant, to ensure the mitigation, remediation and rehabilitation of adverse environmental impacts, including latent and environmental residual impacts.  (5) An applicant, holder of an environmental authorisation, holder or holder of an old order right must annually undertake, as prescribed, the mitigation, remediation and rehabilitation measures that are possible to be undertaken.  (6) The financial provisioning vehicles which must be used when setting aside the financial provision include-  (a) cash,  (b) insurance,  (c) a financial guarantee,  (d) a trust fund; and  (e) any other vehicle identified by notice in the Gazette by the Minister in concurrence with the Minister of Finance, including—  (i) a closure rehabilitation company,  (ii) a parent company guarantee; and  (iii) an affiliate company guarantee.    (7) The financial provisioning vehicles contemplated in subsection (6) may be used in combination as required.  (8) (a) Where the Minister, Minister for mineral resources or the MEC is not satisfied with the determination or review of the financial provision, the Minister, the Minister responsible for mineral resources or the MEC may appoint an independent party to conduct an assessment of the determination or review on their behalf.  (b) Any costs in respect of such assessment must be borne by the holder of the environmental authorisation, holder or holder of an old order right.  (9) If any holder of an environmental authorisation, holder or holder of an old order right fails to mitigate, remediate and rehabilitate or to manage any impact on the environment, or is unable to undertake such mitigation, remediation and rehabilitation of such impact as prescribed, the Minister responsible for mineral resources or the Minister responsible for water affairs may, upon written notice to such holder, use all or part of the financial provision contemplated in this section to rehabilitate or manage the environmental impact in question.  (10) The financial provision may only be used for the purposes of decommissioning, closure, post closure to ensure mitigation, remediation and rehabilitation of adverse environmental impacts for which it was set aside and shall not be used for any other purposes.  (10) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (1) and all amounts arising from that provision.  **24PA Financial provision for mining**  (1) A holder of an environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, a holder or holder of an old order right must—    (a) maintain and retain a financial provision until a closure certificate is issued by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002,  (b) every three years review his or her environmental liability as prescribed and must adjust his or her financial provision accordingly to the satisfaction of the Minister responsible for mineral resources;  (c) every three years subject the financial provision and the basis of the calculations to an independent audit; and  (d) every five years, or in the case of a mining permit every three years, submit to the Minister responsible for mineral resources, an audit report  (e) publish, within 5 days of being notified by the Minister responsible for mineral resources of the review decision, the decision in a provincial newspaper as well as a newspaper distributed within the municipal area within which the mining operation is located, and indicate where the review can be obtained.  (2) The requirement to maintain and retain the financial provision contemplated in this section remains in force until a closure certificate is issued by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder of an environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, a holder or holder of an old order right.  (3) The Minister responsible for mineral resources may, in consultation with the Minister and Minister responsible for water affairs, approve an annual drawdown of the financial provision in the prescribed manner to support final decommissioning and closure for a period not exceeding 10 years before the final decommissioning and closure.  (4) The financial provision set aside in respect of latent or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, must be transferred to the Minister responsible for mineral resources upon the issuing of a closure certificate, unless otherwise prescribed.  (5) Where the vehicle for setting aside the financial provision for latent or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, is insurance, the Minister responsible for mineral resources must access the funds on issuing the closure certificate. | |
| 42 | Clause 8; section 24P(1) | | | The current amendment implies that listed activities outside the mining sphere such as blending facilities off site will also be required to provide financial provisioning. The text should be unambiguous | | No text provided  Response: wording clarified throughout |
| 43 | Clause 8; section 24P(1A) | | | The reference to “annually comply” seems unnecessary as the obligation is to comply at all times. | | Delete “annually” |
| 44 | Clause 8; section 24P(1B) | | | No comments | | N/A |
| 45 | Clause 8; section 24P(1B) new provision | | | DEA: Add a provision that financial provision can only be used for rehabilitation and not for other purposes. | | See proposed DEA text |
| 46 | Clause 8; section 24P(2) | | | No comment but consequential amendments required | | See proposed DEA text |
| 47 | Clause 8; section 24P(3) | | | Alignment of text in NEMA and Financial Provisioning Regulations required | | No text provided |
| 48 | Clause 8; section 24P(3); (3)(a) | | | Change from annual to 3 year not supported / support the three-year period for audit, and submit that the annual assessment should rather also be three-yearly, as an annual period will in many cases be too frequent for a substantive and meaningful assessment of environmental liability. | | No text provided |
| 49 | Clause 8; section 24P(3A) | | | Comment made under section 24P(4) and during the stakeholder consultation meeting of 24 May 2018, CER indicated a need for a notification of decisions on reviews of financial provisioning to be included | | No text provided |
| 50 | Clause 8; section 24P(4) | | | Only to refer to “*independent assessor*”. Role and functions of assessor and reviewer to be clarified. Cost to be carried by the applicant/holder is not fair. | | No text provided  Response: Roles clarified. Reference to assessor deleted, reviewer reference retained. Cost must be for the applicant/holder thus retained. |
| 51 | Clause 8; section 24P(5)(a) | | | In (a) delete “and retain”, and replace the word “retain” with access in (b). | | Response: done as requested |
| 52 | Clause 8; section 24P(5)(b) | | | Noted deletion of “latent” | | Response: latent reinstated |
| 53 | Clause 8; section 24P(5)(b) | | | Proposes the deletion of the words “*...in perpetuity”* | | Deletion proposed of “in perpetuity”.  Response: retained “in perpetuity” |
| 54 | Clause 8; section 24P(5)(b) | | | Retention in perpetuity irrespective of the circumstances constitutes an expropriation of money within the meaning of s25 of the Constitution of the Republic of South Africa, 1996 and requires payment of compensation. | | No text provided.  Response: Disagree with comment. |
| 55 | Clause 8; section 24P(5)(b) | | | Propose insertion of a provision authorising the Minister responsible for water to access financial provision in the event that the holder or holder of a right or permit fails to rehabilitate or to manage any impact on water resources, or is unable to undertake such rehabilitation or to manage such impact. | | No text provided.  Response: agreed and inserted |
| 56 | Clause 8; section 24P(5)(b) | | | In (a) delete “and retain”, and replace the word “retain” with access in (b). | | Response: done as requested |
| 57 | Clause 8; section 24P(5)(b) | | | Delete reference to “*other environmental impacts*” | | Delete reference to “*other environmental impacts*”.  Response: deleted as suggested |
| 58 | Clause 8; section 24P(5)(c) | | | Delete reference to “*other environmental impacts*” | | Delete reference to “*other environmental impacts*”.  Response: deleted as suggested |
| 59 | Clause 8; section 24P(5)(c) | | | The concept of “cession” cannot operate in regard to a guarantee or a trust.  Problem with the term ceding.  If there is to be a cession, provision needs to be made for investment of the ceded funds for the benefit of the cedent and there would need to be consequential changes made to the Income Tax Act (“ITA”) to allow for this in the context of trusts or rehabilitation companies as currently it is not permissible.  Would the financial provision ceded to the Minister be ring-fenced? Would it be capable of identification and tied to a particular mine? | | Response: included |
