



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA



EMI LEGISLATION HANDBOOK

VOLUME 2

INDEX

LEGISLATION	GNR NO.	ITEM	PAGES
National Environmental Management: Integrated Coastal Management Act No. 24 of 2008		D	1 - 102
APPLICABLE SUBORDINATE LEGISLATION			
Control of vehicles in the coastal area	496/2014	DR1	1 - 16

LEGISLATION	GNR NO.	ITEM	PAGES
National Environmental Management: Protected Areas Act No. 57 of 2003		E	1 - 66
APPLICABLE SUBORDINATE LEGISLATION			
Regulations for the proper administration of special nature reserves, national parks and world heritage sites	1061/2005	ER1	1 - 34
Regulations for the proper administration of nature reserves	99/2012	ER2	1 - 25

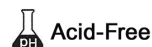
LEGISLATION	GNR NO.	ITEM	PAGES
National Environmental Management: Waste Act No. 59 of 2008		F	1 - 97
APPLICABLE SUBORDINATE LEGISLATION			
List of waste management activities that have or are likely to have a detrimental effect on the environment	921/2013	FR1	1 - 7
National waste information regulations	625/2012	FR2	1 - 13
Waste classification and management regulations	634/2013	FR3	1 - 16
National norms and standards for the assessment of waste for landfill disposal	635/2013	FR4	1 - 12
National domestic waste collection standards	21/2011	FR5	1 - 12
National norms and standards for disposal of waste to landfill	635/2013	FR6	1 - 10
National standards for the extraction, flaring or recovery of landfill gas	924/2013	FR7	1 - 12

National standards for the scrapping and recovery of motor vehicles	925/2013	FR8	1 - 12
National norms and standards for the storage of waste	926/2013	FR9	1 - 12
National norms and standards for the remediation of contaminated land and soil quality in the republic of South Africa	331/2014	FR10	1 - 4

LEGISLATION	GNR NO.	ITEM	PAGES
National Water Act No 36 of 1998		G	1 - 169

LEGISLATION	GNR NO.	ITEM	PAGES
Environment Conservation Act No. 73 of 1989		H	1 - 23
APPLICABLE SUBORDINATE LEGISLATION			
Plastic carrier bags and plastic flat bags regulations	625/2003	HR1	1 - 2
Regulations for the prohibition of the use, manufacturing, import and export of asbestos and asbestos containing materials	341/2008	HR2	1 - 8
Waste tyre regulations	149/2009	HR3	1 - 14
Commencement date of the waste tyre regulations	520/2009	HR4	1

LEGISLATION	GNR NO.	ITEM	PAGES
Criminal Procedure Act 51 of 1977 (Chapters 2, 5 7 and 8)		I	1 - 23



**NATIONAL ENVIRONMENTAL MANAGEMENT:
INTEGRATED COASTAL MANAGEMENT ACT 24 OF 2008**

(English text signed by the President)

[Assented to: 9 February 2009]

[Commencement date: 1 December 2009 unless otherwise indicated]

[Proc. R84 / GG 32765 / 20091201]

Amended by:

ss. 1-64 of the National Environmental Management : Integrated Coastal Management
Amendment Act 36 of 2014
[w.e.f. 1 May 2015]

Editor's note:

The Act amended by s. 40 of Act 36/2014 w.e.f. 1 May 2015 by the substitution for the expression "general authorisation" wherever it occurs in section 69, of the expression "general discharge authorisation".

ACT

To establish a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable; to define rights and duties in relation to coastal areas; to determine the responsibilities of organs of state in relation to coastal areas; to prohibit incineration at sea; to control dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment; to give effect to South Africa's international obligations in relation to coastal matters; and to provide for matters connected therewith.

PREAMBLE

WHEREAS everyone has the constitutional right to have the environment, including the coastal environment, protected for the benefit of present and future generations;

AND WHEREAS integrated management of the coastal zone as a system is essential to achieve the constitutional commitment to improving the quality of life of all citizens, while protecting the natural environment for the benefit of present and future generations:

AND WHEREAS the coastal zone is a unique part of the environment in which biophysical, economic, social and institutional considerations interconnect in a manner that requires a dedicated and integrated management approach:

INTEGRATED COASTAL MANAGEMENT ACT

AND WHEREAS much of the rich natural heritage of our coastal zone is being squandered by overuse, degradation and inappropriate management:

AND WHEREAS the economic, social and environmental benefits of the coastal zone have been distributed unfairly in the past:

AND WHEREAS the conservation and sustainable use of the coastal zone requires the establishment of an innovative legal and institutional framework that clearly defines the status of coastal land and waters and the respective roles of the public, the State and other users of the coastal zone and that facilitates a new co-operative and participatory approach to managing the coast;

AND WHEREAS integrated coastal management should be an evolving process that learns from past experiences, that takes account of the functioning of the coastal zone as a whole and that seeks to co-ordinate and regulate the various human activities that take place in the coastal zone in order to achieve its conservation and sustainable use,

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

ARRANGEMENT OF SECTIONS

CHAPTER 1 **INTERPRETATION, OBJECTS AND APPLICATION OF ACT**

1. Definitions
2. Objects of Act
3. State's duty to fulfil environmental rights in coastal environment
4. Application of Act
5. Application of National Environmental Management Act
6. Interpretation and conflicts with other legislation

CHAPTER 2 **COASTAL ZONE**

Part 1: Coastal public property

7. Composition of coastal public property
- 7A. Purpose of coastal public property
- 7B. Reclamation of land for state infrastructure
- 7C. Reclamation of land for purposes other than state infrastructure
8. Extending coastal public property
9. Acquisition of private land by State
10.
11. Ownership of coastal public property

INTEGRATED COASTAL MANAGEMENT ACT

12. State public trustee of coastal public property
13. Access to coastal public property
14. Position of high-water mark
15. Measures affecting erosion and accretion

Part 2: Coastal protection zone

16. Composition of coastal protection zone
17. Purpose of coastal protection zone

Part 3: Coastal access land

18. Designation of coastal access land
19. Process for designating and withdrawing designation of coastal access land
20. Responsibilities of municipalities with regard to coastal access land

Part 4: Coastal waters

21. Control and management of coastal waters

Part 5: Coastal protected areas

22. Excision of protected areas from coastal protection zone

Part 6: Special management areas

23. Declaration of special management areas
24. Management of special management areas

Part 7: Coastal management lines

25. Establishment of coastal management lines

CHAPTER 3 **BOUNDARIES OF COASTAL AREAS**

26. Determination and adjustment of coastal boundaries
27. Determining and adjusting coastal boundary of coastal public property
28. Determining and adjusting coastal boundaries of coastal protection zone
29. Determining and adjusting coastal boundaries of coastal access land
30. Entry onto land
31. Marking coastal boundaries on zoning maps
32. Endorsements by Registrar of Deeds

CHAPTER 4
ESTUARIES

- 33. National estuarine management protocol
- 34. Estuarine management plans

CHAPTER 5
INSTITUTIONAL ARRANGEMENTS

Part 1: National Coastal Committee

- 35. Establishment and functions of National Coastal Committee
- 36. Composition of National Coastal Committee
- 37. Vacation of office and termination of membership

Part 2: Provincial lead agencies

- 38. Designation and functions of provincial lead agency

Part 3: Provincial Coastal Committees

- 39. Establishment and functions of Provincial Coastal Committees
- 40. Composition of Provincial Coastal Committees
- 41. Vacation of office and termination of membership

Part 4: Municipal Coastal Committees

- 42. Establishment and functions of Municipal Coastal Committees

Part 5: Voluntary Coastal Officers

- 43. Voluntary coastal officers

CHAPTER 6
COASTAL MANAGEMENT

Part 1: National coastal management programme

- 44. Preparation and adoption of national coastal management programme
- 45. Contents of national coastal management programme

Part 2: Provincial coastal management programmes

- 46. Preparation and adoption of provincial coastal management programmes
- 47. Contents of provincial coastal management programmes

Part 3: Municipal coastal management programmes

- 48. Preparation and adoption of municipal coastal management programmes
- 49. Contents of municipal coastal management programmes
- 50. By-laws

Part 4: Co-ordination and alignment of plans and coastal management programmes

- 51. Alignment of certain plans with coastal management programmes
- 52. Ensuring consistency between coastal management programmes and other statutory plans

Part 5: Public participation

- 53. Consultation and public participation

Part 6: Review of coastal management programmes

- 54. Powers of Minister to review coastal management programmes
- 55. Review of municipal coastal management programmes

Part 7: Coastal planning schemes

- 56. Planning schemes for areas within coastal zone
- 57. Coastal planning and land use schemes of municipalities

CHAPTER 7
PROTECTION OF COASTAL RESOURCES

Part 1: Assessing, avoiding and minimising adverse effects

- 58. Duty to avoid causing adverse effects on coastal environment
- 59. Coastal protection notice and coastal access notice
- 60. Repair or removal of structures within coastal zone
- 61. Failure to comply with certain notices

Part 2: Regulation of coastal zone

- 62. Implementation of land use legislation in coastal protection zone

Part 3: Environmental authorisations

- 63. Environmental authorisations for coastal activities
- 64.

Part 4: Use of coastal public property

- 65. Award of coastal use permits on coastal public property
- 66. Terms of coastal use permits
- 66A. Leases in admiralty reserves

Part 5: General provisions

- 67. Temporary occupation of land within coastal zone
- 68. Amendment, revocation, suspension or cancellation of authorisations

CHAPTER 8
MARINE AND COASTAL POLLUTION CONTROL

- 69. Discharge of effluent into coastal waters
- 70. Prohibition of incineration or dumping at sea
- 71. Dumping permits
- 72. Emergency dumping at sea
- 73. National action list

CHAPTER 9
APPEALS

- 74. Appeals
- 75. Advisory appeal panel
- 76. Interim orders by Minister or MEC
- 77. Proceedings of advisory appeal panel
- 78. Determination of appeal by Minister or MEC

CHAPTER 10
ENFORCEMENT

- 79. Offences
- 80. Penalties
- 81. Jurisdiction of courts
- 82. Actions in relation to coastal public property

CHAPTER 11
GENERAL POWERS AND DUTIES

Part 1: Regulations

- 83. Regulations by Minister
- 84. Regulations by MECs
- 85. General provisions applicable to regulations
- 86. Amendment of Schedule 2

Part 2: Powers to be exercised by MEC

- 87.
- 88. Directives by MEC to municipalities

Part 3: Delegations

- 89. Delegation by Minister
- 90. Enforcement by Minister
- 91. Delegation by MECs

Part 4: General matters

- 92. Urgent action by Minister or MEC
- 93. Information and reporting on coastal matters
- 94. Co-ordination of actions between provinces and municipalities
- 94A. Exemptions

CHAPTER 12
MISCELLANEOUS MATTERS

Part 1: Transitional provisions

- 95. Existing leases on, or rights to, coastal public property
- 96. Unlawful structures on coastal public property
- 97.
- 97A. Withdrawal of previous exclusions
- 98. Repeal and amendment of legislation
- 99. Savings

Part 2: General

- 100. Limitation of liability
- 101. Short title

INTEGRATED COASTAL MANAGEMENT ACT

SCHEDULE 1 - Laws repealed and amended.

SCHEDULE 2 - Guidelines for the assessment of wastes or other material that may be considered for dumping at sea (“the Waste Assessment Guidelines”).

[Arrangement of sections amended by s. 63 of Act 36/2014 w.e.f. 1 May 2015]

CHAPTER 1

INTERPRETATION, OBJECTS AND APPLICATION OF ACT

1. Definitions

(1) In this Act, unless the context indicates otherwise-

“**access fee**” means a fee that is charged to allow a person to enter coastal public property and includes launching from and entering a vessel launch site with a boat;

[Definition of “access fee” inserted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**admiralty reserve**” means any strip of land adjoining the inland side of the high-water mark which, when this Act took effect, was state land reserved or designated on an official plan, deed of grant, title deed or other document evidencing title or land-use rights as “**admiralty reserve**”, “**government reserve**”, “**beach reserve**”, “**coastal forest reserve**” or other similar reserve;

“**adverse effect**” means any actual, potential or cumulative impact on the environment that impairs, or may impair, the environment or any aspect of it to an extent that is more than trivial or insignificant;

[Definition of “adverse effect” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**aircraft**” means an aircraft as defined in terms of section 1 of the National Environmental Management Act;

“**authorisation**”

[Definition of “authorisation” deleted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**Biodiversity Act**” means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“**biodiversity**” or “**biological diversity**” has the same meaning ascribed to it in the Biodiversity Act;

“**coastal access land**” means land designated as coastal access land in terms of section 18(1), read with section 26;

“**coastal activities**” means activities listed or specified in terms of Chapter 5 of the National Environmental Management Act which take place-

INTEGRATED COASTAL MANAGEMENT ACT

(a) in the coastal zone; or

(b) outside the coastal zone but have or are likely to have a direct impact on the coastal zone;

[Definition of “coastal activities” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**coastal authorisation**” means an authorisation under this Act, and includes the authorisation to reclaim land in terms of sections 7B and 7C, a coastal waters discharge permit in terms of section 69, a general discharge authorisation in terms of section 69, a dumping permit in terms of section 71, a coastal use permit in terms of section 65 and any other authorisation under this Act, but excludes an environmental authorisation;

[Definition of “coastal authorisation” inserted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**coastal concession**”

[Definition of “coastal concession” deleted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**coastal environment**” means the environment within the coastal zone;

“**coastal lease**”

[Definition of “coastal lease” deleted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**coastal management**” includes -

- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;
- (b) the regulation and management of the use and development of the coastal zone and coastal resources;
- (c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and
- (d) planning in connection with the activities referred to in paragraphs (a), (b) and (c).

“**coastal management line**” means a line determined by an MEC in accordance with section 25 in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal management objectives;

[Definition of “coastal management line” inserted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“**coastal management objective**” means a clearly defined objective established by a coastal management programme for a specific area within the coastal zone which coastal management must be directed at achieving;

“**coastal management programme**” means the national or a provincial or municipal coastal management programme established in terms of Chapter 6;

INTEGRATED COASTAL MANAGEMENT ACT

“coastal planning scheme” means a scheme that-

- (a) reserves defined areas within the coastal zone to be used exclusively or mainly for a specified purpose; and
- (b) prohibits or restricts any use of these areas in conflict with the terms of the scheme;

[Definition of “coastal planning scheme” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“coastal protected area” means a protected area that is situated wholly or partially within the coastal zone and that is managed by, or on behalf of, an organ of state, but excludes any part of such a protected area that has been excised from the coastal zone in terms of section 22;

“coastal protection zone” means the coastal protection zone contemplated in section 16;
[Definition of “coastal protection zone” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“coastal public property” means coastal public property referred to in section 7;

“coastal resources” means any part of -

- (a) the cultural heritage of the Republic within the coastal zone, including shell middens and traditional fish traps; or
- (b) the coastal environment that is of actual or potential benefit to humans;

“coastal set-back line”

[Definition of “coastal set-back line” deleted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“coastal waters” means -

- (a) the internal waters, territorial waters, exclusive economic zone and continental shelf of the Republic referred to in sections 3, 4, 7 and 8 of the Maritime Zones Act, 1994 (Act No.15 of 1994), respectively; and
- (b) an estuary;

[Definition of “coastal waters” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“coastal wetland” means -

- (a) any wetland in the coastal zone; and
- (b) includes -
 - (i) land adjacent to coastal waters that is regularly or periodically inundated by water, salt marshes, mangrove areas, inter-tidal sand and mud flats, marshes,

INTEGRATED COASTAL MANAGEMENT ACT

and minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature; and

- (ii) the water, the subsoil and substrata beneath, and bed and banks of, any such wetland;

“coastal zone” means the area comprising coastal public property, the coastal protection zone, coastal access land, coastal protected areas, the seashore and coastal waters, and includes any aspect of the environment on, in, under and above such area;

[Definition of “coastal zone” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“competent authority” means a competent authority identified in terms of section 24C of the National Environmental Management Act;

“cultural heritage” means any place or object of aesthetic, architectural, historical, scientific, social or spiritual value or significance;

“Department” means the national department responsible for environmental affairs;

“development”, in relation to a place, means any process initiated by a person to change the use, physical nature or appearance of that place, and includes -

- (a) the construction, erection, alteration, demolition or removal of a structure or building;
- (b) a process to rezone, subdivide or consolidate land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of indigenous or protected vegetation;

“Director-General” means the Director-General of the Department;

“dumping at sea” means -

- (a) any deliberate disposal into the sea of any waste or material other than operational waste from a vessel, aircraft, platform or other man-made structure at sea;
- (b) any deliberate disposal into the sea of a vessel, aircraft, platform or other man-made structure at sea;
- (c) any storage of any waste or other material on or in the seabed, its subsoil or substrata; or
- (d) any abandonment or toppling at site of a platform or other structure at sea, for the sole purpose of deliberate disposal, but “dumping at sea” does not include -
 - (i) the lawful disposal at sea through sea out-fall pipelines of any waste or other material generated on land;

INTEGRATED COASTAL MANAGEMENT ACT

- (ii) the lawful depositing of any substance or placing or abandoning of anything in the sea for a purpose other than mere disposal of it; or
- (iii) disposing of or storing in the sea any tailings or other material from the bed or subsoil of coastal waters generated by the lawful exploration, exploitation and associated off-shore processing of mineral resources from the bed, subsoil or substrata of the sea;

“dumping permit” means a permit granted under section 71;

“dynamic coastal processes” means all natural processes continually reshaping the shoreline and near shore seabed and includes -

- (a) wind action;
- (b) wave action;
- (c) currents;
- (d) tidal action; and
- (e) river flows.

“effluent” means -

- (a) any liquid discharged into the coastal environment as waste, and includes any substance dissolved or suspended in the liquid; or
- (b) liquid which is a different temperature from the body of water into which it is being discharged.

“environment” means **“environment”** as defined in the National Environmental Management Act;

“environmental authorisation” means an authorisation granted in respect of coastal activities by a competent authority in terms of Chapter 5 of the National Environmental Management Act;

“estuary” means a body of surface water -

- (a) that is permanently or periodically open to the sea;
- (b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the body of surface water is open to the sea; or
- (c) in respect of which the salinity is higher than fresh water as a result of the influence of the sea, and where there is a salinity gradient between the tidal reach and the mouth of the body of surface water;

[Definition of “estuary” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

“exclusive economic zone” means the exclusive economic zone of the Republic, referred to in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

“Gazette”, when used in relation to -

- (a) the Minister, means the *Government Gazette*;
- (b) the MEC, means the *Provincial Gazette*; and
- (c) a municipality, means the *Provincial Gazette* of the province in which the municipality is situated.

“general discharge authorisation” means an authorisation under section 69(2);
[Definition of “general authorisation” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“harbour” means a harbour proclaimed in terms of any law and managed by an organ of state;
[Definition of “harbour” inserted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“high-water mark” means the highest line reached by coastal waters, but excluding any line reached as a result of-

- (a) exceptional or abnormal weather or sea conditions; or
- (b) an estuary being closed to the sea;

[Definition of “high-water mark” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“incinerate at sea” means the deliberate combustion of any material on board a vessel, platform or other man-made structure at sea for the purpose of disposing of it by thermal destruction, but does not include the combustion of operational waste from a vessel, aircraft, platform or other man-made structure at sea;

“interests of the whole community” means the collective interests of the community determined by -

- (a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;
- (b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and
- (c) taking into account the interests of other living organisms that are dependent on the coastal environment.

INTEGRATED COASTAL MANAGEMENT ACT

“issuing authority” means the authority designated in terms of this Act to issue authorisations;

“land development plan” means any plan that is approved in terms of legislation regulating land development and that indicates the desirable uses for areas of land but does not create legal rights to use land;

[Definition of “land development plan” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“Land Survey Act” means the Land Survey Act, 1997 (Act No. 8 of 1997);

“land unit” means a cadastral entity which is capable of registration in the deeds registry in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

[Definition of “land unit” inserted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“land use scheme”, in relation to an area, means a scheme established by or under legislation and that creates or regulates the use of land in that area, and includes a land use scheme, a town planning scheme, a zoning scheme and any other similar instrument that identifies or regulates rights to use land;

“littoral active zone” means any land forming part of, or adjacent to, the seashore that is -

- (a) unstable and dynamic as a result of natural processes; and
- (b) characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated.

“local community” means any community of people living, or having rights or interests, in a distinct geographical area within the coastal zone;

“low-water mark” means the lowest line to which coastal waters recede during spring tides;

“Marine Living Resources Act” means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

“MEC” means the member of the Executive Council of a coastal province who is responsible for the designated provincial lead agency in terms of this Act;

“Minister” means the Minister responsible for environmental affairs;

[Definition of “Minister” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“municipality” -

- (a) means a metropolitan, district or local municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); or
- (b) in relation to the implementation of a provision of this Act in an area which falls within both a local municipality and a district municipality, means -

INTEGRATED COASTAL MANAGEMENT ACT

- (i) the district municipality; or
- (ii) the local municipality, if the district municipality, by agreement with the local municipality, has assigned the implementation of that provision in that area to the local municipality.

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“National Environmental Management Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“national estuarine management protocol” means the national protocol concerning the management of estuaries contemplated in section 33;

“National Water Act” means the National Water Act, 1998 (Act No. 36 of 1998);

“operational waste”-

- (a) means any waste or other material that is incidental to, or derived from, the normal operation of a vessel, aircraft, platform or other man-made structure and its equipment; and
- (b) excludes any waste or other material that is transported by or to a vessel, aircraft, platform or other man-made structure which is operated for the purpose of disposing of that waste or other material, including any substances derived from treating it on board, at sea.

“organ of state” has the meaning assigned to it in section 239 of the Constitution;

“pollution” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“port” means a port as defined in the National Ports Act, 2005 (Act No. 12 of 2005);
[Definition of “port” inserted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“prescribe” means prescribe by regulation;

“protected area” means a protected area referred to in section 9 of the Protected Areas Act;

“Protected Areas Act” means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

“provincial lead agency” means a provincial organ of State designated by the Premier of the province in terms of section 38 as the lead agency for coastal management in the province;

INTEGRATED COASTAL MANAGEMENT ACT

“reclamation” means the process of artificially creating new land within coastal waters, and includes the creation of an island or peninsula, but excludes beach replenishment by sand pumping for maintenance purposes;

[Definition of “reclamation” inserted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“sea” means all marine waters, including -

- (a) the high seas;
- (b) all coastal waters; and
- (c) land regularly or permanently submerged by sea water, including-
 - (i) the bed, subsoil and substrata beneath those waters; and
 - (ii) land flooded by sea water which subsequently becomes part of the bed of coastal waters, including the substrata beneath such land;

[Definition of “sea” substituted by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“seashore”, subject to section 26, means the area between the low- water mark and the high-water mark;

“South African aircraft” means any aircraft registered in the Republic in terms of applicable legislation;

“South African vessel” means any vessel registered or deemed to be registered in the Republic in terms of applicable legislation;

“special management area” means an area declared as such in terms of section 23;

“this Act” includes any regulation made in terms of this Act;

“traditional council” means a traditional council established and recognised in terms of section 3 of the Traditional Leadership and Governance Framework Act. 2003 (Act No. 41 of 2003);

“vessel” means a waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transport by water;

“waste” means any substance, whether or not that substance can be re- used, recycled or recovered -

- (i) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (ii) that the generator has no further use of, for the purposes of production, reprocessing or consumption; and

INTEGRATED COASTAL MANAGEMENT ACT

- (iii) that is discharged or deposited in a manner that may detrimentally impact on the environment.

“Waste Assessment Guidelines” means the guidelines set out in Schedule 2;
[Definition of “Waste Assessment Guidelines” amended by s. 1 of Act 36/2014 w.e.f. 1 May 2015]

“wetland” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

- (2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates otherwise.

2. Objects of Act

The objects of this Act are-

- (a) to determine the coastal zone of the Republic;
- (b) to provide, within the framework of the National Environmental Management Act, for the co-ordinated and integrated management of the coastal zone by all spheres of government in accordance with the principles of co-operative governance;
- (c) to preserve, protect, extend and enhance the status of coastal public property as being held in trust by the State on behalf of all South Africans, including future generations;
- (d) to secure equitable access to the opportunities and benefits of coastal public property;
[Para. (d) amended by s. 2 of Act 36/2014 w.e.f. 1 May 2015]
- (dA) to provide for the establishment, use and management of the coastal protection zone; and
[Para. (dA) inserted by s. 2 of Act 36/2014 w.e.f. 1 May 2015]
- (e) to give effect to the Republic’s obligations in terms of international law-regarding coastal management and the marine environment.

3. State’s duty to fulfil environmental rights in coastal environment

In fulfilling the rights contained in section 24 of the Constitution of the Republic of South Africa, the State -

- (a) through its functionaries and institutions implementing this Act, must act as the trustee of the coastal zone; and

INTEGRATED COASTAL MANAGEMENT ACT

- (b) must, in implementing this Act, take reasonable measures to achieve the progressive realisation of those rights in the interests of every person.

4. Application of Act

- (1) This Act applies to the Republic, including -
 - (a) its coastal waters; and
[Para. (a) substituted by s. 3 of Act 36/2014 w.e.f. 1 May 2015]
 - (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).
- (2) A provision of this Act which relates to dumping and incineration at sea applies to South African aircraft and vessels also when outside the Republic.

5. Application of National Environmental Management Act

- (1) This Act must, in relation to coastal management, be read, interpreted and applied in conjunction with the National Environmental Management Act.
- (2) This Act must be regarded as a "specific environmental management Act" as defined in section 1 of the National Environmental Management Act.
- (3) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

6. Interpretation and conflicts with other legislation

[Heading of s. 6 substituted by s. 4 of Act 36/2014 w.e.f. 1 May 2015]

- (1) If there is a conflict relating to coastal management between a section of this Act and any other legislation existing when this Act takes effect, the section of this Act prevails.
- (2) A provision contained in this Act or the National Environmental Management Act, or in regulations made or authorisations issued under either Act, prevails if there is a conflict between that provision and a provision contained in regulations or in an authorisation dial has been saved in terms of section 99.
- (3) Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament -
 - (a) by the Minister only; or
 - (b) only after the Minister has been consulted on the contents of the draft legislation.

(4) Section 7(2) of this Act shall not affect-

- (a) the ownership of an immovable structure, part of an immovable structure, or port or harbour installation or infrastructure; or
- (b) the control, use and management of the sea space, including turning basins and channels, within a port or harbour, existing prior to the commencement of this Act.

[Subs. (4) added by s. 4 of Act 36/2014 w.e.f. 1 May 2015]

CHAPTER 2

COASTAL ZONE

Part 1

Coastal public property

7. Composition of coastal public property

(1) Coastal public property consists of -

- (a) coastal waters;
- (b) land submerged by coastal waters, including-
 - (i) land flooded by coastal waters which subsequently becomes part of the bed of coastal waters; and
 - (ii) the substrata beneath such land;
- (c) any natural island within coastal waters;
- (d) the seashore, including-
 - (i) the seashore of a natural or reclaimed island; and
 - (ii) the seashore of reclaimed land;
- (e) subject to section 66A, any admiralty reserve owned by the State;
- (f) any land owned or controlled by the State declared under section 8 to be coastal public property;
- (g) land reclaimed in terms of section 7C; or

INTEGRATED COASTAL MANAGEMENT ACT

- (h) any natural resources on or in any coastal public property of a category mentioned in paragraphs (a) to (g).
- (2) Notwithstanding the provisions of subsection (1), coastal public property does not include-
- (a) any-
- (i) immovable structure, or part of an immovable structure; or
 - (ii) installation or infrastructure located in a port or harbour,
whether located on land or the seabed, lawfully constructed by an organ of state.
- (b) any portion of the seashore below the high-water mark, which was lawfully alienated before the Sea-shore Act, 1935 (Act No. 21 of 1935), took effect, or which was lawfully alienated in terms of that Act, and which has not subsequently been re-incorporated into the seashore;
- (c) any part of an island that was lawfully alienated before this Act commenced; or
- (d) any portion of a coastal cliff that-
- (i) was lawfully alienated before this Act took effect; and
 - (ii) is not owned by the State.

[S. 7 substituted by s. 5 of Act 36/2014 w.e.f. 1 May 2015]

7A. Purpose of coastal public property

- (1) Coastal public property is established for the following purposes:
- (a) To improve public access to the seashore;
 - (b) to protect sensitive coastal ecosystems;
 - (c) to secure the natural functioning of dynamic coastal processes;
 - (d) to protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise; or
 - (e) to facilitate the achievement of any of the objects of this Act.

[S. 7A inserted by s. 6 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

7B. Reclamation of land for state infrastructure

- (1) No organ of state may reclaim land for the development of state infrastructure unless authorised by the Minister.
- (2) The Minister may, on application, approve reclamation in terms of this section.
- (3) An application for reclamation must be-
 - (a) accompanied by-
 - (i) a detailed plan of how the land will be developed and utilised for the benefit of the State;
 - (ii) an assessment of whether there is any alternative land available and why such land cannot be used;
 - (iii) an explanation of the purpose for which the land is to be reclaimed;
 - (iv) detailed information on how development will be funded; and
 - (v) any other relevant information;
 - (b) submitted to the Minister for pre-approval prior to any application for an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act; and
 - (c) published by notice in the Gazette for public comment by the Minister for a period of no less than 60 days.
- (4) If an environmental authorisation is refused, a pre-approval in terms of subsection (3)(b) becomes invalid.
- (5) If an environmental authorisation is granted, the applicant must resubmit to the Minister the application, the environmental authorisation and other documents related to the reclamation for a final decision.
- (6) A final decision made by the Minister in terms of subsection (5) must be tabled in Parliament within 60 days of the decision.
- (7) Any land reclaimed for the development of state infrastructure vests in the organ of state applying for such reclamation.
- (8) Unless authorised by the Minister, land reclaimed in terms of subsection (2) may not be utilised other than in accordance with the purpose stated in the original application and conditions of the authorisation.

INTEGRATED COASTAL MANAGEMENT ACT

- (9) The Minister may, when approving a reclamation application, make the approval subject to any conditions or title deed restrictions.
- (10) Before making a decision in terms of this section, the Minister must consult with any organ of state that may be affected by such decision.

[S. 7B inserted by s. 6 of Act 36/2014 w.e.f. 1 May 2015]

7C. Reclamation of land for purposes other than state infrastructure

- (1) An application for reclamation for purposes other than the development of state infrastructure as contemplated in section 7B will only be considered in exceptional circumstances which are not contrary to the purpose of coastal public property as set out in section 7A.
- (2) An application for reclamation in terms of this section must be accompanied by-
- (a) details of how the land will be developed and its use;
 - (b) an assessment of whether there is any alternative land available and why such land cannot be used;
 - (c) information on whether the land and structures will be accessible to the public;
 - (d) information on whether the development is in the interests of the whole community;
 - (e) detailed information on how the development will be funded; and
 - (f) any other relevant information.
- (3) An application for reclamation must be submitted to the Minister for pre-approval prior to any application for an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act.
- (4) The Minister must-
- (a) follow the consultation process in section 53 prior to pre-approving an application for reclamation; and
 - (b) submit a pre-approval for reclamation to Parliament for ratification.
- (5) In the event that-
- (a) Parliament fails to ratify the pre-approval, the Minister's pre-approval as envisaged in subsection (3) becomes invalid; or

INTEGRATED COASTAL MANAGEMENT ACT

- (b) the environmental authorisation is refused, a pre-approval in terms of subsection (3) and a ratification in terms of subsection (4)(b) becomes invalid.
- (6) In the event that Parliament ratifies the pre-approval, application may be made for an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act.
- (7) If an environmental authorisation is granted, the applicant must resubmit to the Minister the application, the environmental authorisation, the ratified pre-approval and other documents related to the reclamation for a final decision.
- (8) A final decision made by the Minister in terms of subsection (7) must be tabled in Parliament within 60 days of the decision.
- (9) Land reclaimed in terms of this section-
- (a) may not be sold under any circumstances;
 - (b) must be subject to a lease as prescribed by the Minister; and
 - (c) may not be subleased without the written authorisation of the Minister.
- (10) Unless authorised by the Minister, land reclaimed in terms of this section may not be utilised other than in accordance with the purpose stated in the original application and conditions of the authorisation.
- (11) The Minister may, when approving a reclamation application, make the approval subject to any conditions.

[S. 7C inserted by s. 6 of Act 36/2014 w.e.f. 1 May 2015]

8. Extending coastal public property

- (1) The Minister may, by notice in the *Gazette*, declare in the manner contemplated in subsection (2) any state-owned land as coastal public property for the purposes set out in section 7A.

[Subs. (1) substituted by s. 7 of Act 36/2014 w.e.f. 1 May 2015]

- (3) The declaration of state-owned land as coastal public property in terms of subsection (1) may only be withdrawn by the Minister by notice in the *Gazette* with the prior approval of Parliament.
- (4) This section does not affect the application of section 26.

9. Acquisition of private land by State

- (1) The Minister, acting with the concurrence of the Minister of Land Affairs, may acquire private land for the purpose of declaring that land as coastal public property, by-
 - (a) purchasing the land;
 - (b) exchanging the land for other land; or
 - (c) if no agreement is reached with the owner, by expropriating the land in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975).
- (2) Land may be acquired in terms of this section only if it is being expropriated for a purpose set out in section 8(1).

10.

[S. 10 repealed by s. 8 of Act 36/2014 w.e.f. 1 May 20115]

11. Ownership of coastal public property

- (1) The ownership of coastal public property vests in the citizens of the Republic and coastal public property must be held in trust by the State on behalf of the citizens of the Republic.
- (2) Coastal public property is inalienable and cannot be sold, attached or acquired by prescription and rights over it cannot be acquired by prescription.

(Commencement date of s.11: To be proclaimed)

12. State public trustee of coastal public property

The State, in its capacity as the public trustee of all coastal public property, must-

- (a) ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community; and
- (b) take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property for the benefit of present and future generations.

13. Access to coastal public property

- (1) Subject to this Act and any other applicable legislation, any natural person in the Republic -
 - (a) has a right of reasonable access to coastal public property; and
 - (b) is entitled to use and enjoy coastal public property, provided such use-

INTEGRATED COASTAL MANAGEMENT ACT

- (i) does not adversely affect the rights of members of the public to use and enjoy the coastal public property;
- (ii) does not hinder the State in the performance of its duty to protect the environment; and
- (iii) does not cause an adverse effect.

(1A) Subject to subsections (2) and (3), no person may prevent access to coastal public property.
[Subs. (1A) inserted by s. 9 of Act 36/2014 w.e.f. 1 May 2015]

(2) This section does not prevent prohibitions or restrictions on access to, or the use of, any part of coastal public property -

- (a) which is or forms part of a protected area;
- (b) to protect the environment, including biodiversity;
- (c) in the interests of the whole community;
- (d) in the interests of national security; or
- (e) in the national interest.

(3)

- (a) No access fee may be charged for access to coastal public property without the approval of the Minister.
- (b) The Minister may by notice in the Gazette publish maximum fees for access to coastal public property or infrastructure located therein, payable by persons in general or a category of persons.
- (c) Any person or organ of state may apply to the Minister to charge a fee in excess of the maximum published in terms of paragraph (b).
- (d) The provisions of paragraph (a) shall not apply to fees for the use of facilities or activities which are located on or in coastal public property.

[Subs. (3) substituted by s. 9 of Act 36/2014 w.e.f. 1 May 2015]

(4) The Minister, before granting approval for the imposition of a fee, must require a public participation process in accordance with Part 5 of Chapter 6 to enable interested and affected parties to make representations.

INTEGRATED COASTAL MANAGEMENT ACT

- (5) Subsections (3) and (4) do not apply to coastal public property-
- (a) for which a coastal use permit has been issued in terms of section 65; or
 - (b) that is, or forms part of, a protected area, or a port or harbour.

[Subs. (5) substituted by s. 9 of Act 36/2014 w.e.f. 1 May 2015]

14. Position of high-water mark

- (1) No person may replace the high-water mark curvilinear boundary with a straight line boundary in terms of section 34 of the Land Survey Act.

[Subs. (1) substituted by s. 10 of Act 36/2014 w.e.f. 1 May 2015]

- (2)

[Subs. (2) deleted by s. 10 of Act 36/2014 w.e.f. 1 May 2015]

- (3)

[Subs. (3) deleted by s. 10 of Act 36/2014 w.e.f. 1 May 2015]

- (4)

[Subs. (4) deleted by s. 10 of Act 36/2014 w.e.f. 1 May 2015]

- (5) If the high-water mark is landward of a straight line boundary of a coastal land unit when this Act took effect, or the high-water mark moves landward of a straight line boundary of a coastal land unit due to the erosion of the coast, sea-level rise or other causes, the owner of that coastal land unit-

[Words preceding para. (a) substituted by s. 10 of Act 36/2014 w.e.f. 1 May 2015]

- (a) loses ownership of any portion of that coastal land unit that is situated below the high-water mark to the extent that such land unit becomes coastal public property; and
- [Para. (a) substituted by s. 10 of Act 36/2014 w.e.f. 1 May 2015]

- (b) is not entitled to compensation from the State for that loss of ownership,

unless the movement of the high-water mark was caused by an intentional or negligent act or omission by an organ of state and was a reasonably foreseeable consequence of that act or omission.

