

REPUBLIC OF SOUTH AFRICA

**NATIONAL ENVIRONMENTAL
MANAGEMENT LAWS
THIRD AMENDMENT BILL**

*(As presented by the Portfolio Committee on Water and Environmental Affairs
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 26B—2013]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the—

- National Environmental Management Act, 1998, so as to amend certain definitions and to define certain words and expressions; to provide for the review of environmental management instruments; to provide for minimum information requirements to be included under environmental management instruments; to provide for the Minister responsible for mineral resources to be the competent authority for environmental matters in so far as they relate to prospecting, exploration, mining or production of mineral and petroleum resources; to empower the Minister to take an environmental decision in so far as it relates to prospecting, exploration, mining or production instead of the Minister responsible for mineral resources under certain circumstances; to clarify the provisions relating to integrated environmental authorisations; to strengthen the financial provisions in the Act; to provide for consultation with State Departments; to provide for the management of residue stockpiles and residue deposits; to empower the Director-General of the Department responsible for mineral resources to issue section 28 directives in so far as they relate to prospecting, exploration, mining or production; to empower the Minister responsible for mineral resources to designate environmental mineral resource inspectors within the Department responsible for mineral resources for compliance monitoring and enforcement of provisions in so far as they relate to prospecting, exploration, mining or production; to provide the Minister with the power to direct environmental management inspectors to perform compliance monitoring and enforcement duties instead of mineral resource inspectors under certain circumstances; to empower the provincial head of department to delegate a function entrusted to him or her under this Act; to provide for the suspension of a decision on receipt of an appeal; to provide for appeals against directives; to further provide for the power of the Minister to make regulations; to provide for consultation in the event that an Act of Parliament or regulations are amended that impact on the Agreement; to provide for the criteria for condonation applications in the case of appeals that relates to prospecting, exploration, mining or production;
- National Environmental Management: Waste Act, 2008 so as to insert certain definitions; to empower the Minister to prohibit or restrict waste management activities in specified geographical areas; to empower the Minister responsible for mineral resources to be the licensing authority to issue waste management licences in so far as it relates to prospecting, exploration, mining or production activities of mineral and petroleum resources; to empower the Minister responsible for mineral resources to delegate a function entrusted to him or her under this Act;

- **National Environmental Management Amendment Act, 2008, so as to provide for transitional arrangements; to amend the commencement provisions; and to delete certain obsolete provisions; and to provide for matters connected therewith.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004, section 1 of Act 62 of 2008, section 4 of Act 14 of 2009 and section 1 of Act 30 of 2013 5

1. Section 1 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for the definition of “applicant” of the following definition:
- “**applicant**” means a person who has submitted[— 10
- (a) **or who intends to submit an application for an environmental authorisation; or**
- (b) **an application for an environmental authorisation simultaneously with his or her application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002]** an application for an environmental authorisation to the competent authority and has paid the prescribed fee”; 15
- (b) by the deletion of the definition “community”;
- (c) by the substitution for the definition of “environmental management inspector” of the following definition: 20
- “**environmental management inspector**” means a person designated as an environmental management inspector in terms of [section] sections 31B, 31BA or 31C;”;
- (d) by the insertion after the definition of “environmental management programme” of the following definition: 25
- “**environmental mineral resource inspector**” means a person designated as an environmental mineral resource inspector in terms of section 31BB;”;
- (e) by the deletion of the definition of “exploration area”;
- (f) by the insertion after the definition of “exploration area” of the following 30 definition:
- “**financial provision**” means the insurance, bank guarantee, trust fund or cash that applicants for an environmental authorisation must provide in terms of this Act guaranteeing the availability of sufficient funds to undertake the— 35
- (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; 40
- (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;” 45
- (g) by the deletion of the definition of “mining area”;
- (h) by the substitution for the definition of “Minister” of the following definition: 50
- “**Minister**”[, in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area,] means the Minister responsible for environmental matters;

- (i) by the deletion of the definition of the “Minister responsible for mineral resources”; and
- (j) by the deletion of the definitions of “production area”, “prospecting area” and “Regional Mining Development and Environmental Committee”.

Amendment of section 24 of Act 107 of 1998, as substituted by section 2 of Act 8 of 2004, section 2 of Act 62 of 2008 and section 5 of Act 30 of 2013 5

2. Section 24 of the National Environmental Management Act, 1998 is hereby amended—

- (a) by the substitution in subsection 5(b) for subparagraph (vi) of the following subparagraph: 10
 - “(vi) the management and control of residue stockpiles and deposits **[on a prospecting, mining, exploration or production area]**”; and
- (b) by the substitution in subsection (5) for paragraph (bA) of the following paragraph: 15
 - “(bA) laying down the procedure to be followed for the preparation, evaluation, **[and]** adoption and review of prescribed environmental management instruments, including—
 - (i) environmental management frameworks;
 - (ii) strategic environmental assessments; 20
 - (iii) environmental impact assessments;
 - (iv) environmental management programmes;
 - (v) environmental risk assessments;
 - (vi) environmental feasibility assessments;
 - (vii) norms or standards; 25
 - (viii) spatial development tools; **[or]**
 - (viiiA) minimum information requirements; or
 - (ix) any other relevant environmental management instrument that may be developed in time;”.

