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NEGOTIATING MANDATE NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL [B36B-2007]

The Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning ("the Committee") deliberated on the National Environmental Management Amendment Bill [B36B-2007] ("the Bill").

After deliberations, the Committee supports the principles underlying the Bill, taking into account the observations of the Committee as contained in the attached report.

During the deliberations, the Committee made the following observations and recommendations:

- a. The proposed bill does not reflect a clear definition for the terms '**competent authority**' and '**environmental assessment practitioner**'.
- b. Section 24(9)(b): remove the word "**customary**", which gives an impression that other applicable categories or forms of International laws are excluded.
- c. Section 24(Q)(b): replace the word {an} for "**and**" between "...every holder **an** every holder..."
- d. The Committee recommendations on Section 24(5)(a) and (b) and Section 24(G)(1) as indicated in the attached report.

The delegation representing the Province of Mpumalanga in the National Council of Provinces ("NCOP") is conferred with authority and a mandate to negotiate in favour of the Bill, taking into account the observations and recommendations of the Committee made above, as well as the public submissions as indicated in the attached Committee report.

05.09.2008

HON. SW LUBISI
CHAIRPERSON: PORTFOLIO
COMMITTEE ON AGRICULTURE
AND LAND ADMINISTRATION;
ECONOMIC DEVELOPMENT AND PLANNING

DATE

**REPORT OF THE PORTFOLIO COMMITTEE ON
AGRICULTURE AND LAND ADMINISTRATION;
ECONOMIC DEVELOPMENT AND PLANNING ON THE
NATIONAL ENVIRONMENTAL MANAGEMENT
AMENDMENT BILL
[B36B-2007]**

1. Introduction

The National Environmental Management Amendment Bill [B36B-2007] ("the Bill") was referred to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) for consideration and with a responsibility to report back its recommendations to the House.

2. Objectives of the bill

The Bill seeks to amend the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("the Act") to refine the integrated environmental management system in order to improve the efficiency and effectiveness of the system. The Bill proposes new enabling provisions that make it possible for environmental management instruments, other than environmental management impact assessment to be introduced. The Bill proposes enabling provisions in order to allow a process conducted in terms of other regulatory system to be used as a basis for the granting of environmental authorisations in terms of the Act. The Bill also proposes that one integrated environmental authorisation may be issued where different Acts regulate the same activity or where multiple authorisations require a similar process.

3. Method of work

The Speaker referred the Bill to the Committee for consideration and report back to the House. The Committee was briefed by Hon VV Windvoël on behalf of Hon A Watson, the permanent delegate representing the Province of Mpumalanga in the National Council of Provinces ("NCOP") on 22 August 2008. The Committee then decided to hold public hearings in the three districts of the Province on 27 August 2008.

Officials from the Provincial Department of Agriculture and Land Administration ("DALA") and the National Department of Environmental Affairs and Tourism ("DEAT") also attended the briefing.

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Consequently, the Bill was sent to the following stakeholders:

- Manganese Metal Company (Nelspruit);
- Barberton Mines;
- Environmental Education Centres in Barberton and Pilgrim's Rest;
- Constituency Offices; and
- Municipality Offices.

The Honourable Members and officials from the Department of Agriculture and Land Administration were deployed to the public hearings that were arranged as follows:

DATE	DISTRICT	VENUE	ATTENDANCE
27/08/2008	Ehlanzeni Region	Emjindini Community Hall; Umjindi Municipality	58
27/08/2008	Gert Sibande region	Chrissiesmeer (KwaChibikulu) Public Hall; Msukaligwa Municipality	103
27/08/2008	Nkangala Region	Simon Gondwe Arts and Culture Centre, Delmas Municipality	155

The Committee received and considered written inputs/comments from the following stakeholders, some of whom attended the public hearings (**see attachments**):

- Provincial Department of Agriculture and Land Administration;
- NinhamShand Environmental and Engineering Consultants;
- Umjindi Environmental Committee;
- Wildlife and Environment Society of South Africa (WESSA);
- Federation for a Sustainable Environment (FSE);
- Environment Escarpment Protection Group (EEPOG);
- Mpumalanga Lakes District Protection Group (MLDPG);
- Barberton Mines;
- Schoemanskloof Conservancy;
- Alkmaar Land owner's Association; and
- Crocodile River Major Irrigation Board.