- (6)

[Subs. (6) deleted by s. 10 of Act 36/2014 w.e.f. 1 May 2015]

15. Measures affecting erosion and accretion

- (1) No person, owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion or accretion may require any organ of state or any other

INTEGRATED COASTAL MANAGEMENT ACT

person to take measures to prevent the erosion or accretion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is caused by an intentional act or omission of that organ of state or other person.

- (2) No person may construct, maintain or extend any structure, or take other measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for in this Act, the National Environmental Management Act or any other specific environmental management Act.

[Subs. (2) substituted by s. 11 of Act 36/2014 w.e.f. 1 May 2015]

Part 2

Coastal protection zone

16. Composition of coastal protection zone

- (1) Subject to subsection (2) and section 26, the coastal protection zone consists of-
[Words preceding para. (a) substituted by s. 12 of Act 36/2014 w.e.f. 1 May 2015]

- (a) land falling within an area declared in terms of the Environment Conservation Act, 1999 (Act No. 73 of 1989), as a sensitive coastal area within which activities identified in terms of section 21(1) of that Act may not be undertaken without an authorisation;
- (b) any part of the littoral active zone that is not coastal public property;
- (c) any coastal protected area, or part of such area, which is not coastal public property;
[Para. (c) substituted by s. 12 of Act 36/2014 w.e.f. 1 May 2015]
- (d) any land unit situated wholly or partially within one kilometre of the high-water mark which, when this Act came into force-
- (i) was zoned for agricultural or undetermined use; or
 - (ii) was not zoned and was not part of a lawfully established township, urban area or other human settlement;
- (e) any land unit not referred to in paragraph (d) that is situated wholly or partially within 100 metres of the high-water mark;
- (f) any coastal wetland, lake, lagoon or dam which is situated wholly or partially within a land unit referred to in paragraph (d)(i) or (e);
- (fA) the part of a river which is situated within a land unit referred to in paragraph (d)(i) or (e);
[Para. (fA) inserted by s. 12 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

- (g) any part of the seashore which is not coastal public property, including all privately owned land below the high-water mark;
 - (h) any admiralty reserve which is not coastal public property; or
 - (i) any land adjacent to an area referred to in paragraphs (a) to (h) that would be inundated by a 1: 100 year flood or storm event.
[Para. (i) substituted by s. 12 of Act 36/2014 w.e.f. 1 May 2015]
- (2) An area forming part of the coastal protection zone, except an area referred to in subsection (1)(g) or (h), may be excised from the coastal protection zone in terms of section 26.

17. Purpose of coastal protection zone

The coastal protection zone is established for enabling the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted in order to-

- (a) protect the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property;
- (b) avoid increasing the effect or severity of natural hazards in the coastal zone;
- (c) protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise;
- (d) maintain the natural functioning of the littoral active zone;
- (e) maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
- (f) make land near the seashore available to organs of state and other authorized persons for -
 - (i) performing rescue operations; or
 - (ii) temporarily depositing objects and materials washed up by coastal waters.
[Subpara. (ii) substituted by s. 13 of Act 36/2014 w.e.f. 1 May 2015]

Part 3

Coastal access land

18. Designation of coastal access land

- (1) Each municipality whose area includes coastal public property must within four years of the commencement of this Act, make a by law that designates strips of land as coastal access land in order to secure public access to that coastal public property.

INTEGRATED COASTAL MANAGEMENT ACT

(2) Coastal access land designated in terms of subsection (1) is automatically subject to a public servitude in terms of which members of the public may use that land to gain access to coastal public property.

[Subs. (2) substituted by s. 14 of Act 36/2014 w.e.f. 1 May 2015]

(3) A municipality must implement subsection (1) subject to -

(a) the other provisions of this Act, including-

(i) any prohibitions or restrictions referred to in section 13(2); and

(ii) the national and applicable provincial coastal management programmes; and

(b) any other applicable national or provincial legislation.

(4) No land within a port or harbour, defence or other strategic facility may be designated as coastal access land without the consent of the Minister responsible for that facility.

[Subs. (4) substituted by s. 14 of Act 36/2014 w.e.f. 1 May 2015]

(5) Subject to section 19, a municipality may, on its own initiative or in response to a request from an organ of state or any other interested and affected party, withdraw the designation of any land as coastal access land.

(6) If a municipality fails to designate strips of land as coastal access land in terms of subsection (1), the MEC, and failing the MEC, the Minister, may designate such access land by notice in the Gazette.

[Subs. (6) added by s. 14 of Act 36/2014 w.e.f. 1 May 2015]

(7) The MEC may not take any measures under subsection (6) without first consulting the municipality and giving it a reasonable opportunity to make representations.

[Subs. (7) added by s. 14 of Act 36/2014 w.e.f. 1 May 2015]

(8) The Minister may not take any measures under subsection (6) without first consulting the municipality and the relevant MEC and giving them a reasonable opportunity to make representations.

[Subs. (8) added by s. 14 of Act 36/2014 w.e.f. 1 May 2015]

(9) Each municipality approving the rezoning, subdivision or development of a land unit within or abutting on coastal public property must ensure that adequate provision is made in the conditions of approval to secure public access to that coastal public property.

[Subs. (9) added by s. 14 of Act 36/2014 w.e.f. 1 May 2015]

19. Process for designating and withdrawing designation of coastal access land

Before designating land as coastal access land or withdrawing any such designation, a municipality, the MEC or Minister, as the case may be, must-

[Words preceding para. (a) substituted by s. 15 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

- (a) assess the potential environmental impacts of doing so;
- (b) consult with interested and affected parties in accordance with Part 5 of Chapter 6; and
- (c) give notice of the intended designation or withdrawal of the designation to the owner of the land.

20. Responsibilities of municipalities with regard to coastal access land

- (1) A municipality in whose area coastal access land falls, must -
 - (a) signpost entry points to that, coastal access land;
 - (b) control the use of, and activities on, that land;
 - (c) protect and enforce the rights of the public to use that land to gain access to coastal public property;
 - (d) maintain that land so as to ensure that the public has access to the relevant coastal public property;
 - (e) where appropriate and within its available resources, provide facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of physically disabled persons;
 - (f) ensure that the provision and use of coastal access land and associated infrastructure do not cause adverse effects to the environment;
 - (g) remove any public access servitude that is causing or contributing to adverse effects that the municipality is unable to prevent or to mitigate adequately;
 - (h) describe or otherwise indicate all coastal access land in any municipal coastal management programme and in any municipal spatial development frame-work prepared in terms of the Municipal Systems Act;
 - (i) perform any other actions that may be prescribed; and
 - (j) report to the MEC within two years of this Act coming into force on the measures taken to implement this section.
- (2) A municipality may make by-laws for the proper implementation of subsection (1).

Part 4

Coastal waters

21. Control and management of coastal waters

An organ of state that is legally responsible for controlling or managing any activity on or in coastal waters, must control and manage that activity -

- (a) in the interests of the whole community; and
- (b) in accordance with the Republic's obligations under international law.

Part 5

Coastal protected areas

22. Excision of protected areas from coastal protection zone

- (1) Subject to section 87, the MEC may by notice in the *Gazette* declare that with effect from a specified date the whole or any part of a protected area that is not coastal public property, will not form part of the coastal protection zone.
- (2) The MEC may only publish a notice referred to in subsection (1) after consultation with the management authority of the protected area, if he or she on reasonable grounds believes that doing so will not prejudice the effective management of the coastal zone.
- (3) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in this section, if such power relates to any part of an area that-
 - (a) is a national protected area as defined in the Protected Areas Act;
 - (b) straddles a coastal boundary between two provinces; or
 - (c) extends up to, or straddles, the borders of the Republic.

[Subs. (3) added by s. 16 of Act 36/2014 w.e.f. 1 May 2015]

Part 6

Special management areas

23. Declaration of special management areas

- (1) The Minister may, after consultation with the MEC, by notice in the *Gazette*-

INTEGRATED COASTAL MANAGEMENT ACT

- (a) declare an area that is wholly or partially within the coastal zone to be a special management area; or
 - (b) withdraw or amend any declaration made in terms of paragraph (a).
- (2) Before declaring an area to be a special management area, the Minister must give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6.
- (3) An area may be declared as a special management area only if environmental, cultural or socio-economic conditions in that area require the introduction of measures which are necessary in order to more effectively -
- (a) attain the objectives of any coastal management programme in the area;
 - (b) facilitate the management of coastal resources by a local community;
 - (c) promote sustainable livelihoods for a local community; or
 - (d) conserve, protect or enhance coastal ecosystems and biodiversity in the area.
- (4) The Minister may prescribe specified activities which are prohibited in special management areas taking into account the purpose for which the special management area was declared.

24. Management of special management areas

- (1) The Minister may, by notice in the *Gazette*, appoint a manager for each special management area.
- (2) The manager must have sufficient expertise and capacity to manage the special management area in a manner that will achieve the objectives for which it was established and may be -
- (a) a juristic person constituted for that purpose;
 - (b) an organ of state;
 - (c) a traditional council; or
 - (d) any other person with appropriate expertise and capacity.
- (3) Before authorising the manager to begin managing the special management area, the Minister must make regulations that -

- (a) define the duties and powers of the manager; and
- (b) prescribe rules to facilitate the achievement of the objectives for which the special management area was declared.

Part 7

Coastal management lines

[Heading of Part 7 substituted by s. 17 of Act 36/2014 w.e.f. 1 May 2015]

25. Establishment of coastal management lines

- (1) An MEC must by notice in the Gazette establish or change coastal management lines-
 - (a) to protect coastal public property, private property and public safety;
 - (b) to protect the coastal protection zone;
 - (c) to preserve the aesthetic values of the coastal zone; or
 - (d) for any other reason consistent with the objectives of this Act.
- (1A) An MEC may, in regulations published in the Gazette, prohibit or restrict the building, erection, alteration or extension of structures that are wholly or partially seaward of a coastal management line.
- (1B) When establishing coastal management lines in terms of subsection (1), the MEC must consider the location of immovable property and the ownership and zonation of vacant land.
- (2) Before making or amending a notice referred to in subsection (1), or making the regulations referred to in subsection (1A), the MEC must-
 - (a) consult with any local municipality within whose area of jurisdiction the coastal management line is, or will be, situated; and
 - (b) give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6.
- (3) A local municipality within whose area of jurisdiction a coastal management line has been established must delineate the coastal management line on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the coastal management line in relation to existing cadastral boundaries.
- (4) A coastal management line may be situated wholly or partially outside the coastal zone.

- (5) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in this section, if such power relates to any part of an area that-
- (a) is a national protected area as defined in the Protected Areas Act;
 - (b) straddles a coastal boundary between two provinces; or
 - (c) extends up to, or straddles, the borders of the Republic.

[s. 25 substituted by s. 18 of Act 36/2014 w.e.f. 1 May 2015]

CHAPTER 3

BOUNDARIES OF COASTAL AREAS

26. Determination and adjustment of coastal boundaries

- (1) The coastal boundaries of-
- (a) coastal public property may be determined or adjusted by the Minister in accordance with section 27 by notice in the *Gazette*;
 - (b) the coastal protection zone may be determined or adjusted by the MEC in accordance with section 28 by notice in the *Gazette*;
 - (c) a special management area may be determined or adjusted by the Minister in accordance with section 23 by notice in the *Gazette*; and
 - (d) coastal access land may be determined or adjusted by the municipality in accordance with section 29 by notice in the *Gazette*.
- (2) The power of the Minister to determine or adjust the inland coastal boundary of coastal public property in terms of section 27, includes the power to make any consequential change to an adjoining coastal boundary of the coastal protection zone or coastal access land.
- (3) The coastal boundaries referred to in subsection (1) may be determined or adjusted if-
- (a) that coastal boundary-
 - (i) is uncertain or undefined;
 - (ii) is subject to disputing claims; or

INTEGRATED COASTAL MANAGEMENT ACT

- (iii) has shifted due to natural or artificial processes; or
 - (b) the Minister, MEC or municipality concerned on reasonable grounds believes that the objects of this Act will be achieved more effectively by doing so.
- (4) When determining or adjusting a coastal boundary in terms of subsection (1), the Minister, MEC or municipality in question must -
- (a) give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6;
 - (b) take into account -
 - (i) any representations made by interested and affected parties;
 - (ii) the interests of any affected local community;
 - (iii) any applicable coastal management programme; and
 - (c) comply with any other requirements that may be prescribed.
- (5) If the Minister or MEC determines or adjusts any coastal boundary under this section, he or she must immediately inform any municipality within whose area of jurisdiction the coastal boundary is situated to enable the municipality to reflect that coastal boundary on its zoning maps in accordance with section 31.
- (6) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in subsection (1)(b) if such power relates to any part of an area that-
- (a) is a national protected area as defined in the Protected Areas Act;
 - (b) straddles a coastal boundary between two provinces; or
 - (c) extends up to, or straddles, the borders of the Republic.

[Subs. (6) added by s. 19 of Act 36/2014 w.e.f. 1 May 2015]

27. Determining and adjusting coastal boundary of coastal public property

When determining or adjusting the inland coastal boundary of coastal public property, the Minister must take into account-

- (a) the dynamic nature of the shoreline;

INTEGRATED COASTAL MANAGEMENT ACT

- (b) the need to make appropriate allowance for-
 - (i) the periodic natural movements in the high-water mark; and
 - (ii) the erosion and accretion of the seashore;
- (c) the importance of ensuring the natural functioning of dynamic coastal processes and of extending the coastal boundaries of coastal public property to include the littoral active zone and sensitive coastal ecosystems, including coastal wetlands;
- (d) the potential effects of projected rises in sea-level;
- (dA) any anthropogenic influences on dynamic coastal processes; and
- (e) any other factor that may be prescribed.

[S. 27 substituted by s. 20 of Act 36/2014 w.e.f. 1 May 2015]

28. Determining and adjusting coastal boundaries of coastal protection zone

- (1) The MEC may not determine or adjust the coastal boundaries of the coastal protection zone in a manner that changes the coastal boundaries of coastal public property.
- (2) The MEC may include land that is not adjacent to coastal public property in the coastal protection zone.
- (3) When determining or adjusting the coastal boundary of the coastal protection zone the MEC must take into account-
 - (a) the purpose for which the coastal protection zone is established;
 - (b) the importance for coastal management to incorporate into the coastal protection zone land inland of the high-water mark that is not coastal public property but that should be maintained in, or restored to, a natural or semi-natural State;
 - (c) the need to avoid risks posed by natural hazards to people, biodiversity, coastal public property and private property;
 - (d) the potential for the number and severity of natural disasters to increase due to the effects of global climate change and other impacts on the environment, and the importance of taking preventive measures to address these threats;
 - (e) the importance of allowing for the movement of the position of the high water mark over time and of protecting the inland coastal boundary of coastal public property by demarcating a continuous strip of land adjacent to it; and
 - (f) any other factor that may be prescribed.

INTEGRATED COASTAL MANAGEMENT ACT

- (4) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in subsections (2) and (3), if such power relates to any part of an area that-
- (a) is a national protected area as defined in the Protected Areas Act;
 - (b) straddles a coastal boundary between two provinces; or
 - (c) extends up to, or straddles, the borders of the Republic.

[Subs. (4) added by s. 21 of Act 36/2014 w.e.f. 1 May 2015]

29. Determining and adjusting coastal boundaries of coastal access land

When determining or adjusting a coastal boundary of coastal access land a municipality must take into account-

- (a) the kind of public access required, and whether it is for-
 - (i) pedestrians;
 - (ii) vehicles;
 - (iii) vessels; or
 - (iv) any other kind of access:
- (b) any potential adverse effects that public access may cause, including those caused by-
 - (i) associated infrastructure;
 - (ii) vehicles, vessels or other conveyances; and
 - (iii) increased numbers of people:
- (c) the need for parking, recreational and ablution facilities;
- (d) any existing rights of way, public servitudes or customary means of gaining access to the seashore and coastal waters;
- (e) the need to protect any coastal protected areas; and
- (f) the importance of not restricting the rights of land owners unreasonably.

30. Entry onto land

- (1) The Minister, an MEC or a municipality may, for the purpose of determining or adjusting a coastal boundary in terms of section 26, authorise any person to enter at any reasonable time, after reasonable notice to the owner or occupier of land or premises, other than residential premises, without a warrant, to -
 - (a) conduct any survey;
 - (b) gather data;
 - (c) undertake an environmental assessment;
 - (d) erect a beacon; or
 - (e) take any other steps that may be necessary under this section.
- (2) Any person authorised in terms of subsection (1) to enter land or premises must on demand by any person, produce proof of his or her identity and authority to enter such land or premises.
- (3) Where the owner of any land or premises has refused entrance or cannot be found, the Minister, an MEC or a municipality may apply to the High Court for an appropriate order.
- (4) The Minister, an MEC or a municipality must compensate the owner for any damage, or repair any damage, arising from any act performed or carried out on the land or premises in the exercise of any power conferred in terms of this section.

31. Marking coastal boundaries on zoning maps

If the Minister, an MEC or a municipality determines or adjusts a coastal boundary in accordance with section 26, a local municipality within whose area of jurisdiction the coastal boundary is situated must delineate that coastal boundary on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the coastal boundary in relation to existing cadastral boundaries.

32. Endorsements by Registrar of Deeds

- (1) The Minister, an MEC or a municipality, as may be appropriate, must notify the relevant Registrar of Deeds in writing whenever a coastal boundary has been determined or adjusted in terms of section 26(1) or an area or land has been demarcated in terms of section 26(2).
- (2) The notification to the relevant Registrar of Deeds must -
 - (a) include a description of the land involved; or

INTEGRATED COASTAL MANAGEMENT ACT

- (b) be accompanied by a diagram as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997), of the land involved which is signed by a land surveyor.
- (3) On receipt of the notification contemplated in subsection (2), the relevant Registrar of Deeds must in accordance with section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), make a note in the relevant register of the determination or adjustment of a coastal boundary or a demarcation.

CHAPTER 4

ESTUARIES

33. National estuarine management protocol

- (1) Estuaries within the Republic must be managed in a co-ordinated and efficient manner and in accordance with a national estuarine management protocol.
- (2) The Minister, with the concurrence of the Minister responsible for water affairs, must within four years of the commencement of this Act publish by notice in the Gazette a national estuarine management protocol.

[Subs. (2) substituted by s. 22 of Act 36/2014 w.e.f. 1 May 2015]

- (3) The national estuarine management protocol must -
 - (a) determine a strategic vision and objectives for achieving effective integrated management of estuaries;
 - (b) set standards for the management of estuaries;
 - (c) establish procedures or give guidance regarding how estuaries must be managed and how the management responsibilities are to be exercised by different organs of state and other parties;
 - (d) establish minimum requirements for estuarine management plans;
 - (e) identify who must prepare estuarine management plans and the process to be followed in doing so;
 - (f) specify the process for reviewing estuarine management plans to ensure that they comply with the requirements of this Act; and
 - (g) be published for public comment in accordance with the procedure set out in Part 5 of Chapter 6.

34. Estuarine management plan

- (1) The responsible body contemplated in section 33(3)(e) who develops an estuarine management plan must -
- (a) follow a public participation process in accordance with Part 5 of Chapter 6; and
 - (b) ensure that the estuarine management plan and the process by which it is developed are consistent with-
 - (i) the national estuarine management protocol; and
 - (ii) the national coastal management programme and with the applicable provincial coastal management programme and municipal coastal management programme referred to in Parts 1, 2 and 3 of Chapter 6;
[Subpara. (ii) amended by s. 23 of Act 36/2014 w.e.f. 1 May 2015]
 - (c) if applicable, ensure that relevant legislation is enacted to implement an estuarine management plan; and
[Para. (c) added by s. 23 of Act 36/2014 w.e.f. 1 May 2015]
 - (d) submit an annual report to the Minister on the implementation of the estuarine management plan, the legislation and any other matter which the Minister may prescribe.
[Para. (d) added by s. 23 of Act 36/2014 w.e.f. 1 May 2015]
- (2) An estuarine management plan may form an integral part of a provincial coastal management programme or a municipal coastal management programme.
- (3) The report referred to in subsection (1)(d) must be tabled in Parliament annually.
[Subs. (3) added by s. 23 of Act 36/2014 w.e.f. 1 May 2015]

CHAPTER 5

INSTITUTIONAL ARRANGEMENTS

Part 1

National Coastal Committee

35. Establishment and functions of National Coastal Committee

- (1) The Minister must by notice in the *Gazette* establish a National Coastal Committee and determine its powers.

INTEGRATED COASTAL MANAGEMENT ACT

- (2) The Department must provide administrative support to the National Coastal Committee.
- (3) The National Coastal Committee must promote integrated coastal management in the Republic and effective co-operative governance by co-ordinating the effective implementation of this Act and of the national coastal management programme, and in particular must -
- (a) promote integrated coastal management -
 - (i) within each sphere of government;
 - (ii) between different spheres of government; and
 - (iii) between organs of state and other parties concerned with coastal management;
 - (b) promote the integration of coastal management concerns and objectives into -
 - (i) those environmental implementation plans and environmental management plans referred to in Chapter 3 of the National Environmental Management Act to which they are relevant;
 - (ii) national, provincial and municipal development policies, plans and strategies;
 - (iii) other plans, programmes and policies of organs of State whose activities may create adverse effects on the coastal environment; and
 - (c) perform any function delegated to it.
- (4) The National Coastal Committee must report to the Minister annually on the matters in subsection (3) and that report must be tabled in Parliament.
[Subs. (4) added by s. 24 of Act 36/2014 w.e.f. 1 May 2015]

36. Composition of National Coastal Committee

- (1) The Minister appoints the members of the National Coastal Committee.
- (1A) The Minister must designate an official from the Department as the Chairperson of the National Coastal Committee.
[Subs. (1A) inserted by s. 25 of Act 36/2014 w.e.f. 1 May 2015]
- (2) The persons to be appointed in terms of subsections (1) and (1A) must, by virtue of the office that they hold or their expertise, be able to assist the National Coastal Committee in fulfilling its functions.
[Subs. (2) substituted by s. 25 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

(2A) The Minister must appoint permanent members on the National Coastal Committee which must include but is not limited to-

- (a) a representative from each Provincial Coastal Committee;
- (b) representatives of national government departments which play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment; and
- (c) one or more members representing the management authorities of coastal protected areas.

[Subs. (2A) inserted by s. 25 of Act 36/2014 w.e.f. 1 May 2015]

(2B) The Committee may, when required invite other persons to participate in the National Coastal Committee which may include-

- (a) a representative of a national government department which is not a permanent member;
- (b) a representative of a municipality that is affected by issues under consideration by the National Coastal Committee;
- (c) persons with expertise in fields relevant to coastal management and coastal ecosystems; and
- (d) any other person who may assist the National Coastal Committee in fulfilling its functions.

[Subs. (2B) inserted by s. 25 of Act 36/2014 w.e.f. 1 May 2015]

(3) The Minister may, on the basis of the criteria referred to in subsection (2), appoint -

- (a) an alternate member for any member of the National Coastal Committee; and
- (b) a replacement for any member who vacates his or her office.

(4)

[Subs. (4) deleted by s. 25 of Act 36/2014 w.e.f. 1 May 2015]

37. Vacation of office and termination of membership

(1) A member of the National Coastal Committee vacates office if he or she tenders his or her resignation.

[Subs. (1) substituted by s. 26 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

- (2) The Minister may terminate membership of a member of the National Coastal Committee where-
- (a) that member fails to perform the duties of a member as required in terms of this Act;
 - (b) that member obstructs or impedes the National Coastal Committee in the performance of its functions in terms of this Act;
 - (c) that member brings the National Coastal Committee into disrepute; or
 - (d) such termination is in the interest of the public.

Part 2

Provincial lead agencies

38. Designation and functions of provincial lead agency

- (1) The Premier of each coastal province must, within two months of the commencement of this Act, designate a provincial organ of state to function as the lead agency for coastal management in the province and must ensure that there is at all times a lead agency for coastal management in the province which is responsible to the MEC.
- (2) Each provincial lead agency must, within the province -
- (a) co-ordinate the implementation of the provincial coastal management programme referred to in Part 2 of Chapter 6;
 - (b) monitor coastal management in the province to ensure that it is undertaken in an integrated, effective and efficient manner and in accordance with the objects of this Act;
 - (c) monitor the state of the environment in the coastal zone and relevant trends affecting that environment, and identify provincial priority issues;
 - (d) co-ordinate the preparation of a provincial state of the coast report required by section 93(2);
 - (e) provide logistical and administrative support to the Provincial Coastal Committee established in accordance with section 39;
 - (f) review reports that relate to determinations and adjustments under Chapter 3 or that concern policies that may impact on the coastal zone;
 - (g) promote, in collaboration with other appropriate bodies and organisations, training, education and public awareness programmes relating to the protection, conservation

INTEGRATED COASTAL MANAGEMENT ACT

and enhancement of the coastal environment and the sustainable use of coastal resources;

- (h) take all reasonably practical measures to monitor compliance with, and to enforce, this Act, either alone or in co-operation with other enforcement agencies; and
- (i) perform any other functions assigned to it by the Minister or the MEC under this Act.

(3) The Premier may assign any of the functions referred to in subsection (2) to any organ of state other than the lead agency in the province.

[Subs. (3) e substituted by s. 27 of Act 36/2014 w.e.f. 1 May 2015]

Part 3

Provincial Coastal Committees

39. Establishment and functions of Provincial Coastal Committees

- (1) Each MEC must within 12 months of the commencement of this Act establish a Provincial Coastal Committee for the province.
- (2) A Provincial Coastal Committee must -
 - (a) promote integrated coastal management in the province and the co-ordinated and effective implementation of this Act and the provincial coastal management programme;
 - (b) advise the MEC, the provincial lead agency and the National Coastal Committee on matters concerning coastal management in the province;
 - (c) advise the MEC on developing, finalising, reviewing and amending the provincial coastal management programme;
 - (d) promote a co-ordinated, inclusive and integrated approach to coastal management within the province by providing a forum for, and promoting, dialogue, co-operation and co-ordination between the key organs of State and other persons involved in coastal management in the province;
 - (e) promote the integration of coastal management concerns and objectives into the plans, programmes and policies of other organs of state whose activities may have caused or may cause adverse effects on the coastal environment; and
 - (f) perform any function delegated to it.

40. Composition of Provincial Coastal Committees

- (1) Subject to subsection (5), the MEC must determine the composition of the Provincial Coastal Committee, and in doing so must take account of the desirability of ensuring the

INTEGRATED COASTAL MANAGEMENT ACT

representation on the Provincial Coastal Committee of organs of state and community groups or bodies which have a material and direct interest in the conservation and management of the coast or the use of coastal resources including representatives of government who play a significant role in undertaking or regulating activities that may have an adverse impact on the coastal environment.

- (2) The MEC must -
- (a) appoint persons to the Provincial Coastal Committee who by virtue of the office that they hold or their expertise are able to assist the Provincial Coastal Committee in fulfilling its functions; and
 - (b) when appointing persons in terms of paragraph (a), ensure that the Provincial Coastal Committee includes-
 - (i) persons with expertise in fields relevant to coastal management;
 - (ii) one or more members representing municipalities in the coastal zone;
 - (iii) one or more members representing community based and non-government organisations; and
 - (iv) one or more members representing scientific or coastal research institutes.
- (3) The MEC may, on the basis of the criteria referred to in subsections (1) and (2), appoint -
- (a) an alternate member for any member of the Provincial Coastal Committee; and
 - (b) a replacement for any member who vacates his or her office.
- (4) The MEC must, with the consent of the MEC responsible for finance in the province, determine the rate of remuneration and the allowances payable to any member of the Provincial Coastal Committee who is not an employee of an organ of state.
- (5) The Director-General may appoint a member of the Department to participate as a non-voting member of a Provincial Coastal Committee and may appoint an alternate or replacement for any such member.

41. Vacation of office and termination of membership

- (1) A member of a Provincial Coastal Committee vacates office if he or she -
- (a) becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the Provincial Coastal Committee;

INTEGRATED COASTAL MANAGEMENT ACT

- (b) ceases to hold any office necessary for his or her appointment to the Provincial Coastal Committee; or
 - (c) tenders his or her resignation and the MEC accepts it.
- (2) The MEC may terminate membership of the member of the Provincial Coastal Committee where -
- (a) he or she fails to perform the duties of a member as required in terms of this Act;
 - (b) he or she obstructs or impedes the Provincial Coastal Committee in the performance of its functions in terms of this Act;
 - (c) he or she brings the Provincial Coastal Committee into disrepute; or
 - (d) such termination is in the interest of the public.

Part 4

Municipal Coastal

42. Committees Establishment and functions of municipal coastal committees

- (1) Each metropolitan municipality and each district municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and, subject to subsection (4), determine its powers.
- (2) Any local municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and, subject to subsection (4), determine its powers, which may include the power to establish local subcommittees of the municipal coastal Committee.
- (3) A municipal coastal committee contemplated in subsections (1) and (2) may include -
 - (a) persons with expertise in fields relevant to coastal management; and
 - (b) representatives of the management authorities of coastal protected areas or special management areas within the municipality; and
 - (c) representatives of communities or organisations with a particular interest in contributing to effective coastal management, such as port authorities, organs of state, persons whose livelihoods or businesses rely on the use of coastal resources, environmental interest groups and research organisations.
- (4) A municipal coastal committee contemplated in subsections (1) and (2) may -

INTEGRATED COASTAL MANAGEMENT ACT

- (a) promote integrated coastal management in the municipality and the co-ordinated and effective implementation of this Act and the municipal coastal management programme;
- (b) advise the municipal manager, the municipal council and the provincial coastal committee on matters concerning coastal management within the area of jurisdiction of the municipal coastal committee;
- (c) advise the municipality on developing, finalising, reviewing and amending the municipal coastal management programme;
- (d) promote a co-ordinated, inclusive and integrated approach to coastal management within the municipality by providing a forum for, and promoting, dialogue, co-operation and co-ordination between the key organs of state and other persons involved in coastal management within its area of jurisdiction;
- (e) promote the integration of coastal management concerns and objectives into the municipality's integrated development plan and spatial development framework and into other municipal plans, programmes and policies that affect the coastal environment; and
- (f) perform any coastal governance function delegated to it.

Part 5

Voluntary Coastal Officers

43. Voluntary coastal officers

- (1) The MEC of a coastal province may appoint any member of the public who has appropriate expertise as a voluntary coastal officer.
- (2) A voluntary coastal officer must exercise the powers and perform the duties assigned to him or her by the MEC in a manner that conserves and protects coastal public property.
- (3) The MEC must -
 - (a) prescribe the powers and duties of voluntary coastal officers;
 - (b) clearly define the responsibilities and duties of each voluntary coastal officer in his or her letter of appointment; and
 - (c) issue each voluntary coastal officer with an identity card that confirms his or her appointment.
- (4) A voluntary coastal officer who is exercising powers or performing functions in terms of this Act must produce his or her identity card at the request of a member of the public.

CHAPTER 6

COASTAL MANAGEMENT

Part 1

National coastal management programme

44. Preparation and adoption of national coastal management programme

- (1) The Minister -
 - (a) must within four years after this Act takes effect, prepare and adopt a national coastal management programme for managing the coastal zone;
 - (b) must review the programme at least once every five years; and
 - (c) may, when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), the Minister must by notice in the *Gazette* invite members of the public to submit to the Minister, within 30 days of such notice, written representations on or objections to the programme.
- (3) The Minister must, within 60 days of the adoption of the national coastal management programme or of any substantial amendment to it-
 - (a) give notice to the public -
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from, the programme are available for public-inspection at specified places; and
 - (b) publicise a summary of the programme.

45. Contents of national coastal management programme

- (1) The national coastal management programme must-
 - (a) be a policy directive on integrated coastal management; and
 - (b) provide for an integrated, co-ordinated and uniform approach to coastal management by organs of state in all spheres of government, nongovernmental organisations, the private sector and local communities.

INTEGRATED COASTAL MANAGEMENT ACT

- (2) The national coastal management programme must include the following components -
- (a) A national vision for coastal management in the Republic, including the sustainable use of coastal resources;
 - (b) national coastal management objectives;
 - (c) priorities and strategies to achieve those objectives;
 - (d) performance indicators to measure progress with the achievement of those objectives;
 - (e) norms and standards for the management of-
 - (i) the coastal zone generally;
 - (ii) the specific components of the coastal zone; and
 - (f) a framework for co-operative governance to implement measures concerning coastal management that -
 - (i) identifies the responsibilities of different organs of state, including their responsibilities in relation to marginalised or previously disadvantaged communities that are dependent on coastal resources for their livelihood; and
 - (ii) facilitates co-ordinated and integrated coastal management.

Part 2

Provincial coastal management programmes

46. Preparation and adoption of provincial coastal management programmes

- (1) The MEC of each coastal province -
- (a) must within four years of the commencement of this Act, prepare and adopt a provincial coastal management programme for managing the coastal zone in the province;
 - (b) must review the programme at least once every five years; and
 - (c) may, when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), the MEC must by notice in the *Gazette* invite members of the public to submit to the MEC, within 30 days of such notice, written representations on or objections to the programme.

INTEGRATED COASTAL MANAGEMENT ACT

- (3) The MEC must, within 60 days of the adoption of the provincial coastal management programme or of any substantial amendment to it-
- (a) give notice to the public -
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from, the programme are available for public inspection at specified places; and
 - (b) publicise a summary of the programme.
- (4) If the province has a provincial land development plan or an integrated development plan, programme or strategy, its coastal management programme may form part of that plan, programme or strategy.

47. Contents of provincial coastal management programmes

- (1) A provincial coastal management programme must -
- (a) be a provincial policy directive for the management of the coastal zone in the province;
 - (b) provide for an integrated, coordinated and uniform approach to coastal management in the province; and
 - (c) be consistent with -
 - (i) the national coastal management programme; and
 - (ii) the national estuarine management protocol.
- (2) A provincial coastal management programme must include-
- (a) a vision for the management of the coastal zone in the province, including the sustainable use of coastal resources;
 - (b) the coastal management objectives for the coastal zone in the province and for specific parts of the coastal zone;
 - (c) priorities and strategics -
 - (i) to achieve the coastal management objectives of the province;
 - (ii) to assist in the achievement of the national coastal management objectives as applicable in the province;

INTEGRATED COASTAL MANAGEMENT ACT

- (iii) to develop estuarine management plans for estuaries in the province; and
 - (d) performance indicators to measure progress with the achievement of those objectives.
- (3) A provincial coastal management programme may include a programme of projected expenditure and investment by the provincial government in order to implement the provincial coastal management programme.

Part 3

Municipal coastal management programmes

48. Preparation and adoption of municipal coastal management programmes

- (1) A coastal municipality -
- (a) must, within four years of the commencement of this Act, prepare and adopt a municipal coastal management programme for managing the coastal zone or specific parts of the coastal zone in the municipality;
 - (b) must review any programme adopted by it at least once every five years; and
 - (c) may, when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), a municipality must by notice in the *Gazette* invite members of the public to submit written representations on or objections to the programme in accordance with the procedure contemplated in Chapter 4 of the Municipal Systems Act.
- (3) A municipality must, within 60 days of the adoption of the municipal coastal management programme or of any substantial amendment to it-
- (a) give notice to the public -
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from the programme are available for public inspection at specified places; and
 - (b) publicise a summary of the programme.
- (4) A municipality may prepare and adopt a coastal management programme as part of an integrated development plan and spatial development framework adopted in accordance with the Municipal Systems Act and if it does so, compliance with the public participation

INTEGRATED COASTAL MANAGEMENT ACT

requirements prescribed in terms of the Municipal Systems Act for the preparation and adoption of integrated development plans will be regarded as compliance with public participation requirements in terms of this Act.

49. Contents of municipal coastal management programmes

- (1) A municipal coastal management programme must-
 - (a) be a coherent municipal policy directive for the management of the coastal zone within the jurisdiction of the municipality; and
 - (b) be consistent with -
 - (i) the national and provincial coastal management programmes; and
 - (ii) the national estuarine management protocol.
- (2) A municipal coastal management programme must include -
 - (a) a vision for the management of the coastal zone within the jurisdiction of the municipality, including the sustainable use of coastal resources;
 - (b) the coastal management objectives for the coastal zone within the jurisdiction of the municipality;
 - (c) priorities and strategies -
 - (i) to achieve the coastal management objectives of the municipality; and
 - (ii) to assist in the achievement of the national and provincial coastal management objectives as may be applicable in the municipality;
 - (iii) to address the high percentage of vacant plots and the low occupancy levels of residential dwellings;
 - (iv) to equitably designate zones as contemplated in section 56(1)(a)(i) for the purposes of mixed cost housing and taking into account the needs of previously disadvantaged individuals;
 - (v) to address coastal erosion and accretion; and
 - (vi) to deal with access issues.
 - (d) performance indicators to measure progress with the achievement of those objectives.