Amendment of section 24C of Act 107 of 1998, as inserted by section 3 of Act 8 of 2004, substituted by section 3 of Act 62 of 2008 and amended by section 6 of Act 30 of 2013 30

3. Section 24C of the National Environmental Management Act, 1998 is hereby amended—

- (a) by the substitution for subsection (2A) of the following subsection: 35
 - “(2A) The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection (1) where the listed or specified activity **[constitutes prospecting, mining, exploration, production or a related activity occurring within a prospecting, mining, exploration or production area]** is directly related to— 40
 - (a) prospecting or exploration of a mineral or petroleum resource; or
 - (b) extraction and primary processing of a mineral or petroleum resource.”;
- (b) by the insertion after subsection (2B) of the following subsection: 45
 - “(2C) (a) Whenever a decision on an application for an environmental authorisation is not made within the time-frames applicable to that process, the applicant may apply to the Minister to facilitate the process of taking the decision by the Minister responsible for mineral resources, or where appropriate, to take the decision. 50
 - (b) The applicant must notify the Minister responsible for mineral resources in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.
 - (c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the Minister responsible for mineral resources in order to enable the Minister to take a decision. 55
 - (d) Before taking a decision contemplated in paragraph (a), the Minister must request the Minister responsible for mineral resources to provide him or her with a report within a specified time period on the

status and causes of delay in the application and whether the Minister will be able to take the decision within a specified time period.

(e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactory response or cooperation is received from the Minister responsible for mineral resources within the specified time period, the Minister must, where appropriate, take the decision or such other steps as the Minister may deem necessary, within a reasonable time period.

(f) The Minister must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament setting out the details regarding the exercise of the power referred to in subsection (e) during the previous financial year.”.

Amendment of section 24L of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008

4. Section 24L of the National Environmental Management Act, 1998, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A competent authority empowered under Chapter 5 to issue an environmental authorisation and any other authority empowered under a specific environmental management Act may agree to issue an integrated environmental authorisation.”; and

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“An intergrated environmental authorisation contemplated in subsection (1) [(b)] may be issued only if—”.

Amendment of section 24N of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008

5. Section 24N of the National Environmental Management Act, 1998, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister, the Minister responsible for mineral resources[,] or an MEC [**or identified competent authority**] may require the submission of an environmental management programme before considering an application for an environmental authorisation.”;

(b) by the substitution for subsection (1A) of the following subsection:

“(1A) Where an environmental impact assessment has been identified as the environmental instrument to be utilised [**in informing**] as the basis for a decision on an application for environmental authorisation, [**or where such application relates to prospecting, mining, exploration or production and related activities on a prospecting, mining, exploration or production area,**] the Minister, the Minister responsible for mineral resources[,] or an MEC [**or identified competent authority**] must require the submission of an environmental management programme before [**considering**] deciding an application for an environmental authorisation.”;

(c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) contain measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of polluted or extraneous water or ecological degradation [**as a result of prospecting or mining operations or related mining activities**] which may occur inside and outside the boundaries of the [**prospecting area or mining area**] operations in question;”;

(d) by the deletion of subsection (4);

(e) by the substitution for subsections (5) and (6) of the following subsections:

“(5) The Minister, the Minister responsible for mineral resources[,] or an MEC [**or identified competent authority**] may call for additional information and may direct that the environmental management

programme in question must be adjusted in such a way as the Minister, the Minister responsible for mineral resources or the MEC may require.

- (6) The Minister, the Minister responsible for mineral resources[,] or an MEC [**or identified competent authority**] may at any time after he or she has approved an application for an environmental authorisation approve an amended environmental management programme.”; 5
- (f) by the substitution in subsection (7)(c) for subparagraph (ii) of the following subparagraph: 10
- “(ii) as an integral part of the [**reconnaissance,**] prospecting or mining, exploration or production operation, unless the Minister responsible for mineral resources directs otherwise.”;
- (g) by the substitution in subsection (7) for paragraph (f) of the following paragraph: 15
- “(f) is responsible for any environmental damage, pollution, pumping and treatment of polluted or extraneous water or ecological degradation as a result of his or her [**prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting or mining area**] operations to which such right, [**or**] permit or environmental authorisation relates.”; and 20
- (h) by the addition of the following subsection: 25
- “(8) Notwithstanding the Companies Act, 2008 (Act No. 71 of 2008), or the Close Corporations Act, 1984 (Act No. 69 of 1984), the directors of a company or members of a close corporation are jointly and severally liable for any negative impact on the environment, whether advertently or inadvertently caused by the company or close corporation which they represent, including damage, degradation or pollution.”.

Amendment of section 24O of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008 and amended by section 11 and 26 of Act 30 of 2013

6. Section 24O of the National Environmental Management Act, 1998 is hereby amended— 30

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 35
- “If the Minister, the Minister responsible for mineral resources[,] or an MEC [**or identified competent authority**] considers an application for an environmental authorisation, the Minister, Minister responsible for mineral resources[,] or MEC [**or competent authority**] must—”;
- (b) by the insertion in subsection (1)(b) of the following subparagraph after subparagraph (iii): 40
- “(iiiA) the ability of the applicant to comply with the prescribed financial provision;”;
- (c) by the substitution for subsection (2) of the following subsection: 45
- “(2) The Minister, the Minister responsible for mineral resources or an MEC [**or identified competent authority**] must consult with every State department that administers a law relating to a matter affecting the environment when [**he or she**] such Minister, Minister responsible for mineral resources or MEC considers an application for an environmental authorisation.”;
- (d) by the insertion after subsection (2) of the following subsection: 50
- “(2A) Where the matter relates to prospecting, exploration, mining or production, the request for comment contemplated in subsection (2), must be submitted by registered mail to the Director-General or provincial head of department of the State department contemplated in subsection (2).”;
- (e) by the substitution for subsection (3) of the following subsection: 55
- “(3) A State department consulted in terms of subsection (2) must submit comment within [**40**] 30 days from the date on which the Minister, Minister responsible for mineral resources[,] or MEC [**or**] [**identified competent authority**] or environmental assessment practitioner requests such State department in writing to submit comment.”; 60
- and

- (f) by the deletion of subsections (4) and (5).