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4. General Comments by the public

The following were the general comments made by those present at each public hearing:

- Umjindi – Those who attended were largely in favour of the Bill but raised concerns about the way in which the public hearing was arranged, not providing much time for public education and consultation.
- KwaChibkulu (Chrissiesmeer) – This hearing was attended mostly by representatives from the nearby Ermelo Crisis Committee and the Wonderfontein Community, who raised issues related to mining activities. Concerns were also raised at this hearing about the lack of public education on the Bill. The majority of those present at this hearing were not in support of the Bill.
- Delmas – The people present at this hearing were very favourable towards the way in which the public hearing was conducted and expressed their support of the Bill. They understood the Bill as explained by the Members of the Committee deployed there.

5. Summary of submissions on the Bill

From the inputs and comments made during the public hearings; and the written submissions, the Committee noted that:

- Provincial Department of Agriculture

They are content with the intention of the Bill but they further raised points of clarification with regards to:

- a) Cross referencing of Definitions that the NEMA, 1998 is inserting some definitions applicable to the Mineral and Petroleum Resource Development Act (MPRDA) 2002. To this they propose that NEMA should have a broader definition for

b) readability rather than depend on MPRDA which regulates only mining.

c) Financial Security Pollutions in terms of NEMA, 1998

The department feels that section 24(5)(d) of the Bill falls short of addressing pollution and degradation that had occurred as a result of unforeseen circumstances. They feel that this undermines the principle outlined in section 2 of NEMA, 1998.

They propose that the Bill should provide for a competent authority to require the applicant to set up a Remediation Account for post - operation remediation of contaminated land.

d) Section 24G (1)

The Department is of the view that there is no provision made in the Bill for the Minister of Minerals and Energy to implement Section 24(G).

The Committee notes the concern of DALA that the entire issue of environmental legal enforcement could be problematic during the transitional period since only designated Environmental Management Inspectors (EMI's) may enforce NEMA and specific Environmental Management Acts. Hence there will be no EMI's to monitor and enforce legal compliance to environmental mandates for mining during the transition period unless provided for in the amendment bill.

The Department therefore suggests that the DME will have to immediately appoint and/or train staff as EMI's to ensure that the provisions under the Bill are implemented.

e) Section 24(5)(a)

During the transition period, the Minister of Minerals and Energy will be responsible for the issuing of environmental authorisations yet he may not in terms of S24(5) make

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Regulations in this regard or S24(5)(a) make procedures for applying for, and monitoring compliance with regard to these authorisations. It is suggested that the Minister of Minerals and Energy should receive these powers in concurrence with the Minister of Environmental Affairs and Tourism to ensure environmental management powers are not eroded during this transitional period.

f) Editorials

The DALA proposes the following technical corrections:

-Section 24(9) by removing the word "customary", which gives an impression that other applicable categories or forms of international laws are excluded.

- Section 24(Q)(b) replace the word [an] for **and** between "...every holder **an** every holder..." (**Details as attached**)

- Legal Resources Centre (LRC)

The LRC supports the Bill but feels it needs to be corrected, as in its current form it is taking away certain protections which were provisions of the NEMA 1998. Sections 23 and 24 have been eroded. This does not support the constitutional duty of the state to take reasonable measures to prevent pollution and promote sustainable development. Therefore, the most vulnerable sectors of society are likely to be adversely affected.