INTEGRATED COASTAL MANAGEMENT ACT

- (3) A municipal coastal management programme may include -
- (a) a programme of projected expenditure and investment by the municipality in coastal management infrastructure or in order to implement any coastal management programme;
 - (b) a description of specific areas within the coastal zone that require special coastal management, and management strategies for those areas;
 - (c) estuarine management plans; and
 - (d) any other matter that may be prescribed.

50. By-laws

A municipality may administer its coastal management programme and may make by-laws to provide for the implementation, administration and enforcement of the coastal management programme.

Part 4

Co-ordination and alignment of plans and coastal management programmes

51. Alignment of certain plans with coastal management programmes

Any programme or plan in terms of the National Environmental Management Act, any specific environmental management Act, an integrated development plan in terms of the Municipal Systems Act and a provincial or municipal land development plan must-
[Words preceding para. (a) substituted by s. 28 of Act 36/2014 w.e.f. 1 May 2015]

- (a) be aligned with the national coastal management programme and any applicable provincial coastal management programme;
- (b) contain those provisions of the national coastal management programme and any applicable provincial coastal management programme that specifically applies to it; and
- (c) give effect to the national coastal management programme and any applicable provincial coastal management programme.

52. Ensuring consistency between coastal management programmes and other statutory plans

- (1) For the purposes of this section, "statutory plan" means a plan, policy or programme adopted by an organ of state that may affect coastal management, and without limitation, may include -

INTEGRATED COASTAL MANAGEMENT ACT

- (a) an environmental implementation or environmental management plan prepared in terms of Chapter 3 of the National Environmental Management Act;
 - (b) an integrated development plan adopted by a municipality in terms of the Municipal Systems Act;
 - (c) the national biodiversity framework referred to in section 38 of the Biodiversity Act and a bioregional plan prepared in terms of that Act;
 - (d) a provincial or municipal land development plan;
 - (e) a provincial strategic policy and plan concerned with promoting sustainable development; and
 - (f) the national estuarine management protocol.
- (2) The Minister must ensure that there is consistency between the national coastal management plan and other statutory plans adopted by a national organ of state.
- (3) The MEC must ensure that there is consistency between the provincial coastal management plan and other statutory plans adopted by either a national or a provincial organ of state.
- (4) Each municipality in the coastal zone must ensure that its integrated development plan (including its spatial development framework) is consistent with other statutory plans adopted by either a national or a provincial organ of State.
- (5) If there is a conflict between the provisions of a coastal management programme and the provisions of another statutory plan, the person responsible under subsections (2), (3) or (4) to ensure consistency must discuss the conflict with the organ of State responsible for that statutory plan in order to resolve the conflict, failing which the conflict must be dealt with in accordance with Chapter 4 of the National Environmental Management Act.
- (6) Conflicts between a coastal management programme and other statutory plans must be resolved in a manner that best promotes the objects of this Act.
- (7) Once the parties referred to in subsection (5) have resolved the conflict they must make appropriate amendments to one or more of such conflicting plans.

Part 5

53. Public participation Consultation and public participation

- (1) Before exercising a power, which this Act requires to be exercised in accordance with this section, the Minister, MEC, municipality or other person exercising that power must -

INTEGRATED COASTAL MANAGEMENT ACT

- (a) consult with all Ministers, MECs or municipalities whose areas of responsibilities will be affected by the exercise of the powers in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution;
- (b) publish or broadcast his or her intention to do so in a manner that is reasonably likely to bring it to the attention of the public; and
- (c) by notice in the *Gazette* -
 - (i) invite members of the public to submit, within no less than 30 days of such notice, written representations or objections to the proposed exercise of power; and
 - (ii) contain sufficient information to enable members of the public to submit representations or objections.

Part 6

Review of coastal management programmes

54. Powers of Minister to review coastal management programmes

- (1) The Minister may at any time review any provincial coastal management programme.
- (2) The Minister must, in reviewing the provincial coastal management programme, determine whether or not it -
 - (a) meets the requirements specified in section 47;
 - (b) is consistent with the national coastal management programme;
 - (c) gives adequate protection to coastal public property; and
 - (d) provides an appropriate policy framework for establishing an effective and efficient system of coastal management.
- (3) If the Minister believes that a provincial coastal management programme does not meet all the criteria referred to in subsection (2), the Minister must by notice to the MEC of the province concerned, require the MEC to amend or replace the provincial coastal management programme within a reasonable period, which must be specified in the notice.
- (4) An MEC who receives a notice in terms of subsection (3) must amend or replace the provincial coastal management programme by following the same procedure used to prepare and adopt it in terms of this Act, except that the new or amended coastal management programme may not be finally adopted without the consent of the Minister.

(5)

- (a) The Minister may request an MEC to review a municipal coastal management programme under section 55;
- (b) If the MEC is unable or unwilling to review the municipal coastal management programme within a reasonable period, the Minister may do so, in which case section 55 applies with the necessary changes.

55. Review of municipal coastal management programmes

- (1) The MEC may at any time review a municipal coastal management programme.
- (2) The MEC must, in reviewing the municipal coastal management programme, determine whether or not it -
 - (a) meets the requirements specified in section 49;
 - (b) is consistent with the national and the provincial coastal management programmes;
 - (c) gives adequate protection to coastal public property; and
 - (d) was prepared in a manner that allowed for effective participation by interested and affected parties.
- (3) If, after considering the advice of the Provincial Coastal Committee, the MEC believes that a municipal coastal management programme does not meet all the criteria referred to in subsection (2), the MEC must, by notice to the municipality concerned, require the municipality to amend or replace the municipal coastal management programme within a reasonable period, which must be specified in the notice.
- (4) A municipality that receives a notice in terms of subsection (3), must amend or replace the municipal coastal management programme by following the same procedure used to prepare and adopt it in terms of this Act except that the new or amended coastal management programme may not be finally adopted without the consent of the MEC.

Part 7

Coastal planning schemes

56. Planning schemes for areas within coastal zone

- (1) A coastal planning scheme is a scheme that facilitates the attainment of coastal management objectives by -

INTEGRATED COASTAL MANAGEMENT ACT

- (a) defining areas within the coastal zone or coastal management area which may -
 - (i) be used exclusively or mainly for specified purposes or activities; or
 - (ii) not be used for specified purposes or activities; and
 - (b) prohibiting or restricting activities or uses of areas that do not comply with the rules of the scheme.
- (2) A coastal planning scheme must-
- (a) be established by notice in the *Gazette*;
 - (b) be consistent with -
 - (i) this Act;
 - (ii) the national coastal management programme;
 - (iii) the applicable provincial coastal management programme; and
 - (iv) any estuarine management plan applicable in the area; and
 - (c) take into account any other applicable coastal management programmes.
- (3) A coastal planning scheme may be established and implemented for an area within the coastal zone by -
- (a) the Minister, after consultation with the MEC and with any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme applies to -
 - (i) an area of coastal public property and is established to protect and control the use of marine living resources or to implement national norms or standards; or
 - (ii) an area of the coastal zone that straddles the border between two provinces, or adjoins or straddles the borders of the Republic of South Africa;
 - (b) the person in which the authority to manage a coastal protected area is vested, if the planning scheme only applies within that protected area;
 - (c) the MEC, after consultation with the Minister and any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme is not one referred to in paragraph (a) or (b) and applies to an area of the coastal zone within the province;

INTEGRATED COASTAL MANAGEMENT ACT

- (d) the municipality, in consultation with the MEC and after consultation with any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme is not one referred to in paragraphs (a) or (b) and applies to an area falling within its jurisdiction; and
 - (e) the management authority of a special management area, in consultation with the MEC and after consultation with the municipality, if the planning scheme only applies within that management area.
- (4) A coastal planning scheme established by -
- (a) the Minister takes precedence over any other coastal planning scheme;
 - (b) the person in which the authority to manage a coastal protected area is vested, takes precedence within that protected area over any other coastal planning scheme except one established by the Minister;
 - (c) an MEC takes precedence over any other coastal planning scheme except one established by the Minister or the management authority for a coastal protected area; or
 - (d) a municipality takes precedence over any other coastal planning scheme except one established by the Minister or the MEC, or established within a coastal protected area by the management authority for that protected area.
- (5) A coastal planning scheme may only be established with the consent of-
- (a) the Minister, if the scheme applies to an area that extends into the sea further than 500 metres from the high-water mark or affects the protection or use of marine living resources; or
 - (b) the relevant Minister responsible for navigation of vessels on the sea or vessels entering or leaving a port or harbour, if the scheme affects or restricts such vessels.

[Subs. (5) substituted by s. 29 of Act 36/2014 w.e.f. 1 May 2015]

- (6) A coastal planning scheme may not create any rights to use land or coastal waters.

57. Coastal planning and land use schemes of municipalities

- (1) Subject to section 56(5), a coastal planning scheme of a municipality may form, and be enforced as part of, any land use scheme adopted by the municipality.
- (2)
 - (a) A municipality may not adopt a land use scheme that is inconsistent with a coastal planning scheme established in terms of this Act.

- (b) If there is a conflict between a municipal land use scheme established after the commencement of this Act and a coastal planning scheme made in terms of this Act, the coastal planning scheme shall prevail.

CHAPTER 7

PROTECTION OF COASTAL ENVIRONMENT

Part 1

Assessing, avoiding and minimising adverse effects

58. Duty to avoid causing adverse effects on coastal environment

(1)

- (a) Section 28 of the National Environmental Management Act applies, subject to the necessary changes, to any impact caused by any person and that has an adverse effect on the coastal environment.

(b) For the purposes of the application of section 28 a reference in that section to -

- (i) “**significant pollution or degradation of the environment**” must be read as including an adverse effect on the coastal environment;
- (ii) “**environment**” must be read as including the coastal environment; and
- (iii) “**environmental management plan**” must be read as including a coastal management programme applicable in the area concerned.

(2) For the purposes of subsection (1) -

- (a) the Minister may, by notice in the *Gazette*, determine that an impact or activity described in the notice must be presumed, until the contrary is proved, to result in an adverse effect; and

(b) the persons to whom section 28(1) and (2) of the National Environmental Management Act applies must be regarded as including -

- (i) a user of coastal public property;
- (ii) the owner, occupier, person in control of or user of land or premises on which an activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;

INTEGRATED COASTAL MANAGEMENT ACT

- (iii) the owner or person in charge of a vessel, aircraft, platform or structure at sea, or the owner or driver of a vehicle, in respect of which any activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
- (iv) the operator of a pipeline that ends in the coastal zone; or
- (v) any person who produced or discharged a substance which caused, is causing or is likely to cause, an adverse effect.

59. Coastal protection notice and coastal access notice

- (1) If the Minister or MEC has reason to believe that a person has, either prior to or after the commencement of this Act, carried out, is carrying out, or intends to carry out, an activity that has, is having, or is likely to have, an adverse effect on the coastal environment then, subject to subsection (2), he or she may issue a written coastal protection notice to the person responsible for that activity-

[Words preceding para. (a) substituted by s. 30 of Act 36/2014 w.e.f. 1 May 2015]

- (a) prohibiting the activity it is not already prohibited in terms of this Act; and
- (b) instructing that person -
 - (i) to take appropriate steps in terms of this Act or any other applicable legislation to protect the environment;
 - (ii) to investigate and evaluate the impact of an activity on an aspect of the coastal environment in accordance with Chapter 5 of the National Environmental Management Act; or
 - (iii) to skip or postpone the activity for a reasonable period to allow for the investigation to be carried out and for the Minister or MEC to evaluate the report.

- (2) Before exercising a power to issue a coastal protection notice under subsection (1), the Minister or MEC must-

[Words preceding para. (a) substituted by s. 30 of Act 36/2014 w.e.f. 1 May 2015]

- (a) consult with any other organ of state that authorised, or is competent to authorise, the undertaking of the activity or proposed activity concerned; and
- (b) give the person to whom the coastal protection notice is to be addressed, an opportunity of making representations.

- (3)

[Subs. (3) deleted by s. 30 of Act 36/2014 w.e.f. 1 May 2015]

- (4) A coastal protection notice in terms of subsection (1) -

INTEGRATED COASTAL MANAGEMENT ACT

(a) must state -

- (i) the reasons for the notice;
 - (ii) the period within which anything required by the notice must be carried out; and
 - (iii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9;
- [Second subpara. (ii) renumbered as subpara. (iii) by s. 30 of Act 36/2014 w.e.f. 1 May 2015]

(b) may instruct the person to whom it is addressed, among other matters -

- (i) to build, maintain or demolish any specified works;
- (ii) to close a public access or prevent unauthorised access to coastal public property at a specified place;
- (iii) to plant, cultivate, preserve or stop damaging indigenous vegetation at a specified place;
- (iv) to stop altering the geographical features of land at a specified place;
- (v) to build or maintain any specified works at a specified place to protect land from wind erosion;
- (vi) to rehabilitate land at a specified place;
- (vii) to remove stock from land; or
- (viii) to take measures to protect indigenous fauna.

(5) If the Minister or MEC has reason to believe that a person has, either prior to or after the commencement of this Act, carried out, is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, the Minister or MEC may issue a written coastal access notice to that person-

[Words preceding para. (a) substituted by s. 30 of Act 36/2014 w.e.f. 1 May 2015]

- (a) prohibiting the activity if it is not already prohibited in terms of this Act; and
- (b) instructing that person to take appropriate steps in terms of this Act or any other applicable legislation to allow natural persons access to the coastal public property.

(6) When issuing a notice contemplated in subsection (5), subsections (2) and (4) apply with the necessary changes.

[Subs. (6) substituted by s. 30 of Act 36/2014 w.e.f. 1 May 2015]

60. Repair or removal of structures within coastal zone

- (1) The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure -
 - (a) is having or is likely to have an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or
 - (b) has been erected, constructed or upgraded in contravention of this Act or any other law.
 - (2) Before exercising a power to issue a repair and removal notice under subsection (1), the Minister or MEC must-
 - (a) consult with any other organ of State that authorised or is competent to authorise the undertaking of the activity or proposed activity concerned; and
 - (b) give the person to whom the repair and removal notice is to be addressed an opportunity to make representations.
 - (3)
- [Subs. (3) deleted by s. 31 of Act 36/2014 w.e.f. 1 May 2015]
- (4) A repair and removal notice in terms of subsection (1) -
 - (a) must state -
 - (i) the reasons for the notice; and
 - (ii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9; and
 - (b) may instruct the person responsible for the structure -
 - (i) to remove the structure from the coastal zone or place where it is situated within a specified period;
 - (ii) to rehabilitate the site and as far as is reasonable, to restore it to a natural state;
 - (iii) to repair the structure to the satisfaction of the Minister or the MEC within the time stated in the notice; or
 - (iv) to take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure.
 - (5) If a person responsible for a structure referred to in subsection (1) cannot readily be found, the Minister or the MEC, instead of issuing a notice in accordance with subsection (4), may -

INTEGRATED COASTAL MANAGEMENT ACT

- (a) publish a notice that complies with the provisions of subsection (2) once in the *Gazette* and once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and
- (b) affix a copy of the notice to the structure in question during the period of advertisement.

61. Failure to comply with certain notices

If a person fails to comply with a notice issued in terms of section 59(1) or (5) or section 60(1) which requires that person to carry out any specific action, or if the person responsible is not identified after publication of a notice in terms of section 60(5), the Minister or the MEC who issued the notice may instruct appropriate persons to -

- (a) carry out what is required by the notice; and
- (b) recover from the person to whom the notice was addressed, or in the circumstances referred to in section 60(4) from any person subsequently found to be responsible for the structure, the costs reasonably incurred in carrying out the required action.

Part 2

Regulation of coastal zone

62. Implementation of land use legislation in coastal protection zone

- (1) An organ of state that is responsible for implementing national, provincial or municipal legislation that regulates the planning or development of land must, in a manner that conforms to the principles of co-operative governance contained in Chapter 3 of the Constitution, apply that legislation in relation to land in the coastal protection zone in a way that gives effect to the purposes for which the protection zone is established as set out in section 17.

(2)

[Subs. (2) deleted by s. 32 of Act 36/2014 w.e.f. 1 May 2015]

Part 3

Environmental authorisations

63. Environmental authorisations for coastal activities

- (1) Where an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act is required for coastal activities, the competent authority must take into account all relevant factors, including -

INTEGRATED COASTAL MANAGEMENT ACT

- (a) the representations made by the applicant and by interested and affected parties;
- (b) the extent to which the applicant has in the past complied with similar authorisations;
- (c) whether coastal public property, the coastal protection zone or coastal access land will be affected, and if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;
- (d) the estuarine management plans, coastal management programmes, coastal management lines and coastal management objectives applicable in the area;
[Para. (d) substituted by s. 33 of Act 36/2014 w.e.f. 1 May 2015]
- (e) the socio-economic impact if the activity -
 - (i) is authorised;
 - (ii) is not authorised;
- (f)
[Para. (f) deleted by s. 33 of Act 36/2014 w.e.f. 1 May 2015]
- (g) the likely impact of coastal environmental processes on the proposed activity;
[Para. (g) amended by s. 33 of Act 36/2014 w.e.f. 1 May 2015]
- (h) whether the development or activity-
 - (i) is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;
 - (ii) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;
 - (iii) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;
 - (iv) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
 - (v) is likely to be significantly damaged or prejudiced by dynamic coastal processes;
 - (vi) would substantially prejudice the achievement of any coastal management objective; or
 - (vii) would be contrary to the interests of the whole community;
[Para. (h) substituted by s. 33 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

(i) whether the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land;

[Para. (i) added by s. 33 of Act 36/2014 w.e.f. 1 May 2015]

(j) whether the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area; and

[Para. (j) added by s. 33 of Act 36/2014 w.e.f. 1 May 2015]

(k) the objects of this Act, where applicable.

[Para. (k) added by s. 33 of Act 36/2014 w.e.f. 1 May 2015]

(2)

[Subs. (2) deleted by s. 33 of Act 36/2014 w.e.f. 1 May 2015]

(3)

[Subs. (3) deleted by s. 33 of Act 36/2014 w.e.f. 1 May 2015]

(4)

[Subs. (4) deleted by s. 33 of Act 36/2014 w.e.f. 1 May 2015]

(5) The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.

(6) Where an environmental authorisation is not required for coastal activities, the Minister may, by notice in the *Gazette* list such activities requiring a permit or licence.

64.

[S. 64 repealed by s. 34 of Act 36/2014 w.e.f. 1 May 2015]

Part 4

Use of coastal public property

[Heading of Part 4 substituted by s. 35 of Act 36/2014 w.e.f. 1 May 2015]

65. Award of coastal use permits on coastal public property

(1) The Minister may by notice in the *Gazette*-

(a) list activities that-

(i) are prohibited within coastal public property; or

(ii) require a coastal use permit from the Minister; and

(b) set different user charges for coastal use permits in terms of paragraph (a)(ii), provided that such activities do not require environmental authorisation in terms of Chapter 5 of the National Environmental Management Act.

(2) No person may-

- (a) undertake an activity prohibited in terms of subsection (1)(a)(i);
- (b) undertake an activity referred to in subsection (1)(a)(ii) without a coastal use permit; or
- (c) contravene any conditions determined in a coastal use permit referred to in section 66.

(3) A coastal use permit in terms of subsection (1)(a)(ii) may, subject to section 66, be awarded by the Minister either-

- (a) on application by a person; or
- (b) if the Minister so determines in any specific case, through a prescribed process.

(4) An application for a coastal use permit must be lodged in the prescribed manner.

(5) A coastal use permit awarded in terms of this Chapter does not relieve the holder thereof from the obligation to-

- (a) obtain any other coastal authorisation that may be required in terms of this Act or any other authorisation in terms of other legislation; or
- (b) comply with any other legislation.

[S. 65 substituted by s. 36 of Act 36/2014 w.e.f. 1 May 2015]

(Commencement date of s.65: To be proclaimed)

66. Terms of coastal use permits

A coastal use permit-

- (a) must be awarded for a fixed period of time of not more than 20 years whereafter a new application must be made in terms of section 65(3) and (4);
- (b) is subject to any conditions determined by the Minister; and
- (c) must provide for the payment by the holder thereof of a user charge determined by the Minister in terms of section 65(1)(b).

[S. 66 substituted by s. 37 of Act 36/2014 w.e.f. 1 May 2015]

(Commencement date of s.66: To be proclaimed)

66A. Leases in admiralty reserves

- (1) Notwithstanding section 7(1)(e), a lease in an admiralty reserve, prior to the commencement of this section, must be managed by the organ of state empowered to do so in terms of the relevant local, provincial or national legislation.
- (2) A lease referred to in subsection (1), must be managed as prescribed by the Minister and until so prescribed, such leases must be managed in a manner that is consistent with the purpose of coastal public property as set out in section 7A.

[S. 66A inserted by s. 38 of Act 36/2014 w.e.f. 1 May 2015]

Part 5

General provisions

67. Temporary occupation of land within coastal zone

- (1) Subject to the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may direct that land within the coastal zone be temporarily occupied to build, maintain or repair works to implement a coastal management programme, or to respond to pollution incidents or emergency situations, and may for this purpose -
 - (a) take from the land stone, gravel, sand, earth or other material;
 - (b) deposit materials on it; and
 - (c) construct and use temporary works on it, including roads.
- (2) Notwithstanding section 89, the powers of the Minister in terms of subsection (1) may be delegated to -
 - (a) the MEC, who may subdelegate this power to a municipality in that province; or
 - (b) an official in that Department.
- (3) If the land is private property, the Minister or the MEC, acting in terms of subsection (1), must, before the land is occupied, give the occupier and the owner of the land reasonable notice, in writing, of the intention to occupy and the purpose of the occupation.

68. Amendment, revocation, suspension or cancellation of authorisations

- (1) An issuing authority may amend, revoke, suspend or cancel a coastal authorisation issued in terms of this Act, if-

INTEGRATED COASTAL MANAGEMENT ACT

- (a) the holder of the coastal authorisation contravenes or fails to comply with a condition subject to which the coastal authorisation was issued;
 - (b) it is in conflict with a coastal management programme or will significantly prejudice the attainment of a coastal management objective;
 - (c) changes in circumstances require such amendment, revocation, suspension or cancellation; or
 - (d) it is necessary to meet the Republic's international obligations.
- (2) An issuing authority must by written notice delivered to the holder of the coastal authorisation, or sent by registered post to the holder's last known address, request the holder to make written representations within a period of 30 days from the date of the notice as to why the coastal authorisation should not be amended, revoked, suspended or cancelled, as the case may be.
- (3) After the expiry of the period referred to in subsection (2) the issuing authority must consider the matter in the light of all relevant circumstances, including any representations made by the holder, and may-
- (a) revoke the coastal authorisation;
 - (b) suspend the coastal authorisation for a period determined by the issuing authority;
 - (c) cancel the coastal authorisation from a date determined by the issuing authority;
 - (d) alter the terms or conditions of the coastal authorisation; or
 - (e) decide not to amend, revoke, suspend or cancel the coastal authorisation.
- (4) Notwithstanding subsections (2) and (3), the issuing authority may, whenever it is in the interests of the promotion, protection or utilisation on a sustainable basis of the coastal zone, at any time by written notice to the holder of a coastal authorisation amend, revoke, suspend or cancel the coastal authorisation.
- (5) If the issuing authority intends to exercise the powers under subsection (4), subsection (2) shall apply with the necessary changes.
- (6) If the Minister or an issuing authority has reason to believe that it is urgently necessary to exercise powers under subsection (1), (3) or (4) in order to protect the coastal environment or human health and well-being, the Minister or issuing authority may, by notice to the holder of a coastal authorisation, temporarily suspend the coastal authorisation and then follow the procedure referred to in subsection (3).

- (7) A competent authority, when exercising the power to amend, withdraw or suspend an environmental authorisation in terms of the National Environmental Management Act, must consider the factors referred to in subsections (1), (4), (5) and (6) with the necessary changes.

[S. 68 substituted by s. 39 of Act 36/2014 w.e.f. 1 May 2015]

CHAPTER 8

MARINE AND COASTAL POLLUTION CONTROL

69. Discharge of effluent into coastal waters

- (1) No person may discharge effluent that originates from a source on land into coastal waters except in terms of a general discharge authorisation contemplated in subsection (2) or a coastal waters discharge permit issued under this section by the Minister after consultation with the Minister responsible for water affairs in instances of discharge of effluent into an estuary.

[Subs. (1) substituted by s. 40 of Act 36/2014 w.e.f. 1 May 2015]

- (2) The Minister may by notice in the *Gazette* authorise persons in general, or a category of persons, to discharge effluent into coastal waters, and in instances of discharge of effluent into an estuary, only after consultation with the Minister responsible for water affairs.

- (3) Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a general discharge authorisation referred to in subsection (2) must apply to the Department for a coastal waters discharge permit.

[Subs. (3) substituted by s. 40 of Act 36/2014 w.e.f. 1 May 2015]

- (4) Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general discharge authorisation under subsection (2) must apply to the Department for a coastal waters discharge permit.

[Words preceding para. (a) substituted by s. 40 of Act 36/2014 w.e.f. 1 May 2015]

- (a) within 24 months of the date of commencement of this Act if the discharge is in terms of a licence or authorisation under the National Water Act; or
- (b) within 36 months of the date of commencement of this Act if the discharge is a continuation of an existing lawful water use within the meaning of section 32 or 33 of the National Water Act.
- (5) Unless a person referred to in subsection (4) is directed otherwise by a person acting in terms of this Act or the National Water Act, it is not an offence for that person to discharge effluent that originates from a source on land into coastal waters if-
- (a) that person has made an application under subsection (4) but has not yet been notified whether the application has been granted or refused; or

INTEGRATED COASTAL MANAGEMENT ACT

- (b) the applicable period referred to in subsection (4)(a) or (b) has not yet expired.
- (6) A person who discharges effluent into coastal waters -
- (a) must not waste water;
 - (b) may only do so to the extent that it is not reasonably practicable to return any freshwater in that effluent to the water resource from which it was taken;
 - (c) must discharge the effluent subject to any condition contained in the relevant authorisation;
 - (d) must comply with any applicable waste standards or water management practices prescribed under this Act or under section 29 of the National Water Act or any Act of Parliament specifically dealing with waste, unless the conditions of the relevant authorisation provide otherwise; and
 - (e) must register the discharge with the department responsible for water affairs.
- (7) The Minister, and in instances of discharge of effluent into an estuary, with the concurrence of the Minister responsible for water affairs, must, when deciding whether or not to issue a general discharge authorisation contemplated in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including-
- [Words preceding para. (a) substituted by s. 40 of Act 36/2014 w.e.f. 1 May 2015]
- (a) the interests of the whole community;
 - (b) the socio-economic impact if the disposal -
 - (i) is authorised;
 - (ii) is not authorised;
 - (c) the coastal management programmes and estuarine management plans applicable in the area;
 - (d) the likely impact of the proposed disposal on the coastal environment, including, the cumulative effect of its impact together with those of existing point and non-point discharges.
 - (e) the Republic's obligations under international law;
 - (f) the factors listed in section 27 of the National Water Act; and
 - (g) any other factors that may be prescribed.

INTEGRATED COASTAL MANAGEMENT ACT

- (8) The Minister may not grant an application in terms of subsection (3) for a coastal waters discharge permit if doing so is likely -
- (a) to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
 - (b) to prejudice significantly the achievement of any coastal management objective contained in a coastal management programme; or
 - (c) to be contrary to the interests of the whole community.
- (9)
- (a) The Director-General must within five years of the date of commencement of this Act -
 - (i) review all authorisations issued before the commencement of this Act that authorise the discharge of effluent into coastal waters; and
 - (ii) in consultation with the director-general of the department responsible for water affairs undertake a joint review of all authorisations issued before the commencement of this Act that authorised the discharge of effluent into estuaries, in order to determine the extent to which those authorisations comply with the requirements of this Act and of other applicable legislation.
 - (b) After any such review the Director-General must make recommendations to the Minister and to the Minister responsible for water affairs as to whether or not-
 - (i) the discharge should be prohibited;
 - (ii) in the case of a discharge into the sea, whether or not a permit should be issued under subsection (1);
 - (iii) in the case of a discharge into an estuary, whether or not the discharge should be authorised in terms of a permit issued under subsection (1) and a permit issued under the National Water Act.
- (10) The Minister, and in instances where the discharge takes place into an estuary, with the concurrence of the Minister responsible for water affairs, must as soon as possible after recommendations contemplated in section (9)(b) have been received, decide whether or not to issue a permit or permits referred to in subsection (9) and the conditions that will apply to any permits issued, but before doing so, must give the holders of the authorisations a reasonable opportunity of making representations.

(11).....

[Subs. (11) deleted by s. 40 of Act 36/2014 w.e.f. 1 May 2015]

- (12) The Minister may, when performing functions in terms of subsections (1), (7) and (10), enter into an agreement with any member of Cabinet.

70. Prohibition of incineration or dumping at sea

- (1) Subject to subsection (2), no person may -
- (a) incinerate at sea, including aboard a South African vessel, aircraft, platform or other structure, any waste or other material;
[Para. (a) substituted by s. 41 of Act 36/2014 w.e.f. 1 May 2015]
 - (b) import into the Republic any waste or other material to be dumped or incinerated at sea, including aboard a South African vessel, aircraft, platform or other structure;
[Para. (b) substituted by s. 41 of Act 36/2014 w.e.f. 1 May 2015]
 - (c) export from the Republic any waste or other material to be dumped or incinerated -
 - (i) on the high seas; or
 - (ii) in an area of the sea under the jurisdiction of another state;
 - (d) load any waste or other material to be dumped or incinerated at sea onto any vessel, aircraft, platform or other structure at any place in the Republic, including the exclusive economic zone, unless the master of the vessel, aircraft, platform or other structure produces written proof that the dumping at sea of that waste or other material has been authorised in terms of a dumping permit granted under section 71:
 - (e) except on the authority of a dumping permit granted under section 71-
 - (i) dump at sea any waste or other material; or
 - (ii) dump from a South African vessel, aircraft, platform or other structure at sea, any waste or other material; or
[Para. (e) substituted by s. 41 of Act 36/2014 w.e.f. 1 May 2015]
 - (f) dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material in any area of the sea under the jurisdiction of another State, except with the written permission of that state.
- (2) It is a defence to a charge in terms of subsection (1)(e)(i) or (ii) to show -
- (a) that adverse weather conditions necessitated the dumping or incineration at sea in order to secure the safety of human life or of the vessel, aircraft, platform or structure in question; or

INTEGRATED COASTAL MANAGEMENT ACT

- (b) that there was a danger to human life or a real threat to the vessel, aircraft, platform or structure in question, that there appeared to be no reasonable alternative to dumping or incineration at sea, and that it is probable that the adverse effects arising from the dumping or incineration at sea were less than would otherwise have occurred; and
- (c) that in either case, the dumping or incineration at sea was conducted in a manner that minimised any actual or potential adverse effects and was reported to the Department without delay.

71. Dumping permits

- (1) A person who wishes to dump at sea any waste or other material must -
 - (a) apply in writing to the Minister in the form stipulated by the Minister for a dumping permit that authorises the waste or other material to be loaded aboard a vessel, aircraft, platform or other structure and to be dumped at sea; and
 - (b) pay the prescribed fee.
- (2) When deciding an application for a dumping permit contemplated in subsection (1), the Minister must have regard to -
 - (a) the Waste Assessment Guidelines set out in Schedule 2;
 - (b) any coastal management programme applicable in the area;
 - (c) the likely environmental impact of the proposed activity;
 - (d) national legislation dealing with waste;
 - (e) the interests of the whole community;
 - (f) transboundary impacts and international obligations and standards; and
 - (g) any other factors that may be prescribed.
- (3) The Minister may not grant a dumping permit that authorises the dumping of any waste or other material, other than -
 - (a) dredged material;
 - (b) sewage sludge;
 - (c) fish waste, or material resulting from industrial fish processing operations;

INTEGRATED COASTAL MANAGEMENT ACT

- (d) vessels and platforms or other man-made structures at sea;
 - (e) inert, inorganic geological material;
 - (f) organic material of natural origin;
[Para. (f) amended by s. 42 of Act 36/2014 w.e.f. 1 May 2015]
 - (g) bulky items primarily comprising iron, steel, concrete and similarly non-harmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping at sea; or
[Para. (g) amended by s. 42 of Act 36/2014 w.e.f. 1 May 2015]
 - (h) waste or other material which may be prescribed.
[Para. (h) added by s. 42 of Act 36/2014 w.e.f. 1 May 2015]
- (4) The Minister may not issue a dumping permit if -
- (a) the waste or other material proposed for dumping contains -
 - (i) levels of radioactivity greater than as defined by the International Atomic Energy Agency and adopted by the contracting parties to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter adopted on 7 November 1996; or
 - (ii) material which is capable of creating floating debris or otherwise contributing to the pollution of the marine environment and which could be removed from the material proposed for dumping;
 - (b) dumping the waste or other material in question -
 - (i) is likely to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
 - (ii) would cause a serious obstacle to fishing or navigation;
 - (iii) would prejudice the achievement of any coastal management objective contained in a coastal management programme;
 - (iv) would be contrary to the obligations of the Republic under international law; or
 - (v) would be contrary to the interests of the whole community.
- (5) The Minister, may issue a dumping permit for a period of not more than five years whereafter a new application must be made.
[Subs. (5) substituted by s. 42 of Act 36/2014 w.e.f. 1 May 2015]

72. Emergency dumping at sea

- (1) The Minister may in relation to any application for a dumping permit referred to in section 71 dispense with any prescribed procedure, including any consultation and public participation processes, if -
 - (a) the dumping at sea of a quantity of any particular waste or other material is necessary to avert an emergency that poses an unacceptable risk to the environment or to human health or safety; and
 - (b) there is no other feasible solution.
- (2) Before issuing a permit in the circumstances contemplated in subsection (1), the Minister must consult with -
 - (a) any foreign State that is likely to be affected by the proposed dumping at sea; and
 - (b) the International Maritime Organisation.
- (3) The Minister must-
 - (a) as far as reasonably possible in the circumstances, follow any recommendations received from the International Maritime Organisation when imposing permit conditions regarding the procedures to be followed in conducting the loading or dumping at sea of the relevant quantity of waste or other material; and
 - (b) inform the International Maritime Organisation of any action taken under this section within a reasonable period thereafter.

73. National action list

- (1) The Minister must progressively and subject to available resources, develop a national action list to provide a mechanism for screening waste and other material on the basis of their potential effect on human health and the marine environment.
- (2) The national action list must -
 - (a) be developed in accordance with the Waste Assessment Guidelines set out in Schedule 2; and
 - (b) contain the prescribed information.

CHAPTER 9

APPEALS

74. Appeals

- (1) A person to whom a coastal protection notice or coastal access notice in terms of section 59 or a repair and removal notice in terms of section 60, has been issued, may lodge a written appeal against that notice with-
 - (a) the Minister, if the notice was issued by an MEC or by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or
 - (b) the MEC of the province concerned, if the notice was issued by a municipality in that province or by a person exercising powers delegated by the MEC in terms of this Act.
- (2) A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel a coastal authorisation, may lodge a written appeal against that decision with-
[Words preceding para. (a) substituted by s. 43 of Act 36/2014 w.e.f. 1 May 2015]
 - (a) the Minister, if the decision was taken by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or
 - (b) the MEC of the province concerned, if the decision was taken by -
 - (i) a person exercising powers granted or delegated to the MEC that have been delegated by the MEC;
 - (ii) a provincial organ of state; or
 - (iii) a municipality in that province.
- (3) An appeal made under subsection (1) or (2) must -
 - (a) be lodged within 30 days of the appellant being given the notice in terms of section 59 or 60, or being notified of the decision, or if the appellant is not given a notice or notified of the decision, within 60 days of the relevant decision being announced;
 - (b) State clearly the grounds of the appeal;
 - (c) state briefly the facts on which the appellant relies and include any relevant information that was not placed before the decision-maker and which the appellant believes should be considered on appeal; and
 - (d) comply with any other requirements that may be prescribed.

INTEGRATED COASTAL MANAGEMENT ACT

- (4) An appeal under this section does not suspend an authorisation or an exemption, or any provision or condition of an authorisation, or any notice issued under Chapter 7, unless the Minister or MEC directs otherwise.
- (5) The Minister or MEC may, on good cause shown, extend the period within which an appeal may be lodged in terms of this Chapter.
- (6) The Minister or MEC may dismiss an appeal that he or she considers to be trivial, frivolous or manifestly without merit.
- (7) Appeals against a decision involving an environmental authorisation must be dealt with in terms of the National Environment Management Act.