Amendment of section 24P of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008

7. Section 24P of the National Environmental Management Act, 1998, is hereby amended— 5

- (a) by the substitution for subsection (1) of the following subsection: 10
- “(1) An applicant for an environmental authorisation relating to prospecting, [**mining,**] exploration, mining or production [**or related activities on a prospecting, mining, exploration or production area**] must [**make provision for the prescribed financial provision**], before the Minister responsible for mineral resources issues the environmental authorisation, comply with the prescribed financial provision for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts.”;
- (b) by the substitution for subsection (3) of the following subsection: 15
- “(3) Every holder must annually—
- (a) assess his or her environmental liability in a prescribed manner and must increase his or her financial provision to the satisfaction of the Minister responsible for mineral resources; and
- (b) submit an audit report to the Minister responsible for mineral resources on the adequacy of the financial provision from an independent auditor.”; and
- (c) by the substitution for subsection (5) of the following subsection: 20
- “(5) The requirement to maintain and retain the financial provision contemplated in this section remains in force [**until the Minister of Minerals and Energy issues a certificate to such holder, but**] 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 and the Minister responsible for mineral resources may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent, [**or**] residual or any other environmental impacts, including the pumping of polluted or extraneous water, for a prescribed period.”. 25 30

Amendment of section 24R of Act 107 of 1998, as inserted by section 8 of Act 62 of 2008 35

8. Section 24R of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 40
- “(1) Every 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 [**until the Minister of mineral resources has issued a closure certificate**] 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.”; 45
- (b) by the substitution for subsection (2) of the following subsection: 50
- “(2) When the Minister responsible for mineral resources issues a closure certificate, he or she must return such portion of the financial provision contemplated in section 24P as the Minister may deem appropriate to the holder concerned, but may retain a portion of such financial provision referred to in subsection (1) for any latent, [**and or**] residual or any other environmental impact [**that may become known in the future**], including the pumping of polluted or extraneous water, for a prescribed period after issuing a closure certificate.”. 55

Insertion of section 24S to Act 107 of 1998

9. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 24R:

“Management of residue stockpiles and residue deposits

24S. Residue stockpiles and residue deposits must be deposited and managed in accordance with the provisions of the National Environmental Management: Waste Act, 2008 (Act No 59 of 2008), on any site demarcated for that purpose in the environmental management plan or environmental management programme in question.”

Amendment of section 28 of Act 107 of 1998, as amended by section 12 of Act 14 of 2009 and section 12 of Act 30 of 2013

10. Section 28 of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

- “The Director-General, the Director-General of the department responsible for mineral resources or a provincial head of department 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 to—”;
- (b) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
- “The Director-General, the Director-General of the department responsible for mineral resources or a provincial head of department, when considering any measure or time period envisaged in subsection (4), must have regard to the following;”;
- (c) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
- “Subject to subsection (9), the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department may recover costs for reasonable remedial measures to be undertaken under subsection (7), before such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—”;
- (d) by the substitution for subsections (9) and (12) of the following subsections, respectively:
- “(9) The Director-General, the Director-General of the department responsible for mineral resources or provincial head of department 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).
- (12) Any person may, after giving the Director-General, the Director-General of the department responsible for mineral resources or provincial head of department 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 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 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(2) and (3) shall apply to such proceedings, with the necessary changes.”.

Insertion of section 31BB in Act 107 of 1998

11. The following section is hereby inserted in the National Environmental Management Act, 1998 after section 31BA:

“Designation of environmental mineral resource inspectors by Minister responsible for mineral resources 5

- 31BB.** (1) The Minister responsible for mineral resources may—
- (a) designate as an environmental mineral resource inspector, any staff member of the Department of Mineral Resources; and
 - (b) at any time withdraw a designation made in terms of paragraph (a).”.

Amendment of section 31D of Act 107 of 1998, as substituted by section 5 of Act 44 of 2008 and amended by section 26 of Act 30 of 2013 10

12. Section 31D of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the insertion after subsection 2 of the following subsection: 15
 - “(2A) The Minister responsible for mineral resources may designate a person as an environmental mineral resource inspector for the compliance monitoring and enforcement of the provisions of this Act or a specific environmental management Act in respect of which powers are conferred on him or her.”;
- (b) by the substitution for subsection (3) of the following subsection: 20
 - “(3) A person designated as an environmental management inspector or environmental mineral resource inspector may exercise any of the powers given to environmental management inspectors in terms of this Act that are necessary for the inspector’s mandate in terms of [subsection] subsections (1) or 2A that may be specified by the Minister, the Minister responsible for water affairs, the Minister responsible for mineral resources or MEC by notice in writing to the environmental management inspector or environmental mineral resource inspector.”;
 - and
- (c) by the addition of the following subsections: 30
 - “(4) Despite the provisions in subsections (2A) and (3), the Minister may, with the concurrence of the Minister responsible for mineral resources, if the environmental mineral resource inspectors are unable or not adequately able to fulfill the compliance monitoring and enforcement functions, 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. 35
 - (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. 40
 - (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. 45
 - (7) On receipt of such information referred to in subsection (6), the Minister must consult with the Minister responsible for mineral resources on his or her response to the complainant. 50
 - (8) Subsequent to subsection (7), the Minister may, in concurrence with the Minister responsible for mineral resources, within a reasonable period of time and where appropriate— 55
 - (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.”