| 60 | Clause 8; section 24P(5)(c) new drawdown | | | Some mechanism must be provided for return of the financial provision once it becomes clear that there are no longer any residual impacts (and that pumping of polluted or extraneous water is no longer required). | | No text provided.  Response: mechanism for drawdown for closure added but not for return of financial provision. |
| 61 | Clause 8; section 24P(7) | | | Not supported the deletion of the reference to the MEC in concurrence with the Minister. | | No text provided but did not support proposed deletion.  Response: This should be allowed only through legislation. Provision deleted |
| 62 | Clause 9; section 24R(1) | | | Either in section 24P or 24R, since the holder remains responsible for environmental liabilities notwithstanding the issuing of a closure certificate, there needs to be some mechanism in s24P(5) whereby the holder can draw down on the financial provision which has been retained by and ceded to the Minister. | | No text provided.  Response: see new proposed section 24P(5)(c). This can alternatively be added to section 24R. |
| 63 | Clause 9; section 24R(1) | | | Add holder of environmental authorization for mining or directly associated | | No text provided.  Response:added as suggested | Every holder of environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, 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 polluted or extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned. | |
| 64 | Clause 9; Section 24R(2) | | | Support deletion of (2) as it is a duplication of section 24P; not supported. | | No text provided  Response: deletion of section 24R (2) retained | Deletion of subsection (2). | |
| 65 | Clause 9; Section 24R (3) | | | Add holder of environmental authorization for mining or directly associated | | No text provided  See proposed DEA text | Every holder of environmental authorisation for listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource, holder, holder, holder of an old order right or owner of works must plan, manage and implement such procedures and requirements in respect of the closure of a mine as may be prescribed. | |
| 66 | Clause 9; Section 24R (4) | | | Add mechanism for DWS to access the financial provision directly | | No text provided  Response: provide for in section 24P | N/A | |
| 67. | Clause 5/Section 24G (Consequences of unlawful commencement of activity) | | | If S24G is expanded to include “successors-in-title or persons in control of”, then the Act should be amended to exempt them from the payment of a fine. | | **Not supported** | **28.Duty of care and remediation of environmental damage**  (1)Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.  (1A)Subsection (1) also applies to a significant pollution or degradation that-  (a) occurred before the commencement of this Act; (b)arises or is likely to arise at a different time from the actual activity that caused the contamination; or (c) arises through an act or activity of a person that results in a change to pre-existing contamination.  (2) Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures, include an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which -  (a) any activity or process is or was performed or undertaken; or (b) any other situation exists,  which causes, has caused or is likely to cause significant pollution or degradation of the environment.  (3) The measures required in terms of subsection (1) may include measures to -  (a)investigate, assess and evaluate the impact on the environment; (b) inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;  (c) cease, modify or control any act, activity or process causing the pollution or degradation; (d)contain or prevent the movement of pollutants or the caus**[ant]**e of degradation; (e) eliminate any source of the pollution or degradation; or (f) remedy the effects of the pollution or degradation.  (4)The Director-General, the Director-General of the department responsible for mineral resources**[or]** a provincial head of department or a municipal manager of a municipality may, **[after having given adequate opportunity to affected persons to inform him or her of their relevant interests]**, direct any person [**who is causing, has caused or may cause significant pollution or degradation of the environment]** referred to in (2);to-  (a) cease any activity, operation or undertaking; (b)investigate, evaluate and assess the impact of specific activities and report thereon; (c)commence taking specific measures before a given date; (d)diligently continue with those measures; and (e)complete those measures before a specified reasonable date:  **[Provided that the Director-General or a provincial head of department may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable**.]  (4A) Before issuing a directive contemplated in subsection (4),the Director-General, the Director-General of the department responsible for mineral resources, or a provincial head of department or a municipal manager of a municipality must give [**advanced]** adequate notice in writing to the person to whom the directive is intended to be issued, of his or her intention to issue the directive and provide such person with a reasonable opportunity to make representations in writing: Provided that the Director-General, the Director-General of the department responsible for mineral resources, a provincial head of department or a municipal manager of a municipality may, if urgent action is necessary for the protection of the environment, issue the directive referred to in subsection (4), and give the person on whom the directive was issued an opportunity to make representations as soon as is reasonable thereafter.  (5) The Director-General, the Director-General of the department responsible for mineral resources; [**or]** a provincial head of department or a municipal manager of a municipality, when considering any measure or time period envisaged in subsection (4), must have regard to the following;  (a)the principles set out in [section 2](https://discover.sabinet.co.za/webx/access/netlaw/107_1998_national_environmental_management_act.htm#section2); (b)the provisions of any adopted environmental management plan or environmental implementation plan; (c)the severity of any impact on the environment and the costs of the measures being considered; (d)any measures proposed by the person on whom measures are to be imposed; (e)the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people; and (f)any other relevant factors.  (6)If a person required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to, use of or a limitation on use of that land in order to effect rehabilitation or remedial work, but is unable to acquire it on reasonable terms, the Minister may -  (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and (b)recover from the person for whose benefit the expropriation was effected all costs incurred.  (7)Should a person fail to comply, or inadequately comply, with a directive issued under subsection (4), the Director-General **[or]** a provincial head of department or a municipal manager of a municipality, may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.  (8)Subject to subsection (9), the Director-General, the Director-General of the department responsible for mineral resources **[or]** provincial head of department or a municipal manager of a municipality, may recover costs for reasonable remedial measures undertaken or to be undertaken under subsection (7), before or after such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons-  (a)any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation; (b)the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner’s successor in title; (c)the person in control of the land or any person who has or had a right to use the land at the time when -  (i) the activity or the process is or was performed or undertaken; or (ii)the situation came about; or  (d)any person who negligently failed to prevent -  (i)the activity or the process being performed or undertaken; or (ii)the situation from coming about:  Provided that such person failed to take the measures required of him or her under subsection (1).  (9) The Director-General, the Director-General of the department responsible for mineral resources; [**or]** provincial head of department or a municipal manager of a municipality, may in respect of the recovery of costs under subsection (8), claim proportionally from any other person who benefited from the measures undertaken under subsection (7).  (10) The costs claimed under subsections (6), (8) and (9) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.  (11) If more than one person is liable under subsection (8), the liability must be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (4).  (12) Any person may, after giving the Director-General, the Director-General of the department responsible for mineral resources [**or]** provincial head of department or a municipal manager of a municipality, 30 days’ notice, apply to a competent court for an order directing the Director-General, the Director-General of the department responsible for mineral resources **[or]** any provincial head of department or a municipal manager of a municipality, to take any of the steps listed in subsection (4) if the Director-General, the Director-General of the department responsible for mineral resources [**or]** provincial head of department or a municipal manager of a municipality, fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps, and the provisions of [section 32](https://discover.sabinet.co.za/webx/access/netlaw/107_1998_national_environmental_management_act.htm#section32)(2) and (3) shall apply to such proceedings, with the necessary changes. | |