75. Advisory Appeal panel

- (1) The Minister or an MEC may appoint an advisory appeal panel to consider and advise the Minister or the MEC on an appeal.
- (2) An advisory appeal panel must consist of an uneven number of members.
- (3) The members appointed by the Minister or an MEC must -
 - (a) have suitable qualifications and experience in relation to the matters that must be considered in the appeal; and
 - (b) be committed to the objects of this Act.
- (4) A person may not be appointed as a member of the appeal panel if he or she -
 - (a) was involved in any way in the making of the decision appealed against;
 - (b) or any spouse, partner or close family member of that person has a personal or private interest in the appeal;
 - (c) is an unrehabilitated insolvent;
 - (d) has, as a result of improper conduct, been removed from an office of trust; or
 - (e) has been declared by a court to be mentally ill or disordered.
- (5) The Minister, with the consent of the Minister of Finance, or the MEC, with the consent of the member of the provincial executive council responsible for finance, must determine the rate of remuneration and the allowances payable to any member of an advisory appeal panel who is not an employee of an organ of State.

76. Interim orders by Minister or MEC

- (1) The Minister or an MEC may, at any time after an appeal has been lodged, make any interim order pending the determination of the appeal, that he or she considers equitable or appropriate to achieve the objects of this Act.
- (2) Without limiting the generality of subsection (1) an interim order may -
 - (a) preserve existing rights or an existing State of affairs between the parties to the proceedings;
 - (b) provide for interim protection of the coastal environment;
 - (c) suspend or temporarily stay a notice or any part, of it; or
 - (d) deal with procedural issues.
- (3) The Minister or an MEC may make an interim order at his or her own initiative, or in response to an application by the appeal panel or a party to the appeal proceedings.
- (4) If a party to the proceedings applies for an interim order, the Minister or an MEC must give the parties to the proceedings a reasonable opportunity to make oral or written submissions, but may make an interim order pending the making of submissions by the parties, if the Minister or an MEC has reason to believe that doing so would be just or desirable in order to protect the coastal environment.

77. Proceedings of advisory appeal panel

- (1) The chairperson of an advisory appeal panel decides when and where the panel meets.
- (2) An advisory appeal panel must give the appellant, the person who made the decision or gave the notice appealed against, and any other interested and affected parties, a reasonable opportunity of making written submissions, and may allow oral representations to be made.
- (3) An advisory appeal panel -
 - (a) must act fairly;
 - (b) may determine its own procedures;
 - (c) may convene hearings and make orders concerning preliminary and procedural matters;
 - (d) may summon and examine witnesses on oath;

INTEGRATED COASTAL MANAGEMENT ACT

- (e) must in considering the merits of an appeal, have regard to -
 - (i) the objects of this Act; and
 - (ii) any relevant coastal management objectives or standards and relevant policies; and
 - (iii) guidelines published or endorsed by the Department or the provincial lead agency concerned.
- (4) An advisory appeal panel must give a written report to the Minister or an MEC, setting out its findings and recommendations.
- (5) The decision of the majority of the members of an advisory appeal panel is the decision of the panel, but the chairperson must ensure that any dissenting opinions by members are recorded in the written report of the panel.

78. Determination of appeal by Minister or MEC

- (1) The Minister or an MEC must consider the appeal and may -
 - (a) dismiss the appeal and confirm the decision appealed against;
 - (b) uphold part or all of the appeal and either vary the decision appealed against or set aside the decision and make a new decision; or
 - (c) refer the appeal back to the appeal panel with directions to investigate and consider specific facts or issues and to report back to the Minister or MEC.
- (2) In determining an appeal the Minister or an MEC must have regard to -
 - (a) the objects of this Act;
 - (b) any relevant coastal management objectives; and
 - (c) the findings and recommendations of the appeal panel, but is not bound by them.

CHAPTER 10

ENFORCEMENT

79. Offences

- (1) A person is guilty of a category one offence if that person -

INTEGRATED COASTAL MANAGEMENT ACT

- (a) discharges effluent originating from a source on land into coastal waters in contravention of section 69;
- (b) incinerates at sea any waste or material in contravention of section 70;
- (c) loads, imports or exports any waste or other material to be dumped or incinerated at sea in contravention of section 70;
- (d) dumps any waste at sea in contravention of section 70;
- (e) dumps any waste or other material at sea without a dumping permit in contravention of section 70;
- (f) alters any authorisation;
- (g) fabricates or forges any document for the purpose of passing it off as an authorisation;
- (h) passes off, uses, alters or has in possession any altered or false document purporting to be a coastal authorisation;
[Para. (h) substituted by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (i) makes any false statement or report, for the purpose of obtaining or objecting to an authorisation;
- (j) reclaims land from coastal waters without authorisation of the Minister in terms of sections 7B and 7C;
[Para. (j) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (k) utilises reclaimed land in contravention of sections 7B and 7C;
[Para. (k) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (l) charges fees in contravention of section 13(3)(a) and (b);
[Para. (l) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (m) conducts an activity that is prohibited in terms of section 65(1)(a)(i);
[Para. (m) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (n) fails to comply with a verbal directive issued by the Minister or MEC in terms of section 92(1); or
[Para. (n) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (o) fails to comply with section 96(1).
[Para. (o) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

- (2) A person is guilty of a category two offence if that person -
- (a) fails to comply with a repair and removal notice issued in terms of section 60;
 - (b) hinders or interferes with a duly authorised person exercising a power or performing a duty in terms of this Act;
[Para. (b) amended by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (c) knowingly falsely represents that he or she is a person authorised to exercise powers in terms of this Act;
 - (d) constructs, maintains or extends any structure, or takes other measures on coastal public property to prevent or promote erosion or accretion of the seashore in contravention of section 15(2);
[Para. (d) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (e) fails to comply with a coastal protection notice or access notice issued in terms of section 59;
[Para. (e) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (f) conducts an activity without a coastal authorisation required in terms of this Act;
[Para. (f) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (g) fails to comply with the conditions of a coastal authorisation;
[Para. (g) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (h) fails to comply with section 95(1);
[Para. (h) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (i) allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a), or (c) to (h);
[Para. (i) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (j) prevents access to coastal public property in contravention of section 13(1A); or
[Para. (j) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
 - (k) contravenes any other provision of this Act which is not referred to in subsections (1) or (2).
[Para. (k) added by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (3)
- [Subs. (3) deleted by s. 44 of Act 36/2014 w.e.f. 1 May 2015]
- (4)
- [Subs. (4) deleted by s. 44 of Act 36/2014 w.e.f. 1 May 2015]

80. Penalties

- (1) A person who is convicted of a category one offence referred to in section 79(1) may be sentenced to a fine of up to R5 000 000 or to imprisonment for a period of up to ten years, or to both such fine and imprisonment.
- (2) A person who is convicted of a category two offence referred to in section 79(2) may be sentenced on a first conviction for that offence to a fine of up to R2 000 000 or to imprisonment or community service for a period of up to five years, or to both such fine and imprisonment or community service.
- (3)
- (4) A person who is convicted of a category two offence may be sentenced on a second or subsequent conviction for that offence as if he or she has committed a category one offence.
- (5) A court that sentences any person-
 - (a) to community service for an offence in terms of this Act must impose a form of community service which benefits the coastal environment, unless it is not possible to impose such a sentence in the circumstances;
 - (b) for any offence in terms of this Act, may suspend, revoke or cancel a coastal authorisation granted to the offender under this Act.
- (6) If a person is found guilty of an offence in the High Court, the penalty limitations in subsections (1), (2) and (4) do not apply a higher penalty may be imposed.

[S. 80 substituted by s. 45 of Act 36/2014 w.e.f. 1 May 2015]

81. Jurisdiction of courts

- (1) Any act or omission in contravention of any of the provisions of this Act which is committed-
 - (a) by any person in, on or above coastal waters;
 - (b) outside coastal waters by any citizen of the Republic or any person ordinarily resident in the Republic; or
 - (c) by any person on board any South African vessel, shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic.
- (2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.

[S. 81 substituted by s. 46 of Act 36/2014 w.e.f. 1 May 2015]

82. Actions in relation to coastal zone

The Minister, an MEC or a municipality concerned may -

- (a) institute legal proceedings or take other appropriate measures -
 - (i) to prevent damage, or recover damages for harm suffered to coastal public property or the coastal environment; or
 - (ii) to abate nuisances affecting the rights of the public in its use and enjoyment of coastal public property; and
- (b) accept service of legal processes and defend any legal proceedings instituted in connection with coastal public property.

CHAPTER 11

GENERAL POWERS AND DUTIES

Part 1

Regulations

83. Regulations by Minister

- (1) The Minister may make regulations relating to any matter which this Act requires to be dealt with in regulations or that may be necessary to facilitate the implementation of this Act, including, but not limited to, regulations relating to-
 - (a) the implementation and enforcement of the national coastal management programme;
 - (b) the sustainable use of coastal resources in order to address poverty in communities dependent on coastal resources for their livelihood;
 - (c) the sustainable use of coastal resources;
 - (d) coastal public property, including regulations concerning-
 - (i) public access to coastal public property;
 - (ii) the rehabilitation of coastal public property;
 - (iii) fees, costs and rents for the use of coastal public property; and
 - (iv) research conducted within, or in respect of, coastal public property;

INTEGRATED COASTAL MANAGEMENT ACT

- (e) the type and format of data to be submitted to the Department or other organs of state for the purposes of monitoring the coastal environment and the implementation of this Act or maintaining a coastal information system;
- (f) the establishment of national norms, standards and frameworks to implement this Act, including systems, guidelines, protocols, procedures, standards and methods, concerning -
 - (i) the content and regular revision of the coastal management programmes of provinces and municipalities;
 - (ii) the implementation and enforcement of coastal management programmes;
 - (iii) the monitoring of the implementation of coastal management programmes and the performance of any functions contemplated in this Act, including indicators to evaluate effectiveness and progress;
 - (iv) the amendment of coastal planning schemes;
 - (v) the quality of coastal public property and coastal ecosystems;
 - (vi) the factors that must be taken into account when deciding applications;
 - (vii) the circumstances in which exemption may be given from compliance with a coastal management programme;
 - (viii) the uses of the coastal zone that do not conform with the relevant coastal planning scheme;
 - (ix) the outcomes that must be achieved by managing and treating all or any category of effluent, discharges from storm-water drains, or waste or other material, before it is discharged or deposited on or in coastal public property or in a place within the coastal zone from where it is likely to enter coastal public property, including those relating to the kind, quantity and characteristics of effluent, waste or other material that may be discharged or deposited;
 - (x) who should monitor and analyse effluent, waste or other material referred to in subparagraph (ix) and the methods that should be used to do so;
 - (xi) the appointment, training, powers and supervision of voluntary coastal officers;
 - (xii) public safety and behaviour on coastal public property; or
 - (xiii) any activity which has an adverse effect on the coastal environment.
- (g) the procedures to be followed with the lodging and consideration of applications for coastal authorisations, including-

INTEGRATED COASTAL MANAGEMENT ACT

- (i) the conditions with which applicants must comply before or after the lodging of their applications;
- (ii) the application fees to be paid;
- (iii) the authorities that will be competent to issue the different categories of coastal authorisations;
- (iv) the consultation procedures to be followed with organs of state and other interested and affected parties;
- (v) the authorities whose consent is required before coastal authorisations may be issued; and
- (vi) the procedures for objecting to such applications;
- (vii) the powers of issuing authorities when considering and deciding such applications;
- (viii) the factors that must be taken into account when deciding applications;
- (ix) the circumstances in which applications must be refused or may be approved and guidelines as to the conditions on which permits may or must be issued; and
- (x) the process to be followed for the award of coastal authorisations;

[Para. (g) substituted by s. 47 of Act 36/2014 w.e.f. 1 May 2015]

(h) the contents of coastal authorisations;

[Para. (h) substituted by s. 47 of Act 36/2014 w.e.f. 1 May 2015]

(i) the giving of security in respect of any obligation that may arise from carrying out activities authorised by coastal authorisations, and the form of such security;

[Para. (i) substituted by s. 47 of Act 36/2014 w.e.f. 1 May 2015]

(j) the procedure to be followed in connection with the lodging and consideration of appeals in terms of Chapter 9, including-

- (i) the fees to be paid;
- (ii) the conditions with which appellants must comply before or after the lodging of their appeals;
- (iii)

INTEGRATED COASTAL MANAGEMENT ACT

- (iv) the circumstances in which a temporary stay may be granted in the carrying out of notices in terms of section 59 or 60, or an amendment, revocation, suspension or cancellation of coastal authorisations in terms of section 68;

[Para. (j) substituted by s. 47 of Act 36/2014 w.e.f. 1 May 2015]

- (k) methods, procedures and conditions of enforcing compliance with coastal authorisations;

[Para. (k) substituted by s. 47 of Act 36/2014 w.e.f. 1 May 2015]

- (l) the issuing and contents of notices to persons who have contravened or failed to comply with-

- (i) a provision of this Act;
- (ii) a coastal management programme; or
- (iii) a condition of a coastal authorisation;

[Para. (l) substituted by s. 47 of Act 36/2014 w.e.f. 1 May 2015]

- (m) training, education and public awareness programmes on the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources;

- (n) the presence and use of vehicles and aircraft within the coastal zone;

- (o) the presence and recreational use of vessels on coastal waters;

- (p) the seizing, removal and disposal of vehicles, vessels, aircraft or property suspected of being used in the commission of an offence under this Act and of coastal resources suspected of having been illegally obtained;

- (q) methods, procedures and conditions for obtaining access to relevant information, including entry to private property; and

- (r) the issuing and contents of coastal authorisations.

[Para. (r) substituted by s. 47 of Act 36/2014 w.e.f. 1 May 2015]

- (2) The Minister must obtain the consent of the Minister of Finance before making any regulation that

- (a) will entail the expenditure of funds in future years; or

- (b) prescribes application fees for, or other monies in relation to, dumping permits or coastal waters discharge permits.

INTEGRATED COASTAL MANAGEMENT ACT

- (3) The Minister must consult with -
- (a) the Minister of Finance before making any regulations imposing fees, costs or rents;
 - (b) the Minister responsible for water affairs before making any regulations concerning estuaries; or
 - (c) the MEC and municipalities before making any regulations concerning the coastal zone within that province.

84. Regulations by MECs

- (1) The MEC of a province may, after consultation with the Minister, make regulations that are consistent with any national norms or standards that may have been prescribed, relating to -
- (a) the implementation and enforcement of the coastal management programme of the province;
 - (b) the management of the coastal protection zone within the province;
 - (c) the use of coastal public property for recreational purposes;
 - (d) the impounding, removal and disposal of vehicles, vessels, aircraft or property found abandoned on coastal public property;
 - (e) coastal management lines, including the granting of permission for the erection, placing, alteration or extension of a structure that is wholly or partially seaward of a coastal management line and the process to be followed for acquiring such permission, including the authority by whom, the circumstances in which and the conditions on which such permission may be given;
[Para. (e) substituted by s. 48 of Act 36/2014 w.e.f. 1 May 2015]
 - (f) the implementation within the province of any national norm, framework or standard referred to in section 83(1)(f);
 - (g) the management of special management areas; or
 - (h) any other matter referred to in section 83(1), other than in paragraph (f) of that section, that may be necessary to facilitate the implementation of this Act in the province.
- (2) Any regulation which will entail the expenditure of funds in future years may be made only with the concurrence of the MEC responsible for finance in the province.
- (3) The Minister, after consultation with the relevant MEC, must make regulations in terms of subsections (1)(b), (c), (d) and (e), if such regulations relate to any part of an area that-

INTEGRATED COASTAL MANAGEMENT ACT

- (a) is a national protected area as defined in the Protected Areas Act;
- (b) straddles a coastal boundary between two provinces; or
- (c) extends up to, or straddles, the borders of the Republic.

[Subs. (3) added by s. 48 of Act 36/2014 w.e.f. 1 May 2015]

85. General provisions applicable to regulations

- (1) The Minister or MEC must publish draft regulations for public continent and must take any submissions received into account before making any regulations in terms of sections 83 or 84.
- (2) Subsection (1) need not be applied in the case of a minor or a mere technical amendment to regulations.
- (3) Regulations made in terms of section 83 or 84 may-
 - (a) restrict, prohibit or control any act that may have an adverse effect on the coastal environment, either absolutely or conditionally;
 - (b) apply generally -
 - (i) throughout the Republic or province, as the case may be, or only in a specified area or category of areas;
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all prohibited activities or only to a specified activity or category of activities; or
 - (iv) to all types of waste or other materials or only to specified waste or other material or a category of waste or other material;
 - (c) differentiate between different -
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons;
 - (iii) activities or categories of activities; or
 - (iv) types of wastes or other materials or categories of types of waste or other materials;

INTEGRATED COASTAL MANAGEMENT ACT

- (d) provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to-
- (i) imprisonment for a period not exceeding five years;
 - (ii) an appropriate fine not exceeding R2 million; or
 - (iii) both such fine and imprisonment.

[Para. (d) substituted by s. 49 of Act 36/2014 w.e.f. 1 May 2015]

86. Amendment of Schedule 2

The Minister may by notice in the *Gazette* amend Schedule 2 so as to ensure that it continues to give effect to the Republic's obligations under international law.

Part 2

Powers to be exercised by Minister and MEC

87.

[S. 87 repealed by s. 51 of Act 36/2014 w.e.f. 1 May 2015]

88. Directives by MEC to municipalities

- (1) An MEC may in writing direct a municipality to take specified measures if the MEC is satisfied that the municipality is not taking adequate measures to -
- (a) prevent or remedy adverse effects on the coastal environment;
 - (b) adopt or implement a municipal coastal management programme; or
 - (c) give effect to the provincial coastal management programme.
- (2) The MEC may not issue a directive under subsection (1) without first consulting with the municipality and giving it a reasonable opportunity to make representations.
- (3) If the municipality does not comply with a directive under subsection (1) the MEC may use any powers granted to the MEC under this Act to take measures to prevent or remedy adverse effects on the coastal environment, to implement or monitor compliance with provincial norms and standards, or to give effect to the provincial coastal management programme.

Part 3

Delegations and enforcement

89. Delegation by Minister

- (1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to -
 - (a) the Director-General or to other officials in the Department;
 - (b) an MEC, by agreement with that MEC; or
 - (c) any other organ of state, statutory functionary, traditional council or management authority of a special management area, by agreement with that organ of state, statutory functionary, traditional council or management authority.
- (2) A delegation in terms of subsection (1) -
 - (a) is subject to any limitations, conditions and directions the Minister may impose;
 - (b) is subject to consultation with the relevant MEC if the organ of state to whom the power or duty is delegated is a municipality;
 - (c) must be in writing;
 - (d) may include the power to subdelegate; and
 - (e) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, an organ of state, a statutory functionary, a traditional council or a management authority of a special management area.
- (4) The Minister may confirm, vary or revoke any decision made taken in consequence of a delegation or subdelegation in terms of a provision of this Act or of a statute repealed by this Act.
- (5) The Minister-
 - (a) may not delegate a power or duty vested in the Minister-
 - (i) to make regulations; or
 - (ii) to publish notices in the *Gazette*; and

INTEGRATED COASTAL MANAGEMENT ACT

- (b) may withdraw by notice in writing any delegation made in terms of a provision of this Act.

[Subs. (5) to be substituted by s. 52 of Act 36/2014 w.e.f. 1 May 2015]

90. Enforcement by Minister

- (1) The Minister may in writing request an MEC to take specified measures if the Minister is satisfied that the MEC is not taking adequate measures to -
- (a) prevent or remedy adverse effects on coastal public property;
 - (b) implement or monitor compliance with national norms and standards;
 - (c) give effect to the national coastal management programme; or
 - (d) establish coastal management lines.

[Para. (d) substituted by s. 53 of Act 36/2014 w.e.f. 1 May 2015]

- (2) If the MEC does not comply with a request under subsection (1) the Minister may exercise any powers given to the MEC by this Act in order to take any measures referred to in the request, including the power-
- (a) to issue coastal protection or coastal access notices and repair and removal notices delegated to the MEC in terms of sections 59 and 60, respectively;
 - (b) to take measures and to recover costs in terms of section 61; and
 - (c) to allow temporary occupation of land within the coastal zone and to take other measures in terms of section 67.
- (3) The Minister may not take any measures under subsection (2) without first consulting with the MEC and giving the MEC a reasonable opportunity to make representations.

91. Delegation by MECs

- (1) An MEC may delegate any power or duty assigned or delegated to him or her in terms of this Act to -
- (a) the head of the provincial lead agency;
[Para. (a) amended by s. 54 of Act 36/2014 w.e.f. 1 May 2015]
 - (b) any other organ of state, a statutory functionary, a traditional council or a management authority of a special management area, by agreement.
 - (c) an official within the MEC's department.
[Para. (c) added by s. 54 of Act 36/2014 w.e.f. 1 May 2015]

INTEGRATED COASTAL MANAGEMENT ACT

- (2) A delegation in terms of subsection (1) -
- (a) is subject to any limitations, conditions and directions that the MEC may impose;
 - (b) must be in writing;
 - (c) may include the power to subdelegate; and
 - (d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The MEC may confirm, vary or revoke any decision taken as a consequence of a delegation or subdelegation in terms of this section.
- (4) The MEC -
- (a) may not delegate a power or duty vested in the MEC -
 - (i) to make regulations; or
 - (ii) to publish notices in the *Gazette*; or
 - (iii) to appoint the members of the Provincial Coastal Committee contemplated in section 39; and
 - (b) may withdraw any delegation by notice in writing.

Part 4

General matters

92. Urgent action by Minister or MEC

[Heading of s. 92 substituted by s. 55 of Act 36/2014 w.e.f. 1 May 2015]

- (1) The Minister or MEC may issue a verbal directive to any responsible person to stop an activity if such activity poses-

[Words preceding para. (a) substituted by s. 55 of Act 36/2014 w.e.f. 1 May 2015]

- (a) an immediate risk of serious danger to the public or property; or
 - (b) an immediate risk of serious damage, or potentially significant detriment, to the environment.
- (2) Subject to subsection (3), a verbal directive contemplated in subsection (1) must be confirmed in writing at the earliest opportunity, which must be within seven days.

- (3) When issuing a verbal directive contemplated in subsection (1), the provisions of section 59(1) and (4) or 60(1) and (4) apply with the necessary changes.

[Subs. (3) substituted by s. 55 of Act 36/2014 w.e.f. 1 May 2015]

93. Information and reporting on coastal matters

- (1) The Minister must progressively, and within the available resources of the Department, make sufficient information available and accessible to the public concerning the protection and management of the coastal zone to enable the public to make an informed decision of the extent to which the State is fulfilling its duty in terms of section 3.

- (2) The MEC must -

- (a) prepare a report on the state of the coastal environment in the province every four years, which must contain any information prescribed by the Minister;
- (b) update the report once applicable information pertaining to the coastal environment under the jurisdiction of the MEC becomes available; and
- (c) submit the report and every update to the Minister.

- (3) The Minister must prepare and regularly update a national report on the state of the coastal environment, which must include-

- (a) information from provincial reports submitted to the Minister in terms of subsection (2); and
- (b) a review on the status of each pipeline that discharges effluent into coastal waters in terms of section 69 and its impact on the coastal environment and progress on any other national responsibilities in this Act.

[Subs. (3) substituted by s. 56 of Act 36/2014 w.e.f. 1 May 2015]

94. Co-ordination of actions between provinces and municipalities

The MEC must -

- (a) liaise with coastal municipalities in the province to co-ordinate actions taken in terms of this Act by provincial organs of state in the province with actions taken by municipalities; and
- (b) monitor compliance by such municipalities with this Act.

94A. Exemptions

- (1) The Minister may in writing exempt any person or group of persons or organ of state from a provision of this Act, provided that such exemption does not conflict with the objects of the Act.

- (2) An exemption granted in terms of subsection (1) may-
- (a) be subject to conditions;
 - (b) be subject to payment of a fee; and
 - (c) be amended or cancelled at any time by the Minister.
- (3) Before making a decision in terms of this section, the Minister must consult with any organ of state that may be affected by such decision.

[S. 94A inserted by s. 57 of Act 36/2014 w.e.f. 1 May 2015]

CHAPTER 12

MISCELLANEOUS MATTERS

Part 1

Transitional provisions

95. Existing leases on, or rights to, coastal public property

- (1) In order to enable the Minister to establish the nature and extent of existing uses within the coastal zone, the holder of a lease or right in terms of the Sea-shore Act, 1935 (Act No. 21 of 1935), or a lease within the admiralty reserve must, within 12 months of the commencement of this section, provide the Minister with a copy of the lease concluded in terms of the Sea-shore Act.
- (2) If a lease under the Sea-Shore Act-
- (a) relates to an activity that is not listed in terms of section 65(1)(a), that lease is no longer required and therefore lapses, and the activity may continue;
 - (b) relates to an activity which is prohibited by notice in terms of section 65(1)(a)(i), that activity must stop within a period of 180 days from the date of publication of such notice; or
 - (c) relates to an activity requiring a permit in terms of section 65(1)(a)(ii) application must be made for a coastal use permit in terms of section 65(3) within a period of 180 days of the publication of the notice listing such activities.
- (3) If an application for a coastal use permit contemplated in subsection 2(c) is refused, that activity must stop within a period of 180 days of receipt of the refusal.

- (4) Unless a person referred to in subsection (2)(c) is directed otherwise by a person acting in terms of this Act, it is not an offence for that person to continue with the activity if that person makes an application for a permit under section 65(3)(a) within 180 days as contemplated in subsection (2)(c) but has not yet been notified whether the application has been granted or refused.

[S. 95 substituted by s. 58 of Act 36/2014 w.e.f. 1 May 2015]

(Commencement date of s.95: To be proclaimed)

96. Unlawful structures on coastal public property

- (1) A person who, before this section took effect, had unlawfully constructed a building or other structure on coastal public property or who, when this section took effect, occupied a building or other structure unlawfully built on coastal public property must-
- (a) within 180 days of the publication of the Gazette notice contemplated in section 65(1)(a)(ii), apply for a coastal use permit if the activity is listed in terms of section 65(1)(a)(ii); or
 - (b) within 180 days of the publication of the Gazette notice contemplated in section 65(1)(a)(i), demolish the building or structure and as far as reasonably possible, restore the site to its condition before the building or other structure was built, if the activity is prohibited in terms of section 65(1)(a)(i); and must notify the Department with proof of such demolition and restoration.
- (2) If a person referred to in subsection (1) applies for a coastal use permit in accordance with section 65(3)(a) and the application is refused by the Minister, that person must demolish the building or structure and, within a reasonable period, as determined by the Minister when refusing the application, as far as reasonably possible restore the site to its condition before the building or other structure was built.
- (3) If a person who in terms of subsection (1) or (2) is obliged to demolish the building or structure and to restore the site to its original condition, fails to do so within the period specified in subsection (1)(b) or specified by the Minister in subsection (2), the Minister may, under section 60, issue a written repair or removal notice to that person.
- (3A) If appropriate, before issuing a notice as contemplated in subsection (3), the Minister must consider the effect this may have on the elderly, children, disabled persons and households headed by women, particularly in low-income households.
- (4) This section does not affect-
- (a) any legal proceedings that commenced prior to the commencement of this section to enforce any prohibition or restriction on construction or other activities in terms of any other law; or

(b) any legal proceedings instituted after the commencement of this Act to enforce any notice served prior to the commencement of this section that required the addressee to vacate or demolish any building or structure that was constructed unlawfully.

[S. 96 substituted by s. 59 of Act 36/2014 w.e.f. 1 May 2015]

(Commencement date of s.96: To be proclaimed)

97.

[S. 97 repealed by s. 60 of Act 36/2014 w.e.f. 1 May 2015]

97A. Withdrawal of previous exclusions

Any exclusion of an area from coastal public property in terms of section 27, prior to the repeal of that section, shall be of no force and effect and shall remain coastal public property to the extent defined in section 7.

[S. 97A inserted by s. 61 of Act 36/2014 w.e.f. 1 May 2015]

98. Repeal of legislation

The laws referred to in Schedule 1 are hereby repealed to the extent indicated in the third column of that Schedule.

(Commencement date of s.98: To be proclaimed)

99. Savings

- (1) Subject to section 6 any regulation made in terms of a provision repealed under section 98 remains valid to the extent that it is consistent with this Act and shall be regarded as having been made in terms of this Act.
- (2) Anything else done in terms of legislation repealed in terms of section 98 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

Part 2

General

100. Limitation of liability

Neither the State nor any other person is liable for any damage or loss caused by -

- (a) the exercise of any power or the performance of any duty in terms of this Act; or
- (b) the failure to exercise any power or perform any duty in terms of this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the duty, was unlawful, negligent or in bad faith.

INTEGRATED COASTAL MANAGEMENT ACT

101. Short title

This Act is called the National Environmental Management: Integrated Coastal Management Act, 2008, and takes effect on a date or dates determined by the President by proclamation in the Gazette.

[S. 101 substituted by s. 62 of Act 36/2014 w.e.f. 1 May 2015]

SCHEDULE 1

LAWS REPEALED

(Section 98)

Number and year of the law	Short title	Extent of repeal or amendment
Act No. 21 of 1935	Sea-shore Act, 1935	Repeal of the whole, to the extent that it has not been assigned to provinces.
Act No. 73 of 1980	Dumping at Sea Control Act, 1980	Repeal of the whole

SCHEDULE 2

(Section 71)

GUIDELINES FOR THE ASSESSMENT OF WASTES OR OTHER MATERIAL THAT MAY BE CONSIDERED FOR DUMPING AT SEA ("the Waste Assessment Guidelines")

1. General
2. Waste Prevention Audit
- 3.
- 4.
5. Consideration of Waste Management Options
- 6.
7. Chemical, Physical and Biological Properties
8. Action List
- 9.
10. Dump-site Selection
11. Assessment of Potential Effects
- 12.
- 13.
- 14.
15. Monitoring

INTEGRATED COASTAL MANAGEMENT ACT

16. Permit and Permit Conditions
- 17.

GENERAL

1. This Schedule sets out guidelines for reducing the necessity for dumping at sea in accordance with Schedule II to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters adopted on 7 November 1996.

WASTE PREVENTION AUDIT

2. The initial stages in assessing alternatives to dumping at sea should, as appropriate, include an evaluation of -
 - (a) the types, amounts and relative hazard of wastes generated;
 - (b) details of the production process and the sources of wastes within that process; and
 - (c) the feasibility of the following waste reduction or prevention techniques;
 - (i) product reformulation;
 - (ii) clean production technologies;
 - (iii) process modification;
 - (iv) input substitution; and
 - (v) on-site, closed-loop recycling.
3. In general terms, if the required audit reveals that opportunities exist for waste prevention at its source, an applicant for a permit is expected to formulate and implement a waste prevention strategy, in collaboration with the relevant local, provincial and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being, met. Permit issuance or renewal decisions must assure compliance with any resulting waste reduction and prevention requirements.
4. For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local, provincial and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

CONSIDERATION OF WASTE MANAGEMENT OPTIONS

5. Applications to dump wastes or other material must demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:
 - (a) re-use;
 - (b) off-site recycling;
 - (c) destruction of hazardous constituents;
 - (d) treatment to reduce or remove the hazardous constituents; and
 - (e) disposal on land, into air and in water.
6. The Minister will refuse to grant a permit if it is established that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping at sea and the alternatives.

CHEMICAL, PHYSICAL AND BIOLOGICAL PROPERTIES

7. A detailed description and characterisation of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterised that a proper assessment cannot be made of its potential impacts on health and the environment, that waste may not be dumped.

Characterisation of the wastes and their constituents must take into account -

- (a) origin, total amount, form and average composition;
- (b) properties: physical, chemical, biochemical and biological;
- (c) toxicity;
- (d) persistence: physical, chemical and biological; and
- (e) accumulation and biotransformation in biological materials or sediments.

ACTION LIST

8. In selecting substances for consideration in the Action List referred to in section 78, the Minister will give priority to toxic, persistent and bioaccumulative substances

INTEGRATED COASTAL MANAGEMENT ACT

from anthropogenic sources (e.g. cadmium, mercury, organohalogens, petroleum hydrocarbons and whenever relevant arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogens). An Action List can also be used as a trigger mechanism for further waste prevention considerations.

9. The Action List must specify an upper level and may also specify lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:
 - (a) wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping at sea through the use of management techniques or processes;
 - (b) wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping at sea; and
 - (c) wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping at sea can be determined.

DUMP-SITE SELECTION

10. The Minister will require at least the following information before deciding whether or not to approve a site for dumping at sea:
 - (a) the physical, chemical and biological characteristics of the water-column and the seabed;
 - (b) the location of amenities, values and other uses of the sea in the area under consideration;
 - (c) the assessment of the constituent fluxes associated with dumping at sea in relation to existing fluxes of substances in the marine environment;
 - (d) the economic and operational feasibility; and
 - (e) any relevant coastal management objectives.

ASSESSMENT OF POTENTIAL EFFECTS

11. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the "Impact Hypothesis". It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

INTEGRATED COASTAL MANAGEMENT ACT

12. The assessment for dumping at sea must integrate information on waste characteristics, conditions at the proposed dump-site or dump- sites, fluxes, and proposed disposal techniques and specify the potential effects on the environment, human health, living resources, amenities and other legitimate uses of the sea. It must define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.
13. An analysis of each disposal option must be considered in the light of a comparative assessment of the following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option may not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping at sea option to be less preferable, a permit for dumping will not be given.
14. Each assessment must conclude with a statement supporting a decision to issue or refuse a permit for dumping at sea.

MONITORING

15. Monitoring is used to verify that permit conditions are met - compliance monitoring - and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health - field monitoring. It is essential that such monitoring programmes have clearly defined objectives.

PERMIT AND PERMIT CONDITIONS

16. A decision to issue a permit will only be made if all impact evaluations are completed and the monitoring requirements are determined. The conditions of the permit must ensure, as far as practicable, that adverse effects are minimised and the benefits maximised. A dumping permit issued must contain data and information specifying -
 - (a) the types and sources of materials to be dumped;
 - (b) the location of the dump-site(s);
 - (c) the method of dumping at sea; and
 - (d) monitoring and reporting requirements.
17. The Minister will review permits for dumping at sea at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

**NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL
MANAGEMENT ACT 24 OF 2008**

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

Published under Government Notice R496 in *Government Gazette* 37761 of 27 June 2014.

SCHEDULE

TABLE OF CONTENTS

- 1 Definitions
- 2 General prohibition
- 3 Permissible uses
- 4 Permits to use vehicles in coastal area
- 5 Assessment of impact of using vehicles in the coastal area
- 6 Consideration of application
- 7 Decisions
- 8 Suspension, amendment and cancellation of permits and exemptions
- 9 Vehicle use at launch sites
- 10 Law enforcement
- 11 Co-operation with authorised officers
- 12 Procedure with regard to seized vehicles
- 13 Offences and penalties
- 14 Presumptions
- 15 Forfeiture
- 16 Exemptions
- 17 Conflict with other regulations and policies
- 18 Transitional provisions
- 19 Commencement

1. Definitions

In these Regulations, unless the context indicates otherwise, a word or expression that is defined in the Act bears the same meaning in these Regulations, and in addition-

“**Act**” means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

“**authorised officer**” means -

- (a) any person appointed as a fishery control officer in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

(b) an environmental management inspector appointed in terms of the National Environmental Management Act; and

(c) all peace officers as defined in the Criminal Procedure Act;

“beach or surf launch site” means a natural location within the coastal zone, with no slipway, jetty or other construction or structure, where a vessel may be launched directly into the water and includes a natural location in the coastal area, which can only be accessed by an artificially compacted or hardened surface;

“coastal area” means-

(a) coastal public property;

(b) littoral active zone; and

(c) any area between the high-water mark and up to 500 meters landwards of the high-water mark where dunes, wetlands, mangroves, lagoons, salt marshes, salt pans, mud flats occur, but not exceeding the boundary of the coastal zone as determined in the Act;

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“dune” means a mound or ridge of loose wind-blown material, usually sand, whether covered by vegetation or not;

“emergency” means a serious situation or occurrence that happens unexpectedly or is reasonably foreseeable and that requires immediate action;

“fishing competition” means an interprovincial, national, or international recreational sport fishing competition sanctioned by, and held under the auspices of, the South African Shore Angling Association;

“harbour” means a port or harbour proclaimed in terms of any law and managed by an organ of State;

“integrated management plan” has the meaning assigned to it in the World Heritage Convention Act, 1999 (Act No. 49 of 1999);

“management authority” means the organisation or authority appointed in terms of the Protected Areas Act or in terms of the World Heritage Convention Act, 1999 (Act No. 49 of 1999), to manage a coastal protected area including any authority or organisation who has been appointed or contracted to manage a coastal protected area in terms of section 14 of the Protected Areas Act or section 13 of the World Heritage Convention Act, 1999 (Act No. 49 of 1999);

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

“permissible use” means a use of a vehicle within the coastal area referred to in regulation 3 and for which a permit under these regulations is not required;

“physically disabled person” means a person with permanent severe mobility impairment who has been certified as such by the National Council for Persons with Physical Disabilities in South Africa;

“privately used launch site” means a site-

- (a) constructed adjacent to or proximate to privately owned property;
- (b) used by the owner or occupiers of such property to launch a vessel in the coastal area;
- (c) which is not for use by the general public;
- (d) where no fees, levies or charges are imposed for launching a vessel; and
- (e) excludes a beach or surf launch site.