Amendment of section 42A of Act 107 of 1998, as inserted by section 10 of Act 46 of 2003

13. Section 42A is hereby amended by the addition of the following subsection:

“(5) A provincial head of department may delegate a power or duty vested in him or her or delegated to him or her by the MEC in terms of this Act or a specific environmental management Act to the holder of an office in the department.

(6) The delegation in subsection (5)—

(a) must be in writing;

(b) may be made subject to conditions; and

(c) may be withdrawn by the provincial head of department.”

Amendment of section 43 of Act 107 of 1998, as substituted by section 4 of Act 8 of 2004 and section 10 of Act 62 of 2008

14. Section 43 of the National Environmental Management Act, 1998, is hereby amended—

(a) by the substitution for subsections (1A), (4) and (7) of the following subsections, respectively:

“(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.

(4) An appeal under subsection (1), (1A)[,(1B)] or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

(7) An appeal under this section [does not] suspends an environmental authorisation[or], 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, [, or any directive, unless the Minister or an MEC directs otherwise].”;

(b) by the deletion of subsection (1B); and

(c) by the addition of the following subsections:

“(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.

(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.

(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.

(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.”.

Amendment of section 44 of the Act 107 of 1998, as amended by section 2 of Act 52 of 2002, as amended by section 21 of Act 30 of 2013

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15. Section 44 of the National Environmental Management Act, 1998, is hereby amended—

- (a) by deletion of the word “and” at the end of paragraph “(aD)”: and the insertion after that paragraph of the following paragraphs:
- “(aE) on the assessment and determination of environmental liability;
 - (aF) auditing and reporting of environmental liability;
 - (aG) the amendment of the financial provision; and
 - (aH) any other matter necessary to facilitate the implementation of the financial provision.”; and
- (b) by the insertion after subsection (1B) of the following subsection:
- “(1C) Regulations made in terms of this Act or any other Act of Parliament that may have the effect of amending the provisions of the Agreement referred to in section 50A must be made by the Minister in concurrence with the Minister responsible for mineral resources and the Minister responsible for water affairs.”.

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Insertion of section 47CA and 47CB in Act 107 of 1998

16. The following sections are hereby inserted in the National Environmental Management Act, 1998 after section 47C:

“Extension of time periods applicable to appeals relating to prospecting, exploration, mining or production

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47CA. The Minister responsible for mineral resources in respect of a decision that relates to prospecting, exploration, mining or production in terms of this Act or any specific environmental management Act may only in exceptional circumstances extend or condone a failure by a person to comply with a time period in terms of this Act or a specific environmental management Act, except a time period which binds the Minister responsible for mineral resources.

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Condonation of time periods applicable to appeals relating to prospecting, exploration, mining or production

47CB. (1) The Minister may only in exceptional circumstances extend or condone a failure by a person to comply with a time period applicable to an appeal contemplated in section 43(1A), except for a time period which binds the Minister.

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(2) The Minister may not accept an application for condonation to submit an appeal contemplated in section 43(1A) after 30 days has lapsed from the date of the decision by the Minister responsible for mineral resources or any person acting under his or her delegated authority.

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(3) When considering an extension or condonation the Minister must consider the following factors:

- (a) the degree of lateness;
- (b) a detailed explanation of the reasons for the lateness;
- (c) whether and to what extent that person or the Minister responsible for mineral resources will suffer prejudice if the time period is extended or failure to comply with a time period is condoned; and
- (d) a detailed explanation of the merits of the application for extension or condonation.

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(4) The time period may only be condoned for a maximum period equal to the time period allowed for the action for which condonation is sought in terms of this Act.”.

Insertion of section 50A in Act 107 of 1998

17. The following section is hereby inserted in the National Environmental Management Act, 1998 after section 50:

“Future amendments in respect of environmental matters in so far as it relates to the Agreement

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50A. (1) (a) Any proposed amendments to the provisions relating to prospecting, exploration, mining or production in this Act, the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008), a specific environmental management Act or any other Act of Parliament that may have the effect of amending the provisions of the Agreement, must be subject to concurrence between the Minister, the Minister responsible for water affairs and the Minister responsible for mineral resources; and

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(b) Any intervention contemplated in paragraph (a) that may lead to the amendment of the provisions of the Agreement must be tabled in Parliament prior to any steps being taken to effect those changes and Parliament may express its view on the proposed amendment of the Agreement.

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(2) Agreement for the purpose of subsection (1) means the Agreement reached between the Minister, Minister responsible for water affairs and the Minister responsible for mineral resources titled ***One Environmental System*** for the country with respect to mining, which entails—

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(a) that all environment related aspects would be regulated through one environmental system which is the principal Act and that all environmental provisions would be repealed from the Mineral and Petroleum Resources Development Act, 2002; and

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(b) that the Minister sets the regulatory framework and norms and standards, and that the Minister responsible for Mineral Resources will implement the provisions of the principal Act and the subordinate legislation as far as it relates to prospecting, exploration, mining or operations;

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(c) that the Minister responsible for Mineral Resources will issue environmental authorisations in terms of the principal Act for prospecting, exploration, mining or operations, and that the Minister will be the appeal authority for these authorisations;

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(d) that the Minister, the Minister responsible for Mineral Resources and the Minister responsible for Water Affairs agree on fixed time-frames for the consideration and issuing of the authorisations in their respective legislation and agree to synchronise the time frames.”.

Amendment of section 1 of Act 59 of 2008

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18. Section 1 of the National Environmental Management: Waste Act, 2008 is hereby amended—

(a) by the insertion after the definition of “MEC” of the following definition:

“ **‘Mineral and Petroleum Resources Development Act, 2002’** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;

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(b) by the insertion after the definition “recycle” of the following definitions:

“ **‘residue deposit’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002; **‘residue stock pile’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;”.