| 68. | Clause 11/s28 (Duty of Care and Remediation of Environmental Damage) | | | Section 28(4A)(a) should provide an opportunity to affected persons to inform them of their interests;  I&AP’s should be taken into account in the context of S28(7)(8)(9)(11); | | **Not supported** |
| 69. | The category of persons upon whom a section 28(4) directive may be served should include any person who causes the pollution/degradation; as well as the list of specific responsible persons i.e. landowners, persons on control of land/premises or a person who has the right to use land/premises | | **Supported – same as DEA proposed text** |
| 70 | The word advanced notice in writing i.e. a S28 pre-directive, should be aligned to ss3(2)(b)(a) of PAJA and be replaced by adequate notice, which is a broader term. | | **Supported – same as DEA proposed text** |
| 71. | Joint and several liability would constitute expropriation of money within the meaning of 25 of the Constitution, for which the State would have to pay compensation in relation to any excess recovered from a particular person.  Even though it may be difficult to determine the exact degree of responsibility where there are multiple polluters impacting on the environment, this is no reason to impose joint and several liability. This principle is not in accordance with the adoption of causality, on which the statutory duty of care is premised. Proportionality is inherent to the concept of causality on which the statutory duty of care is premised. | | **Supported – retain original wording of the Act** |
| 72. | The addition of a municipal manager to the DGs and HODs that are empowered to issue S28 directives is inappropriate, due to the fact that municipalities under compliance and enforcement through their own bylaws.  The expansion of the environmental authorities to local authorities is of concern and may lead to the duty of care provisions being enforced by more than one regulator. | | **Not supported** |
| 73 | Clause 12/S31BB (Designation of Environmental Mineral Resource Inspectors by Minister responsible for mineral resources) | | | Not agree with empowering the Minister of Mineral Resources to appoint as an EMPI, a staff member from any organ of state.  The definition of ‘organ of state’ is very wide and may include institutions that are not regulatory authorities e.g. Lebowa Mineral trust, Iscor, Petro SA and the African Exploration Mining and Finance Corporation Limited (EMFCL). The EMFCL cannot be both a regulator and the regulated. | | **Supported - No proposed text** | **31BB.Designation of environmental mineral [resource] and petroleum inspectors by Minister responsible for mineral resources**    (1) The Minister responsible for mineral resources may-  ‘‘(a) designate as an environmental mineral **[resource]** and petroleum inspector, any staff member of **[the Department of Mineral Resources]—**  (i) the department responsible for mineral resources; or  (ii) any other relevant organ of state; and’’; and  ‘‘(2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister responsible for mineral resources and the relevant organ of state.’’. | |
| 74 | The Minster of Environmental Affairs and not the Minister responsible for Mineral Resources should have the power to designate and appoint environmental management inspectors | | **Not supported** |  | |
| 75 | **Clause 13 /S31D Mandates** | | | The intention of section 31D (4)(5)(6)(7)(8) and (9) is to provide for procedure in which the Ministers of Environmental Affairs and Mineral Resources can agree that EMIs can undertake the compliance and enforcement work, in circumstances where the EMPIs are unable to adequately fulfil the compliance and enforcement functions.  However, the proposed amendment does not achieve the intended result  Delete S31D(4) (7) and (8) insofar as they require the Minister of EA to obtain the concurrence of the Minister of MR before assistance, support can be provided. | | **Partially supported**  Add an additional trigger in which a complainant can write to the Minister of Environmental Affairs to request EMIs to undertake compliance and enforcement functions that would otherwise be the mandate of EMPIs:   1. Where s/he is not satisfied with the response from the Minister of MR (existing) AND 2. In the event that the Minister of MR does not respond within a reasonable period of time;   Add a new sub paragraph that provides that the Minister of EA, after consultation with the Minister of MR, direct EMIs to undertake EMPI compliance and enforcement activities, where the complainant has provided prima facie evidence of unlawful activities or of an existing or imminent adverse risk to the environment.  The Minister must, within a reasonable time, inform the complainant of the steps taken in response to the complaint. If no steps are taken in response to the complaint, the Ministers of EA and MR must provide reasons for this to the complainant. | ….  (4) Despite the provisions in subsections (2A) and (3), the Minister may, **[with the concurrence of]** after consultation with the Minister responsible for mineral resources, if the environmental mineral **[resource]** and petroleuminspectors are unable or not adequately able to fulfil the compliance monitoring and enforcement functions and where there is prima facie evidence of unlawful activities or of an existing or imminent adverse risk to the environment, designate environmental management inspectors to implement these functions in terms of this Act or a specific environmental management Act in respect of which powers have been conferred on the Minister responsible for mineral resources.  (5) In the event that a complainant alleges that a specific compliance monitoring and enforcement function relating to prospecting, exploration, mining and production has not been implemented or has been inadequately implemented, the complainant must submit, in writing, information substantiating such allegations to the Minister responsible for mineral resources.  (6) In the event that the complainant is not satisfied with the response from the Minister responsible for mineral resources, the complainant may submit, in writing, such information to the Minister with substantiating documentation, including details of the engagement with the Minister responsible for mineral resources.  (7) On receipt of such information referred to in subsection (6), the Minister must [**consult]** notify with the Minister responsible for mineral resources on his or her response to the complainant.  (8) Subsequent to subsection (7), the Minister may, [**in concurrence with]** after consultation with the Minister responsible for mineral resources, within a reasonable period of time and where appropriate-    (a) assist or support the Minister responsible for mineral resources to fulfill his or her compliance monitoring and enforcement obligations under this Act; or  (b) direct the environmental management inspectors as contemplated in subsection (4) to undertake the compliance monitoring and enforcement functions.  (9) The Minister must inform the complainant of steps taken in response to the complaint. | |
| 76 | Clause 13/ S31D Mandates | | | The Bill should provide a clear, distinct and separate mandate for national EMIs, provincial EMIs, local authority EMIs and national EMPIs.  Where local authority EMIs are not executing an original function, the specific assignment of functions must be clarified. | | **Not supported** |
| 77 | Clause 14/S31E Prescribed Standards | | | The proposed insertion of subsection (3) is supported. We are of the opinion that a code of conduct for all EMIs and environmental mineral and petroleum inspectors is necessary to raise the standards of compliance monitoring and enforcement of environmental legislation, especially by EMRIs. We therefore submit that the proposed code of conduct must be a legislative imperative that must be performed within a given timeframe; and must include the principles of transparency and responsiveness. | | **Not supported in respect of the timeframe and explicit provision for principles.** |  | |