“public launch site” means a site listed by notice in the *Gazette* in terms of the Public Launch Site Regulations, as a site where a vessel may be launched in the coastal zone, but excludes a privately used launch site;

“Public Launch Site Regulations” means the regulations published in terms of the Act relating to the listing and management of public launch sites;

“public road” has the meaning assigned to it in the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“relevant authority” means the delegated authority or the Minister as referred to in regulations 4 and 16;

“scientific research” means research carried out by a museum, recognised institute established for the purpose of scientific research, or research carried out by a registered research unit of a tertiary institution;

“tourism business” means a commercial business using vehicles in the coastal area for the purpose of conducting eco-tours and which employs tourist guides;

“tourist guide” means a tourist guide as defined in the Tourism Act, 1993 (Act No. 72 of 1993);

“use” in relation to a vehicle includes driving, operating, being conveyed by, or being seated in the driver's seat of a stationary vehicle;

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

“vehicle” means-

- (a) any self-propelled conveyance which is designed to transport one or more persons on land including those designed for the construction or maintenance or infrastructure;
- (b) a trailer;
- (c) any motorised aircraft which may land in the coastal area; or
- (d) a vessel which is able to move on land.

“vehicle use launch site” means a public launch site listed by notice in the *Provincial Gazette* in terms of the Public Launch Site Regulations, as a site which allows a vehicle to be used to launch a vessel in the coastal area but excludes a privately used launch site; and

“vessel” has the meaning assigned to it in the Act, but excludes non-motorised waterborne craft which do not require a vehicle or any other equipment to launch into the water.

2. General prohibition

- (1) No person may use a vehicle in the coastal area unless that use-
 - (a) is a permissible use under regulation 3;
 - (b) is authorised in terms of a permit granted under regulation 4;
 - (c) is authorised in terms of an exemption granted under regulation 16; or
 - (d) is lawful in terms of regulation 18.

3. Permissible uses

- (1) Subject to section 58 of the Act, the following uses of vehicles within the coastal area are permissible without a permit or exemption granted under these regulations:
 - (a) the use by any person of a vehicle-
 - (i) on a public road;
 - (ii) on private land by the owner or with the written permission of the owner or lawful occupier of that land;
 - (iii) on a road within a coastal protected area where written permission has been granted by the management authority of that coastal protected area, or provided that such use is authorised in the protected area management plan or integrated management plan compiled by the management authority;

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (iv) within a mining area as defined in section 1 of the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
 - (v) in coastal public property within an operational harbour area that has already been physically modified from its original natural state; or
 - (vi) in an emergency in order to safeguard human life or health, property or any aspect of the environment;
- (b) the use of a vehicle within a vehicle use launch site, or privately used launch site;
 - (c) the use by a physically disabled person of an electrically propelled wheelchair that is specifically designed and manufactured for use by such person;
 - (d) the use of a vehicle by an employee or agent of an organ of state acting in the course and scope of their employment or mandate, or by any person contracted by an organ of state, for the purposes of performing the public duties of that organ of state mandated by law; or
 - (e) the use of a vehicle by members of the National Sea Rescue Institute for the purpose of performing the public duties of that organisation including authorised training exercises.

4. Permits to use vehicles in coastal area

- (1) A permit to use a vehicle in the coastal area may be issued by the Minister for the purposes of-
 - (a) carrying out a non-recreational activity in terms of a right, permit or exemption granted under the Act, the Marine Living Resources Act, 1998 (Act No. 18 of 1998) or the Sea Fishery Act, 1988 (Act No. 12 of 1988);
 - (b) scientific research;
 - (c) operating a tourism business;
 - (d) accessing private property provided there is no reasonable alternative access to the property;
 - (e) producing an advertisement, film, still photograph or a television programme;
 - (f) access by a physically disabled person;
 - (g) hosting a fishing competition; or

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (h) the construction or maintenance of infrastructure authorised by a law.
- (2) An application for a permit shall be made to the Minister.
- (3) A permit may be issued subject to conditions as determined by the Minister.
- (4)
 - (a) A permit may be issued for non-recreational activities in terms of sub-regulation 4(1)
 - (a) if-
 - (i) the applicant pays the application fee if prescribed; and
 - (ii) the applicant demonstrates that the use of a vehicle is required in the coastal area to effectively carry out the non-recreational activity;
 - (b) Such a permit may be issued for a maximum period of five years, provided that the permit will only be valid if the holder thereof is also the holder of a valid permit or exemption granted under the Act, the Marine Living Resources Act, 1998 (Act No. 18 of 1998) or the Sea Fishery Act, 1988 (Act No. 12 of 1988).
- (5)
 - (a) A permit may be issued for scientific research in terms of sub-regulation 4(1)(b) if-
 - (i) the applicant demonstrates that the use of the vehicle is required to effectively carry out the scientific research; and
 - (ii) the applicant provides an approved research proposal from the research institution, organisation or tertiary institution; or
 - (iii) the applicant is in possession of a valid permit, licence or other written permission from an organ of state to conduct scientific research where required by law.
 - (b) Such a permit may be issued for a maximum period of five years.
- (6)
 - (a) A permit may be issued for tourism in terms of sub-regulation 4(1)(c) if-
 - (i) the applicant pays the application fee if prescribed;
 - (ii) the applicant demonstrates that the use of the vehicle is required to effectively conduct the tourism business;

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (iii) the applicant provides proof of registration of its tour guides and copies of all marketing material for the intended tour in the coastal area;
 - (iv) the applicant is in possession of a valid permit, licence or other written permission from an organ of state to conduct a tourism business, where required by law;
 - (v) the applicant provides an operational plan setting out the activities that will be undertaken during a tour, the number of trips per day, the length of a tour, the number of people per tour that can be accommodated and any equipment or infrastructure which will be utilised; and
 - (vi) the applicant provides an environmental plan for the proposed vehicle use in the coastal area which plan must, as a minimum, address the following issues:
 - (aa) a detailed description of the environment that may be affected by the tourism activity, and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected or impacted on by the activity;
 - (bb) proposed management or mitigation measures that will be implemented to minimise environmental impacts and respond to any negative impact which may occur during the tourism activity;
 - (cc) measures to be taken to rehabilitate the affected environment if required; and
 - (dd) a description of any consultation process with interested and affected parties that was undertaken and a summary of any comments that were received during such consultation process.
- (b) Such a permit may be issued for a maximum period of five years.

(7)

- (a) A permit may be issued to access private property in terms of sub-regulation 4(1)(d) if-
- (i) the applicant provides proof that the use and occupation of the property is lawful; and
 - (ii) the applicant demonstrates that no reasonable alternative access route to the property exists.
- (b) Such a permit may be issued for a maximum period of five years.

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

(8)

- (a) A permit may be issued for filming in terms of sub-regulation 4(1)(e) if-
- (i) the applicant pays the application fee if prescribed;
 - (ii) the applicant provides an environmental plan for the proposed vehicle use in the coastal area which plan must, as a minimum, address the following issues:
 - (aa) a detailed description of the environment that may be affected by the filming activity, and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected or impacted on by the filming activity;
 - (bb) proposed management or mitigation measures that will be implemented to minimise environmental impacts and respond to any negative impact which may occur during the filming activity;
 - (cc) measures to be taken to rehabilitate the affected environment if required; and
 - (dd) a description of any consultation process with interested and affected parties that was undertaken and a summary of any comments that were received during such consultation process;
 - (iii) the applicant provides a detailed description of the proposed advertisement, production or filming activity and the purpose of the proposed vehicle use;
 - (iv) the proposed vehicle use does not depict or promote the inappropriate or illegal use of a vehicle in the coastal area in South Africa or may not be recognisable as an area in South Africa; and
 - (v) the applicant is in possession of a valid permit, licence or other written permission from an organ of state to conduct filming, where required by law.
- (b) Such a permit may be issued for the duration of the production up to a maximum of one year.

(9)

- (a) A permit may be issued for a physically disabled person in terms of sub-regulation 4(1)(f) if-
- (i) the applicant pays the application fee if prescribed; and

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

(ii) the applicant provides written confirmation from the National Council for Persons with Physical Disabilities in South Africa that he or she is a physically disabled person.

(b) Such a permit may be issued for a maximum period of five years.

(10)

(a) A permit may be issued for a fishing competition in terms of sub-regulation 4(1)(g) if-

(i) the applicant pays the application fee if prescribed;

(ii) the applicant submits a code of conduct or similar document issued by the organisers of the fishing competition that regulates the use of vehicles by participants;

(iii) the applicant provides an environmental plan for the proposed vehicle use in the coastal area which plan must, as a minimum, address the following issues:

(aa) a detailed description of the environment that may be affected by the fishing competition, and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected or impacted on;

(bb) proposed management or mitigation measures that will be implemented to minimise environmental impacts and respond to any negative impact which may occur during the fishing competition;

(cc) measures to be taken to rehabilitate the affected environment if required; and

(dd) a description of any consultation process with interested and affected parties that was undertaken and a summary of any comments that were received during such consultation process; and

(iv) the applicant is in possession of a valid permit, licence or other written permission from an organ of state to conduct a fishing competition, where required by law.

(b) Such a permit may be issued for the duration of the competition, provided that a permit shall only be issued for a single specified organised recreational fishing competition.

(11)

(a) A permit may be issued for construction or maintenance in terms of sub-regulation 4(1)(h) if-

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (i) the applicant pays the application fee if prescribed;
- (ii) the applicant provides a copy of an environmental authorisation if required;
- (iii) an environmental authorisation is not required, a letter from the competent authority confirming this;
- (iv) the applicant provides an environmental management plan if required in the environmental authorisation; and
- (v) a detailed description of the construction or maintenance activity and the extent of the use of a vehicle including the time periods and number of vehicles which may be used.

(b) Such a permit may be issued for a maximum period of five years.

(12) For any application for a permit the Minister must be satisfied that-

- (a) the intended vehicle use will not cause significant harm to the coastal area; and
- (b) members of the public will be able to continue to safely use and enjoy that part of the coastal area.

(13) When considering an application for a permit to use a vehicle in the coastal area of a coastal protected area, the Minister shall only issue a decision on the application in consultation with the management authority of the coastal protected area where such management authority is not the delegated authority to issue such permits.

(14) The Minister may, on application subject to a renewal fee, renew a permit for a further period of not more than two years, whereafter a new application must be made in terms of regulation 4.

(15) Any permit issued in terms of these regulations is not transferable.

5. Assessment of impact of use of vehicles in coastal area

Notwithstanding anything to the contrary in these regulations, the Minister may require an applicant to fulfill the requirements of section 24(5)(bA) of the National Environmental Management Act in relation to the investigation, assessment or communication of the potential impacts of the activity concerned.

6. Consideration of application

(1) The relevant authority referred to in regulation 4 and 16 must refuse to consider an incomplete application for a permit or exemption.

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (2) The relevant authority may, after considering an application submitted in terms of these regulations-
- (a) request the applicant to carry out further investigations and/or submit additional information within a specified time frame, failing which the application will be regarded as incomplete;
 - (b) request the applicant to consult with specific organisations, authorities, persons or interested parties and submit the results of the required consultations;
 - (c) refuse the application; or
 - (d) issue a permit or exemption.
- (3) A permit or exemption may be issued subject to conditions.

7. Decision

- (1) A permit or exemption must include-
- (a) the geographic location and precise description of the area for which the permit or exemption is being issued;
 - (b) the name, address and telephone number of the applicant;
 - (c) the conditions included in the permit or exemption; and
 - (d) the date of expiry or the duration of the permit or exemption.
- (2) A decision to refuse a permit or exemption must include-
- (a) the reasons for the decision; and
 - (b) the date of the decision.

8. Suspension, amendment and cancellation of permits and exemptions

- (1) Subject to sub-regulation (2), a permit or exemption issued under these regulations may at any time be suspended, cancelled or amended.
- (2) A permit or exemption may be suspended, cancelled or amended, if-
- (a) the relevant authority is satisfied on the basis of information that was not considered when the permit or exemption was issued, that it is necessary or desirable to suspend, cancel or amend the permit or exemption to prevent deterioration or further deterioration of the environment within the coastal area;

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (b) other similar permits or exemptions held by other persons in the same vicinity have also been reviewed and the suspension, cancellation or amendment does not unfairly discriminate against the holder in relation to other holders of similar permits or exemptions in the same vicinity;
 - (c) the permit holder or exemption holder is in breach of a condition contained in the permit or exemption;
 - (d) the permit holder or exemption holder provided incorrect or false information in the application for the permit or exemption;
 - (e) the holder of a permit or exemption has been convicted of an offence in terms of the Act, the National Environmental Management Act or a specific environmental management act or any regulations issued thereunder; or
 - (f) the reason for the issuing of the permit or exemption no longer exists.
- (3) A permit or exemption may be amended-
- (a) if an error needs to be corrected or rectified;
 - (b) at the request of the applicant;
 - (c) for the proper management and implementation of these Regulations; or
 - (d) where the conditions or circumstances have changed since the original permit or exemption was issued.

9. Vehicle use at public launch sites

- (1) No person shall use a vehicle to launch a vessel from a public launch site-
- (a) which is not listed in terms of the Public Launch Site Regulations; and
 - (b) which site is not a vehicle use launch site.

10. Law enforcement

- (1) Any authorised officer may in addition to any powers he or she may have in terms of the National Environmental Management Act or the Criminal Procedure Act-
- (a) arrest any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations;
 - (b) seize any vehicle if he or she on reasonable grounds believes that the vehicle-

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (i) has been or is being used in the commission of an offence in terms of these regulations;
 - (ii) may afford evidence of the commission or suspected commission of an offence in terms of these regulations; or
 - (iii) is intended to be used in the commission of an offence in terms of these regulations; and
- (c) at any time within 30 days of the alleged commission of the offence, issue a written notice in terms of the Criminal Procedure Act, stipulating an admission of guilt fine which shall not exceed R2500, to any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations.
- (2) Any person issued with a written notice in terms of sub-regulation 10(1)(c) may in terms of the Criminal Procedure Act, pay an admission of guilt fine as stipulated in a written notice.

11. Co-operation with authorised officers

- (1) The driver or passenger of any vehicle in the coastal area must comply immediately with any lawful instruction given or request made by an authorised officer.
- (2) Any person who has been granted a permit or exemption to use a vehicle in the coastal area under these regulations, must immediately produce such permit or exemption if requested to do so by an authorised officer.
- (3) No person shall-
 - (a) assault, obstruct, resist, delay, threaten, intimidate, abuse or otherwise interfere with an authorised officer in the performance of his or her duties, or any other person lawfully assisting and acting under the instructions of an authorised officer;
 - (b) incite or encourage any other person to assault, resist, obstruct, threaten, intimidate, abuse or otherwise interfere with any authorised officer while exercising or performing his or her powers or duties, or any other person lawfully assisting and acting under the instructions of an authorised officer;
 - (c) fail to comply with the lawful requirements of any authorised officer; or
 - (d) give any false or misleading particulars to an authorised officer.

12. Procedure with regard to seized vehicles

- (1) Any vehicle seized under these regulations must-

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (a) be immediately delivered to a police official if the authorised officer is not a police official as defined in section 1 of the Criminal Procedure Act; and
 - (b) be dealt with in accordance with the provisions of the Criminal Procedure Act, except as otherwise provided in these regulations.
- (2) If any vehicle has been seized in terms of regulation 10 and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within 90 days of the seizure, the Director-General may apply to the court for it to be forfeited to the State and the court shall make any order it considers appropriate.
- (3) If the lawful owner of a seized vehicle fails to take delivery of the vehicle within 90 days of being notified by registered post at his or her last-known address that he or she may take possession of the vehicle, the vehicle shall be forfeited to the State and disposed of as the Director-General in his or her discretion considers appropriate.
- (4) If the owner of a vehicle or the person having the possession, care or control of it at the time of its seizure is served with a written notice or convicted of an offence in terms of these regulations and a fine is imposed, the vehicle may be detained until all fines, orders for costs and penalties imposed in terms of these regulations have been paid.
- (5) If any payment contemplated in sub-regulation (4) is not made within such time as the court may determine, the court may order the vehicle to be forfeited to the State.

13. Offences and penalties

Any person who contravenes any provision of these regulations shall be guilty of an offence and liable on conviction to a fine up to a maximum of R500 000 per vehicle per offence, or to imprisonment not exceeding two years, or to both such fine and such imprisonment.

14. Presumptions

- (1) If in the course of any proceedings in connection with an offence under these regulations it is proved that-
- (a) a person was sitting behind the steering wheel or at the controls of a vehicle, whether or not the vehicle was stationary, it shall be *prima facie* proof that the person was using that vehicle in that place.
 - (b) a person used a vehicle in the coastal area other than on a public road, it shall be *prima facie* proof that-
 - (i) the vehicle was used in a manner that was not permissible under regulation 3;
 - (ii) was not authorised in terms of a permit granted under regulation 4 or an exemption under regulation 16, or

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

(iii) was not lawful in terms of regulation 18.

15. Forfeiture

- (1) A court convicting any person of an offence under these regulations may declare any vehicle used in committing the offence, or the rights of the convicted person to such vehicle, to be forfeited to the State.
- (2) Any vehicle ordered to be forfeited in terms of these regulations shall be disposed of as the Director-General in his or her discretion considers appropriate.

16. Exemptions

- (1) Any person, including an organ of state, may apply in writing to the Minister for an exemption from obtaining a permit or from complying with any of the requirements in regulation 4 for the granting of a permit.
- (2) The Minister shall only issue an exemption if satisfied that granting such exemption will not result in significant harm to the coastal area, will not seriously affect any rights of the general public to enjoy the coastal area, and is in the public interest, alternatively in the interests of protecting the environment.

17. Conflict and Repeal

- (1) These regulations will prevail if there is any conflict between any of the provisions in them and any other regulations, by-laws or other subordinate legislation relating to the use of vehicles in the coastal area made under any Act.
- (2) Except for regulation 7 thereof, the Regulations for the Control of Use of Vehicles in the Coastal Zone, published in terms of the National Environmental Management Act and promulgated under Government Notice No. 1399 in *Government Gazette* 22960 of 21 December 2001 and Government Notice No. 1426 in *Government Gazette* 27066 of 7 December 2004 are hereby repealed.

18. Transitional provisions

- (1) Any permit or exemption issued under regulations repealed by these Regulations shall be deemed to be a permit or exemption issued in terms of these Regulations and shall remain valid until revocation, cancellation, amendment or expiry of such permit or exemption.
- (2) Any boat launch site licence issued under regulations repealed by these Regulations or repealed by the Public Launch Site Regulations, shall remain valid and shall be deemed to be a vehicle use launch site for the purposes of regulation 3(1)(b), until a list of public launch sites has been published in terms of the Public Launch Site Regulations.

CONTROL OF USE OF VEHICLES IN THE COASTAL AREA

- (3) An application for a permit or exemption lodged in terms of Regulation 6 or 20 of the Control of Use of Vehicles in the Coastal Zone, published in terms of the National Environmental Management Act and promulgated under Government Notice No. 1399 in *Government Gazette* 22960 of 21 December 2001 and Government Notice No. 1426 in *Government Gazette* 27066 of 7 December 2004, which is pending when these Regulations take effect, must despite the repeal of those regulations be dispensed with in terms of those regulations as if those regulations were not repealed and a decision taken in terms of those regulations must be deemed as a decision taken in terms of these Regulations.

19. Short title and commencement

These regulations are called the Control of Use of Vehicles in the Coastal Area Regulations and shall commence on the date of publication in the *Gazette*.

PROTECTED AREAS ACT

**NATIONAL ENVIRONMENTAL MANAGEMENT:
PROTECTED AREAS ACT 57 OF 2003**

[Assented To: 11 February 2004]
[Commencement Date: 1 November 2004]

as amended by:

National Environmental Management: Protected Areas Amendment Act 31 of 2004
[with effect from 1 November 2005 - Proc. R58 / GG 28123 / 20051021]
National Environment Laws Amendment Act 14 of 2009
[with effect from 18 September 2009 - Proc. 65 / GG 32580 / 20090918]
National Environmental Management: Protected Areas Amendment Act 15 of 2009
*[with effect from 23 October 2009 - Proc. 69 / GG 32660 / 20091023 unless
otherwise indicated]*
GN 236 / GG 36295 / 20130327
National Environmental Management: Protected Areas Amendment Act 21 of 2014
[with effect from 2 June 2014]

ACT

To provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; for the continued existence, governance and functions of South African National Parks; and for matters in connection therewith.

[Long title substituted by s. 29 of Act 31/2004]

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows:-

TABLE OF CONTENTS

CHAPTER 1

INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

1. Definitions
2. Objectives of Act
3. State trustee of protected areas
4. Application of Act
5. Application of National Environmental Management Act

PROTECTED AREAS ACT

6. Application of Biodiversity Act in protected areas
7. Conflicts with other legislation
8. Status of provincial legislation on provincial and local protected areas

CHAPTER 2 **SYSTEM OF PROTECTED AREAS IN SOUTH AFRICA**

9. Kinds of protected areas
10. Register of Protected Areas
11. Norms and standards
12. Provincial protected areas
13. World heritage sites
14. Continued existence of marine protected areas
15. Specially protected forest areas, forest nature reserves and forest wilderness areas
16. Mountain catchment areas

CHAPTER 3 **DECLARATION OF PROTECTED AREAS**

17. Purpose of protected areas

Part 1: Special nature reserves

18. Declaration of special nature reserves
19. Withdrawal of declaration or exclusion of part of special nature reserve

Part 2: National parks

20. Declaration of national parks
21. Withdrawal of declaration or exclusion of part of national park
22. Designation of national park as wilderness area

Part 2A: Marine protected areas

- 22A. Declaration of marine protected areas
- 22B. Withdrawal of declaration of or addition to, or exclusion from, marine protected areas

Part 3: Nature reserves

23. Declaration of nature reserve
24. Withdrawal of declaration or exclusion of part of nature reserve
25. Designation of nature reserve as specific type
26. Designation of nature reserve as wilderness area
27. Notice to be given to Minister of provincial declarations

Part 4: Protected environments

- 28. Declaration of protected environment
- 29. Withdrawal of declaration or exclusion of part of protected environment
- 30. Notice to be given to Minister of provincial declarations

Part 5: Consultation process

- 31. Consultation by Minister
- 32. Consultation by MEC
- 33. Public participation
- 34. Affected organs of state, communities and beneficiaries

Part 6: General

- 35. Initiation of declaration
- 36. Endorsement by Registrar of Deeds

CHAPTER 4
MANAGEMENT OF PROTECTED AREAS

- 37. Application of Chapter

Part 1: Management authorities and management plans

- 38. Management authorities
- 39. Preparation of management plan
- 40. Management criteria
- 41. Management plan
- 42. Co-management of protected area

Part 2: Monitoring and supervision

- 43. Performance indicators
- 44. Termination of mandate to manage protected area

Part 3: Access to protected areas

- 45. Access to special nature reserve
- 46. Access to national park, nature reserve and world heritage site
- 47. Use of aircraft in special nature reserve, national park or world heritage site

Part 4: Restrictions

- 48. Prospecting and mining activities in protected area

PROTECTED AREAS ACT

- 48A. Restriction of activities in marine protected areas
- 49. Regulation or restriction of activities in protected areas
- 50. Commercial and community activities in national park, nature reserve and world heritage site
- 51. Regulation or restriction of development and other activities in protected environment
- 52. Internal rules
- 53. Certain rights and entitlements to be respected

CHAPTER 5
SOUTH AFRICAN NATIONAL PARKS

Part 1: Continued existence and functions of South African National Parks

- 54. Continued existence
- 55. Functions
- 56. General powers

Part 2: Governing board, composition and membership

- 57. Composition
- 58. Qualifications
- 59. Appointment procedure
- 60. Chairperson
- 61. Term of office
- 62. Conditions of appointment
- 63. Conduct of members
- 64. Termination of membership
- 65. Removal from office
- 66. Filling of vacancies

Part 3: Operating procedures of Board

- 67. Meetings
- 68. Procedures
- 69. Quorum and decisions
- 70. Committees
- 71. Delegation of powers and assignment of duties

Part 4: Administration of South African National Parks

- 72. Appointment of Chief Executive Officer
- 73. Employment of staff

Part 5: Financial matters

- 74. Financial accountability

PROTECTED AREAS ACT

- 75. Funding
- 76. Investments
- 77. National Parks Land Acquisition Fund

Part 6: General

- 78. Minister's supervisory powers
- 79. Absence of functional Board

CHAPTER 6
ACQUISITION OF RIGHTS IN OR TO LAND

- 80. Acquisition of private land by State
- 81. Acquisition of private land by South African National Parks
- 82. Cancellation of servitude on, or privately held right in or to, state land
- 83. Cancellation of servitude on, or privately held right in or to, land owned by South African National Parks
- 84. Mineral right
- 85. Financing

CHAPTER 7
ADMINISTRATION OF ACT

- 86. Regulations by Minister
- 87. Regulations by MEC
- 88. General

CHAPTER 8
OFFENCES AND PENALTIES

- 89. Offences and penalties

CHAPTER 9
MISCELLANEOUS

- 90. Repeal of laws
- 91. Savings and transitional provisions
- 92. Protected areas existing before commencement of section
- 93. Short title and commencement

PROTECTED AREAS ACT

SCHEDULE 1

SCHEDULE 2

[Table of contents amended by s. 30 of Act 31/2004 and s. 17 of Act 21/2014]

CHAPTER 1

INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

1. Definitions

(1) In this Act, unless the context indicates otherwise-

“**aircraft**” means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;

“**Biodiversity Act**” means the National Environmental Management: Biodiversity Act, 2003;

“**biological diversity**” or “**biodiversity**” has the meaning ascribed to it in section 1 of the Biodiversity Act;

“**biological resource**” means any resource consisting of-

- (a) a living or dead animal, plant or other organism of an indigenous species;
- (b) a derivative of such an animal, plant or other organism, as defined in section 1 of the Biodiversity Act; or
- (c) any genetic material of such animal, plant or other organism, as defined in section 1 of the Biodiversity Act;

“**Board**” means the Board of South African National Parks referred to in section 57;

[Definition of “Board” inserted by s. 1 of Act 31/2004]

“**Chief Executive Officer**” means the Chief Executive Officer of South African National Parks appointed in terms of section 72;

[Definition of “Chief Executive Officer” inserted by s. 1 of Act 31/2004]

“**declare**”, when used in relation to-

- (a) the Minister, means declare by notice in the Government *Gazette*; and

PROTECTED AREAS ACT

(b) the MEC, means declare by notice in the Provincial *Gazette*;

“Department” means the national Department responsible for administering environmental affairs;

[Definition of “Department” substituted by s. 1 of Act 21/2014]

“designate”, when used in relation to-

(a) the Minister, means designate by notice in the Government *Gazette*;

(b) the MEC, means designate by notice in the Provincial *Gazette*;

“Director-General” means the Director-General of the Department;

“ecological integrity” means the sum of the biological, physical and chemical components of an ecosystem, and their interactions which maintain the ecosystem and its products, functions and attributes;

“ecosystem” means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;

“environmental goods and services” includes-

(a) benefits obtained from ecosystems such as food, fuel and fibre and genetic resources;

(b) benefits from the regulation of ecosystem processes such as climate regulation, disease and flood control and detoxification; and

(c) cultural non-material benefits obtained from ecosystems such as benefits of a spiritual, recreational, aesthetic, inspirational, educational, community and symbolic nature;

“fish”, when used as a verb, has the meaning, with the changes required by the context, ascribed to “fishing” in section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

[Definition of “fish” inserted by s. 1 of Act 21/2014]

“Gazette”, when used in relation to-

(a) the Minister, means the Government *Gazette*; and

(b) the MEC, means the Provincial *Gazette* of that province;

PROTECTED AREAS ACT

“**habitat**”, in relation to a specific species, means a place or type of site where such species naturally occurs;

“**indigenous species**”, in relation to a specific protected area, means a species that occurs, or has historically occurred, naturally in a free state in nature within that specific protected area, but excludes a species introduced in that protected area as a result of human activity;

“**lawful occupier**” includes an occupier protected under the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996), or the Extension of Security of Tenure Act, 1997 (Act No. 26 of 1997), if the land regarding which the occupier enjoys such protection falls within a protected area or is proposed to be declared as or included in a protected area;

“**local community**” means any community of people living or having rights or interests in a distinct geographical area;

“**local protected area**” means a nature reserve or protected environment managed by a municipality;

“**management**”, in relation to a protected area, includes control, protection, conservation, maintenance and rehabilitation of the protected area with due regard to the use and extraction of biological resources, community-based practices and benefit-sharing activities in the area in a manner consistent with the Biodiversity Act;

“**management authority**”, in relation to a protected area, means the organ of state or other institution or person in which the authority to manage the protected area is vested;

“**marine protected area**” means an area declared as a marine protected area in terms of section 22A;

[Definition of “marine protected area” substituted by s. 1 of Act 31/2004 and s. 1 of Act 21/2014]

“**marine waters**” means waters that form part of the internal waters, territorial waters and the exclusive economic zone of the Republic, respectively referred to in sections 3, 4 and 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and includes an estuary defined in section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

[Definition of “marine waters” inserted by s. 1 of Act 21/2014]

“**MEC**” means the member of the Executive Council of a province in whose portfolio provincial protected areas in the province fall;

“**Minister**” means the Cabinet member responsible for national environmental management;

PROTECTED AREAS ACT

“municipality” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“National Environmental Management Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“national environmental management principles” means the principles contained in section 2 of the National Environmental Management Act;

“national park” means -

- (a) an area which was a park in terms of the National Parks Act, 1976 (Act No. 57 of 1976), immediately before the repeal of that Act by section 90(1) of this Act, and includes a park established in terms of an agreement between a local community and the Minister which has been ratified by Parliament; or
- (b) an area declared or regarded as having been declared in terms of section 20 as a national park,

and includes an area declared in terms of section 20 as part of an area referred to in paragraph (a) or (b) above;

[Definition of “national park” inserted by s. 1 of Act 31/2004]

“National Parks Land Acquisition Fund” means the fund established by section 12A of the National Parks Act, 1976 (Act No. 57 of 1976);

[Definition of “National Parks Land Acquisition Fund” inserted by s. 1 of Act 31/2004]

“national protected area” means-

- (a) a special nature reserve;
- (b) a national park;
- (bA) a marine protected area; or
- (c) a nature reserve or protected environment-
 - (i) managed by a national organ of state; or
 - (ii) which falls under the jurisdiction of the Minister for any other reason;

[Definition of “national protected area” amended by s. 1 of Act 31/2004 and substituted by s. 1 of Act 21/2014]

PROTECTED AREAS ACT

“nature reserve” means-

- (a) an area declared, or regarded as having been declared, in terms of section 23 as a nature reserve; or
- (b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 23(2) be declared as a nature reserve, and includes an area declared in terms of section 23(1) as part of an area referred to in paragraph (a) or (b) above;

“organ of state” has the meaning assigned to it in section 239 of the Constitution;

“prescribe” means prescribe by the Minister by regulation in terms of section 86;

“protected area” means any of the protected areas referred to in section 9;

“protected environment” means -

- (a) an area declared, or regarded as having been declared, in terms of section 28 as a protected environment;
- (b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 28(2) be declared as a protected environment; or
- (c) an area which was a lake area in terms of the Lake Areas Development Act, 1975 (Act No. 39 of 1975), immediately before the repeal of that Act by section 90(1) of this Act,

and includes an area declared in terms of section 28(1) as part of an area referred to in paragraph (a), (b) or (c) above;

[Definition of “protected environment” substituted by s. 1 of Act 31/2004]

“provincial protected area” means a nature reserve or protected environment-

- (a) managed by a provincial organ of state; or
- (b) which falls under the jurisdiction of a province for any other reason;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“special nature reserve” means-

PROTECTED AREAS ACT

- (a) an area which was a special nature reserve in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), immediately before the repeal of section 18 of that Act by section 90 of this Act; or
- (b) an area declared, or regarded as having been declared, in terms of section 18 as a special nature reserve, and includes an area declared in terms of section 18 as part of an area referred to in paragraph (a) or (b) above;

“**species**” means a kind of animal, plant or other organism, including any subspecies, cultivar, variety, geographic race, strain, hybrid or geographically separate population;

“**subordinate legislation**” means any regulation made or notice issued under or in terms of this Act;

“**the Fund**” means the National Parks Land Acquisition Fund;

[Definition of “the Fund” inserted by s. 1 of Act 31/2004]

“**this Act**” includes any subordinate legislation;

“**wilderness area**” means an area designated in terms of section 22 or 26 for the purpose of retaining an intrinsically wild appearance and character or capable of being restored to such and which is undeveloped and roadless, without permanent improvements or human habitation;

“**world heritage site**” means a world heritage site in terms of the World Heritage Convention Act, 1999 (Act No. 49 of 1999).

- (2) In this Act words or expressions derived from words or expressions defined in subsection (1) have corresponding meanings unless the context indicates otherwise.

2. Objectives of Act

The objectives of this Act are-

- (a) to provide, within the framework of national legislation, including the National Environmental Management Act, for the declaration and management of protected areas;
- (b) to provide for co-operative governance in the declaration and management of protected areas;
- (c) to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve its biodiversity;

PROTECTED AREAS ACT

- (d) to provide for a diverse and representative network of protected areas on state land, private land, communal land and marine waters;

[Para. (d) substituted by s. 2 of Act 21/2014]

- (e) to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas;

[Para. (e) amended by s. 2 of Act 31/2004]

- (f) to promote participation of local communities in the management of protected areas, where appropriate; and

[Para. (f) amended by s. 2 of Act 31/2004]

- (g) to provide for the continued existence of South African National Parks.

[Para. (g) added by s. 2 of Act 31/2004]

3. State trustee of protected areas

In fulfilling the rights contained in section 24 of the Constitution, the State through the organs of state implementing legislation applicable to protected areas must-

- (a) act as the trustee of protected areas in the Republic; and
- (b) implement this Act in partnership with the people to achieve the progressive realisation of those rights.

4. Application of Act

(1) This Act also applies-

- (a) in the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and
- (b) to marine waters, including the continental shelf of the Republic referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994).

[Para. (b) substituted by s. 3 of Act 21/2014]

(2) This Act binds all organs of state.

5. Application of National Environmental Management Act

(1) This Act must-

PROTECTED AREAS ACT

- (a) be interpreted and applied in accordance with the national environmental management principles; and
 - (b) be read with the applicable provisions of the National Environmental Management Act.
- (2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

6. Application of Biodiversity Act in protected areas

This Act must, in relation to any protected area, be read, interpreted and applied in conjunction with the Biodiversity Act.

7. Conflicts with other legislation

- (1) In the event of any conflict between a section of this Act and-
- (a) other national legislation, the section of this Act prevails if the conflict specifically concerns the management or development of protected areas;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the section of this Act prevails.
- (2) In the event of any conflict between subordinate legislation issued in terms of this Act and-
- (a) an Act of Parliament, the Act of Parliament prevails;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.
- (3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146(6) of the Constitution, submit all subordinate legislation issued in terms of this Act and which affects provinces to the National Council of Provinces for approval.

8. Status of provincial legislation on provincial and local protected areas

This Act does not affect the implementation of provincial legislation regulating matters with regard to provincial or local protected areas to the extent that such legislation-

PROTECTED AREAS ACT

- (a) regulates matters not covered by this Act;
- (b) is consistent with this Act; or
- (c) prevails over this Act in terms of section 146 of the Constitution.

CHAPTER 2

SYSTEM OF PROTECTED AREAS IN SOUTH AFRICA

9. Kinds of protected areas

The system of protected areas in South Africa consists of the following kinds of protected areas:

- (a) special nature reserves, national parks, nature reserves (including wilderness areas) and protected environments;

[Para. (a) amended by s. 3 of Act 31/2004]

- (b) world heritage sites;
- (c) marine protected areas;

[Para. (c) inserted by s. 3 of Act 31/2004]

- (d) specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act, 1998 (Act No. 84 of 1998); and
- (e) mountain catchment areas declared in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970).

10. Register of Protected Areas

- (1) The Minister must maintain a register called the Register of Protected Areas.
- (2) The Register must-
 - (a) contain a list of all protected areas;
 - (b) indicate the kind of protected area in each case; and
 - (c) contain any other information determined by the Minister.

