



NEGOTIATING MANDATE

To : Hon Tebogo Modise
Chairperson - Select Committee on Land Reform,
Environment, Mineral Resources and Energy

Name of Bill : National Environmental Management Laws Amendment Bill

Number of Bill : B 14 D – 2017

Vote of the Legislature : The North West Provincial Legislature votes in favour of the
National Environmental Management Laws Amendment Bill
with proposed amendments

HON. K.E.B LENKOPANE

13 October 2020

Date

Chairperson: Portfolio Committee for Economic Development, Tourism, Agriculture & Rural Development

PROPOSED AMENDMENTS

National Environmental Management Act: NEMA

1. Definitions

There is a strong opposition of the proposed definition of the term “mitigate”, “rehabilitate”, “remediate” and “residual environmental impacts” and proposed that this terms require rewording. This words are seen to counter to contemporary definitions and understanding and by redefining these terms it is likely to cause confusion and inconsistent and misapplication of the mitigation hierarchy.

The proposed redefinition are also seen to have an undesirable consequence for the correct location of and character of biodiversity offsets and compensation. This could weaken the state’s fiducial duties to ensure that natural environment, and the biodiversity therein is protected and used sustainably.

The following are the proposed amendment for the following terms:

“Mitigate” means to anticipate, avoid and prevent negative impacts and risks, then to minimise them, rehabilitate or repair impacts to the extent feasible, and compensate or offset remaining significant negative impacts to rectify or remedy harm.

“Offset” means the measurable action to counterbalance impacts remaining after actions to avoid or prevent, and then minimise negative impacts, rehabilitate or repair damage have been exhausted.

The definition of “residual negative impacts” is non-sensical when read with the definition of “financial provision”. The latter refers to the mitigation, remediation and rehabilitation of residual environmental impacts. How can residual impacts be mitigated, remediated or rehabilitated when they are by definition, those impacts remain after such measures has been undertaken?

It is proposed that **“Residual negative impacts”** be defined as those remaining after efforts to avoid/prevent, minimise and rehabilitate have been exhausted.

“Rehabilitate” means to restore to the approved sustainable end use of land, water and air.

The proposed definition of “remediate” does not encompass compensation since these measures neither repair nor reverse the environmental damage caused by the project being authorised.

2. Clause 3: Section 24 C(11) ; allows for simultaneous submission of applications where the environmental authorisation also include activities requiring permits or licence under specific

environmental management acts . It is supported provided that these permits and licences are only approved once the environmental authorisation is granted to prevent any undue or premature development being undertaken.

3. Clause 3. 7: it appears that any mining right issued in terms of the Mining and Petroleum Resources Development Act, that on or before 08 December 2014 will be deemed as having authorisation in terms of NEMA. The proposed amendment as is stands currently has the potential to vindicate those mining companies that a mining without a valid environmental authorisation and cause a substantial number of mining companies environmental management obligations to be substantially below what is required by various provision in NEMA and is so doing risk causing uncertainty and confusion with respect to enforcement of this and other relevant environmental legislation.

It is therefore proposed that there be a provision for transitional arrangement that requires that all mining companies, by a specified date, to amend their EMPRS to meet these new requirements, and to have these amended documents re-approved by the Department.

4. Clause 13 of the Bill: section 31 A-Q, the appointment of environmental management inspectors across all three spheres of government is appreciated. Recourse constraints may however limit the actual number of inspectors in the field.

Proposal is that government can consider the appointment of honorary environmental management inspectors from members of the public including members of civil society to support the capacity of government, but focusing on minor environmental transgressions. Honorary officers would also have to complete specified training and be certified to ensure consistence and appropriate action.

5. Clause 30 of the Bill: delegation of powers should be considered if there is demonstrated capacity to deal with the relevant matters.

National Environmental Management Protected Areas Act of 2003: NEM: PAA

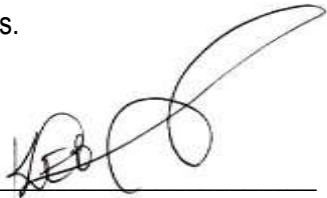
The proposed amendments to section 48 of NEMPAA will remove the requirement for the Minister responsible for Mineral Resources to provide written permission for undertaking any activities. The Minister responsible for mineral resources should not be removed from decision relating to the location

of mining and related activities and should be held to those decisions where the land in question is legally protected.

National Environmental Management Biodiversity Act: NEMBA

Clause 42 of the Bill: the scope of the bill extends its scope to include the wellbeing of any faunal biological resource. Proposal is that it should be clear that the Bill is underpinned by the principle laid down by NEMA and that sustainability requires social responsibility, environmental sustainability and economic efficiency. The fact that the scope include faunal biological resource not conflict the overlapping mandates between Department of Agriculture, Land Reform and Rural Development (DALRRD) and the Department of Forestry and Fisheries (DEFF) and the difference in wild populations and that in captive operations. The five freedoms as applied in welfare assessment of captive animals do not apply to wild animals that are part of well-functioning ecosystem, where natural environmental drivers such as drought, should continue to persist to maintain ecological processes and natural selection. Specific attention should be given to the alignment of the principle of sustainable and responsible use of faunal biological resources and the construct of animal well-being.

Clause 46 &47: Amendments relating to alien invasive species is supported. It is therefore proposed that where it is required that written notification of invasive species on land must be given to the competent authority. The competent authority must develop the necessary information material and mechanism to inform, educate and empower the general public to identify and eradicate such alien species.



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