| 78 | Amend the wording of S31E (3): The Minister may prescribe a code of conduct , including a training programme which is necessary and appropriate for designated EMIs and EMPIs | | **Not supported** |  | |
| 79. | Empower the Minister of MR rather than the Minister of EA to prescribe qualification criteria and training; and code of conduct for EMPIs | | **Not supported** |  | |
| 80 | **Clause 16/S31G (Functions of an EMI)** | | | Section 31G (1)(b) currently empowers an investigation on “reasonable suspicion”, which words are intended to be deleted.  That is however contrary to the right to privacy in terms of s14 of the Constitution whereby everyone has the right to privacy which includes the right not to have their person, home or property searched or their possessions seized. That is indeed the reason why in the Criminal Procedure Act, 1977, searches can take place only on the authority of a warrant issued by a magistrate. | | **Supported - no text proposed** | **31G. Functions of inspectors**    (1) An environmental management inspector or an environmental mineral and petroleum inspector within his or her mandate in terms of section 31D -    (a) must monitor and enforce compliance with a law for which he or she has been designated in terms of that section;  “may enter and inspect any building, land or premises, vehicle, vessel, aircraft, pack-animal, container, bag box or item for the purposes of ascertaining compliance with the legislation for which that inspector has been designated in terms of section 31D; or a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.”  (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute -  (i) an offence in terms of such law;  (ii) a breach of such law; or  (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law. | |
| 81 | **Clause 17/S31H General Powers** | | | Add additional power of an AMI to request documents, certificates or authorisations when questioning a person; or issuing them with a written notice:  “…question a person about any act or omission, including a request to produce a document, certificate or authorisation”  “upon reasonable suspicion, issue a written notice to a person who refuses to answer questions or produce any document, certificate or proof of any authorisation where such questions or request that was required in terms of that paragraph.” | | **Not supported** |  | |
| 82 | **Clause 19/S31J (Powers to stop and search vehicles, vessels and aircraft)** | | | An EMI should be required to obtain a search warrant prior to the exercising the powers in S31J to stop, enter and search vehicles, vessels and aircraft; and the seizure of items concerned in the commission of an offence.  An EMI should be required to obtain a search warrant prior to the exercising the powers in S31K in relation to the conducting of routine inspections | | **Not supported** |  | |
| 83 | **Clause 20/31K Routine Inspections** | | | **Not supported** |  | |
| 84 | **Clause 22/S31M (Objection 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)). 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 in relation to compliance notices issued by the Minister of Mineral Resources. | | **Not supported** |  | |
| 85 | Disagree with an objection to be lodged with a Municipal Council since the matters which are dealt with in s31M do not fall within the functional areas of competence of local authorities in Part B of Schedule 4 or in Part B of Schedule 5 to the Constitution and may therefore be unconstitutional. | | **Not supported** |  | |
| 86 | **Clause 28/42B Delegation by the Minister responsible for Mineral Resources** | | | Remove an organ of state as an authority to whom the Minister of Mineral Resources could delegate a power in terms of NEMA and the SEMAs | | **Not supported** |  | |
| 87 | In addition to the Minister of Mineral Resources (like the Minister of EA) must also be empowered to amend, withdraw or substitute the decision taken by the delegate or sub-delegate; | | **Supported – no text proposed** | **42B. Delegation by Minister responsible for mineral resources**   1. The Minister responsible for mineral resources may delegate a function entrusted to him or her in terms of this Act to- 2. the Director-General of the Department of Minerals and Energy; or 3. any officer in the Department of Minerals and Energy. 4. A delegation in terms of subsection (1)- 5. must be in writing; 6. may be made subject to any condition;   (c) does not prevent the performance of the function by the Minister himself or herself; and  (d) may be withdrawn by the Minister.  (2B) The Minister responsible for mineral resources may confirm, vary or revoke any decision taken in consequence of a delegation or subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision. | |
| Omit the power of the Minister of MR to delegate his/her power to another functionary. | | **Not supported** |
| 88 | **Clause 30/S43 Appeals** | | | Inclusion of the phrase ‘other administrative enforcement notice issued in terms of this Act’ is poor drafting and undermines the rule of law principle. The rule of law requires that administrative action by state officials be based on clear and unambiguous powers contained in a law of general application. In NEMA, these take the form of directives, any ‘other administrative enforcement notices’ will not have the requisite legal backing and will be ultra vires. | | **Supported insofar as the need to clarify the scope of ‘other administrative enforcement notice issued’ – no text proposed** | ‘‘(7) An appeal under this section suspends an environmental authorisation, exemption **[, directive,]** or any other decision made in terms of this Act or any other specific environmental management Act, or any provision or condition attached thereto, except for a directive, or other administrative enforcement notice that is aimed at addressing significant harm to the environment issued in terms of this Act or any other specific environmental management Act.  (8) A person who receives a directive in terms of section 28(4) may lodge an appeal against the decision made by the Director-General or any person acting  under his or her delegated authority, the Director-General of the department responsible for mineral resources or any person acting under his or her delegated authority, **[or]** the provincial head of department or any person acting under his or  her delegated authority or the municipal manager of a municipality or any person acting under his or her delegated authority, to the Minister, the Minister responsible for mineral resources **[or]**, the MEC or the municipal council, as the case may be, within 30 days of receipt of the directive, or within such longer period as the Minister, the Minister responsible for mineral resources **[or]**, MEC or municipal council may determine.  (9) **[Notwithstanding]** Despite subsection (7) **[and]**, pending the finalisation of the appeal, the Minister, Minister responsible for mineral resources **[or]** , the MEC or municipal council, as the case may be, may, on application and on good cause shown, direct that **[any part or provision of the directive not be suspended, but only strictly in exceptional circumstances where there is an imminent threat to**  **human health or the environment.]**—  *(a)* the environmental authorisation, exemption or any other decision made in terms of this Act or any other specific environmental management Act, or any  provision or condition attached thereto may either wholly or in part, not be suspended; or  *(b)* the directive or other administrative enforcement notice that is aimed at addressing significant harm to the environment issued in terms of this Act or any other specific environmental management Act or part thereof, be suspended.’’. | |
| 89 | Clause 32; Section 49A(q) | | | | DEA: Add a provision to indicate that it is an offense to use the funds for any other purpose than rehabilitation | See DEA proposed text | | 49A “(q) uses any part of the financial provision for any other purpose than rehabilitation, remediation or mitigation of adverse environmental impacts.” | |