PROTECTED AREAS ACT

- (3) For the purposes of subsection (2)(b) a protected area declared in terms of provincial legislation must be included in the Register as a nature reserve or protected environment depending on the purpose for which it was declared.
- (4) The Cabinet member responsible for the administration of the National Forests Act, 1998 (Act No. 84 of 1998), and the MEC must notify the Minister of all areas declared as protected areas in terms of that Act or provincial legislation, as the case may be.

11. Norms and standards

- (1) The Minister may prescribe-
 - (a) norms and standards for the achievement of any of the objectives of this Act, including for the management and development of protected areas referred to in section 9(a), (b) and (c);
 - (b) indicators to measure compliance with those norms and standards; and
 - (c) the requirement for the management authorities of those protected areas to report on these indicators to the Minister.
- (2) Before issuing norms and standards and setting indicators for provincial or local protected areas, the Minister must consult-
 - (a) the MEC of each province in which those norms and standards will apply; and
 - (b) the relevant local government.
- (3) Norms and standards may apply-
 - (a) nationwide;
 - (b) in a specific protected area only;
 - (c) to a specific management authority or category of management authorities only.
- (4) Different norms and standards may be issued for-
 - (a) different areas; or
 - (b) different management authorities or categories of management authorities.

12. Provincial protected areas

A protected area which immediately before this section took effect was reserved or protected in terms of provincial legislation for any purpose for which an area could in terms of this Act

PROTECTED AREAS ACT

be declared as a nature reserve or protected environment, must be regarded to be a nature reserve or protected environment for the purpose of this Act.

13. World heritage sites

- (1) Chapter 1 and this Chapter apply to world heritage sites, declared as such in terms of the World Heritage Convention Act, 1999 (Act No. 49 of 1999).
- (2) The other provisions of this Act do not apply to world heritage sites except where expressly or by necessary implication provided otherwise.

14. Continued existence of marine protected areas

Any marine protected area which had been declared as such in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which exists when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect, must be regarded as a marine protected area declared as such in terms of section 22A.

[S. 14 inserted by s. 4 of Act 31/2004 and substituted by s. 4 of Act 21/2014]

15. Specially protected forest areas, forest nature reserves and forest wilderness areas

- (1) Chapter 1, this Chapter and section 48 apply to specially protected forest areas, forest nature reserves or forest wilderness areas, declared as such in terms of section 8 of the National Forests Act, 1998 (Act No. 84 of 1998).
- (2) The other provisions of this Act do not apply to specially protected forest areas, forest nature reserves or forest wilderness areas, but if any such area has been declared as or included in a special nature reserve, national park or nature reserve, such area must be managed as a, or as part of the, special nature reserve, national park or nature reserve in terms of this Act in accordance with an agreement concluded between the Minister and the Cabinet member responsible for forestry.

[Subs. (2) substituted by s. 5 of Act 31/2004]

16. Mountain catchment areas

Chapter 1 and this Chapter apply to mountain catchment areas, declared as such in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970).

CHAPTER 3

DECLARATION OF PROTECTED AREAS

17. Purpose of protected areas

The purposes of the declaration of areas as protected areas are-

PROTECTED AREAS ACT

- (a) to protect ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes in a system of protected areas;
- (b) to preserve the ecological integrity of those areas;
- (c) to conserve biodiversity in those areas;
- (d) to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
- (e) to protect South Africa's threatened or rare species;
- (f) to protect an area which is vulnerable or ecologically sensitive;
- (g) to assist in ensuring the sustained supply of environmental goods and services;
- (h) to provide for the sustainable use of natural and biological resources;
- (i) to create or augment destinations for nature-based tourism;
- (j) to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
- (k) generally, to contribute to human, social, cultural, spiritual and economic development;
or
- (l) to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.

Part 1

Special nature reserves

18. Declaration of special nature reserves

- (1) The Minister may by notice in the *Gazette*-
 - (a) declare an area specified in the notice-
 - (i) as a special nature reserve; or
 - (ii) as part of an existing special nature reserve; and
 - (b) assign a name to such special nature reserve.

PROTECTED AREAS ACT

- (2) A declaration under subsection (1)(a) may only be issued-
- (a) to protect highly sensitive, outstanding ecosystems, species or geological or physical features in the area; and
 - (b) to make the area primarily available for scientific research or environmental monitoring.
- (3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has consented to the declaration by way of a written agreement with the Minister.
- (4) An area which was a special nature reserve immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

19. Withdrawal of declaration or exclusion of part of special nature reserve

The declaration of an area as a special nature reserve, or as part of an existing special nature reserve, may not be withdrawn and no part of a special nature reserve may be excluded from the reserve except by resolution of the National Assembly.

Part 2

National parks

20. Declaration of national parks

- (1) The Minister may by notice in the *Gazette* -
- (a) declare an area specified in the notice -
 - (i) as a national park; or
 - (ii) as part of an existing national park; and
 - (b) assign a name to the national park.
- (2) A declaration under subsection (1) (a) may only be issued to -
- (a) protect -
 - (i) the area if the area is of national or international biodiversity importance or is or contains a viable, representative sample of South Africa's natural systems, scenic areas or cultural heritage sites; or

PROTECTED AREAS ACT

- (ii) the ecological integrity of one or more ecosystems in the area;
 - (b) prevent exploitation or occupation inconsistent with the protection of the ecological integrity of the area;
 - (c) provide spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible; and
 - (d) contribute to economic development, where feasible.
- (3) A notice under subsection (1)(a) may be issued in respect of land if the owner has consented to the declaration by way of a written agreement with the Minister or South African National Parks.
- (4) The Minister must notify the relevant MEC of any declaration of an area in terms of subsection (1).
- (5) An area which was a national park when this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.
- (6)
- (a) Each area defined in Schedule 2 shall be a national park under the name assigned to it in that Schedule.
 - (b) The Minister may by notice in the Gazette amend Schedule 2.

[Subs. (6) added by s. 1 of Act 15/2009 w.e.f. 1 April 2013]

[S. 20 inserted by s. 6 of Act 31/2004]

21. Withdrawal of declaration or exclusion of part of national park

- (1) A declaration under section 20 may only be withdrawn -
- (a) by resolution of the National Assembly; or
 - (b) in terms of subsection (2).
- (2) If the Minister or South African National Parks, as the case may be, or the other party to an agreement referred to in section 20(3), withdraws from the agreement, the Minister must withdraw the declaration in terms of which the land in question was declared a national park or part of an existing national park.

[S. 21 inserted by s. 6 of Act 31/2004]

22. Designation of national park as wilderness area

- (1) The Minister may by notice in the *Gazette* designate any national park, or part thereof, as a wilderness area.
- (2) A designation under subsection (1) may only be issued -
 - (a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;
 - (b) to provide outstanding opportunities for solitude;
 - (c) to control access which, if allowed, may only be by non-mechanised means.
- (3) Before designating a national park as a wilderness area, the Minister must consult the management authority of the park.

[S. 22 inserted by s. 6 of Act 31/2004]

[Part. 2 inserted by s. 6 of Act 31/2004]

Part 2A

Marine protected areas

22A. Declaration of marine protected areas

- (1) The Minister may, by notice in the *Gazette*-
 - (a) declare an area specified in the notice-
 - (i) as a marine protected area; or
 - (ii) as part of an existing marine protected area; and
 - (b) assign a name to the marine protected area.
- (2) A declaration under subsection (1)(a) may only be issued-
 - (a) to conserve and protect marine and coastal ecosystems;
 - (b) to conserve and protect marine and coastal biodiversity;
 - (c) to conserve and protect a particular marine or coastal species, or specific population and its habitat;

PROTECTED AREAS ACT

- (d) if the area contains scenic areas or to protect cultural heritage;
 - (e) to facilitate marine and coastal species management by protecting migratory routes and breeding, nursery or feeding areas, thus allowing species recovery and to enhance species abundance in adjacent areas;
 - (f) to protect and provide an appropriate environment for research and monitoring in order to achieve the objectives of this Act; or
 - (g) to restrict or prohibit activities which is likely to have an adverse effect on the environment.
- (3) A notice under subsection (1)(a) may only be issued after consultation with the Cabinet member responsible for fisheries.

22B. Withdrawal of declaration of, addition to, or exclusion from, marine protected areas

The Minister may, by notice in the *Gazette*-

- (a) withdraw a declaration made under section 22A(1);
- (b) add to or exclude any area from a marine protected area; and
- (c) assign a different name to a marine protected area.

[Part 2A inserted by s. 5 of Act 21/2014]

Part 3

Nature reserves

23. Declaration of nature reserve

- (1) The Minister or the MEC may by notice in the *Gazette*-
- (a) declare an area specified in the notice-
 - (i) as a nature reserve; or
 - (ii) as part of an existing nature reserve; and
 - (b) assign a name to the nature reserve.
- (2) A declaration under subsection (1)(a) may only be issued-

PROTECTED AREAS ACT

- (a) to supplement the system of national parks in South Africa;

[Para. (a) inserted by s. 7 of Act 31/2004]

- (b) to protect the area if the area-

- (i) has significant natural features or biodiversity;
- (ii) is of scientific, cultural, historical or archaeological interest; or
- (iii) is in need of long-term protection for the maintenance of its biodiversity or for the provision of environmental goods and services;

- (c) to provide for a sustainable flow of natural products and services to meet the needs of a local community;

- (d) to enable the continuation of such traditional consumptive uses as are sustainable; or

- (e) to provide for nature-based recreation and tourism opportunities.

- (3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has consented to the declaration by way of a written agreement with the Minister or the MEC.

- (4) No area which is or forms part of a special nature reserve or national park may be declared as a nature reserve or as part of an existing nature reserve.

[Subs. (4) substituted by s. 7 of Act 31/2004]

- (5) An area which was a nature reserve immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

24. Withdrawal of declaration or exclusion of part of nature reserve

- (1) A declaration under section 23(1) may only be withdrawn-

- (a) in the case of a declaration by the Minister, by resolution of the National Assembly;
- (b) in the case of a declaration by an MEC, by resolution of the legislature of the relevant province; or
- (c) in terms of subsection (2).

- (2) If the Minister or MEC, or the other party to an agreement, withdraws from an agreement referred to in section 23(3), the Minister or MEC must withdraw the notice in terms of

PROTECTED AREAS ACT

which the land in question was declared a nature reserve or part of an existing nature reserve.

25. Designation of nature reserve as specific type

The Minister or the MEC may by notice in the *Gazette* designate a nature reserve as a specific type of nature reserve in accordance with such uniform system of types as may be prescribed.

26. Designation of nature reserve as wilderness area

- (1) The Minister or MEC may by notice in the *Gazette* designate a nature reserve or part thereof as a wilderness area.
- (2) A notice under subsection (1) may only be issued-
 - (a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;
 - (b) to provide outstanding opportunities for solitude;
 - (c) to control access which, if allowed, may only be by non-mechanised means.
- (3) Before designating a nature reserve or part of a nature reserve as a wilderness area, the Minister or MEC must consult the management authority of the nature reserve.

27. Notice to be given to Minister of provincial declarations

The MEC must promptly forward to the Minister a copy of each notice issued under section 23, 24, 25 or 26.

Part 4

Protected environments

28. Declaration of protected environment

- (1) The Minister or the MEC may by notice in the *Gazette*-
 - (a) declare any area specified in the notice-
 - (i) as a protected environment; or
 - (ii) as part of an existing protected environment; and

PROTECTED AREAS ACT

(b) assign a name to the protected environment.

(2) A declaration under subsection (1)(a) may only be issued-

(a) to regulate the area as a buffer zone for the conservation and protection of a special nature reserve, national park, marine protected area, world heritage site or nature reserve;

[Para. (a) substituted by s. 8 of Act 31/2004 and s. 6 of Act 21/2014]

(b) to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor;

(c) to protect the area if the area is sensitive to development due to its-

(i) biological diversity;

(ii) natural characteristics;

(iii) scientific, cultural, historical, archeological or geological value;

(iv) scenic and landscape value; or

(v) provision of environmental goods and services;

(d) to protect a specific ecosystem outside of a special nature reserve, national park, world heritage site or nature reserve;

[Para. (d) substituted by s. 8 of Act 31/2004]

(e) to ensure that the use of natural resources in the area is sustainable; or

(f) to control change in land use in the area if the area is earmarked for declaration as, or inclusion in, a national park or nature reserve.

[Para. (f) substituted by s. 8 of Act 31/2004]

(3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has requested or consented to a declaration contemplated in subsection (1)(a) and the Minister or the MEC has given the owner notice in writing in terms of section 33.

(4) No area which is or forms part of a special nature reserve, national park or nature reserve may be declared as a protected environment or as part of an existing protected environment.

[Subs. (4) substituted by s. 8 of Act 31/2004]

PROTECTED AREAS ACT

- (5) The declaration of an area as a protected environment for the purposes of subsection (2) (f) lapses at the expiry of the period stated in the notice contemplated in subsection (1), but the Minister or the MEC, as the case may be, may, by agreement reached with the owners of the land in question and by notice in the *Gazette*, extend that period.

[Subs. (5) substituted by s. 2 of Act 15/2009]

- (6) An area ceases to be a protected environment if that area is declared as, or included into, a national park or nature reserve or part thereof.

[Subs. (6) substituted by s. 8 of Act 31/2004]

- (7) An area which was a protected environment immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

29. Withdrawal of declaration or exclusion of part of protected environment

The Minister or the MEC may by notice in the *Gazette*-

- (a) withdraw the declaration, issued under section 28, of an area as a protected environment or as part of an existing protected environment; or
- (b) exclude any part of a protected environment from the area.

30. Notice to be given to Minister of provincial declarations

The MEC must promptly forward to the Minister a copy of each notice issued under section 28 or 29.

Part 5

Consultation process

31. Consultation by Minister

Subject to subsection 34, before issuing a notice under section 18(1), 19, 20(1), 21, 22(1), 22A(1), 22B, 23(1), 24(1), 26(1), 28(1) or 29, the Minister may follow such consultative process as may be appropriate in the circumstances, but must-

[Words preceding para. (a) substituted by s. 7 of Act 21/2014]

- (a) consult all national organs of state affected by the proposed notice;
- (b) in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution, consult-

PROTECTED AREAS ACT

- (i) the MEC of the province concerned; and
- (ii) the municipality in which the area concerned is situated;
- (c) in the prescribed manner, consult any lawful occupier with a right in land in any part of the area affected; and
- (d) follow a process of public participation in accordance with section 33.

[S. 31 amended by s. 9 of Act 31/2004]

32. Consultation by MEC

Subject to section 34, before issuing a notice under section 23(1), 26(1), 28(1) or 29, the MEC may follow such consultative process as may be appropriate in the circumstances, but must-

- (a) consult in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution-
 - (i) the Minister and other national organs of state affected by the proposed notice; and
 - (ii) the municipality in which the area concerned is situated;
- (b) consult all provincial organs of state affected by any proposed notice;
- (c) in the prescribed manner, consult any lawful occupier with a right in land in any part of the area affected; and
- (d) follow a process of public participation in accordance with section 33.

33. Public participation

- (1) The Minister or the MEC must-
 - (a) publish the intention to issue a notice contemplated in section 31 or 32, in the *Gazette* and in at least two national newspapers distributed in the area in which the affected area is situated; and
 - (b) if it is proposed to declare any private land as a protected environment, send a copy of the proposed notice by registered post to the last known postal address of each owner of land within the area to be declared, and inform in an appropriate manner any other person whose rights in such land may materially and adversely be affected by such declaration.

PROTECTED AREAS ACT

- (2) The publication contemplated in subsection (1) must-
- (a) invite members of the public and the persons referred to in subsection (1)(b), if applicable, to submit to the Minister or MEC written representations on or objections to the proposed notice within 60 days from the date of publication in the *Gazette*; and
 - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration.
- (3) The Minister or MEC may in appropriate circumstances allow any interested person to present oral representations or objections to the Minister or the MEC, or to a person designated by the Minister or MEC, but such representations or objections must be allowed where the proposed notice will affect the rights or interests of a local community.
- (4) The Minister or MEC must give due consideration to all representations or objections received or presented before publishing the relevant notice.

34. Affected organs of state, communities and beneficiaries

- (1) If it is proposed to declare an area under section 18(1), 20(1) or 22A(1) as a special nature reserve, a national park or a marine protected area, or as part thereof, and that area consists of or includes-

[Words preceding para. (a) substituted by s. 8 of Act 21/2014]

- (a) land owned by the State, the Minister may make that declaration only-
- (i) with the concurrence of the Cabinet member responsible for the administration of that land, if that land is administered by the national executive; or
 - (ii) after consultation with the provincial executive, if that land is administered by that provincial executive;
- (b) land which is held in trust by the State or an organ of state for a community or other beneficiary, the Minister may declare that area only with the concurrence of the trustee and the community involved.

[Subs. (1) amended by s. 10 of Act 31/2004]

- (2) If it is proposed to declare an area under section 23(1) or 28(1) as a nature reserve or a protected environment, or as part thereof, and that area consists of or includes-
- (a) land owned by the State, the Minister or the MEC may make that declaration only with the concurrence of the Cabinet member or MEC responsible for the administration of that land; or

PROTECTED AREAS ACT

- (b) land which is held in trust by the State or an organ of state for a community or other beneficiary, the Minister or the MEC may declare that area only with the concurrence of the trustee and the community involved.

Part 6

General

35. Initiation of declaration

- (1) The declaration of private land as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, may be initiated either by the Minister, or the MEC or the owners of that land acting individually or collectively.

[Subs. (1) substituted by s. 11 of Act 31/2004]

- (2) Any request received by the Minister or an MEC from the owners of private land for their land to be declared must be considered by the Minister or MEC.

(3)

- (a) The terms of any written agreement entered into between the Minister, South African National Parks or an MEC and the owner of private land in terms of section 18(3), 20(3) or 23(3) are binding on the successors in title of such owner.

[Para. (a) substituted by s. 11 of Act 31/2004]

- (b) The terms of agreement must be recorded in a notarial deed and registered against the title deeds of the property.

36. Endorsement by Registrar of Deeds

- (1) The Minister or the MEC, as the case may be, must in writing notify the Registrar of Deeds whenever an area is declared as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, or whenever a declaration in respect thereof is withdrawn or altered.

[Subs. (1) substituted by s. 12 of Act 31/2004]

- (2) The notification must include a description of the land involved and the terms and conditions of any notarial deed.

- (3) On receipt of the notification, the Registrar of Deeds must record any such declaration, withdrawal or alteration in relevant registers and documents in terms of section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

CHAPTER 4

MANAGEMENT OF PROTECTED AREAS

37. Application of Chapter

Except where expressly stated otherwise in this Chapter, this Chapter only applies to a protected area which is a special nature reserve, national park, marine protected area, nature reserve or protected environment, and the expressions “**protected area**”, “**national protected area**”, “**provincial protected area**”, “**local protected area**” and “**protected environment**” must be construed accordingly in this Chapter.

[S. 37 substituted by s. 13 of Act 31/2004 and s. 9 of Act 21/2014]

Part 1

Management authorities and management plans

38. Management authorities

(1) The Minister, in writing-

- (a) subject to paragraphs (aA) and (aB), may assign the management of any kind of protected area listed in section 9 to a suitable person, organisation or organ of state;

[Para. (a) amended by s. 14 of Act 31/2004 and substituted by s. 3 of Act 15/2009 and s. 10 of Act 21/2014]

- (aA) must assign the management of a national park to South African National Parks;

[Para. (aA) inserted by s. 14 of Act 31/2004, substituted by s. 3 of Act 15/2009 and amended by s. 10 of Act 21/2014]

- (aB) may assign the management of a marine protected area only to a suitable national organ of state, but the powers referred to in section 48A(2) may not be so assigned;
or

[Para. (aB) inserted by s. 10 of Act 21/2014]

- (b) may assign the management of a privately owned protected environment to a suitable person, organization or organ of state, provided that the owner and lawful occupier have requested or consented to such assignment, and the Minister has given the owner and lawful occupier notice in writing in terms of section 33.

[Para. (b) substituted by s. 10 of Act 21/2014]

PROTECTED AREAS ACT

- (2) The MEC, in writing-
 - (a) must assign the management of a nature reserve to a suitable person, organisation or organ of state; and
 - (b) may assign the management of a protected environment to a suitable person, organisation or organ of state, provided that the owner and lawful occupier have requested or consented to such assignment, and the MEC has given the owner and lawful occupier notice in writing in terms of section 33.
- (3) The person, organisation or organ of state to whom the management of a protected area has been assigned in terms of subsection (1) or (2) is the management authority of the area for the purposes of this Act.
- (4) Marine and terrestrial protected areas with common boundaries must be managed as an integrated protected area by a single management authority.

39. Preparation of management plan

- (1) The Minister or the MEC may make an assignment in terms of section 38(1) or (2) only with the concurrence of the prospective management authority.
- (2) The management authority assigned in terms of section 38(1) or (2) must, within 12 months of the assignment, submit a management plan for the protected area to the Minister or the MEC for approval.
- (3) When preparing a management plan for a protected area, the management authority concerned must consult municipalities, other organs of state, local communities and other affected parties which have an interest in the area.
- (4) A management plan must take into account any applicable aspects of the integrated development plan of the municipality in which the protected area is situated.

40. Management criteria

- (1) The management authority must manage the area-
 - (a) exclusively for the purpose for which it was declared; and
 - (b) in accordance with-
 - (i) the management plan for the area;
 - (ii) this Act, the Biodiversity Act, the National Environmental Management Act and any other applicable national legislation;

PROTECTED AREAS ACT

- (iii) any applicable provincial legislation, in the case of a provincial protected area;
and
 - (iv) any applicable municipal by-laws, in the case of a local protected area.
- (2) The management authority may amend the management plan by agreement with the Minister or the MEC, as the case may be.

41. Management plan

- (1) The object of a management plan is to ensure the protection, conservation and management of the protected area concerned in a manner which is consistent with the objectives of this Act and for the purpose it was declared.
- (2) A management plan must contain at least-
- (a) the terms and conditions of any applicable biodiversity management plan;
 - (b) a co-ordinated policy framework;
 - (c) such planning measures, controls and performance criteria as may be prescribed;
 - (d) a programme for the implementation of the plan and its costing;
 - (e) procedures for public participation, including participation by the owner (if applicable), any local community or other interested party;
 - (f) where appropriate, the implementation of community-based natural resource management; and
 - (g) a zoning of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections, provided that in a marine protected area, the zoning must not conflict with a zoning in terms of section 48A(2)(a).

[Para. (g) substituted by s. 11 of Act 21/2014]

- (3) A management plan may contain-
- (a) development of economic opportunities within and adjacent to the protected area in terms of the integrated development plan framework;
 - (b) development of local management capacity and knowledge exchange;
 - (c) financial and other support to ensure effective administration and implementation of the co-management agreement; and

PROTECTED AREAS ACT

(d) any other relevant matter.

(4) Management plans may include subsidiary plans, and the Minister or MEC may approve the management plan or any subsidiary plan in whole or in part.

42. Co-management of protected area

(1)

(a) The management authority may enter into an agreement with another organ of state, a local community, an individual or other party for-

(i) the co-management of the area by the parties; or

(ii) the regulation of human activities that affect the environment in the area.

(b) The co-management contemplated in paragraph (a) may not lead to fragmentation or duplication of management functions.

(2) A co-management agreement may provide for-

(a) the delegation of powers by the management authority to the other party to the agreement;

(b) the apportionment of any income generated from the management of the protected area or any other form of benefit sharing between the parties;

(c) the use of biological resources in the area;

(d) access to the area;

(e) occupation of the protected area or portions thereof;

(f) development of economic opportunities within and adjacent to the protected area;

(g) development of local management capacity and knowledge exchange;

(h) financial and other support to ensure effective administration and implementation of the co-management agreement; and

(i) any other relevant matter.

(3) A co-management agreement must-

(a) provide for the harmonisation and integration of the management of cultural heritage resources in the protected area by the management authority; and

PROTECTED AREAS ACT

- (b) be consistent with the other provisions of this Act.
- (4) The Minister or the MEC, as the case may be, may cancel a co-management agreement after giving reasonable notice to the parties if the agreement is not effective or is inhibiting the attainment of any of the management objectives of the protected area.
- (5) Where the Minister or MEC in terms of subsection (4) cancels a co-management agreement forming a material term of an agreement contemplated in section 20(3), 23(3) or 28(3), the withdrawal of the declaration of the protected area or exclusion contemplated in section 21(2), 24(2) or 29, respectively, applies.

[Subs. (5) substituted by s. 15 of Act 31/2004]

Part 2

Monitoring and supervision

43. Performance indicators

- (1) The Minister may establish indicators for monitoring performance with regard to the management of national protected areas and the conservation of biodiversity in those areas.
- (2) The MEC may establish indicators for monitoring performance with regard to the management of provincial and local protected areas and the conservation of biodiversity in those areas.
- (3) The management authority of a protected area must-
 - (a) monitor the area against the indicators set in terms of subsection (1) or (2); and
 - (b) annually report its findings to the Minister or MEC, as the case may be, or a person designated by the Minister or MEC.
- (4) The Minister or MEC may appoint external auditors to monitor a management authority's compliance with the overall objectives of the management plan.

44. Termination of mandate to manage protected area

- (1) If the management authority of a protected area is not performing its duties in terms of the management plan for the area, or is underperforming with regard to the management of the area or the biodiversity of the area, the Minister or the MEC, as the case may be, must-
 - (a) notify the management authority in writing of the failure to perform its duties or of the underperformance; and

PROTECTED AREAS ACT

- (b) direct the management authority to take corrective steps set out in the notice within a specified time.
- (2) If the management authority fails to take the required steps, the Minister or MEC may-
 - (a) terminate that management authority's mandate to manage the protected area; and
 - (b) assign another organ of state as the management authority of the area.
- (3) The Minister implements this section in relation to national protected areas and the MEC implements this section in relation to provincial and local protected areas.

Part 3

Access to protected areas

45. Access to special nature reserve

- (1) No person may-
 - (a) enter a special nature reserve;
 - (b) reside in a special nature reserve; or
 - (c) perform any activity in a special nature reserve.
- (2) Subsection (1) does not apply to-
 - (a) an official of the Department or another organ of state designated by the Minister in writing to monitor-
 - (i) the state of conservation of the reserve or of the biodiversity in the reserve; or
 - (ii) the implementation of the management plan and this Act;
 - (b) any police, customs or excise officer entering the area in the performance of official duties; or
 - (c) a person acting in terms of an exemption granted under subsection (3).
- (3) The management authority of a special nature reserve may, in writing and on conditions determined by it after consulting the Minister, grant exemption from a provision of subsection (1) to-
 - (a) a scientist to perform scientific work;

PROTECTED AREAS ACT

- (b) a person to perform an activity related to the conservation of the reserve or of the biodiversity in the reserve;
- (c) a person recording a news event that occurred in the reserve or an educational or scientific programme;
- (d) an official of the management authority to perform official duties; or
- (e) an official of an organ of state to perform official duties.

46. Access to national park, nature reserve and world heritage site

- (1) Despite any other legislation, no person may without the written permission of the management authority of a national park, nature reserve or world heritage site enter or reside in the park, reserve or site.
- (2) Subsection (1) does not apply to -
 - (a) an official of the Department or of another organ of state designated by the Minister or, in the case of a provincial or local nature reserve, a person designated by the MEC, to monitor -
 - (i) the state of conservation of the park, reserve or site or of the biodiversity in the park, reserve or site; or
 - (ii) the implementation of the management plan and this Act;
 - (b) an official of the management authority performing official duties in the park, reserve or site;
 - (c) any police, customs or excise officer entering the park, reserve or site in the performance of official duties;
 - (d) the holder of a vested right to enter the park, reserve or site; or
 - (e) a person travelling through the park, reserve or site by rail, as long as that person stays on the train or within the precincts of any railway station.
- (3) If the management authority of a national park, nature reserve or world heritage site refuses permission to an official of an organ of state to enter the park, reserve or site for the performance of official duties, the Minister may -
 - (a) reconsider the matter; and
 - (b) either confirm the refusal or grant the permission.

[S. 46 substituted by s. 16 of Act 31/2004]

47. Use of aircraft in special nature reserve, national park or world heritage site

[Heading substituted by s. 17 of Act 31/2004]

- (1) A special nature reserve, national park or world heritage site includes the air space above the reserve, park or site to a level of 2 500 feet above the highest point of the reserve, park or site.

[Subs. (1) substituted by s. 17 of Act 31/2004]

- (2) No person or organ of state, may land or take off in an aircraft in a special nature reserve, national park or world heritage site, except -
- (a) on or from a landing field designated by the management authority of that nature reserve, national park or world heritage site; and
 - (b) on authority of the prior written permission of the management authority, which authority may stipulate the terms and conditions upon which this must take place.

[Subs. (2) substituted by s. 17 of Act 31/2004 and s. 4 of Act 15/2009]

- (3) No person or organ of state may fly over or cause an aircraft to fly over a special nature reserve, national park or world heritage site at a level of less than 2500 feet above its highest point, except as may be necessary for the purpose of subsections (2) or (3A).

[Subs. (3) substituted by s. 17 of Act 31/2004 and s. 4 of Act 15/2009]

(3A)

- (a) The management authority may provide for flight corridors over a special nature reserve, national park or world heritage site, as well as through the protected airspace identified under subsection (1) where this is necessary for a public purpose or in the public interest.
- (b) No person or organ of state may fly or cause any person to fly an aircraft over a special nature reserve, national park or world heritage site and through the protected airspace identified under subsection (1) -
 - (i) without the prior written permission of the management authority;
 - (ii) without the prescribed fee having first been paid, if applicable; and
 - (iii) unless and until the management authority has approved the flight plan for a flight and stipulated the terms and conditions upon which a flight is to take place.

PROTECTED AREAS ACT

- (c) The Minister in agreement with the Minister of Defence may allow for specific areas within the identified protected airspace to be used for training and testing of aircraft.
- (d) The provision of any flight corridor in paragraph (a) or area in paragraph (c) is subject to an environmental authorization in terms of section 24 of the National Environmental Management Act.

[Subs. (3A) inserted by s. 4 of Act 15/2009]

- (4) Subsections (2), (3) and 3A do not apply-

[Words preceding para. (a) substituted by s. 4 of Act 15/2009]

- (a) in an emergency; or
- (b) to a person acting on the instructions of the management authority.

- (4A) Any person who or organ of state that is affected by a decision of a management authority in terms of subsection (2), (3) or (3A) may appeal to the Minister against such decision.

[Subs. (4A) inserted by s. 4 of Act 15/2009]

- (5) The Minister, acting with the concurrence of the Cabinet member responsible for civil aviation, may prescribe further reasonable restrictions on flying over protected areas.

Part 4

Restrictions

48. Prospecting and mining activities in protected area

- (1) Despite other legislation, no person may conduct commercial prospecting, mining, exploration, production or related activities -

[Words preceding para. (a) substituted by s. 12 of Act 21/2014]

- (a) in a special nature reserve, national park or nature reserve;

[Para. (a) substituted by s. 18 of Act 31/2004]

- (b) in a protected environment without the written permission of the Minister and the Cabinet member responsible for minerals and energy affairs; or

- (c) in a protected area referred to in section 9(b), (c) or (d).

[Para. (c) substituted by s. 18 of Act 31/2004]

PROTECTED AREAS ACT

- (2) The Minister, after consultation with the Cabinet member responsible for mineral and energy affairs, must review all mining activities which were lawfully conducted in areas indicated in subsection (1)(a), (b) and (c) immediately before this section took effect.
- (3) The Minister, after consultation with the Cabinet member responsible for mineral and energy affairs, may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment or for the environmental protection of the area concerned.
- (4) When applying this section, the Minister must take into account the interests of local communities and the environmental principles referred to in section 2 of the National Environmental Management Act, 1998.

48A. Restriction of activities in marine protected areas

- (1) Despite any other legislation, no person may in a marine protected area-
 - (a) fish or attempt to fish;
 - (b) take or destroy any fauna or flora;
 - (c) undertake any dredging or extraction of sand, rock, gravel or minerals unrelated to any activities referred to in section 48(1);
 - (d) discharge or deposit waste or any other polluting matter;
 - (e) in any manner which results in an adverse effect on the marine environment, disturb, alter or destroy the natural environment or disturb or alter the water quality or abstract sea water;
 - (f) carry on any activity which may have an adverse effect on the ecosystem of the area;
 - (g) construct or erect any building or other structure on or over any land or water within such a marine protected area;
 - (h) carry on marine aquaculture activities;
 - (i) engage in bio-prospecting activities;
 - (j) sink or scuttle any platform, vessel or other structure; or
 - (k) undertake mineral exploration, and production of petroleum and other fossil fuels.

PROTECTED AREAS ACT

- (2) Notwithstanding subsection (1) but subject to section 48(1), the Minister may, in relation to a marine protected area, prescribe-
 - (a) different zones to regulate different activities within that marine protected area; and
 - (b) activities which require a permit.
- (3) Before exercising the power referred to in subsection (2), the Minister must-
 - (a) consult with the Minister responsible for fisheries and the management authority that is responsible for managing the relevant marine protected area; and
 - (b) ensure that the zoning achieves the objectives referred to in section 2.
- (4) Any zone declared in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), or created by regulation in terms of section 77 of that Act which exists when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect, must be regarded as a zone prescribed in terms of subsection (2).

[S. 48A inserted by s. 13 of Act 21/2014]

49. Regulation or restriction of activities in protected areas

Activities in protected areas are regulated or restricted to the extent prescribed by-

- (a) regulations made under section 86;
- (b) regulations made under section 87, in the case of provincial and local protected areas;
- (c) by-laws made by the relevant municipality, in the case of local protected areas; and
- (d) internal rules made by the managing authority of the area under section 52.

50. Commercial and community activities in national park, nature reserve and world heritage site

[Heading substituted by s. 19 of Act 31/2004]

- (1) The management authority of a national park, nature reserve and world heritage site may, despite any regulation or by-law referred to in section 49, but subject to the management plan of the park, reserve or site-
 - (a) carry out or allow-

PROTECTED AREAS ACT

- (i) a commercial activity in the park, reserve or site; or
- (ii) an activity in the park, reserve or site aimed at raising revenue;
- (b) enter into a written agreement with a local community inside or adjacent to the park, reserve or site to allow members of the community to use in a sustainable manner biological resources in the park, reserve or site; and
- (c) set norms and standards for any activity allowed in terms of paragraph (a) or (b).

[Subs. (1) substituted by s. 19 of Act 31/2004]

- (2) An activity allowed in terms of subsection (1) (a) or (b) may not negatively affect the survival of any species in or significantly disrupt the integrity of the ecological systems of the national park, nature reserve or world heritage site.

[Subs. (2) substituted by s. 19 of Act 31/2004]

- (3) The management authority of the national park, nature reserve or world heritage site must establish systems to monitor-

- (a) the impact of activities allowed in terms of subsection (1)(a) or (b) on the park, reserve or site and its biodiversity; and

- (b) compliance with-

- (i) any agreement entered into in terms of subsection (1)(b); and

- (ii) any norms and standards set in terms of subsection (1)(c).

[Subs. (3) substituted by s. 19 of Act 31/2004]

- (4) Any activity carried out lawfully in terms of any agreement which exists when this section takes effect may continue until the date of termination of such agreement, provided that the agreement may not be extended or varied so as to expire after the original intended expiry date without the consent of the Minister.

- (5) No development, construction or farming may be permitted in a national park, nature reserve or world heritage site without the prior written approval of the management authority.

[Subs. (5) substituted by s. 19 of Act 31/2004]

51. Regulation or restriction of development and other activities in protected environment

The Minister or the MEC may by notice in the *Gazette* restrict or regulate in a protected environment under the jurisdiction of the Minister or the MEC-

- (a) development that may be inappropriate for the area given the purpose for which the area was declared; and
- (b) the carrying out of other activities that may impede such purpose.

52. Internal rules

- (1) The management authority of a national park, marine protected area, nature reserve or world heritage site may, in accordance with prescribed norms and standards, make rules for the proper administration of the area.

[Subs. (1) substituted by s. 20 of Act 31/2004 and s. 14 of Act 21/2014]

- (2) Rules made under subsection (1)-

- (a) must be consistent with this Act and the management plan for the area;
- (aA) must be consistent with any zoning or permitting done in terms of section 48A(2), and if there is a conflict, such zoning and permitting prevails;

[Para. (aA) inserted by s. 14 of Act 21/2014]

- (b) bind all persons in the area, including visitors;

[Para. (b) amended by s. 14 of Act 21/2014]

- (c) may, as a condition for entry, provide for the imposition of fines for breaches of the rules; and

[Para. (c) amended by s. 14 of Act 21/2014]

- (d) must be published in the *Gazette*.

[Para. (d) added by s. 14 of Act 21/2014]

- (3) Rules made in terms of subsection (1) which apply to marine protected areas must be made in consultation with the Department.