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Amendment of section 4 of Act 59 of 2008

19. Section 4 of the National Environmental Management: Waste Act, 2008 is hereby amended by the deletion in subsection (1) of paragraph (b).

Insertion of section 20A in Act 59 of 2008

20. The following section is hereby inserted in the National Environmental Management: Waste Act, 2008 after section 20:

“Prohibited or restricted activities in specified geographical areas

- 20A.** (1) Despite section 19 and in accordance with the risk averse and cautious approach contemplated in section 2(4)(a)(vii) of the National Environmental Management Act, 1998, the Minister may by notice in the *Gazette* prohibit or restrict the granting of a waste management licence by the licensing authority for a listed activity in a specified geographical area for such period and on such terms and conditions as the Minister may determine, if it is necessary in order to ensure protection of the environment, conservation of resources, sustainable development or human health and well-being. 5
- (2) A prohibition or restriction contemplated in subsection (1) does not affect the undertaking of activities authorised by means of a waste management licence prior to the prohibition becoming effective. 10
- (3) Where the prohibition or restriction affects the exercise of a power that the MEC has in terms of this Act, the prohibition or restriction contemplated in subsection (1) may be published in the *Gazette* after consulting the MEC affected by the prohibition or restriction notice. 15
- (4) The Minister may by notice in the *Gazette*— 20
- (a) lift a prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister to prohibit or restrict no longer exist; or
- (b) amend any period, term or condition applicable to any prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister to prohibit or restrict have changed. 25
- (5) Before acting in terms of subsection (1), the Minister must—
- (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power; 30
- (b) consult the MEC that will be affected by the exercise of the power; and
- (c) publish a notice in the *Gazette* inviting members of the public to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written representations on the proposed prohibition or restriction.”. 35

Amendment of section 43 of Act 59 of 2008

21. Section 43 of the National Environmental Management: Waste Act, 2008 is hereby amended by the insertion after subsection (1) of the following subsections:

- “(1A) The Minister responsible for mineral resources is the licensing authority where the waste management activity is, or is directly related to— 40
- (a) prospecting or exploration of a mineral or petroleum resource;
- (b) extraction and primary processing of a mineral or petroleum resource; or
- (c) residue deposits and residue stockpiles from a prospecting, mining, exploration or production operation.
- (1B) The Minister responsible for mineral resources is responsible for the implementation of the provisions that relate to matters referred to in subsection (1A).”.
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Insertion of section 43A in Act 59 of 2008

22. The following section is hereby inserted in the National Environmental Management: Waste Act, 2008 after section 43: 50

“Residue stockpiles and residue deposits

- 43A.** (1) Residue stockpiles and residue deposits must be managed in the prescribed manner on any site demarcated for that purpose in the environmental management plan or environmental management 55

programme for that prospecting, mining, exploration or production operation.

(2) No person may temporarily or permanently deposit any residue stockpile or residue deposit on any site other than on a site contemplated in subsection (1).”

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Amendment of section 67 of Act 59 of 2008

23. Section 67 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) contravenes or fails to comply with a provision of section 15, 16(1)(c), (d), (e) or (f), 20, 26(1), 43A, or any order under section 38(2) or (3) or a notice under section 17(2) or 18(1);”

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Amendment of section 69 of Act 59 of 2008

24. Section 69 of the National Environmental Management: Waste Act, 2008, is hereby amended by the insertion in subsection (1) after paragraph (i) of the following paragraph:

“(iA) the management and control of residue stockpiles and residue deposits from a prospecting, mining, exploration or production operation.”

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Insertion of section 79A in Act 59 of 2008

25. The following section is hereby inserted in the National Environmental Management: Waste Act, 2008 after section 79:

“Delegation by Minister responsible for mineral resources

79A. (1) The Minister responsible for mineral resources may delegate a function entrusted to him or her in terms of this Act to—

- (a) the Director-General of the Department responsible for mineral resources; or
- (b) the holder of a specific post in the Department responsible for mineral resources who is not below the rank of director or its equivalent.

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(2) A delegation in terms of subsection (1)—

- (a) must be in writing;
- (b) may be made subject to any condition;
- (c) may be withdrawn by the Minister responsible for mineral resources.”

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Amendment of section 12 of Act 62 of 2008

26. Section 12 of the National Environmental Management Amendment Act, 2008, is hereby amended by the addition of the following subsections:

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“(6) Any appeal lodged in terms of section 96 of the Mineral and Petroleum Resources Development Act, 2002, against a decision in respect of environmental aspects, that is pending on the date referred to in section 14(2)(b) of the National Environmental Management Amendment Act, 2008 must be dealt with in terms of the Mineral and Petroleum Resources Development Act, 2002.

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(7) An application for a right or permit in relation to prospecting, exploration, mining or production in terms of the Mineral and Petroleum Resources Development Act, 2002 that is pending on the date referred to in section 14(2)(b) of the National Environmental Management Amendment Act, 2008, must be dispensed of in terms of that Act as if that Act had not been amended.”

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Repeal of section 13 of Act 62 of 2008

27. Section 13 of the National Environmental Management Amendment Act, 2008, is hereby repealed.

Amendment of section 14 of Act 62 of 2008

28. Section 14 of the National Environmental Management Act, 2008 is hereby amended by the deletion of subsection (2) one day immediately before the commencement of this Act.

Repeal of Schedule to Act 62 of 2008

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29. Schedule to the National Environmental Management Amendment Act, 2008 is hereby repealed.