| 90 | No clause/ Section 48 (Act 57 of 2003) (NEMPAA) | | | | Firstly, it is not clear that the prohibition in subsection (1) includes the prohibition on directional drilling or underground mining beneath the protected areas named in subsections (a)-(c). Given that underground drilling or mining can have big environmental impacts on ecosystems, including surface ecosystems, NEMPAA must clarify that underground drilling or mining beneath protected areas must be prohibited to ensure the ecological integrity of those areas.  Secondly, under NEMPAA, anyone may conduct commercial prospecting, mining, exploration or production activities in protected environments if that person obtains the written consent of the Minister of Environmental Affairs and the Minister responsible for mineral resources. The section renders protected environments vulnerable to significant environmental impacts of extractive activities. It is therefore proposed that subsection (b) is amended so that there is an outright prohibition against all extractive activities in protected environments.  Thirdly, in terms of section 48(1), prospecting, mining, exploration and production is prohibited in protected areas. However, as there is no reference to mountain catchment areas, as contemplated in the Mountain Catchment Areas Act, 1970, in that section, those areas are not given the same protection as other protected areas.  We submit that there is no reason why mountain catchment areas should not enjoy the same level of protection as other protected areas from extractive activities. We therefore submit that subsection (1)(c) should be amended by including explicit reference to mountain catchment areas. | **Recommendation A**  (1) Despite other legislation, no person may conduct commercial prospecting, **[or]** mining, exploration**[,]** or production or **[related]** activities related to prospecting, mining, exploration or production -  (a) in, or beneath, a special nature reserve, national park or nature reserve;  (b) in, or beneath, a protected environment **[without the written permission of the Minister and the Cabinet member responsible for minerals and energy affairs]**; or  (c) in, or beneath, a protected area referred to in section 9(b), (c), **[or]** (d) or (e).  **Recommendation B**    (1) Despite other legislation, no person may conduct commercial prospecting, **[or]** mining, exploration**[,]** or production or **[related]** activities related to prospecting, mining, exploration or production -  (a) in, or beneath, a special nature reserve, national park or nature reserve;  (b) in, or beneath, a protected environment without the written permission of the Minister and the **[Cabinet member]** Minister responsible for mineral**[s]** and **[energy affairs]** petroleum resources; or  (c) in, or beneath, a protected area referred to in section 9(b), (c), **[or]** (d) or (e).  **…**  (5) The Minister and the Minister responsible for mineral and petroleum resources may only give written permission contemplated in subsection (1)(b) if the person requesting permission –  (a) can show that there is an insufficient amount of the mineral or petroleum resource sought to be prospected or explored for, or mined or produced outside of the relevant protected environment for the Republic to meet its strategic national goals;  (b) has followed the prescribed public participation process prescribed in subsections (6) and (7).  (6) The person requesting consent from the Minister and the Minister responsible for mineral resources in terms of subsection (1)(b) must give notice to all interested and affected parties by –  (a) fixing a notice board at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of the relevant protected environment;  (b) giving written notice, in any of the manners provided for in section 47D of the National Environmental Management Act, 1998 (No. 107 of 1998), to—  (i) all owners of land constituting the relevant protected environment;  (ii) all occupiers of land constituting the relevant protected environment; and  (iii) the management authority of the relevant protected environment;  (iv) the MEC, if the protected areas is a provincial protected environment;  (v) the relevant provincial authority responsible for conservation;  (vi) the municipal councillor of the ward in which the protected environment is situated and any organisation of ratepayers that represent the community in the area;  (vii) the municipality which has jurisdiction in the area; and  (viii) any organ of state having jurisdiction in respect of any aspect of the management of the relevant protected environment;  (c) placing an advertisement in—  (i) one local newspaper; or  (ii) any official *Gazette* that is published specifically for the purpose of providing public notice of the request;  (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the protected environment straddles provincial boundaries;  (e) placing an advertisement in a national newspaper, if the protected environment is an area of strategic environment, water or soil significance; and  () using reasonable alternative methods, as agreed to by the Minister, in those instances where a person is desirous of but unable to participate in the process due to—  (i) illiteracy;  (ii) disability; or  (iii) any other disadvantage.  (7) (6) A notice, notice board or advertisement referred to in subsection (5) must—  (a) give details of the proposed prospecting, mining, exploration or production activity which is subjected to public participation, including –  (i) a summary of the proposed prospecting, mining, exploration or production operation and its  likely impact on the relevant protected environment;  (ii) that a copy of the environmental management programme for the proposed prospecting, mining, exploration or production operation is accessible to public;  (iii) where a copy of the environmental management programme for the proposed prospecting, mining, exploration or production. | | Not accepted  The Department of Environmental Affairs has already initiated an informal consultation process in preparation of substantial amendments to NEMPAA – this proposal will be considered as part of the substantial amendment process, as it needs to be considered in context with other comments on the same matter. | |
| 91 | No clause/ section 1 (Act 10 of 2004) (NEMBA) | | | | “Well-being” should be defined to clarify its meaning | No proposed text provided | | **‘well-being’** in respect of faunal biological resources means a state of being comfortable, healthy or happy;  The Department’s preference is not to define the term, but rather to rely on the ordinary dictionary meaning, because the definition may be interpreted to be either too wide and unnecessarily encroaching on the mandate of the Department of Agriculture, Forestry and Fisheries, or too narrow to fulfil its intended purpose. It may also lead to the use of words or concepts that would require further clarification, but which are subjective and difficult to define. | |
| 92 | Clause 38/ section 2 | | | | “Well-being” is too open for interpretation, adaptation and exploitation.  Reference to “faunal biological resources” is problematic, as it entrenches their primary use and value from the on-set, and creates the impression that that if an animal is not economically valuable as a resource, then the well-being of that animal does not matter.  The language in section 2 needs to be changed to reflect a more caring position, i.e.one which indicates a duty of care and which will correctly and accurately point to what is the intention of the amendment. | Reference to “well-being” must be replaced with “welfare” and “protection”  Reference to “faunal biological resources” should be amended to include all “wild fauna” and “wild animals” and “wildlife” | | Proposals not accepted.  Reference to “faunal biological resources” is retained, as the Convention on Biological Diversity (CBD) to which South Africa is a Party, uses the term “biological resources”. It is defined in Article 2 of the text of the CBD as meaning to include *“genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.”*  Reference to “well-being” is retained, as a definition for this concept is proposed to clarify the intended meaning.  The language in clause 38 is retained, as the use of additional words/ phrases could create challenges regarding interpretation of those words/ phrases. Additional words/ phrases could also have the unintended consequence of narrowing or broadening the intended scope of the provision. | |
| 93 | Clause 42  Section 75 of NEMBA | | | | Education and support of affected local communities important to ensure participation in the control and eradication of alien and invasive species. | The CGE recommends an amendment to Clause 42 by way of insertion of a new sub-clause (4) that reads as follows:  (4) The education and support of affected local communities to ensure that they participate in the control and eradication of any alien and invasive species as well as the protection of biotic resource or species | | ***75. Control and eradication of listed invasive species***  *(1) Control and eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.*  *(2) Any action taken to control and eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.*  *(3) The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.*  *(4) The Minister must ensure the coordination and implementation of programmes for the prevention, control or eradication of invasive species.*  *(5) The Minister may establish an entity consisting of public servants to coordinate and implement programmes for the prevention, control or eradication of invasive species.*  *(6) The Minister* *for Environmental Affairs must provide education and awareness to local communities affected by listed invasive species.* | |