[Subs. (3) added by s. 14 of Act 21/2014]

53. Certain rights and entitlements to be respected

- (1) Section 45, 46, 49, 50, 51 or 52 may not be applied in a manner that would obstruct the resolution of issues relating to land rights dealt with in terms of-
 - (a) the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); and
 - (b) the provision of essential services and the acquisition of servitudes for that purpose.
- (2) A person may exercise a right that that person may have to water in a public stream in a protected area, but subject to such conditions as may be prescribed by the Minister with the concurrence of the Cabinet member responsible for water affairs.

CHAPTER 5

SOUTH AFRICAN NATIONAL PARKS

Part 1

Continued existence and functions of South African National Parks

54. Continued existence

- (1) South African National Parks established by section 5 of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a juristic person despite the repeal of that Act by section 90 of this Act.
- (2) As from the repeal of the National Parks Act, 1976, South African National Parks functions in terms of this Act.
- (3) The South African National Parks may not be wound up or dissolved except by or in terms of an Act of Parliament and by a resolution of a majority of at least two-thirds of all its members.

[Subs. (3) added by s. 5 of Act 15/2009]

- (4) Upon winding-up or dissolution of the South African National Parks, its remaining assets or the proceeds of those assets after satisfaction of its liabilities, must be transferred to the State or to an equivalent Schedule 3A Public Entity contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), which has the same objectives as the South African National Parks and which itself is exempt from income tax in terms of section 10(1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962).

[Subs. (4) added by s. 5 of Act 15/2009]

[S. 54 inserted by s. 21 of Act 31/2004]

55. Functions

(1) South African National Parks must -

- (a) manage all existing national parks and any kind of protected area listed in section 9, assigned to it by the Minister in terms of Chapter 4 and section 92, in accordance with this Act and any specific environmental management Act referred to in the National Environmental Management Act;

[Para. (a) substituted by s. 6 of Act 15/2009]

- (aA) manage world heritage sites assigned to it by the Minister, in accordance with all national cultural heritage legislation as may be applicable to and required for proper management and protection of such world heritage sites, provided that the South African National Parks' authority to enforce such legislation are provided for in a written instrument of delegation issued by the Minister to this effect under and in terms of such legislation;

[Para. (aA) inserted by s. 6 of Act 15/2009]

- (aB) manage any other protected areas, which are not protected areas referred to in subsection 55(1)(a), and as may be assigned to it by the Minister, in accordance with the provisions of all national environmental legislation as may be applicable to and required for the proper management and protection of such other protected areas, provided that the South African National Parks' authority to enforce such legislation are provided for in a written instrument of delegation issued by the Minister to this effect under and in terms of such legislation;

[Para. (aB) inserted by s. 6 of Act 15/2009]

- (aC) participate in such further international, regional and national environmental, conservation and cultural heritage initiatives identified by the Minister from time to time, and then only on such terms and conditions as the Minister shall in writing provide.

[Para. (aC) inserted by s. 6 of Act 15/2009]

- (b) protect, conserve and control those national parks and other protected areas, including their biological diversity; and
- (c) on the Minister's request, advise the Minister on any matter concerning -
 - (i) the conservation and management of biodiversity; and
 - (ii) proposed national parks and additions to or exclusions from existing national parks; and

PROTECTED AREAS ACT

- (d) on the Minister's request, act as the provisional managing authority of protected areas under investigation in terms of this Act.
- (2) South African National Parks may in managing national parks, or any other kind of protected area assigned to it by the Minister -

[Words preceding para. (a) substituted by s. 6 of Act 15/2009]

- (a) manage breeding and cultivation programmes, and reserve areas in a park as breeding places and nurseries;
- (b) sell, exchange or donate any animal, plant or other organism occurring in a park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to re-introduce into a specific park;
- (c) undertake and promote research;
- (d) control, remove or eradicate any species or specimens of species which it considers undesirable to protect and conserve in a park or that may negatively impact on the biodiversity of the park;
- (e) carry out any development and construct or erect any works necessary for the management of a park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels;
- (f) allow visitors to a park;
- (fA) make, set penalties for, and enforce traffic rules in such national parks, special nature reserves, protected environments, world heritage sites or other protected areas assigned to it by the Minister;

[Para. (fA) inserted by s. 6 of Act 15/2009]

- (g) take reasonable steps to ensure the security and well-being of visitors and staff;
- (h) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;
- (i) carry on any business or trade or provide other services for the convenience of visitors and staff, including the sale of liquor;
- (j) determine and collect fees for -
 - (i) entry to or stay in a park; or

PROTECTED AREAS ACT

- (ii) any service provided by it;
 - (k) authorise any person, subject to such conditions and the payment of such fees as it may determine, to -
 - (i) carry on any business or trade, or provide any service, which South African National Parks may carry on or provide in terms of this section; and
 - (ii) provide the infrastructure for such business, trade or service;
 - (l) by agreement with -
 - (i) a municipality, provide any service in a park which that municipality may or must provide in terms of legislation; or
 - (ii) any other organ of state, perform a function in a park which that organ of state may or must perform in terms of legislation; or
 - (m) perform such other functions as may be prescribed.
- (3) Subsection (2) applies also to other protected areas managed by South African National Parks, and the powers contained in that subsection may be exercised by it to the extent that those powers are consistent with the purpose for which any such area was declared as a protected area.

[S. 55 inserted by s. 21 of Act 31/2004]

56. General powers

South African National Parks may for the purpose of performing its functions -

- (a) appoint its own staff, subject to section 73;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
- (d) open and operate its own bank accounts;
- (e) invest, subject to section 76, any of its money, including money in the fund referred to in section 77;
- (f) borrow money, subject to section 66 of the Public Finance Management Act;

PROTECTED AREAS ACT

- (g) charge fees for any work performed or services rendered by it or collect fees resulting from any intellectual property rights;
- (h) insure itself against -
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in respect of Board members or staff members in the application of this Act;
- (i) perform legal acts, including acts in association with or on behalf of any other person or organ of state; and
- (j) institute or defend any legal action.

[S. 56 inserted by s. 21 of Act 31/2004]

Part 2

Governing board, composition and membership

57. Composition

- (1) South African National Parks is governed by a board consisting of -
 - (a) no fewer than nine and no more than 12 members appointed in terms of section 59;
 - (b) the Director-General or an official of the Department designated by the Director-General; and
 - (c) the Chief Executive Officer.
- (2) The Minister -
 - (a) must determine the number of members to be appointed in terms of subsection (1) (a); and
 - (b) may alter from time to time the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.
- (3) The Board takes all decisions in the performance of the functions of South African National Parks, except -
 - (a) those decisions taken in consequence of a delegation in terms of section 71; or

PROTECTED AREAS ACT

(b) where the Public Finance Management Act provides otherwise.

[S. 57 inserted by s. 21 of Act 31/2004]

58. Qualifications

(1) A member of the Board must -

(a) be a fit and proper person to hold office as a member; and

(b) have appropriate qualifications or experience.

(2) A person is disqualified from becoming or remaining a member of the Board if that person -

(a) is holding office as a member of Parliament or a provincial legislature; or

(b) has been removed from office in terms of section 65.

[S. 58 inserted by s. 21 of Act 31/2004]

59. Appointment procedure

(1) Whenever it is necessary to appoint a member of the Board, the Minister must -

(a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations; and

(b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by -

(a) the personal details of the nominee;

(b) particulars of the nominee's qualifications or experience; and

(c) any other information that may be prescribed.

(3) The Minister must make the required number of appointments from the list referred to in subsection (1)(b), but if the list is inadequate, the Minister may appoint any suitable person.

(4) When making an appointment the Minister must have regard to the need for appointing persons disadvantaged by unfair discrimination.

PROTECTED AREAS ACT

- (5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise.

[S. 59 inserted by s. 21 of Act 31/2004]

60. Chairperson

- (1) The Minister must appoint a member of the Board as the Chairperson.
- (2) The Chairperson is appointed for such period as the Minister may determine which may, in the case of a member referred to in section 57(1)(a), not extend beyond his or her term as a member.
- (3) The Minister may appoint a member of the Board as acting chairperson of the Board if -
- (a) the Chairperson is absent for a substantial period; or
 - (b) the appointment of a Chairperson is pending.

[S. 60 inserted by s. 21 of Act 31/2004]

61. Term of office

- (1) Members of the Board referred to in section 57(1)(a) are -
- (a) appointed for a term of three years or, if section 66(2) applies, for a term determined in terms of that section;
 - (b) on completion of any term contemplated in paragraph (a), eligible for reappointment for one additional term of three years; and
 - (c) after a break of at least three years after a term has ended, eligible for appointment in terms of paragraph (a) again and, if appointed, eligible for reappointment in terms of paragraph (b).
- (2) Any appointment in terms of subsection (1) may be extended by the Minister for a specific period not exceeding one year.

[S. 61 inserted by s. 21 of Act 31/2004]

62. Conditions of appointment

- (1) The Minister must determine the conditions of appointment of members of the Board referred to in section 57(1)(a).

PROTECTED AREAS ACT

(2)

(a) The conditions of appointment of members who are not in the employ of a national, provincial or local organ of state may provide for the payment of remuneration and allowances determined by the Minister with the concurrence of the Cabinet member responsible for finance.

(b) Such remuneration and allowances are payable by South African National Parks.

(3) Members who are in the employ of a national, provincial or local organ of state are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by South African National Parks.

(4) Members are appointed part-time.

[S. 62 inserted by s. 21 of Act 31/2004]

63. Conduct of members

(1) A member of the Board -

(a) must perform the functions of office in good faith and without favour or prejudice;

(b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;

(c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and

(d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of South African National Parks.

(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

[S. 63 inserted by s. 21 of Act 31/2004]

64. Termination of membership

(1) A person referred to in section 57(1)(a) ceases to be a member of the Board when that person -

PROTECTED AREAS ACT

- (a) is no longer eligible in terms of section 58 to be a member;
 - (b) resigns; or
 - (c) is removed from office in terms of section 65.
- (2) A member may resign by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.

[S. 64 inserted by s. 21 of Act 31/2004]

65. Removal from office

- (1) The Minister may remove a member of the Board referred to in section 57(1)(a) from office on the ground of -
- (a) misconduct, incapacity or incompetence;
 - (b) absence from three consecutive meetings of the Board without the prior permission of the Board, except on good cause shown;
 - (c) insolvency; or
 - (d) conviction of a criminal offence without the option of a fine.
- (2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.
- (3) The Minister may suspend a member under investigation in terms of this section.

[S. 65 inserted by s. 21 of Act 31/2004]

66. Filling of vacancies

- (1) A vacancy in the Board is filled -
- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 60(1) as the Chairperson; and
 - (b) in the case of a vacating member referred to in section 51(1)(a), by following the procedure set out in section 59.
- (2) A person appointed to fill a vacancy holds office for the unexpired portion of the term of the vacating Chairperson or member.

[S. 66 inserted by s. 21 of Act 31/2004]

Part 3

Operating procedures of Board

67. Meetings

- (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a meeting at a time and place set out in the request.
- (2) The Chairperson presides at meetings of the Board, but if absent from a meeting, the members present must elect another member to preside at the meeting.

[S. 67 inserted by s. 21 of Act 31/2004]

68. Procedures

- (1) The Board may determine its own procedures subject to the other provisions of this Act.
- (2) The Board must keep a record of its proceedings and of decisions taken.

[S. 68 inserted by s. 21 of Act 31/2004]

69. Quorum and decisions

- (1) A majority of the serving members of the Board constitutes a quorum for a meeting of the Board.
- (2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.
- (3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

[S. 69 inserted by s. 21 of Act 31/2004]

70. Committees

- (1) The Board may establish one or more committees to assist it in the performance of its functions
- (2) When appointing members to a committee, the Board is not restricted to members of the Board.
- (3) The Board -

PROTECTED AREAS ACT

- (a) must determine the functions of a committee;
 - (b) must appoint the chairperson and other members of the committee;
 - (c) may remove a member of a committee from office at any time; and
 - (d) may determine a committee's procedure.
- (4) The Board may dissolve a committee at any time.
- (5)
- (a) Section 62 applies with the changes required by the context to the conditions of appointment of committee members.
 - (b) A staff member of South African National Parks appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

[S. 70 inserted by s. 21 of Act 31/2004]

71. Delegation of powers and assignment of duties

- (1) When necessary for the proper performance of its functions the Board may delegate any of its powers or assign any of its duties, excluding those mentioned in subsection (2), to -
- (a) a Board member;
 - (b) a committee referred to in section 70; or
 - (c) a staff member of South African National Parks.
- (2) The following powers and duties may not be delegated or assigned by the Board:
- (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 72(1) or (2);
 - (b) the determination of the conditions of service of the Chief Executive Officer in terms of section 72(3);
 - (c) the determination of an employment policy in terms of section 73(1);
 - (d) the setting of financial limits in terms of section 73(2)(a) or (3); and
 - (e) the approval of the budget.

PROTECTED AREAS ACT

- (3) A delegation or assignment in terms of subsection (1) -
- (a) must be in writing;
 - (b) is subject to such limitations, conditions and directions as the Board may impose;
 - (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty; and
 - (d) does not prevent the exercise of the assigned power or the performance of the assigned duty by the Board.
- (4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

[S. 71 inserted by s. 21 of Act 31/2004]

Part 4

Administration of South African National Parks

72. Appointment of Chief Executive Officer

- (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of South African National Parks.
- (2) The Chief Executive Officer -
- (a) is appointed for a term not exceeding five years; and
 - (b) may be reappointed by the Board with the concurrence of the Minister.
- (3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.
- (4) The Chief Executive Officer -
- (a) is responsible for the management of South African National Parks;
 - (b) must perform such duties and may exercise such powers as the Board may assign or delegate to the Chief Executive Officer; and

PROTECTED AREAS ACT

- (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers at such frequency and in such manner as the Board may determine.
- (5)
 - (a) Whenever the Chief Executive Officer is for any reason absent or unable to perform his or her functions, or whenever there is a vacancy in the office of the Chief Executive Officer, the Chairperson of the Board may appoint another staff member of South African National Parks as acting Chief Executive Officer for a period not exceeding six months.
 - (b) Whilst acting as Chief Executive Officer, such staff member -
 - (i) has the powers and duties of the Chief Executive Officer; and
 - (ii) is employed subject to such terms and conditions of employment as the Chairperson of the Board may determine in accordance with the policy referred to in subsection (3).

[S. 72 inserted by s. 21 of Act 31/2004]

73. Employment of staff

- (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for South African National Parks.
- (2) The Chief Executive Officer -
 - (a) within the financial limits set by the Board, must determine a staff establishment necessary to enable South African National Parks to perform its functions; and
 - (b) may appoint persons in posts on the staff establishment.
- (3) An employee of South African National Parks is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of and within the financial limits set by the Board.
- (4)
 - (a) A person in the service of another organ of state may be seconded to South African National Parks by agreement between the Chief Executive Officer and such organ of state.
 - (b) Persons seconded to South African National Parks perform their functions under the supervision of the Chief Executive Officer.

PROTECTED AREAS ACT

- (5) A person in the service of South African National Parks may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

[S. 73 inserted by s. 21 of Act 31/2004]

Part 5

Financial matters

74. Financial accountability

South African National Parks is a public entity for the purposes of the Public Finance Management Act, and must to that end comply with the provisions of that Act.

[S. 74 inserted by s. 21 of Act 31/2004]

75. Funding

The funds of South African National Parks consist of -

- (a) income derived from the performance of its functions;
- (b) money appropriated for its purposes by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed in terms of section 56(f);
- (f) income derived from investments;
- (g) fines received or recovered in respect of offences committed under this Act; and

[Para. (g) substituted by s. 7 of Act 15/2009]

- (h) money derived from any other source, with the approval of the Cabinet member responsible for finance.

[S. 75 inserted by s. 21 of Act 31/2004]

76. Investments

South African National Parks may invest any of its funds not immediately required -

PROTECTED AREAS ACT

- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
- (b) in accordance with any criteria set by the Minister.

[S. 76 inserted by s. 21 of Act 31/2004]

77. National Parks Land Acquisition Fund

The National Parks Land Acquisition Fund established by section 12A of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a separate fund under the administration of South African National Parks despite the repeal of that Act by section 90 of this Act.

- (2) The Fund is administered by South African National Parks and consists of -
 - (a) any voluntary contributions, donations and bequests received by South African National Parks for the purpose of the Fund;
 - (b) money appropriated by Parliament for the purpose of the Fund;
 - (c) the proceeds of land sold by South African National Parks which it has acquired in terms of section 81;
 - (d) income derived from investing any credit balances in the Fund;
 - (e) money borrowed by South African National Parks in terms of section 56(f) for the purpose of the Fund; and
 - (f) money derived from any other source for the purpose of the Fund.
- (3) The money in the Fund may be used -
 - (a) to finance -
 - (i) the acquisition of private land or a right in or to private land in terms of section 80 or 81; or
 - (ii) the cancellation of a servitude or a right in land in terms of section 82 or 83; or
 - (b) to defray expenses incurred by South African National Parks in connection with the management of the Fund.
- (4) The Chief Executive Officer must -
 - (a) keep account of the Fund separately from the other money of South African National Parks; and

PROTECTED AREAS ACT

(b) comply with the Public Finance Management Act in administering the Fund.

[S. 77 inserted by s. 21 of Act 31/2004]

Part 6

General

78. Minister's supervisory powers

(1) The Minister -

- (a) must monitor the performance by South African National Parks of its functions;
- (b) may determine norms and standards for the performance by South African National Parks of its functions;
- (c) may issue directives to South African National Parks on measures to achieve those norms and standards;
- (d) may determine limits on fees charged by South African National Parks in the performance of its functions; and
- (e) may identify land for new national parks and extensions to existing national parks.

(2) South African National Parks must perform its functions subject to the norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

[S. 78 inserted by s. 21 of Act 31/2004]

79. Absence of functional Board

In the absence of a functional Board, the functions of the Board revert to the Minister who, in such a case, must perform those functions until the Board is functional again.

[S. 79 inserted by s. 21 of Act 31/2004]

[Chapter 5 inserted by s. 21 of Act 31/2004]

CHAPTER 6

ACQUISITION OF RIGHTS IN OR TO LAND

80. Acquisition of private land by State

- (1) The Minister, acting with the concurrence of the Cabinet member responsible for land affairs, may acquire land, or any right in or to land, which has been or is proposed to be declared as or included in a national protected area, by-
 - (a) purchasing the land or right;
 - (b) exchanging the land or right for other land or rights; or
 - (c) expropriating the land or right in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), and subject to section 25 of the Constitution, if no agreement is reached with the owner of the land or the holder of the right in or to the land.
- (2) The MEC, acting with the approval of the Executive Council of the province, may acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a provincial protected area, by-
 - (a) purchasing the land or right;
 - (b) exchanging the land or right for other land or rights; or
 - (c) expropriating the land or right in accordance with the Expropriation Act, 1975, and subject to section 25 of the Constitution, if no agreement is reached with the owner of the land or the holder of the right in or to the land.

81. Acquisition of private land by South African National Parks

- (1) South African National Parks, with the approval of the Minister acting with the concurrence of the Cabinet member responsible for land affairs, may acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a national park -
 - (a) by purchasing the land or right; or
 - (b) if the land or right is donated or bequeathed to it, by accepting the donation or bequest.
- (2) If the parties fail to agree on a purchase price for the land or right contemplated in subsection (1)(a), the Minister may on behalf of South African National Parks or the State expropriate the land or right in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), subject to section 25 of the Constitution.

[S. 81 inserted by s. 22 of Act 31/2004]

82. Cancellation of servitude on, or privately held right in or to, state land

- (1) The Minister, acting with the concurrence of the Cabinet member responsible for public works, may take any steps necessary to cancel a servitude on state land, or a privately held right in or to state land, which has been or is proposed to be declared as or included in a national protected area.
- (2) The MEC, acting with the concurrence of the MEC responsible for public works in the province, may take any steps necessary to cancel a servitude on provincial land, or a privately held right in or to provincial land, which has been or is proposed to be declared as or included in a provincial protected area.
- (3) If the Minister or MEC fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister or MEC may expropriate the servitude or the privately held right in or to State land, in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), subject to section 25 of the Constitution.

[Subs. (3) substituted by s. 26 of Act 14/2009]

83. Cancellation of servitude on, or privately held right in or to, land owned by South African National Parks

- (1) South African National Parks may take any steps necessary to cancel a servitude on land owned by South African National Parks, or a privately held right in or to such land, which has been or is proposed to be declared as or included in a national park.
- (2) If South African National Parks fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister may on behalf of South African National Parks or the State expropriate the servitude or right in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), subject to section 25 of the Constitution.

[S. 83 inserted by s. 23 of Act 31/2004]

84. Mineral right

The Minister may in accordance with section 80(1)(c), 81(2), 82(3) or 83(2) and the MEC may in accordance with section 80(2) or 82(3), acquire or cancel a mineral right by way of expropriation only with the concurrence of the Cabinet member responsible for mineral and energy affairs.

[S. 84 substituted by s. 24 of Act 31/2004]

85. Financing

- (1) The Minister may finance the acquisition of private land or a right in or to private land in terms of section 80, or the cancellation of a servitude on, or a privately held right in or to, state land in terms of section 82, from-
- (a) money appropriated for this purpose by Parliament; or
 - (b) the Fund, by agreement with South African National Parks.

[Para. (b) added by s. 25 of Act 31/2004]

- (2) South African National Parks may finance the acquisition of private land or a right in or to private land in terms of section 81, or the cancellation of a servitude on, or a privately held right in or to, land owned by South African National Parks in terms of section 83, from -
- (a) the funds of South African National Parks; or
 - (b) the Fund, by agreement with the Minister.

[Subs. (2) added by s. 25 of Act 31/2004]

CHAPTER 7

ADMINISTRATION OF ACT

86. Regulations by Minister

- (1) The Minister may make regulations that are not in conflict with this Act-
- (a) regarding any matter that may or must be prescribed in terms of this Act;
 - (b) conferring additional powers or assigning additional duties to management authorities;
 - (c) regulating-
 - (i) biodiversity management and conservation in protected areas;
 - (ii) the use of biological resources in protected areas;
 - (iii) access to protected areas;
 - (iv) tourism in protected areas where tourism is allowed;

PROTECTED AREAS ACT

- (v) activities that may be carried out in terms of section 50;
 - (vi) the use of land and water in protected areas;
 - (vii) community-based natural resource utilisation; or
 - (viii) consultation activities which are required in terms of this Act.
- (d) prohibiting or restricting-
- (i) activities that have an adverse effect in protected areas;
 - (ii) the use of biological resources in protected areas;
 - (iii) land uses in protected areas that are harmful to the environment;
- (e) providing for the establishment of advisory committees for protected areas, the appointment of members and their role;
- (f) setting norms and standards for the proper performance of any function contemplated in this Act, and the monitoring and enforcing of such norms and standards;
- (g) regarding any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (2) Any regulation with material financial implications must be made with the concurrence of the Cabinet member responsible for finance.
- (3) Before publishing any regulation contemplated in subsection (1), the Minister must publish the draft regulations in the *Gazette* for public comment.

87. Regulations by MEC

- (1) The MEC may, in relation to provincial and local protected areas, make regulations not in conflict with this Act regarding any matter referred to in section 86, except a matter referred to in section 86(1)(f).
- (2) Any regulation made under subsection (1) must be consistent with the norms and standards prescribed under section 11 or 86(1)(f).
- (3) Any regulation with substantive financial implications for the province must be made with the concurrence of the MEC responsible for finance in the province.
- (4) Before publishing any regulation contemplated in subsection (1), the MEC must publish the draft regulations in the *Gazette* for public comment.

88. General

- (1) Regulations made under section 86 or 87 may-
- (a) restrict or prohibit any act either absolutely or conditionally;
 - (b) apply-
 - (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas;
 - (ii) generally to all persons or only a specified category of persons; or
 - (iii) generally with respect to all species or only a specified species or category of species; or
 - (c) differentiate between-
 - (i) different areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.
- (2) Regulations made under section 86 or 87 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.

[Subs. (2) substituted by s. 27 of Act 14/2009]

CHAPTER 8

OFFENCES AND PENALTIES

89. Offences and penalties

- (1) A person is guilty of an offence if that person-
- (a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A) , 48(1), 49A(5)(b), 50(5) or 55(2)(fA);

[Para. (a) substituted by s. 28 of Act 14/2009]

PROTECTED AREAS ACT

- (b) contravenes a notice issued under section 51;
 - (c) hinders or interferes with a management authority or a member or staff member of a management authority in the performance of official duties; or
 - (d) falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer.
- (2) A person convicted of an offence in terms of subsection (1) is liable, in the case of a first conviction, to a fine not exceeding R5 million or imprisonment for a period not exceeding five years and, in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years or in both instances to both a fine and such imprisonment.

[Subs. (2) substituted by s. 28 of Act 14/2009]

- (3) Contravention of or failure to comply with any provision of a regulation made under section 86 or 87 is an offence.

[Subs. (3) added by s. 28 of Act 14/2009]

- (4) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

[Subs. (4) added by s. 28 of Act 14/2009]

CHAPTER 9

MISCELLANEOUS

90. Repeal of laws

- (1) Subject to subsection (2), the laws mentioned in the second column of Schedule 1 are hereby repealed to the extent set out in the third column thereof.
- (2) Sections 16 and 17 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are repealed in a province with effect from the date of publication by the MEC of regulations under section 87 prescribing matters covered by the said sections 16 and 17.
- (3) Section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), is hereby repealed.

[Subs. (3) added by s. 15 of Act 21/2014]

91. Savings and transitional provisions

[Heading of s. 91 substituted by s. 16 of Act 21/2014]

- (1) Anything done in terms of a law repealed by section 90 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.
- (2) A person who, immediately before the repeal of the National Parks Act, 1976 (Act No. 57 of 1976), was -
 - (a) a board member of South African National Parks becomes a member of the Board for the unexpired part of the term for which that person was appointed as a member of South African National Parks; or
 - (b) the Chairperson of South African National Parks becomes the Chairperson of the Board for the unexpired part of the term for which that person was appointed as the Chairperson of South African National Parks.
- (3)
 - (a) Any regulation relating to a marine protected area prescribed in terms of section 77 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which exists when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect, must be regarded as having been prescribed in terms of this Act and remains of force and effect until it is repealed or amended in terms of this Act.
 - (b) Anything done in relation to a marine protected area in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which could have been done in terms of this Act must be regarded as having been done in terms of this Act.
 - (c) Any permission granted in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which was valid immediately before the commencement of the National Environmental Management: Protected Areas Amendment Act, 2014, remains valid and the person concerned must be regarded as having been issued with a permit contemplated in section 48A(2).
 - (d) Any application for a permit or exemption lodged in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which has not been finalised when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect must, despite the repeal of section 43 of that Act by section 90(3), be dispensed with in terms of section 43 of the Marine Living Resources Act, 1998, and a decision taken in terms of section 43 must be deemed as a decision taken in terms of this Act.

[Subs. (3) added by s. 16 of Act 21/2014]

[S. 91 inserted by s. 26 of Act 31/2004]

PROTECTED AREAS ACT

92. Protected areas existing before commencement of section

(1) South African National Parks -

(a) is the management authority for any protected area it managed immediately before this section took effect, unless otherwise assigned by the Minister in terms of this Act; and

(b) must manage such area in accordance with -

(i) this Act and any management plan in terms of Chapter 4 for the area; and

(ii) any condition and agreement which existed immediately before this section took effect and which were applicable to the area.

[Subs. (1) inserted by s. 27 of Act 31/2004]

(2) The organ of state managing a protected area immediately before this section took effect, other than a protected area referred to in subsection (1), must continue managing the area until the management of the area is assigned either to it or to another management authority in terms of Chapter 4.

[Subs. (2) substituted by s. 27 of Act 31/2004]

93. Short title and commencement

This Act is called the National Environmental Management: Protected Areas Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

REPEAL OF LAWS

(Section 90)

No. and year of Act	Short Title of Act	Extent of Repeal
Act No. 39 of 1975	Lake Areas Development Act, 1975	The repeal of the whole
Act No. 57 of 1976	National Parks Act, 1976	The repeal of the whole
Act No. 60 of 1979	National Parks Amendment Act, 1979	The repeal of the whole[, except section 2(1) and Schedule 1]

PROTECTED AREAS ACT

Act No. 9 of 1980	Lake Areas Development Amendment Act, 1980	The repeal of the whole
Act No. 13 of 1982	National Parks Amendment Act, 1982	The repeal of the whole
Act No. 23 of 1983	National Parks Amendment Act, 1983	The repeal of the whole
Act No. 43 of 1986	National Parks Amendment Act, 1986	The repeal of the whole
Act No. 111 of 1986	National Parks Second Amendment Act, 1986	The repeal of the whole
Act No. 60 of 1987	National Parks Amendment Act, 1987	The repeal of the whole
Act No. 73 of 1989	Environment Conservation Act, 1989	The repeal of sections 16, 17 and 18
Act No. 23 of 1990	National Parks Amendment Act, 1990	The repeal of the whole
Act No. 52 of 1992	National Parks Amendment Act, 1992	The repeal of the whole
Act No. 91 of 1992	National Parks Second Amendment Act, 1992	The repeal of the whole
Act No. 38 of 1995	National Parks Amendment Act, 1995	The repeal of the whole
Act No. 70 of 1997	National Parks Amendment Act, 1997	The repeal of the whole
Act No. 106 of 1998	National Parks Amendment Act, 1998	The repeal of the whole
Act No. 54 of 2001	National Parks Amendment Act, 2001	The repeal of the whole

[Schedule substituted by s. 28 of Act 31/2004 and renumbered as Schedule 1 by s. 8 of Act 15/2009 and substituted by s. 8 of Act 15/2009 w.e.f. 1 April 2013]

SCHEDULE 2

NATIONAL PARK AREAS

[Schedule 2 inserted by s. 8 of Act 15/2009 w.e.f. 1 April 2013 and substituted by GN 236/2013 w.e.f. 1 April 2013]

**NATIONAL ENVIRONMENTAL MANAGEMENT:
PROTECTED AREAS ACT 57 OF 2003**

GNR 1061 OF 28 OCTOBER 2005:

**REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL
NATURE RESERVES, NATIONAL PARKS AND WORLD HERITAGE SITES**

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GN R622

GG 37904

2014/08/15

The Minister of Environmental Affairs and Tourism has, under section 86 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), made the Regulations in the Schedule.

SCHEDULE

1. Definitions

**CHAPTER 1
APPLICATION OF REGULATIONS**

2. Application of Regulations

**CHAPTER 2
PROTECTED AREAS REGISTER**

3. Protected Areas Register

CHAPTER 3

Part 1: Biodiversity management and conservation in a special nature reserve, national park and world heritage site

4. Prohibitions

Part 2: Use of biological resources in a national park and world heritage site

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

5. Use of biological resources
6. Access to special nature reserve, national park and world heritage site by user of biological resources
7. Collection of data

Part 3: Access to a special nature reserve, national park and world heritage site

8. Admission
9. Entrance and accommodation fees
10. Points of entry and exit
11. Proof of entry
12. Safe entering
13. Staying overnight
14. Times of entry and travel
15. Vehicles
16. Prohibitions
17. Permits for vessels
18. Operating rules

Part 4: Commercial activities in national parks and world heritage sites is allowed

19. Development

Part 5: Activities that may be carried out in terms of section 50

20. Authorised activities
21. Commercial and community activities
22. Other activities

Part 6: Use of water areas, land and airspace in a special nature reserve, national park and world heritage site

23. Protected area notice
24. Recreation areas
25. Prohibitions in water areas
26. Bathing and swimming
27. Safety ropes
28. Life saving apparatus
29. Water skiing
30. Prohibitions on land and in airspace

Part 7: Community-based natural resource utilisation

31. Use of biological resources
32. Access
33. Register of local communities

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

Part 8: general

- 34. Research and monitoring
- 35. Special use permits
- 36. Interference with management authority equipment
- 37. Misuse of facilities

CHAPTER 4

Part 1: Prohibition or restriction of activities having an adverse effect in a special nature reserve, national park and world heritage site

- 38. Prohibited activities
- 39. Interference with soil or substrate
- 40. Littering
- 41. Pollution of water
- 42. Removal and dumping in water areas
- 43. General prohibitions
- 44. Firearms and dangerous weapons

Part 2: Prohibition or restriction of the use of biological resources in a special nature reserve, national park and world heritage site

- 45. Restricted activities

Part 3: Prohibition or restriction of land use in a special nature reserve, national park and world heritage site

- 46. Buildings and improvements
- 47. French drains and pit latrines
- 48. Holiday resort, caravan park, camping or picnic site

Part 4: General

- 49. Pets

CHAPTER 5
ADVISORY COMMITTEES

- 50. Establishment of advisory committee
- 51. Procedure
- 52. Closing date for nominations
- 53. Composition of advisory committee

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- 54. Mandate
- 55. Term of office

CHAPTER 6
NORMS AND STANDARDS

- 56. Internal rules
- 57. Management plans
- 58. Planning
- 59. Revenue requirements

CHAPTER 7
BIOPROSPECTING

- 60. Bioprospecting

CHAPTER 8
FINES AND PENALTIES

- 61. Offences
- 62. Lawful instructions
- 63. Eviction
- 64. Penalties

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates -

“**accommodation**” means facilities of any nature for the accommodation of day and overnight visitors;

“**alien species**” means -

- (a) a species that is not an indigenous species; or
- (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

“authorised official” means an employee of a management authority, or any other person, acting as such on the written authorisation of a management authority and includes an environmental management inspector;

“bioprospecting” means bioprospecting as defined in section 1 of the National Environmental Management: Biodiversity Act (Act No. 10 of 2004)

“community-based natural resource management” means in relation to indigenous biological resources, any utilisation of indigenous biological resources by a community for sustainable harvesting, traditional use or commercial purposes;

“critically endangered species” means any indigenous species listed as a critically endangered species in terms of section 56 of the Biodiversity Act;

“dangerous weapon” means any object, other than a firearm, which could cause serious bodily injury in respect of people or animals;

“development” means any physical intervention, excavation or action, other than that caused by natural forces, which may result in a change in the nature, appearance or physical nature of a site in a national park or world heritage site or influence its stability and future well-being, including -

- (a) the construction, alteration, demolition, removal or change of use of a site or a structure on the site;
- (b) the carrying out of any works on, over or under the site;
- (c) the construction or putting up for display of signs or boardings;
- (d) any change to the natural or existing condition or topography of land; and
- (e) any removal, clearing or destruction of trees or vegetation or the removal of topsoil;

“employee” means a person in the employ of a management authority;

“environmental management inspector” means a person designated as such in terms of section 31B of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“firearm” means a firearm as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000);

“internal rules” means rules made under section 52 of the Act;

“invasive species” means invasive species as defined in section 1 of the National Environmental Management: Biodiversity Act (Act no 10 of 2004)

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

“**life-guard**” means a person appointed by a management authority to perform rescue services;

“**listed threatened or protected species**” means any species listed in terms of section 56(1) of the Biodiversity Act;

“**Marine Living Resources Act, 1998**” means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

“**Merchant Shipping Act, 1951**” means the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

“**open access protected area**” means a national park or world heritage site which can be entered and traversed by any means where the entry to such national park or world heritage site is not restricted or controlled by any access point or a gate;

“**overnight**” means to be present in a national park or world heritage site between sunset and sunrise;

“**point of entry**” means a place of entry to a special nature reserve, national park or world heritage site;

“**Protected Area Notice**” means a written notification issued by a management authority;

“**protected species**” means any indigenous species naturally found in a protected area and includes any indigenous protected species listed under section 56 of the Biodiversity Act;

“**recreation area**” means any area set aside in terms of the management plan for general recreational use by the public;

“**special use permit**” means a permit granted as contemplated in regulation 35;

“**specific environmental management Act**” means a specific environmental management Act as defined in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“**specimen**” means a specimen as defined in section 1 of the Biodiversity Act;

“**the Act**” means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

“**vehicle**” means any conveyance designed or adapted principally to travel on wheels or tracks;

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

“**vessel**” means any conveyance floating on, in or over water and designed for navigation on or in water, howsoever propelled and includes any canoe, lighter, floating platform, decked boat, carrier vessel, vessel equipped with an inboard or outboard motor or any other craft, whether surface craft or submarine;

“**vulnerable species**” means any indigenous species listed as a vulnerable species under section 56 of the Biodiversity Act;

“**water area**” means the water and the bed of any tidal lagoon, natural lake, tidal river, river or stream, dam, impoundment or wetland or any part thereof, situated within a special nature reserve, national park or world heritage site, and includes the water and the land between the lowest line and the highest line to which the water-level of such tidal lagoon, natural lake, tidal river, dam, impoundment or wetland, river or stream or any part thereof may recede or rise at any time;

“**water ski**” means to ski on or in the water with or without the assistance of any kind of skiing apparatus while the water skier is towed by a vessel by means of a towing-rope, and includes kite-surfing and para-sailing.

