



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Land Reform
Environment, Mineral Resources and Energy

Hon. T C Modise

NAME OF BILL: National Environmental Management Laws Amendment Bill

NUMBER OF BILL: [B14D-2017]

DATE OF DELIBERATION: 27 July 2021

VOTE OF THE LEGISLATURE: The Gauteng Provincial Legislature is supporting the National Environmental Management Laws Amendment Bill subject to the recommendation and proposed amendments below being considered:

1. Due to the nature and complexity of environmental legislation, more trainings should be provided to stakeholders so as to ensure compliance with the legislation.
2. The Cooperative arrangement between SAPS and Environmental Management Inspectors should be regulated .
3. The public participation as referred to in **section 24G** should be clearly defined.
4. **Clause 2** - Definition of black professionals in should include indigenous knowledge practitioners.
5. Amnesty concerning application fees for licences and permits should be provided for local practitioners or traditional healers that are struggling financially.
6. The definition of waste have resulted in consensus that the definition should be simple and unambiguous. It is currently far too complex and is causing challenges, different interpretations, uncertainty and court cases , if the substance, material, object (etcetera) is unwanted it should be regarded as a waste. Given the proposed amendments to the definition of waste and Schedule 3 – there will be no value in retaining Schedule 3 in the NEMWA and it should be removed in its entirety. Furthermore, the recent outcome of a legal challenge of the definition of waste points to the need for the definition to allow for rational, risk-based beneficiation of waste without the need for any waste management licence or

compliance with the National Environmental Management: Waste Act, as the material in question would not be considered a “waste”.

Additional proposed amendments include that;

7. There is a need for more training and support from the National Department of Environment, Forestry and Fisheries and the Gauteng Department of Agriculture and Rural Development (GDARD) in relation to the planting of *Artemisia* and other medicinal plants. There is also a need for more support towards the bio-traditional and informal traditional medicine industry.
8. The Bill needs to assist in defining the following terminologies: **indigenous communities, equitable, disadvantaged communities, bio-trade, relief, environmental management beneficiation fund** (clarity on who has the right to participate and when this fund accounts to the public on monies collected from bioprospecting permits) and how these monies are disbursed to support conservation.
9. The word “**holder**” is repeatedly used, this term needs to also be clearly defined. It would also help if the roles of the Minister of environmental affairs is clearly defined and aligned with that of the Minister of health.
10. **Clause 27** - the powers granted to police to assess and audit should be reconsidered.
11. **Clause 38** - That permission be denied for mining in conservation areas, however there is need for the government to ensure that job opportunities are available to nearby communities.
12. The concept of animal well-being is proposed to be included in the NEMBA Bill.
13. The proposed definition of well-being under **Section 1 of NEMBA**, i.e. “a state where the living conditions of a faunal biological resource are conducive to its health”, is limited and lacks a comprehensive approach that includes all factors influencing animal wellbeing.
14. That animal well-being be extended to include the utilisation of species not native to South Africa, as animal well-being does not discriminate if the species is indigenous to South Africa or not. Current wildlife exploitative activities in South Africa is extensive, which includes the use of exotics in a range of areas from tourism-related activities, breeding, trade, consumptive use, conservation to research purposes. The use of exotic animals in these areas leaves the animals vulnerable to compromised animal welfare due to a lack of adequate protection under legislation and regulations.

15. **Section 24G of the NEMA** - currently provides flexibility where there is an apparent unlawful commencement of activity. Proposed amendments to remove the discretionary nature of the provisions, include the requirement to undergo public participation processes, and increase the administrative fine to a maximum of R10 million.
16. The flexibility of the current **S24G** must be maintained to facilitate the consideration of the level of risk and/or environmental degradation, for example, when making these decisions as there may even have been no environmental impact from the commencement of the activity. These amendments could result in projects ceasing and negative economic and employment impacts; with nothing achieved for the environment. Competitors, for example, may abuse the proposed amendment to halt projects. Regarding the need for public participation, this could be accepted to be required to the same level as conventionally undertaken projects, but the project must not be halted. How an existing project will be managed if the outcome of public participation is unfavourable requires further discussion between the regulator and the regulated from a policy perspective. The proposed amendment should be reconsidered in this light.

17. **Amendments to Section 28/43**

The proposed amendments seek to

- i) increasing the power of compliance officers, and
- ii) increasing the list of those that have the powers. These intended amendments are not understood as there are sufficient powers already in the legislation. Furthermore, the fact that appeals process will now force activities to stop cannot be supported. Industry can be asked objectively by the Committee for examples of where incorrect compliance notices and/or directives have been issued, mostly because of insufficient process knowledge and/or expertise. Amendments such as these could result in company closures and further dire negative economic and employment consequences. There should be a more rational approach to determining which of the existing compliance provisions should be used to achieve a certain objective of the DEFF in specific compliance matters. This approach would be preferred over blanket approaches that try and apply a one-size-fits-all approach.

- iii) Environmental transgressions are often brought to the attention of the competent authority by members of the public (whistle-blowers) who report them, and often request EMI inspections for suspect activities /suspected transgressions. After the initial inspection by the competent authority or EMI, the outcome of these inspections (pre-compliance and compliance notices / issuing of section 24G directives and/ or fines) are not divulged to the reporting party, and this can support unwanted and unacceptable bribery and corruption.

Compliance must be transparent in order to create awareness around the consequences of committing an offence under the NEMA and send a message to potential transgressors.

18. Section 31M NEMA –

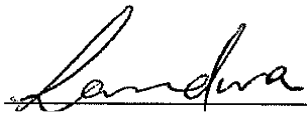
Any interested and affected party (e.g. whistle-blower who requests an EMI to conduct an inspection on suspicion of an environmental transgression) should be permitted to object to a notice and terms of a notice.

What regulations speak to whistle-blowers and stakeholders being provided access to view compliance notices and fines issued, and the requirement of the EMI / competent authority to divulge this information (than through PAIA).

19. Section 31A – 31Q NEMA

In some instances, an EMI will need the cooperation and assistance of SAPS to support and effect arrests - especially in situations that may be dangerous, where EMIs are outnumbered. Lay a charge for an environmental offence at a police station and make arrangements to detain confiscated material. Is there other legislation or policy that guides this cooperation arrangement, and if not, there should be a code-of-conduct or guideline provided to the police that defines and creates awareness around environmental transgressions as well as the EMIs responsibilities and duties to carry out compliance, enforcement, and protection of the environment. This submission is in relation to particular incidents we are experiencing, where SAPS are not cooperating with EMIs, and also that SAPS are not opening cases for Environmental crimes in our area. The only other recourse is private prosecution, which requires legal representation, and is not affordable for the average citizen. (section33)

20. The proposed amendment from “may” to “must” is not supported as it is more prescriptive, where a more cooperative approach is actually needed
21. **Section 34E of NEMA** - states that a seized live specimen may be placed in a facility for its continued care, or in the event that it is deemed perishable, a police official may dispose of it in a suitable manner. There is a concern in terms of both the fate and welfare of a live specimen prior to and after the finalisation of a criminal procedure, as the proposed amendment does not afford adequate protection to a seized live specimen. It also does not definitively provide a framework that ensures that the final decision followed a sequential order than results in the best interest of the animal.



Date: 27 July 2021

HON. LINDI LASINDWA

CHAIRPERSON: ECONOMIC DEVELOPMENT, ENVIRONMENT, AGRICULTURE AND
RURAL DEVELOPMENT PORTFOLIO COMMITTEE

GAUTENG PROVINCIAL LEGISLATURE