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| 94 | | Clause 43/ section 97 | The language in section 97 needs to be changed to reflect a more caring position, i.e.one which indicates a duty of care and which will correctly and accurately point to what is the intention of the amendment. | No text proposed | (aA) ~~the protection of~~ the well-being of ~~a~~ faunal biological resources ~~during the carrying out of a restricted activity involving such faunal biological resource~~;  The revised text is more flexible and less limiting. It further provides for the regulation of well-being in circumstances that do not necessarily relate to the carrying out of restricted activities. |
| 95 | | Clause 44/ section 99 | Proposed amendment in respect of stakeholder consultation in terms of NEMBA, by way of inserting the text highlighted in red | ‘‘(1) Before exercising a power which, in terms of a provision of this  Act, must be exercised in accordance with this section and section 100,  the Minister or MEC for Environmental Affairs must follow an appropriate and meaningful consultative process in the circumstances.’’. | Not supported  Section 100 provides the minimum requirement in terms of consultation and is aligned with PAJA provisions. It does not prevent the Minister from doing more to facilitate participation  “Meaningful” is a subjective term that could lead to different interpretations. |
| 96 | | Clause 45/ section 100 | Proposed amendment in respect of the public participation process by way of deleting the text highlighted in red | “(4) The Minister or MEC for Environmental Affairs must give due consideration to all representations or objections received or presented **[before exercising the power]**.”. | Not supported    The text “before exercising the power” binds the Minister as to at what stage the representations or objections must be considered. |
| 97 | | Clause 45/ section 100 | Proposed amendment by way of inserting a new subsection to section 100 of NEMBA: | “(5) The Minister or MEC for Environmental Affairs must give the relevant community feedback on how the comments made, have been addressed, before exercising the power.”. | Not supported  The proposal relates to a procedural matter rather than a legal matter. The table of comments and responses can be made available on the Departmental website. |
| 98 | | Clause 60  Section 74 of the ICM ACT | No comments received on this clause | No recommendations received on this clause | A rationalisation exercise is underway to streamline legislation, which includes having all the governance provisions in NEMA apply to the SEMAs such as appeals, enforcement, etc. The ICM Act is currently the only SEMA with its own appeal provisions. When the drafting of this amendment began the rationalisation project had not yet commenced. The process is now gaining momentum and DEA and all the provinces are working jointly to rationalise the environmental laws, both nationally and provincially.  It would make sense to delete the appeal provisions – Chapter 9 of the ICM Act and align it with all the other SEMAs.  **NEMA**  **43.     Appeals**    (1)     Any person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister **under this Act or a specific environmental management Act.**    (1A)  Any person may appeal to the Minister against a decision made in terms of this Act or any specific environmental management Act by the Minister responsible for mineral resources or any person acting under his or her delegated authority.  [Subs. (1A) substituted by s. 14 of Act 25/2014 w.e.f. 2 September 2014]    (1B)  ..........  [Subs. (1B) deleted by s. 14 of Act 25/2014 w.e.f. 2 September 2014]    (2)     Any person may appeal to an MEC against a decision taken by any person acting under a power delegated by that MEC under this Act or a specific environmental management Act.    (4)     An appeal under subsection (1), (1A) or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.  [Subs. (4) substituted by s. 14 of Act 25/2014 w.e.f. 2 September 2014]    (5)     The Minister or an MEC, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.    (6)     The Minister or an MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded.    (7)     An appeal under this section suspends an environmental authorisation, exemption, directive, or any other decision made in terms of this Act or any other specific environmental management Act, or any provision or condition attached thereto.  [Subs. (7) substituted by s. 14 of Act 25/2014 w.e.f. 2 September 2014]    (8)     A person who receives a directive in terms of section 28(4) may lodge an appeal against the decision made by the Director-General, the Director-General of the department responsible for mineral resources, or the provincial head of the department to the Minister, the Minister responsible for mineral resources or the MEC, as the case may be, within 30 days of receipt of the directive, or within such longer period as the Minister, the Minister responsible for mineral resources or MEC may determine.  [Subs. (8) added by s. 14 of Act 25/2014 w.e.f. 2 September 2014]    (9)     Notwithstanding subsection (7) and pending the finalisation of the appeal, the Minister, the Minister responsible for mineral resources or MEC, as the case may be, may direct that any part or provision of the directive not be suspended, but only strictly in exceptional circumstances where there is an imminent threat to human health or the environment.  [Subs. (9) added by s. 14 of Act 25/2014 w.e.f. 2 September 2014]    (10)   A person who receives a directive and who wishes to lodge an appeal in terms of subsection (8) may make representations to the Minister, the Minister responsible for mineral resources or MEC, as the case may be, to suspend the operation of the directive or any part of the directive pending the finalisation of the appeal.  [Subs. (10) added by s. 14 of Act 25/2014 w.e.f. 2 September 2014]    (11)   After considering the appeal lodged in terms of subsection (8) and any other relevant information, the Minister, the Minister responsible for mineral resources or MEC, as the case may be-    (a)     may confirm, modify or cancel a directive or any part of a directive; and    (b)     may specify the period within which the person who received the directive must comply with any part of the directive that is confirmed or modified.  [Subs. (11) added by s. 14 of Act 25/2014 w.e.f. 2 September 2014]   [S. 43 substituted by s. 4 of Act 8/2004 and s. 10 of Act 62/2008 with effect from 1 May 2009]  **DEA proposed text:**  **Repeal of Chapter 9 of Act 24 of 2008**  **49.** Chapter 9 of the National Environmental Management: Integrated Coastal Management Act, 2008, is hereby repealed.  **[CHAPTER 9**  **APPEALS**  **74. Appeals**  (1) A person to whom a coastal protection notice or coastal access notice in terms of [section 59](http://discover.sabinet.co.za/webx/access/netlaw/24_2008_national_environmental_management_integrated_coastal_management_act.htm#section59) or a repair and removal notice in terms of [section 60](http://discover.sabinet.co.za/webx/access/netlaw/24_2008_national_environmental_management_integrated_coastal_management_act.htm#section60), has been issued, may lodge a written appeal against that notice with-  (a) the Minister, if the notice was issued by an MEC or by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or  (b) the MEC of the province concerned, if the notice was issued by a municipality in that province or by a person exercising powers delegated by the MEC in terms of this Act.  (2) A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel a coastal authorisation, may lodge a written appeal against that decision with-  [Words preceding para. (a) substituted by s. 43 of Act 36/2014 w.e.f. 1 May 2015]  (a) the Minister, if the decision was taken by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or  (b) the MEC of the province concerned, if the decision was taken by -  (i) a person exercising powers granted or delegated to the MEC that have been delegated by the MEC;  (ii) a provincial organ of state; or  (iii) a municipality in that province.  (3) An appeal made under subsection (1) or (2) must -  (a) be lodged within 30 days of the appellant being given the notice in terms of [section 59](http://discover.sabinet.co.za/webx/access/netlaw/24_2008_national_environmental_management_integrated_coastal_management_act.htm#section59) or [60](http://discover.sabinet.co.za/webx/access/netlaw/24_2008_national_environmental_management_integrated_coastal_management_act.htm#section60), or being notified of the decision, or if the appellant is not given a notice or notified of the decision, within 60 days of the relevant decision being announced;  (b) State clearly the grounds of the appeal;  (c) state briefly the facts on which the appellant relies and include any relevant information that was not placed before the decision-maker and which the appellant believes should be considered on appeal; and  (d) comply with any other requirements that may be prescribed.  (4) An appeal under this section does not suspend an authorisation or an exemption, or any provision or condition of an authorisation, or any notice issued under [Chapter 7](http://discover.sabinet.co.za/webx/access/netlaw/24_2008_national_environmental_management_integrated_coastal_management_act.htm#chapter7), unless the Minister or MEC directs otherwise.  (5) The Minister or MEC may, on good cause shown, extend the period within which an appeal may be lodged in terms of this Chapter.  (6) The Minister or MEC may dismiss an appeal that he or she considers to be trivial, frivolous or manifestly without merit.  (7) Appeals against a decision involving an environmental authorisation must be dealt with in terms of the National Environment Management Act.  **75. Advisory Appeal panel**  (1) The Minister or an MEC may appoint an advisory appeal panel to consider and advise the Minister or the MEC on an appeal.  (2) An advisory appeal panel must consist of an uneven number of members.  (3) The members appointed by the Minister or an MEC must -  (a) have suitable qualifications and experience in relation to the matters that must be considered in the appeal; and  (b) be committed to the objects of this Act.  (4) A person may not be appointed as a member of the appeal panel if he or she-  (a) was involved in any way in the making of the decision appealed against;  (b) or any spouse, partner or close family member of that person has a personal or private interest in the appeal;  (c) is an unrehabilitated insolvent;  (d) has, as a result of improper conduct, been removed from an office of trust; or  (e) has been declared by a court to be mentally ill or disordered.  (5) The Minister, with the consent of the Minister of Finance, or the MEC, with the consent of the member of the provincial executive council responsible for finance, must determine the rate of remuneration and the allowances payable to any member of an advisory appeal panel who is not an employee of an organ of State.  **76. Interim orders by Minister or MEC**  (1) The Minister or an MEC may, at any time after an appeal has been lodged, make any interim order pending the determination of the appeal, that he or she considers equitable or appropriate to achieve the objects of this Act.  (2) Without limiting the generality of subsection (1) an interim order may -  (a) preserve existing rights or an existing State of affairs between the parties to the proceedings;  (b) provide for interim protection of the coastal environment;  (c) suspend or temporarily stay a notice or any part, of it; or  (d) deal with procedural issues.  (3) The Minister or an MEC may make an interim order at his or her own initiative, or in response to an application by the appeal panel or a party to the appeal proceedings.  (4) If a party to the proceedings applies for an interim order, the Minister or an MEC must give the parties to the proceedings a reasonable opportunity to make oral or written submissions, but may make an interim order pending the making of submissions by the parties, if the Minister or an MEC has reason to believe that doing so would be just or desirable in order to protect the coastal environment.  **77. Proceedings of advisory appeal panel**  (1) The chairperson of an advisory appeal panel decides when and where the panel meets.  (2) An advisory appeal panel must give the appellant, the person who made the decision or gave the notice appealed against, and any other interested and affected parties, a reasonable opportunity of making written submissions, and may allow oral representations to be made.  (3) An advisory appeal panel -  (a) must act fairly;  (b) may determine its own procedures;  (c) may convene hearings and make orders concerning preliminary and procedural matters;  (d) may summon and examine witnesses on oath;  (e) must in considering the merits of an appeal, have regard to -  (i) the objects of this Act; and  (ii) any relevant coastal management objectives or standards and relevant policies; and  (iii) guidelines published or endorsed by the Department or the provincial lead agency concerned.  (4) An advisory appeal panel must give a written report to the Minister or an MEC, setting out its findings and recommendations.  (5) The decision of the majority of the members of an advisory appeal panel is the decision of the panel, but the chairperson must ensure that any dissenting opinions by members are recorded in the written report of the panel.  **78. Determination of appeal by Minister or MEC**  (1) The Minister or an MEC must consider the appeal and may -  (a) dismiss the appeal and confirm the decision appealed against;  (b) uphold part or all of the appeal and either vary the decision appealed against or set aside the decision and make a new decision; or  (c) refer the appeal back to the appeal panel with directions to investigate and consider specific facts or issues and to report back to the Minister or MEC.  (2) In determining an appeal the Minister or an MEC must have regard to -  (a) the objects of this Act;  (b) any relevant coastal management objectives; and  (c) the findings and recommendations of the appeal panel, but is not bound by them.**]** |
| 28 | Clause 52 (1) (c) | | Suggestion that domestic waste should also include general waste that is generated at factories and other industrial premises. | **Not supported** | “***‘domestic waste***’ means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential , educational, healthcare, sport or recreation purposes;” |
| 29 | Clause 52  New (1) (d) definition of general waste | | The definition of general waste must be amended. | any waste classified as non-hazardous waste in terms of the regulations made and includes non-hazardous substances, materials objects within business, domestic, inert, building and demolition wastes as outlined below:” | Any waste classified as non-hazardous waste in terms of the regulations made and includes non-hazardous substances, materials objects within business, domestic, inert, building and demolition wastes as outlined below:” |
| 30 | Clause 52. 1(e) | | The definition to include the impact on any biological species | “hazardous waste” means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on the health of any biological species and the environment. | “***hazardous waste’*** means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;” |
| 31 | Clause 52 (1) (f) | | Significant and insignificant not defined in terms of inert waste. They must be defined. | Definition of significant and insignificant required | Dictionary definition must be used. Not necessary for a separate definition in the Bill.  “***’inert waste’*** means waste that –  (a) does not undergo any significant physical, chemical or biological transformation after disposal;  (b) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and  (c) does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant.” |
| 32 | Clause 52 (1) (g) | |  |  | ***“recovery’*** means the controlled extraction or retrieval of **[any substance,]** energy, or material **[or object]** from waste;” |
| 33 | Clause 52 (1) (h) | | Residue Deposits is part of NEMA and MPRDA. Remove from NEMWA? |  | Remove residue deposit from the Waste Bill, except in the definitions and clause 53. |
| 34 | Clause 52 (1) (i) (a) | |  |  | Any substance, material or object, that is unwanted rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be reused, recycled or recovered and includes all wastes as defined. |
| 35 | Clause 52 (1) (j) | | Concerns raised in terms of the regulation of material after it ceases to be waste | None specified | Once an application for its re-use, recycling or recovery has been approved **[or, after such approval, once it is, or has been re-used, recycled or recovered]** and the waste or portion of waste is re-used, recycled or recovery in accordance with the conditions in the approval. |
| 36 | Clause 56  s34I (5) | | Clause 56  The CGE recommends an amendment to sub-clause 34l.(1) by way of an insertion of the following words at 34(l)(5) to read as follows: | (5) Appointments must be made in such a way that the Board is composed of a broad range of appropriate expertise in the field of waste management and an equitable gender representation. | (5) Appointments must be made in such a way that the Board is composed of a broad range of appropriate expertise in the field of waste management and has gender representation. |