Amendment of Arrangements of Sections of Act 107 of 1998

30. The Arrangements of Sections of the National Environmental Management Act, 1998 is hereby amended— 10

- (a) by the insertion after item 31BA of the following item:
 - “**31BB.** Designation of environmental mineral resource inspectors by Minister of Mineral Resources”;
- (b) by the insertion after item 24P of the following item:
 - “**24P.** Management of residue stockpiles and residue deposits”;
- (c) by the insertion after item 47C of the following items:
 - “**47CA.** Extension of time periods applicable to appeals relating to prospecting, exploration, mining or production”;
 - “**47CB.** Condonation of time periods applicable to appeals relating to prospecting, exploration, mining or production; and”;
- (d) by the insertion after item 50 of the following item:
 - “**50A.** Future amendments in respect of environmental matters in so far as it relates to the Agreement”.

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Amendment of Table of Contents of Act 59 of 2008

31. The Table of Contents of the National Environmental Management: Waste Act, 2008 is hereby amended— 25

- (a) by the insertion after item 20 of the following item:
 - “**20A.** Prohibited or restricted activities in specified geographical areas”; and
- (b) by the insertion after item 79 of the following item:
 - “**79A.** Delegation by Minister responsible for mineral resources”.

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Short title and commencement

32. This Act is called the National Environmental Management Laws Third Amendment Act, 2014, and comes into effect three months from the date of publication of this Act by the President in the *Gazette* in terms of section 81 of the Constitution. 35

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2013

1. PURPOSE OF BILL

The purpose of the Bill is to amend certain provisions under the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA), and the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA).

2. BACKGROUND

- 2.1. The NEMA is the environmental framework legislation that provides for environmental management in the Republic. Environmental aspects of exploration, prospecting, mining and production activities (mining activities) were previously excluded from the scope of NEMA and were regulated in terms of the Mineral and Petroleum Resources Development Act, 2002. Activities relating to mining were however identified as requiring environmental authorisation under NEMA. As both laws have their own processes and information requirements, this situation leads to duplication, a lack of integration and confusion in the mining sector as well as long delays and lead times for authorisations.
- 2.2 In order to operationalize the Agreement, amendments were made to both Acts in 2008 and passed by Parliament. The National Environmental Management Amendment Act, 2008 was brought into effect on 1 May 2009. The provisions in the National Environmental Management Amendment Act, 2008 as far as they relate to mining will, in terms of section 14 of the Act, only enter into force 18 months after the Mineral and Petroleum Resources Development Amendment Act, 2008 came into operation. The Mineral and Petroleum Resources Development Amendment Act, 2008 entered into force on the 7 June 2013.
- 2.3 In 2010, the “Strategy for Sustainable Growth and Meaningful Transformation of South Africa’s Mining Industry” was adopted. The Strategy identified, amongst others, fragmented licensing mechanisms as one of the key binding constraints to the global competitiveness of the industry.
- 2.4 It was clear that more amendments to the existing legislation were required. This led, in 2013, to a new agreement being reached between the departments, which overturns Parliament’s 2008 solution, but introduces new ways of dealing with the matter. The agreement is entitled *One Environmental System* for the country with respect to mining. The agreement has the following outcomes:
 - All environment related aspects would be regulated through one environmental system under the environmental legislation (National Environmental Management —, National Water —, Air Quality—and Waste Acts) and that all environmental provisions would be repealed from the Mineral and Petroleum Resources Development Act; The Minister responsible for Water and Environment sets the environmental regulatory framework and norms and standards, and the Minister responsible for Mineral Resources will implement the provisions of the Environmental Acts and the subordinate legislation as far as it relates to mining activities;
 - The Minister responsible for Mineral Resources will issue environmental authorisations for mining activities in terms of the principal Act (NEMA), and that the Minister responsible for Environmental Affairs will be the appeal authority for these authorisations;
 - The Minister responsible for Environment, the Minister responsible for Mineral Resources and the Minister responsible for Water agreed on fixed time-frames for the consideration and issuing of the environmental

authorisations in their respective legislation and also agreed to synchronise the time frames.

- 2.5 The overall intention for the amendments is to give effect to the “**One Environmental System**”.

3. OBJECTS OF BILL

3.1. National Environmental Management Act, 1998

Clause 1: Amendment of section 1

The clause amends the definitions of “applicant”, “environmental management inspector” and “Minister”.

The clause also delete the definitions of “community”, “exploration area”, “mining area”, “production area”, “prospecting area”, “Minister responsible for mineral resources” and “Regional Mining Development and Environmental Committee”, and further insert new definitions for “environmental mineral resource inspector” and “financial provision”.

Clause 2: Amendment of section 24

Section 24(5)(b)(vi) provides the Minister of Water and Environmental Affairs with a legal mandate to develop regulations on the management and control of residue stock piles and residue deposits. Section 24(5)(bA) is amended to provide for regulations for the review of environmental management instruments and it makes provision now for the adoption of minimum information requirements. Applicants will in future know upfront what information is required, which will ensure regulatory certainty.

Clause 3: Amendment of section 24C

Section 24C of NEMA sets out the competent authorities (Minister and MECs responsible for environmental affairs) for the listed or specifies activities. This clause amends section 24C to clearly indicate that the Minister responsible for mineral resources is the competent authority for the listed or specified activity directly related to prospecting or exploration of a mineral resource or petroleum resource; or extraction and primary processing of a mineral or petroleum resource.

The amendment also seeks to add a new subsection (2C) to the section to provide for the situation where a decision on an application for an environmental authorisation is not made within the time-frames applicable to that process, the applicant may apply to the Minister to facilitate the process of taking the decision by the Minister of Mineral Resources, or where appropriate, to take the decision. The Bill sets out a procedure to be followed before the Minister can take the decision.