The other concern is that section 24(4)(b) of the Bill gives the Minister some discretionary powers than the mandatory requirements which was provided for by the current Act. (**Details as attached**)

- Escarpment Empowerment Protection Group (EEPOG)

They feel that members of the public were not given enough time to understand the Bill prior to the public hearings. They

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argue that the notice for the public hearings was too short to begin with and thus appeal for time extension for a much fairer consultation and publicised series of interaction on the Bill. **(Details as attached)**

- Wildlife and Environment Society of South Africa (WESSA); Umjindi Environmental Committee; WESSA Lowveld, Mr Antony A Ferrar

They support the intention of the Bill but raise concerns particularly on section 24 of the Bill, which they feel needs to be re-looked at. **(Details as attached)**

- Mr CN Rippon, Geologist, Sheba Mine

He feels that nothing has been done correctly in inviting stakeholders to the public hearing at Barberton; he actually thought the meeting was called by DALA. He raises some shortcomings which occurred and thus appeals for another round of public hearings where they could participate, having gone through the Bill. **(Details as attached)**

The following editorial was also noted at the Barberton hearing: the proposed bill does not reflect a clear definition for the terms '**competent authority**' and '**environmental assessment practitioner**'. **(Details as attached)**

- NINHAM (NS) SHAND Consulting services; and Mr Koos Pretorius; (Attended the Barberton and Chrissiesmeer hearings respectively)

They feel there were shortcomings with the public hearings on the Bill in that planning was not properly done. Thus they appeal for another time at a more populated central venue to interact on the Bill. There is nothing suggesting that they are opposed to the Bill **(Details as attached)**.

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- Barberton Mines (PTY) Limited and others

They do not have major concerns on the Bill as long as it does not invalidate the current EMPR, approved by the Department of Mineral and Energy. They raise a process matter in so far as the preparations for the public hearings were done; that it did not give enough time or was not preceded by workshops with the affected parties so that they could have a meaningful participation. Nothing suggests that they are opposed to the Bill **(Details as attached)**.

5. Committee Observations

Having considered the inputs and comments made on the Bill, the Committee is of the view that the public supports the principles of the National Environmental Management Amendment Bill [B36B-2007] as proposed.

The Committee is of the view that provinces should be given enough time to finalise Bills. In future other ways of engaging with the public must be explored, for example, interactive workshops.

6. Recommendations

The Committee examined the Bill [B36B-2007] and supports the principles underlying it.

The Committee is of the view that comments expressed by the stakeholders are important and need to be considered especially to strengthen the Bill further.

During the deliberations, the Committee made the following observations and recommendations:

- a. The proposed bill does not reflect a clear definition for the terms **'competent authority'** and **'environmental assessment practitioner'**

- b. Section 24(9)(b): remove the word "**customary**", which gives an impression that other applicable categories or forms of international laws are excluded.
- c. Section 24(Q)(b): replace the word [an] for "**and**" between "every holder **an** every holder"
- d. Section 24(5)(a) and (b): the Minister of Minerals and Energy should receive powers in concurrence with the Minister of Environmental Affairs and Tourism to ensure that environmental management powers are not eroded during the transitional period.
- e. Section 24(G)(1): the Department of Minerals and Energy will have to immediately appoint and/or train staff as EMI's to ensure that the provisions under the Bill are implemented.



Hon. SW Lubisi
Chairperson: Portfolio Committee on
Agriculture & Land Administration;
Economic Development & Planning

05.09.2008
Date

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To: The Chairperson: Portfolio Committee on Agriculture & Land Administration; Economic Development and Planning

From: MC Theledi, G Cowden, G. Batchelor

DATE: 4 September 2008

Subject: Revised Department's Inputs for NCOP Negotiating Mandate on National Environmental Management Amendment Bill [B36B – 2007]