| 37 | Clause 57 | | 34U Section 34U(4) provides for revocation of decisions of a delegate. However, there should be an additional section (perhaps s34U(5)) providing for withdrawal of delegations. | None | (4) The Board may withdraw the delegation, confirm, vary or revoke any decision taken in  consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision. |
| 38 | Clause 58, Section 37 | | Section 37 (1)  There will be elevated costs if both a site assessment and site remediation plan is submitted together. | **Not supported** | Section 37 of the National Environmental Management: Waste Act, 2008, is hereby amended –  (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  “(a) **[cause]** require a site assessment to be conducted in respect of the relevant investigation area, and submit a site assessment report and a remediation plan, if applicable, to the Minister or the MEC, as the case may be; or”;  (b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:  “(ii) direct the person who has undertaken or is undertaking the high risk activity or activity that caused or may have caused the contamination of the investigation area, to **[cause]** require a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report and a remediation plan, if applicable, to the Minister or MEC within a period specified in the notice.”; and  (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  “(a) A site assessment report and a remediation plan, if applicable, must comply with any directions that may have been published or given by the Minister or MEC in a notice contemplated in Section 36(1) or (6) and must at least include information on whether the investigation area is contaminated. ". |
| 39 | Clause 59 | | There was a question raised in terms of when the remediation plan would be applicable. Also disagreement with Minister responsible for water affairs. | **Not supported.** | Section 38 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  “On receipt of a site assessment report and a remediation plan, if applicable, contemplated in Section 37, the Minister or MEC, as the case may be, may, after consultation with the Minister **[of Water Affairs and Forestry]** responsible for water affairs and any other organ of state concerned, decide that – “. |
| 40 | Clause 60 | | Concern raised on the change from investigation areas to contaminated areas and perceived exclusion of the public in this process of making the polluter account for their actions | **None Provided** | Section 41 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:  “(1) The Minister must keep a national contaminated land register of **[investigation]** contaminated land areas that includes information on –  (a) the owners and any users of **[investigation]** contaminated land areas;  (b) the location of **[investigation]** contaminated land areas;  (c) the nature and origin of the said contamination;  (d) whether **[an investigation]** a contaminated land area –  (i) **[is contaminated,]** presents a risk to health or the environment, and must be remediated urgently;  (ii) **[is contaminated,]** presents a risk to health or the environment, and must be remediated within a specified period; or  (iii) **[is contaminated,]** does not present an immediate risk, but measures are required to address the monitoring and management of that risk; **[or]** and  **[iv] is not contaminated;**  (e) **the status of any remediation activities on investigation areas; and]**  (f) restrictions of use that have been imposed on the **[investigation]** contaminated land areas.  (2) The Minister may change the status of **[an investigation]** the contaminated land area contemplated in subsection (1) (d)(i) or (ii) as provided for in subsection (1)(d)(iii) or (iv) if a remediation order has been complied with or other circumstances eventuate that justify such a change.  (3) An MEC who has identified **[an investigation]** a contaminated land area must furnish the relevant information to the Minister for recording in the national contaminated land register.” |
| 41 |  | | Sec 36(5)  An owner of land that is significantly contaminated, or a person who undertakes an activity that caused the land to be significantly contaminated, must notify the Minister or MEC of that contamination as soon as that person becomes aware, of that contamination  The provision for notification in terms of section 36(5) is not practical, as it requires notification of a significant contamination to be given prior to a site assessment being conducted, and it is unlikely to result in proper disclosure or acknowledgement of accountability by landowners. | None | (5) An owner of the land that is [**significantly]** likely to be contaminated, or a person who undertakes an activity that caused the land lo be significantly contaminated, must notify [**ihe]** the Minister and MEC of that contamination as soon as that person becomes aware, of that contamination. |
| 42 | Clause 69 | | s74, National Environmental Management: Waste Act): Exemptions  27.1 The introductory wording to s74(1) refers only to persons (not to Organs of State), whereas ss74(1)(b) and (c) refer both to persons and to Organs of State. These provisions should be aligned. | None | S74(1) to be amended to include the organ of State as follows;   1. Any person or organ of state may apply in writing for exemption from the application of a   provision of this Act;  (a) to the Minister [or,];  (b) where the Minister responsible for mineral resources is responsible for  administering the provision of the Act from which the person or organ of state  requires exemption, to the Minister responsible for mineral resources; or  (c) where the MEC is responsible for administering the provision of the Act from  which the person or organ of state requires exemption, to the MEC,  except the exemption from the requirement to obtain a waste management licence  contemplated in Chapter 5.’’. |
| 43 | Clause 75; Section 12 of NEMA, 2008 | | Do not support the principle of converting an environmental management programme (“EMPr”) into an environmental authorisation (“EA”), we will support the proposed amendment, only if the crucial qualifications included are retained. Will only support if retain the qualification *“….do not apply in the instances where an application for an environmental authorisation in relation to activities ancillary to exploration, prospecting, mining, or primary processing was not obtained, was refused or there was failure to obtain an environmental authorisation”.* | *“An environmental management plan or programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) on or before 8 December 2014, … after 8 December 2014… shall be deemed to have been approved in terms of the National Environmental Management Act, 1998,* ***and an environmental authorisation issued.”.*** | “ Where, prior to 8 December 2014—  (a) environmental authorisation was required for activities directly related to─  (i) prospecting or exploration of a mineral or petroleum resource; or  (ii) extraction and primary processing of a mineral or petroleum resource;  and such environmental authorisation has been obtained; and  (b) a right, permit or exemption was required in terms of the Mineral and Petroleum Resources  Development Act, 2002 (Act No. 28 of 2002) for—  (i) prospecting or exploration of a mineral or petroleum resource; or  (ii) extraction and primary processing of a mineral or petroleum resource;  and such right, permit or exemption has been obtained, and activities authorised in such environmental authorisation, right, permit or exemption commenced after 8 December 2014, such environmental authorisation, right, permit or exemption is regarded as fulfilling the requirements of the Act: Provided that where an application for an environmental authorisation was refused or not obtained in terms of the Act for activities directly related to prospecting, exploration or extraction of a mineral or petroleum resource, including primary processing, this subsection does not apply.” |
| 44 | Clause 74  Schedule 3 | | Removal of the Schedule was suggested. |  | 74. Schedule 3 of the National Environmental Management: Waste Act is hereby deleted.  (If accepted consequential amendments will be required to the definition of waste. Some of the newly inserted definitions in clause 1, such as “building and demolition waste” and “domestic waste” may no longer be required – this needs to be checked.) |
| 45 | Clause 78 | | It is suggested that the wording of clause 78(1) be clarified as follows: | “78. (1) Anything done under the repealed provisions in Part 7A of Chapter 4 of the National Environmental Management: Waste Act, 2008 remains valid until **anything done under** the provisions that substitute the provisions in the said Part 7A overrides it.”. | 78. (1) Anything done under the repealed provisions in Part 7A of the National  Environmental Management: Waste Act, 2008, remains valid until **anything done under** the provisions that substitutes the provisions in the said Part 7A overrides it. |