Clause 4: Amendment of section 24L This clause seeks to amend section 24L to provide clarity that the competent authority under NEMA and an authority empowered under a specific environmental management Act may agree to issue an integrated environmental authorisation.

Clause 5: Amendment of section 24N

The amendment removes the wording “or identified competent authority” as it may lead to interpretation difficulties. A new subsection (1A) has been inserted to clarify that in the instance where an environmental impact assessment has been identified as the environmental instrument to be utilised as the basis for a decision on an application for environmental authorisation, the Minister, the Minister responsible for mineral resources or an MEC must

require the submission of an environmental management programme before deciding an application for an environmental authorisation.

The amendment also states that the environmental management programme must, where appropriate, contain measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of polluted or extraneous water or ecological degradation which may occur inside and outside the boundaries of the operations in question.

The holder or a person issued with an environmental authorization is responsible for any environmental damage, pollution, pumping and treatment of polluted or extraneous water or ecological degradation as a result of his or her operations to which such right, permit or environmental authorisation relates.

The amendment also states that directors of a company or members of a close corporation are jointly and severally liable for any negative impacts, including damage, degradation or pollution, advertently or inadvertently caused by the company or close corporation which they represent.

Clause 6: Amendment of section 24O

This clause seeks to amend section 24O to remove “or identified competent authority” where it occurs in the text of the section. A new subsection (2A) is inserted to stipulate that where a matter relates to prospecting, exploration, mining or production, the request for comment by the Minister responsible for mineral resources must be submitted by registered mail to the Director-General of the State department or provincial head of department that administers a law relating to a matter that affects the environment.

The amendment requires a comment period of 30 days (as opposed to the current 40 days) between State departments with respect to an application for an environmental authorisation.

The Regional Mining Development and Environmental Committee will not play a role in the decision-making process and any reference to this Committee has been removed from the Bill.

Clause 7: Amendment of section 24P

This amendment clarifies that an applicant for an environmental authorisation relating to prospecting, exploration, mining or production must make the prescribed financial provision for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts before the environmental authorization will be issued.

The amendment also provides that every holder must annually assess his or her environmental liability in a prescribed manner and must increase his or her financial provision to the satisfaction of the Minister responsible for mineral resources. The holder must also annually submit an audit report to the Minister responsible for mineral resources on the adequacy of the financial provision from an independent auditor.

The amendment further provides for the requirement to maintain and retain the financial provision contemplated in this section. The financial provision remains in force notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources to the holder or owner concerned and the Minister responsible for mineral resources may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent, residual or any other environmental impacts, including the pumping of polluted or extraneous water, for a prescribed period.

Clause 8: Amendment of section 24R

The amendment to this section reiterates that every 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 of an operation, notwithstanding the issuing of a closure certificate to that person.

The amendment makes it clear that when the Minister responsible for mineral resources issues a closure certificate, he or she may retain a portion of such financial provision for any latent, residual or any other environmental impact, including the pumping of polluted or extraneous water, for a prescribed period after issuing a closure certificate.

Clause 9: Insertion of section 24S

This section clarifies that residue stockpiles and residue deposits must be deposited and managed in accordance with the provisions of the National Environmental Management: Waste Act (No 59 of 2008) on any site demarcated for that purpose in the environmental management plan or environmental management programme in question.

Clause 10: Amendment of section 28

The current provisions of section 28 do not allow the Director-General of the Department of Mineral Resources to issue a section 28 directive. The Department of Mineral Resources will be responsible for compliance monitoring and enforcement. The clause seeks to provide the Director-General of the Department of Mineral Resources with the power to issue a section 28 directive (in respect of the duty of care obligation) in so far as it deals with those activities directly related to prospecting, exploration, mining or production.

Clause 11: Insertion of section 31BB

The Director-General responsible for mineral resources will implement the National Environmental Management Act, 1998 as far as it relates to listed or specified activity directly related to prospecting, exploration, mining or production. Therefore, it is also important for the Minister responsible for mineral resources to enforce those environmental authorisations issued by him or her. This amendment will empower the Minister responsible for mineral resources to designate environmental mineral resource inspectors, who will be responsible for compliance monitoring and enforcement of environmental provisions under NEMA.

Clause 12: Amendment of section 31D

This amendment provides for the powers of the environmental mineral resource inspector. The amendment also ensures that enforcement takes place when capacity challenges are experienced. In such instances, the Minister may, with the concurrence of the Minister responsible for mineral resources, if the environmental mineral resource inspector are unable or not adequately able to fulfill the compliance monitoring and enforcement functions, designate environmental management inspectors to implement these functions.

The amendment also makes provision for the circumstance where a complainant alleges that a specific compliance monitoring and enforcement function relating to prospecting, exploration, mining and production has not been or has inadequately been implemented. The section sets out the procedure to follow in such an instance and, if all the avenues are exhausted as indicated in the section, the Minister responsible for environmental affairs may either decide to assist and support the Minister responsible for mineral

resources to fulfil the enforcement function or direct environmental management inspectors to fulfil the function.

Clause 13: Insertion of section 42A

A new section is inserted to allow the provincial head of department to delegate his or her powers in terms of the Act.

Clause 14: Amendment of section 43

In terms of the Agreement the Minister responsible for environmental affairs will be the appeal authority for a decision taken by the Minister responsible for mineral resources in terms of NEMA or any SEMA.

This clause deletes section 43(1B) of NEMA, which allowed for in process appeals as far as decisions relating to prospecting, exploration, mining and production are concerned.