The Department is content with the purpose and intention of the Bill. The essence of the Bill is to consolidate environmental regulation within the mining sector, especially environmental authorisation. This function is currently exclusively administered by the Department of Minerals & Energy. The Bill seeks to allow for the authorisation of Environmental Impact Assessment (EIA) applications in the mining sector using the National Environmental Management Act, 1998 (as amended). It also seeks to designate the Minister for Environmental Affairs & Tourism as the ultimate competent authority to review and decide on appeals against EIA decisions issued by the Minister for Minerals & Energy (on mining applications including prospecting, mining, exploration or production). Within the 18 month transitional period, the Bill provides for alignment of environmental regulatory requirements in the Mineral and Petroleum Resources Development Act, 2002 with the National Environmental Management Act, 1998. This allows for the direct application of NEMA, 1998 on the regulation of mining activities. Consequently, it allows for the Provincial Administration and Executive to have influence on environmental protection against degradation resulting from mining activities.

The points outlined below are some of the few areas which the Department would like to be clarified prior to the enactment of the Bill.

Cross Referencing of Definitions

Section 1 of the Bill deals with definitions that are to be inserted into NEMA, 1998. It principally inserts the key terms applicable to environmental regulation in the Minerals & Petroleum Resources Development Act (MPRDA), 2002, into the National Environmental Management Act, 1998. The Bill basically cross references terms defined in the MPRDA to be inserted into NEMA 1998 (as amended). This has been designed to remove the need to amend NEMA each time the definition of a term is changed/ amended in the MPRDA.

The NEMA is the framework legislation on environmental regulation. Unless, the definitions referring to the MPRDA will only pertain to mining applications and subsequent operation, it is proposed that NEMA should strive, as far as is possible, for a broader definition of the terms outlined, rather than to depend on the MPRDA definitions. It is proposed that the Bill should insert the complete text of the definition of each term into the Definition section of NEMA 1998. This will also allow for readability of the terms as used in the NEMA.

Financial Security Provisions in terms of NEMA, 1998

Section 2 of the Bill inserts section 24(5)(d) which empowers the Minister and/ or MEC to make regulations (after consultation with the Minister of Finance) that provide for financial security (and other forms of security) to cover environmental risks as a result of the operator's non-compliance to conditions set out in an environmental authorisation. This is a positive step to ensure the remediation of environmental degradation even outside of the mining sector.

While the Department welcomes this provision, it falls short of addressing pollution and degradation that had occurred as a result of unforeseen circumstances. In that manner, the Bill undermines the principles outlined in section 2 of the NEMA 1998. The Act should provide for the competent authority to require the applicant to set up a Remediation Account for post-operation remediation of contaminated land, whether due to non-compliance to authorisation conditions or not. Fault should not be the test for responsibility to remediate – the "polluter pays principle" must apply. This will also give effect to the provisions of section 24(4)(b), especially 24(4)(b)(iv) – (v), which imply the application of the "precautionary principle".

S24G (1)

The compliance monitoring and enforcement of environmental mine related activities is currently controlled by the Minister of the Department of Minerals and Energy (DME). No provision is made for the Minister of Minerals and Energy to implement S24G. The entire issue of environmental legal enforcement could be problematic during the transitional period since only designated Environmental Management Inspectors (EMI's) may enforce NEMA and specific Environmental Management Acts. There will be no EMI's to monitor and enforce legal compliance to environmental mandates for mining during the transition period unless provided for in the amendment bill. The designation of EMI's can only be done by the Minister of DEAT or a Provincial environmental MEC.

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The Minister of DME does not have the authority to designate EMI's. Currently there are no EMI's designated under the DME to enforce NEMA. DME will have to immediately appoint and/or train staff as EMI's to ensure that the provisions under the Bill are implemented.

S24(5)(a)

During the transition period, the Minister of Minerals and Energy will be responsible for the issuing of environmental authorizations yet he may not in terms of S24(5) make Regulations in this regard or S24(5)(a) make procedures for applying for, and monitoring compliance with regard to these authorizations. It is suggested that he could receive these powers in concurrence with the Minister of Environmental Affairs and Tourism to ensure environmental management powers are not eroded during this transition period.

Dr G.R. Batchelor
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For Head of Department