The amendment further clarifies that an appeal lodged against a decision in terms of NEMA or any SEMA suspends such decision.

The amendment also makes provision for an appeal against a directive issued and the suspension thereof.

Clause 15: Amendment to section 44

Section 44 has been amended to provide for the regulations to be drafted in respect of the financial provision. It has further been amended to provide that regulations made in terms of this Act or any other Act of Parliament that may have the effect of amending the provisions of the Agreement referred to in section 50A must be made by the Minister in concurrence with the Minister responsible for mineral resources and the Minister responsible for water affairs.

Clause 16: Insertion of section 47CA and 47CB

This amendment seeks to provide for the exceptional circumstances under which the Minister may extend or condone a failure by any person to comply with a time period for a mining activity decision. The amendment sets out the factors that must be considered by the Minister when considering an application for condonation.

Clause 17: Insertion of Section 50A

This clause determines that any proposed amendments to this Acts that changes the Agreement referred to in 2.4 above, which is defined in terms of this section, must have been agreed upon between the Ministers responsible for water, environmental affairs and mineral resources. Parliament must also be consulted prior to the amendments being affected.

3.2. National Environmental Management: Waste Act, 2008

Clause 18: Amendment of section 1

This clause inserts new definitions for “Mineral and Petroleum Resources Development Act, 2002”, “residue deposit” and “residue stockpile”. This is a consequential amendment to give effect to “**One Environmental System**”. The intention is to bring residue deposits and residue stockpiles that relate to mining activities under the scope of the Waste Act.

Clause 19: Amendment of section 4

The amendment intends to remove the exclusion of residue stockpiles and residue deposits from the application of the Act.

Clause 20: Insertion of section 20A

This clause inserts a new section 20A to enable the Minister to prohibit or restrict, through a notice in the *Gazette*, the granting of waste management licences in a particular geographic area if it is necessary to ensure the protection of the environment. The amendment sets out the process to be followed by the Minister, including the consultation process.

Clause 21: Amendment of section 43

A new subsection (1A) empowers the Minister responsible for mineral resources to be the licensing authority where the waste management activity is, or is directly related to—

- (a) prospecting or exploration of a mineral or petroleum resource;
- (b) extraction and primary processing of a mineral or petroleum resource; or
- (c) residue deposits and residue stockpiles from a prospecting, mining, exploration or production operation.

Clause 22: Insertion of section 43A

The new section provides that residue stockpiles and residue deposits must be managed in the prescribed manner on any site demarcated for that purpose in the environmental management plan or environmental management programme for that prospecting, mining, exploration or production operation. It prohibits any person from temporarily or permanently depositing any residue stockpile or residue deposit on any site other than provided for in his or her environmental management plan or environmental management programme.

Clause 23: Amendment of section 76

This amendment provides that a person who contravenes the newly inserted section 43A commits an offence.

Clause 24: Amendment of section 69

This amendment makes provision for the authority of the Minister to make regulations relating to residue stockpiles and residue deposits.

Clause 25: Insertion of section 79A

This clause inserts a new section 79A empowering the Minister responsible for mineral resources to delegate a function entrusted to him or her under the NEMWA to officials within the Department of Mineral Resources.

3.3. National Environmental Management Amendment Act, 2008**Clause 26: Amendment of section 12**

The amendment also seeks to provide for transitional arrangements regarding appeals lodged or applications for rights, permits and licences applied for under the MPRDA before the commencement of the National Environmental Management Laws Amendment Act, 2014.

Clause 27: Repeal of section 13

The Portfolio Committees that were responsible for environment and mining, in 2008, agreed at a joint meeting to insert section 13 which provided that the environmental management function regarding prospecting, mining, exploration, production activities on a mining area will revert back to the Minister of Environmental Affairs after 36 months from the date that both 2008 Amendment Acts are fully operational. However, the Ministers of Water and Environmental Affairs and Mineral Resources have since agreed that the Minister of Mineral Resources will remain responsible for the environmental management function in mining areas for an indefinite period. Therefore, these developments required section 13 and the Schedule to be deleted. The repeal of section 13 of the NEMAA will ensure that the performance of the environmental management function, as far as mining activities are concerned, resides permanently with the Minister responsible for mineral resources.

Clause 28: Amendment of section 13

To avoid that the 2008 text becomes operational as far as mining activities are concerned after the coming into effect of this Act, which could create interpretation difficulties, section 13 has been amended by deleting subsection (1), one day before the coming into effect of this Amendment Act.

Clause 29: Repeal of Schedule

This is a consequential amendment linked to the repeal of section 13 of the NEMAA. The repeal of the Schedule to the NEMAA will ensure that the performance of the environmental management function in mining areas resides permanently with the Minister responsible for mineral resources.

Clause 30

This Clause amends the Arrangement of Sections in the National Environmental Management Act, 1998, necessitated by the insertion of new sections.

Clause 31

This Clause amends the Table of Contents in the National Environmental Management: Waste Act, 2008, necessitated by the insertion of new sections.

Clause 32

This clause makes provision for the commencement and short title of the Act.

4. DEPARTMENTS CONSULTED

The following national and provincial Departments were consulted:

- Water Affairs;
- Mineral Resources; and
- All provincial departments responsible for environmental affairs through Environment MINMEC.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill requires the Department of Environmental Affairs to beef up human resources in the existing Appeals Unit. The Department of Mineral Resources must create capacity to implement environmental management provisions as well as compliance monitoring and enforcement provisions under NEMA.

6. PARLIAMENTARY PROCEDURE

- 6.1. The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution since it falls within functional areas listed in Schedule 4 to the Constitution, namely “Environment”.
- 6.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