CHAPTER 1

APPLICATION OF REGULATIONS

2. Application of regulations

- (1) These Regulations are, unless specified otherwise, applicable to all special nature reserves, national parks and world heritage sites excluding the Vredefort World Heritage Site.

[Subr. (1) substituted by GN R622/2014]

- (2) These Regulations apply to a marine protected area that has been included in a special nature reserve, national park or world heritage site.
- (3) An authorised official is not subject to these Regulations in relation to the performance of their functions or the exercise of their powers and in the course of the performance of their duties or their employment.

CHAPTER 2

PROTECTED AREAS REGISTER

3. Protected areas register

Every management authority must submit to the Minister, within three months after the end of each financial year, information for the protected area register, in the prescribed format,

detailing all protected areas under the control of, or intended to be under the control of, the management authority.

CHAPTER 3

Part 1

Biodiversity management and conservation in a special nature reserve, national park and world heritage site

4. Prohibitions

- (1) No person shall, other than in an open access protected area, in a special nature reserve, national park or world heritage site, without the prior written consent of a management authority, license, permit or receipt -
 - (a) introduce any species or specimen, or part thereof to a special nature reserve, national park or world heritage site;
 - (b) engage in any restricted activity as defined in Regulation 45;
 - (c) intentionally disturb any species or specimen;
 - (d) feed any species or specimen;
 - (e) use any recording of the sound of a species or specimen or the imagery or scent of a species or specimen to attract animals;
 - (f) remove any wood, sand, gravel, stone, sea shell, guano or other material;
 - (g) cut, damage, remove or destroy or be in possession of any plant or any part thereof, including dry wood or firewood;
 - (h) intentionally cause pollution, deface cultural heritage resources, harm or cause death to any individual or population of any protected species;
 - (i) significantly alter or change the sense of place or any environmental, cultural or spiritual values; or
 - (j) remove or be in possession of a cultural artefact
- (2) No person shall, other than with the prior written permission of a management authority and subject to the management plan, open or close the mouth of a tidal lagoon or a tidal river within any special nature reserve, national park or world heritage site.

Part 2

Use of biological resources in a national park or world heritage site

5. Use of biological resources

- (1) A management authority may, subject to the provisions of an approved management plan, by means of the granting of a non-transferable licence or permit or the entering into of a written agreement, on the conditions it deems necessary and against payment of the fees determined by it, grant to any person the right to the sustainable use of identified biological resources in a National Park or World Heritage Site.
- (2) A licence, permit or agreement contemplated in subregulation (1), must-
 - (a) define the land or water area within which the use of the biological resources is granted;
 - (b) indicate the period for which the right contemplated in subregulation (1) is granted; and
 - (c) determine the limits to the use of the biological resources.
- (3) A management authority must demarcate the land or water area contemplated in subregulation (1)(a) in a manner it deems fit.
- (4) A right granted in terms of subregulation (1) may not interfere with the exercise of any right which has been granted to another person in respect of the area contemplated in subregulation (1)(a) or conflict with the purpose for which national park or world heritage site was established.
- (5) A management authority may cancel a right granted in terms of subregulation (1) in respect of the area or part thereof, if such area or part thereof is required for conservation purposes or for purposes approved by the management authority: Provided that the management authority must give 14 days written notice of such cancellation to the holder of the right and that it pays a pro rata portion of the fee in respect of the unexpired period for which the right was granted, to the holder of the right.
- (6) The holder of a right contemplated in subregulation (1), shall not allow, permit or cause any environmental damage, not otherwise normally associated with the sustainable use of biological resources, except with the prior written permission of the management authority.

6. Access to special nature reserve, national park and world heritage site by user of biological resources

- (1) The holder of a right granted in terms of regulation 5(1) may, subject to any condition contained in a licence, permit or agreement, use any road, or path for the reasonable exercise of a right to use biological resources: Provided that -

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- (a) a management authority may close any access road or limit the use thereof for management purposes;
- (b) if a holder of a right fails to remove or repair any obstruction on an access road caused as a result of the exercise of a right, a management authority may undertake such removal or repair and recover the cost in this regard from the holder of the right;
- (c) a management authority may impose restrictions on the type of vehicle, machinery or equipment which is permitted on an access road in order to prevent any environmental or other damage;
- (d) the holder of a right must keep every access road used, reasonable wear excluded, in a good driving condition, and in the case where such holder fails to do so, the management authority may undertake the necessary repairs and recover the cost in this respect from the holder of the right; and
- (e) a holder of a right shall not create or construct any new access road for the removal of biological resources or for any other reason, without the written permission of a management authority.

7. Collection of data

- (1) A management authority must before the end of June of each year submit a return or returns to the Minister in respect of the use of biological resources for the preceding financial year detailing -
 - (a) the number of licences, permits and agreements granted or entered into in respect of the use of biological resources;
 - (b) a description of the biological resources used;
 - (c) the quantities of biological resources harvested;
 - (d) the income generated by the harvesting of biological resources; and
 - (e) the conservation status of the biological resources being exploited.

Part 3

Access to special nature reserves, national parks and world heritage sites

8. Admission

- (1) Any person who has been granted entry into a special nature reserve, national park or world heritage site shall be allowed admission only to a specific area and at designated times as determined by a management authority.

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

- (2) A management authority may close a special nature reserve, national park or world heritage site or any part of a special nature reserve, national park or world heritage site -
- (a) if, in the management authority's opinion -
 - (i) the closure is necessary or desirable for the proper management of the special nature reserve, national park or world heritage site; or
 - (ii) the closure is necessary for the management authority to perform any of its functions in terms of the Act or these Regulations;
 - (b) if a fire ban is in force in an area that includes all or part of the special nature reserve, national park or world heritage site;
 - (c) if the risk of uncontrolled fire in the special nature reserve, national park or world heritage site is, in the management authority's opinion, extreme;
 - (d) if the management authority staff necessary to patrol the special nature reserve, national park or world heritage site are unavailable; or
 - (e) if, in the management authority's opinion, it is in the interest of public safety to close the special nature reserve, national park or world heritage site.
- (3) No person shall, without the permission of the management authority, enter or remain in a special nature reserve, national park or world heritage site that has been closed in terms of subregulation (2).

9. Entrance and accommodation fees

- (1) No person shall enter or remain in a special nature reserve, national park or world heritage site or a part thereof without the payment of an entrance fee as determined by a management authority from time to time.
- (2) Where a fee is determined by a management authority for the hire of accommodation or recreational facilities in a special nature reserve, national park or world heritage site, no person shall enter or remain within the boundaries of the accommodation or recreational facilities unless that person has paid the said fee for the hire of the accommodation or the recreational facilities or has been permitted by the management authority to enter or remain within the boundaries of the accommodation or the recreational facilities.

10. Points of entry and exit

- (1) No person shall, other than in an open access protected area, or subject to the provisions of Section 46 of the Act and regulation 11, enter or leave a special nature reserve, national park or world heritage site at any place other than through an official point of entry or exit, without the written permission of the management authority.

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- (2) Where a public road or railway line passes through a special nature reserve, national park or world heritage site -
- (a) no permission shall be required by a person to pass through the special nature reserve, national park or world heritage site on such a road or railway line to a destination outside the special nature reserve, national park or world heritage site in question; and
 - (b) no person shall be permitted -
 - (i) to leave such a public road; or
 - (ii) to enter into a special nature reserve, national park or world heritage site from such public road or railway line other than in compliance with subregulation (1).

11. Proof of entry

- (1) Where the payment of a fee or the issue of a permit is required for entry to a special nature reserve, national park or world heritage site, a person who enters the special nature reserve, national park or world heritage site in a vehicle must ensure that the receipt for the entrance fee in respect of, or the permit authorising his or her entry into the special nature reserve, national park or world heritage site is displayed at all times in the vehicle in accordance with subregulation (3) until he or she or the vehicle leaves the special nature reserve, national park or world heritage site.
- (2) Where the issue of a permit is required for camping in a special nature reserve, national park or world heritage site, a person who camps in the special nature reserve, national park or world heritage site in or near a vehicle that he or she has travelled in to get to the camp site must ensure that the permit authorising him or her to camp in the special nature reserve, national park or world heritage site is displayed at all times in the vehicle in accordance with subregulation (3) while he or she is camping in or near the vehicle.
- (3) For purposes of these Regulations a receipt for an entrance fee or a permit is displayed in a vehicle only if -
- (a) the receipt or permit is displayed on the inside of the windscreen on the side of the vehicle opposite to the driver's position; or
 - (b) where, because of the design of the vehicle, it is not possible to comply with paragraph (a) the receipt or permit is displayed in a prominent position in or on the vehicle, so that the receipt or permit is facing outwards from the vehicle and can be easily seen and read by a person standing outside the vehicle.
- (4) This regulation does not apply to any person who enters, or camps in, a special nature reserve, national park or world heritage site as the client of a person conducting a tour

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

for a fee or reward if the vehicle concerned is owned by, or is under the control of, a tour operator approved by the management authority.

- (5) Any person who enters a special nature reserve, national park or world heritage site by aircraft or vessel may, after disembarking from such aircraft or vessel, travel by vehicle, without prior written approval or proof of entry, from the landing field or landing within the special nature reserve, national park or world heritage site to the nearest place designated by a management authority, to obtain the necessary proof permitting entry.
- (6) Any person who does not use a vehicle to enter a special nature reserve, national park or world heritage site must display or be in possession of proof of entry in a manner determined by a management authority.

12. Safe entering

No person shall enter or take a vehicle or vessel in a national park or world heritage site onto a place, road, river or water area in an unsafe, reckless or negligent manner.

13. Staying overnight

- (1) No person shall stay overnight in a special nature reserve, national park or world heritage site -
 - (a) without the permission of a management authority;
 - (b) without payment of the applicable fees as determined by the management authority;
 - (c) without having first reported to the designated reception office in a special nature reserve, national park or world heritage site or to an authorised official assigned to perform escort duty;
 - (d) where no accommodation has been reserved or is available for that person;
 - (e) on a houseboat or any vessel without the permission of the management authority;
 - (f) at any place other than a place designated by the management authority.
- (2) No person shall, without the permission of a management authority contemplated in subregulation (1), camp in a special nature reserve, national park or world heritage site except in an area set aside by the management authority for that purpose.

14. Times of entry and travel

No person shall, without the permission of the management authority, enter, leave or travel in a special nature reserve, national park or world heritage site at any time other than the times determined by the management authority from time to time.

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

15. Vehicles

No person shall enter or travel in a special nature reserve, national park or world heritage site except in a vehicle that conforms to the dimensions and other requirements determined by a management authority from time to time.

16. Prohibitions

- (1) No person driving a vehicle in a special nature reserve, national park or world heritage site shall -
 - (a) drive, park, or stop in such a manner that constitutes a nuisance, disturbance, inconvenience or danger to any other person;
 - (b) drive, park or stop in any manner that causes an obstruction, blocks the pathway of a management operation or emergency vehicle;
 - (c) park a vehicle in a place other than in a place designated for that purpose by a management authority;
 - (d) drive or park anywhere except on a designated road or place;
 - (e) damage or act in a manner that could cause damage of any nature whatsoever, including but not limited to, damage to a road, plants or animals;
 - (f) drive or operate any vehicle in a reckless or negligent manner or in a deliberate or intentional disregard for the safety of any person, species, specimen or property of whatever nature.
- (2) No person in a vessel shall, subject to the provisions of the Merchant Shipping Act, enter or be in a special nature reserve, national park, world heritage site, marine protected area or a water area except if that vessel conforms to the dimensions and meets the requirements provided for in internal rules made by a management authority from time to time.

17. Permits for vessels

Any person intending to use a vessel in a water area must apply for a permit for such a vessel in a form determined by a management authority.

18. Operating rules

- (1) No vessel or vehicle, which is propelled by means of a propeller above the water, shall be used in a water area.

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

- (2) No person may paint any vessel in a water area unless the prior written approval by management authority has been obtained.
- (3) No person may dispose of any solid or liquid waste, including motor oil, into a water area other than in places specifically designated by the management authority therefor.
- (4) No person shall, in a special nature reserve, national park or world heritage site, intentionally obstruct, disturb, interrupt or annoy any other person engaged in the proper use of the special nature reserve, national park or world heritage site.
- (5) No person shall, in a special nature reserve, national park or world heritage site, throw, roll or discharge any stone, substance or missile to endanger any person or species or specimen in the special nature reserve, national park or world heritage site.
- (6) No person shall, without the written permission of the management authority in a special nature reserve, national park or world heritage site, deface, paint, write on, cut names or letters in or otherwise make marks or affix bills on trees, rocks, gates, fences, buildings, signs or other property or in any other manner spoil features, buildings or facilities.
- (7) No person, except a person duly authorised thereto by a management authority, shall move, deface or otherwise interfere with a Protected Area Notice, notice-board, notice or other sign-board put on to, affixed to or placed in a special nature reserve, national park or world heritage site by a management authority or by a life-guard in terms of these Regulations.

Part 4

Commercial activities in a national park and a world heritage site

19. Development

- (1) No development contemplated in section 50(5) of the Act shall be implemented -
 - (a) in any area other than an area specifically designated for such development in a management plan; and
 - (b) before a management authority has indicated in writing the nature and extent of the strategic or environmental impact assessment required for the development.
- (2) No commercial activity or activity contemplated in section 50 of the Act, which requires an environmental impact assessment to be undertaken, either in terms of subregulation (1)(b) or under any other law, may be implemented before a management authority has approved, with or without conditions, the environmental impact assessment before it is submitted to the relevant authority for approval.

Part 5

Activities that may be carried out in terms of section 50

20. Authorised activities

- (1) A person may not undertake any of the following activities in a special nature reserve, national park or world heritage site except pursuant to a licence, permit or agreement and subject to the payment of the appropriate fees between that person, or some other person, and the management authority:
- (a) the filming and simultaneous transmitting of photographic images by the use of a webcam or other image recording or transmitting device;
 - (b) the conducting of tours;
 - (c) the conducting of any kind of competition;
 - (d) the selling or hiring of goods or the offering of goods for sale or hire;
 - (e) the provision of, or the offering to provide, any service for a fee or reward;
 - (f) the conducting of speed trials;
 - (g) the conducting of research;
 - (h) an activity of any kind for the purpose of fund raising, personal gain or making a profit;
 - (i) any organised or special event, including sporting or cultural events; or
 - (j) visual imaging of animals for purposes of any virtual hunting or other such activity.

21. Commercial and community activities

A management authority may by means of making an internal rule set aside a part of a national park or world heritage site, as an area in which a particular activity may be undertaken by visitors to the national park or world heritage site, communities or interest groups and shall display the internal rule in which such area is described at the entrance to the national park or world heritage site: provided that the activity does not compromise the purpose for which the national park or world heritage site was established.

22. Other activities

No person shall, without the written permission of a management authority -

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

- (a) use or cause to be used, any loud speaker or similar device or other noisy equipment;
- (b) construct or erect any booth, marquee or other structure; or
- (c) organise or cause to be organised or attend or participate in any public meeting, demonstration or gathering, in a special nature reserve, national park or world heritage site.

Part 6

Use of water areas, land and airspace in a special nature reserve, National park and world heritage site

23. Protected area notice

- (1) A management authority may from time to time and by means of a Protected Area Notice displayed at the entrance to or at other relevant places of a national park or world heritage site -
 - (a) set aside any land, airspace or water area;
 - (b) designate any land or water area as a recreation area;
 - (c) designate any land or water area for any other purpose;
 - (d) prohibit or restrict the use and access of any person, vehicle, vessel, pet or species or specimen to any land or water area or any other place or part thereof; or
 - (e) designate the times and conditions during which and subject to which any sports or other activities may be practised or performed on such land or water area, in a national park or world heritage site or part thereof.
- (2) The management authority may, by Protected Area Notice, designate any area within a special nature reserve, national park or world heritage site as an area within which one or more activities otherwise prohibited in terms of these Regulations may be undertaken, and display a prominent Protected Area Notice to this effect in and around the designated area.
- (3) A Protected Area Notice may impose conditions in relation to the participation in or undertaking of any activity in a special nature reserve, national park or world heritage site and a management authority may vary or revoke a Protected Area Notice at any time by subsequent Protected Area Notice.

24. Recreation areas

- (1) A management authority must within a recreation area display any Protected Area Notice required under these Regulations.

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- (2) In relation to recreation areas, a management authority must -
- (a) ensure that those areas are open to the public between sunrise and sunset, unless specified otherwise in terms of a Protected Area Notice; and
 - (b) prominently display a Protected Area Notice at every entrance to a recreation area indicating -
 - (i) the opening and closing times of that recreation area; and
 - (ii) any internal rules made by the management authority in relation to that recreation area.

25. Prohibitions in water areas

- (1) A management authority may within a special nature reserve, national park or world heritage site restrict or permit any use of or activity in a water area or any part thereof.
- (2) No person shall, without the permission of a management authority, launch, or use, a vessel on a dam, reservoir, lake, river or other body of water in a special nature reserve, national park or world heritage site unless the water has been set aside by the management authority for the use of vessels.

26. Bathing and swimming

No person shall bathe, dive or swim in any area in a national park or world heritage site -

- (a) except where bathing and swimming is permitted; or
- (b) where bathing and swimming is prohibited by a life-guard by means of appropriate signs at both ends of the area, for so long as the state of the water is considered unsafe.

27. Safety ropes

No person shall hang from, sit on, interfere with or cause safety ropes or other devices to sink where such safety ropes or devices are provided for the assistance of bathers in distress or for the protection of bathers.

28. Life saving apparatus

Except in an emergency, no person, with the exception of an authorised official or a life-guard, shall handle, touch or use in any manner a life-saving rope, buoy or other life-saving apparatus installed or maintained in or at a water area, or do anything which will impede the proper working of such life-saving apparatus.

29. Water skiing

- (1) Subject to subregulation (2) no person shall water ski in a water area other than in a place and at times permitted by a management authority.
- (2) No person shall water ski in a water area between sunset and sunrise.

30. Prohibitions on land and in airspace

No person shall, except with the prior written permission of a management authority -

- (a) engage in the sport of climbing rock faces;
- (b) engage in the sport of parachuting or abseiling;
- (c) use a hang glider or any other kind of glider;
- (d) launch or fly a hot air balloon;
- (e) fly model planes or gliders;
- (f) engage in the sport of any kind of boarding;
- (g) operate any motorised vehicle for recreational purposes; or
- (h) drive a vehicle off-road or off designated roads or tracks, in a national park or world heritage site except in an area set aside by the management authority for that purpose.

Part 7

Community-based natural resource utilisation

31. Use of biological resources

A management authority may, by means of the granting of a license or permit or the entering into of a written agreement, on the conditions it deems necessary and against payment of the fees determined, if any, grant to any local community the right to the sustainable use of biological resources on the same basis as set out in regulation 5(1).

32. Access

Notwithstanding any other provision of these Regulations, and in accordance with a management plan or co-management agreement, a management authority may by means of the granting of a license, permit or the entering into of an agreement, on the conditions it

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

deems necessary and against payment of the fees determined, if any, grant a local community access to part or parts of a special nature reserve, national park or world heritage site for cultural, spiritual, heritage or religious purposes.

33. Register of local communities

- (1) A management authority of a national park or world heritage site must, within 12 months from the date on which these Regulations are promulgated or from the date that the national park or world heritage site is assigned to the management authority in terms of section 38(1) of the Act, whichever date is the later, establish by open invitation and thereafter maintain a register of local communities with rights, in that national park or world heritage site.
- (2) A management authority must review and, if necessary, update the register contemplated in subregulation (1) at least every two years.

Part 8

General

34. Research and monitoring

- (1) No person shall, without the written permission of a management authority, carry out scientific research in a special nature reserve, national park or world heritage site.
- (2) Any person undertaking research or monitoring projects in a special nature reserve, national park or world heritage site must -
 - (a) submit a research project proposal to a management authority contemplated in subregulation (1) in a format determined by the management authority;
 - (b) submit all data and information gathered to the management authority in a format determined by and at stages of the project specified by the management authority;
 - (c) submit copies of all reports and publications as a result of the research project to the management authority within four weeks of their publication; and
 - (d) pay an administration fee to the management authority if required to do so by the management authority.

35. Special use permits

- (1) A management authority may determine activities in special nature reserves, national parks and world heritage sites generally or in specific special nature reserves, national parks or world heritage sites for which special use permits are required.

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

- (2) A management authority may impose in special use permits contemplated in subregulation (1) such conditions as the management authority deems appropriate from time to time, including but not limited to, the imposition of fees for the activities contemplated in subregulation (1).
- (3) A management authority must include a list of activities for which a special use permit is required, the conditions that pertain to such permit for each activity and the fees, if any, to be paid for such a permit in the internal rules applicable to the special nature reserve, national park or world heritage site in question.

36. Interference with management authority equipment

No person shall, in a special nature reserve, national park or world heritage site, interfere with, put into operation, damage, climb on or board any vehicle, vessel, dredging apparatus or any other implement which is the property of or is used by a management authority or its agents, without the prior permission of the management authority, or its agents.

37. Misuse of facilities

- (1) No person shall interfere with, misuse, damage or use in conflict with any management authority directions any building, signage, convenience shelter, changing room, pier, landing stage, raft, buoy or other facility or structure provided or erected by a management authority.
- (2) No person shall fail to comply with the directions of any notice affixed by a management authority to a building, structure or facility contemplated in subregulation (1).
- (3) No person shall block or restrict any access to any road or other point of entry to any special nature reserve, national park or world heritage site or within the special nature reserve, national park or world heritage site.

CHAPTER 4

Part 1

Prohibition or restriction of activities having an adverse effect in a special nature reserve, national park or world heritage site

38. Prohibited activities

A person is not in contravention of any provision of the Regulations in this chapter if that person needs to undertake the prohibited activity -

- (a) to perform his or her obligations as an employee, agent or contractor of a management authority under his or her contract with, or mandate from, the management authority or to achieve the purposes of these Regulations;

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- (b) to carry out public duties as an employee, agent or contractor or an organ of State within a special nature reserve, national park or world heritage site; or
- (c) to fulfil his or her duties as an authorised official.

39. Interference with soil or substrate

- (1) No person shall, except with the prior written permission of a management authority -
 - (a) remove from a special nature reserve, national park or world heritage site any-
 - (i) soil, rock, mineral or similar material;
 - (ii) wood, mulch or other dead vegetation;
 - (iii) fossil, archaeological remains or cultural artefacts;
 - (iv) ritual or spiritual remains;
 - (v) coral or shells; or
 - (vi) a shipwreck, flotsam or jetsam.
 - (b) dig or intentionally disturb any soil or similar material in a special nature reserve, national park or world heritage site; or
 - (c) intentionally disturb any -
 - (i) wood, mulch, peat or other dead vegetation or animal in a special nature reserve, national park or world heritage site;
 - (ii) termite mounds;
 - (iii) fossil, shell midden, archaeological remains or paleontological specimens or meteorites in a special nature reserve, national park or world heritage site; or
 - (iv) any of the marine components contemplated in paragraph (a); or
 - (v) any object or material that is or was used for any ritual, spiritual or other practice.
- (2) No person shall construct an impoundment or weir on any river or river bed or abstract any water from any impoundment or weir on any river or in any river bed within a special nature reserve, national park or world heritage site, nor abstract any water by means of a pump, pipes, gravitation or any other means, located outside the boundary of a special nature reserve, national park or world heritage site, from any river or river bed forming a

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

boundary with a special nature reserve, national park or world heritage sites without the written permission of a management authority and without conducting an environmental impact assessment.

40. Littering

No person shall, in a special nature reserve, national park or world heritage site -

- (a) deposit or leave any litter, bottle, broken glass, china, pottery, plastic article, rubbish, refuse, seeds, fruit or vegetable matter or other waste material, except in an area or receptacle provided for that purpose;
- (b) deposit, discharge or leave any noxious, smelly, offensive or polluting substance, matter or thing;
- (c) deposit or leave any offal, dead species or specimen or dung;
- (d) deposit, except in any receptacle provided for litter, any domestic garbage;
- (e) intentionally break any article of glass, china, pottery, plastic or other brittle material;
- (f) deposit, discharge or leave any mineral, mineral waste or other industrial waste or by-product thereof; or
- (g) discard or discharge any toxic chemical or substance, pharmaceutical substance, including biocides, or any other pollutant or harmful substance.

41. Pollution of water

No person shall, at any time or in any manner, including by the use of detergents, pollute any water in a river, spring, pan, well, borehole, groundwater, dam, reservoir or lake in a special nature reserve, national park or world heritage site.

42. Removal and dumping in water area

No persons shall, without the prior written consent of a management authority and subject to the conditions imposed by the management authority, in any manner -

- (a) remove, dredge, pump or move any sand, soil or stones from a water area;
- (b) deposit, dump or throw sand, soil, stones or other material of any kind in a water area; or
- (c) construct any retaining wall or weir in a water area.

43. General prohibitions

No person shall in a special nature reserve, national park or world heritage site -

- (a) offer any show or entertainment, conduct any business or trade or collect any money from the public, unless the prior written permission of a management authority is obtained;
- (b) unlawfully occupy, move into, inhabit or use any existing land, building or structure;
- (c) damage any property of the management authority;
- (d) damage, remove or destroy any fences or gates or climb over or through such fences or gates;
- (e) light or cause any open fire to be started, or make use of an open fire, unless such fire is properly contained in a fireplace or container made available by the management authority for that purpose or unless the management authority otherwise authorises;
- (f) place, throw, dump or let out any refuse, rubbish, used containers, effluent, toilet waste or any objectionable matter;
- (g) intentionally or negligently cause a fire or discard any burning object in any place where it may set fire to any other object or otherwise act in a manner likely to cause a fire other than at a place where the making of a fire is permitted by a management authority;
- (h) carry on any agricultural or gardening activities without the prior written approval of the management authority and subject to the conditions which the management authority may lay down from time to time;
- (i) allow any species or specimen to graze in a special nature reserve, national park or world heritage site or enter upon it without the prior written approval of the management authority and subject to the conditions which the management authority may lay down from time to time;
- (j) place, display or distribute any advertisement, promotional material or notice anywhere in a special nature reserve, national park or world heritage site without the prior written permission of the management authority;
- (k) affix to or, in any manner whatsoever, make on any tree or any object not belonging to that person any name, letter, figure, symbol, mark, picture, sign or notice or otherwise damage any tree or other object;
- (l) intentionally or negligently cause any damage to any object of geological, archaeological, historical, ethnological, oceanographic, educational or other scientific interest;

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

- (m) at any time play any radio, compact disc player, music system, musical instrument or in any way whatsoever cause any noise in a manner that is likely to disturb any species or specimen or other person; or
- (n) behave in an offensive, improper, indecent or disorderly manner.

44. Firearms and dangerous weapons

- (1) Subject to the provisions of section 46 of the Act, no person other than an authorised official or any other person acting under the specific authority of a management authority shall -
 - (a) subject to the provisions of paragraph (b) convey into or within a special nature reserve, national park or world heritage site or be in possession of any firearm or dangerous weapon or any explosive, trap or poison in a special nature reserve, national park or world heritage site;
 - (b) a person in possession of a valid licence for a firearm may convey that firearm into a special nature reserve, national park or world heritage site, other than an open access protected area, subject to the following conditions:
 - (i) The person contemplated in paragraph (a) must hand in all firearms in his or her possession to an authorized official at the first checkpoint of a management authority, whether such checkpoint is an entrance gate, a rest camp or an office of an authorized official, as the case may be, for the purposes contemplated in subparagraph (ii);
 - (ii) the person contemplated in subparagraph (i) must make the firearm safe and remove the magazine and any bullets that might be in the chamber of the firearm before handing the firearm to the authorised official;
 - (iii) the authorised official to whom the firearm is handed as contemplated in subparagraph (ii), must ensure that the firearm is not loaded and must seal the firearm in such a manner that the firearm cannot be used without the seal being broken; and
 - (iv) when leaving a special nature reserve, national park or world heritage site, the person contemplated in subparagraph (i) must hand over the firearm for inspection to the authorized official at the checkpoint contemplated in subparagraph (i) to determine whether any seal on the firearm is broken; found to be broken then the owner or possessor of the firearm shall be guilty of an offence;
 - (v) all authorised officials and people residing within a special nature reserve, national park or world heritage site shall declare all firearms in their possession

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

in a special nature reserve, national park or world heritage site to the head of that special nature reserve, national park or world heritage site who shall maintain a register of such firearms at all times;

- (2) No person may discharge a firearm within a special nature reserve, national park or world heritage site, except -
- (a) if that person is authorised by a management authority thereto;
 - (b) for the discharge of a blank by a life-guard during an organized competition or by any other person authorised by the management authority, during a sports meeting in a water area;
 - (c) in connection with the collection of specimens of aquatic life or animals for scientific purposes, subject to the written consent of the management authority;
 - (d) to give a distress signal;
 - (e) with the prior approval of the management authority.

Part 2

Prohibition or restriction of the use of biological resources in a special nature reserve, national park and world heritage site

45. Restricted activities

- (1) No person shall, without the prior written authorisation of a management authority, within a special nature reserve, national park or world heritage site undertake, support or participate in any restricted activity.
- (2) For purposes of subregulation (1) a restricted activity means –
- (a) in relation to a specimen of a protected species -
 - (i) hunting, catching, capturing or killing any living specimen of a protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;

[Subpara. (i) substituted by GN R622/2014]

- (ii) gathering, collecting or plucking any specimen of a protected species;

[Subpara. (ii) substituted by GN R622/2014]

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

- (iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a protected species;

[Subpara. (iii) substituted by GN R622/2014]

- (iv) possessing or exercising physical control over any specimen of a protected species;

[Subpara. (iv) substituted by GN R622/2014]

- (v) growing, breeding or in any other way propagating any specimen of a protected species, or causing it to multiply;

[Subpara. (v) substituted by GN R622/2014]

- (vi) conveying, moving or otherwise translocating any specimen of a protected species;

[Subpara. (vi) substituted by GN R622/2014]

- (vii) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a protected species; or

[Subpara. (vii) substituted by GN R622/2014]

- (viii) luring or baiting a specimen in or from a national park or world heritage site;

- (ix) any other prescribed activity which involves a specimen of a protected species;

[Subpara. (ix) substituted by GN R622/2014]

(b) in relation to a specimen of an alien species or listed invasive species -

- (i) importing into a special nature reserve, national park or world heritage site, including introducing from the sea, any specimen of an alien or listed invasive species;

- (ii) possessing or exercising physical control over any specimen of an alien or listed invasive species;

- (iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;

- (iv) conveying, moving or otherwise translocating any specimen of an alien or listed invasive species; and

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- (v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; and
 - (vi) any other prescribed activity which involves a specimen of an alien or listed invasive species;
- (c) in relation to cultural heritage elements -
- (i) touching, removing, altering or interfering with cultural resources;
 - (ii) preventing participation in living cultural heritage and
 - (iii) preventing the cultural or spiritual development of people, groups or communities.

Part 3

Prohibition or restriction of land use in a special nature reserve, national park and world heritage site

46. Buildings and improvements

- (1) No person shall, without the prior written approval of a management authority, erect, construct or transform or cause to be erected, constructed or transformed -
 - (a) any building or any other improvement, including but not limited, to a building or structure of any kind, jetty, dock, pier, landing stage, landing float, marker, anchor buoy, raft, fence or any obstruction, bridge, pontoon, road or crossing in respect of a building or other immovable property;
 - (b) on any private land in a special nature reserve, national park or world heritage site other than in accordance with the management plan for the area and the plans, specifications and conditions approved by the management authority.
- (2) If any erection, construction or transformation contemplated in subregulation (1), takes place in conflict with the conditions laid down by the management authority, the management authority may cause the building, structure or improvement concerned to be demolished, removed and the site rehabilitated and shall be entitled to recover the costs thereof from the person who has erected, constructed or transformed it or caused it to be erected, constructed or transformed.
- (3) Any person who has applied in terms of subregulation (1) for the erection of a building or any other improvement in respect of a building or other immovable property must, if required to do so by the management authority -

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

- (a) in the case where prior environmental authorisation is not required in terms of any law, employ an independent environmental consultant to conduct an assessment of the proposed erection or improvement in compliance with the minimum requirements set by the Act, or other applicable legislation, and to submit the findings of the assessment to the management authority;
- (b) in instances where prior environmental authorisation is compulsory, provide the management authority with such environmental authorisation before the management authority considers the application.

47. French drains and pit latrines

No person shall, without the prior written approval of a management authority accompanied by a site plan, establish or in any way alter, extend or enlarge any french drain system, pit latrine or any other sewerage disposal system on any land situated within a special nature reserve, national park or world heritage site or replace it with another french drain system, pit latrine or any other sewerage disposal system.

48. Holiday resort, caravan park, camping or picnic site

No person other than a management authority shall erect, establish, transform, extend or enlarge any holiday resort, caravan park or camping or picnic site situated on private land within a national park or world heritage site at which members of the public can stay, camp or picnic upon payment of a fee, other than in accordance with the management plan for the national park or world heritage site and the written approval of the management authority.

Part 4

General

49. Pets

- (1) No person shall, except on conditions determined by a management authority from time to time, allow any dog, cat or other pet belonging to or under the care of that person to enter and remain in or enter or remain in a special nature reserve, national park or world heritage site.
- (2) Any dog, cat or other pet contemplated in subregulation (1) which is found outside the permitted area referred to in subregulation (1) and which is not in the care of any person, may either be caught and removed to a pound or destroyed at the discretion of the management authority.
- (3) Any dog, cat or other pet suspected of hunting or in pursuit of any animal may be impounded or destroyed during or after such act.

CHAPTER 5

ADVISORY COMMITTEES

50. Establishment of advisory committee

A management authority may establish one or more advisory committees in respect of a special nature reserve, national park or world heritage site.

51. Procedure

In establishing an advisory committee contemplated in regulation 50 a management authority must -

- (a) invite community organisations, non-governmental organisations, residents of and neighbouring communities to the special nature reserve, national park or world heritage site to nominate persons who could be taken into consideration when members of the advisory committee are appointed;
- (b) set the minimum requirements and other criteria which it must take into consideration when deciding which persons to appoint as members of the advisory committee; and
- (c) determine a method which will enable the invitation contemplated in paragraph (a) above to reach the greatest number of residents of and, neighbouring communities to the special nature reserve, national park or world heritage site.

52. Closing date for nominations

An invitation contemplated in regulation 51(a) must specify the method of submission and a date by which the nominations contemplated in subregulation 51 (a) must reach a management authority.

53. Composition

A management authority must, after considering any nominations submitted in terms of subregulation 51(a), appoint members to the advisory committee: Provided that at least one employee of a management authority, nominated by the management authority, must be an ex officio member of the advisory committee: Provided further that any appointment of a member made in respect of any particular advisory committee must be based on a real interest demonstrated by the member in respect of the relevant special nature reserve, national park or world heritage site.

54. Mandate

A management authority must define the specific mandate of any advisory committee in writing in specific terms. The specific terms must include the terms of reference, the method

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES

of communicating advice, the acceptance and rejection of advice offered, the appointment and removal of committee members and the support to be provided together with any remuneration payable and its terms.

55. Term of office

A member of an advisory committee shall be appointed by a management authority for a period not exceeding three years.

CHAPTER 6

NORMS AND STANDARDS

56. Internal rules

(1) A management authority must, when making internal rules in terms of section 52(1) of the Act consider at least the following:

- (a) The impact of the internal rules on the provisions of any management plan approved by the Minister in terms of section 39(2) of the Act; and
- (b) the environmental, social and financial effect of the internal rule on the environment.

57. Management plans

(1) A management authority must have due regard for and seek to integrate and harmonise its management plans with the requirements of the Act, and, where applicable -

- (a) plans in terms of other national legislation;
- (b) provincial government planning and development plans;
- (c) regional planning and development plans;
- (d) local government planning and development plans; and
- (e) existing planning and development plans of any other relevant management authority.

(2) In preparing a management plan and in addition to the requirements of section 41 of the Act, a management authority must have due regard for -

- (a) terms and conditions for conducting activities;

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- (b) prohibited activities;
 - (c) an assessment of the activities and an evaluation of material threats arising therefrom;
 - (d) an assessment of equitable access in respect of such activities;
 - (e) the ability of such activity to attract visitors to the national park or world heritage site; and
 - (f) the sense of place, which the management authority must define in a separate section in the management plan prepared for such special nature reserve, national park or special nature reserve.
- (3) In the preparation of a management plan, a management authority must follow the format and adhere to the guidelines issued for the preparation and presentation of management plans by the Minister.

58. Planning

All existing planning measures in connection with any special nature reserve, national park or world heritage site remain in force until a management plan for a special nature reserve, national park or world heritage site becomes effective in accordance with the Act: Provided that where land is to be incorporated into a special nature reserve, national park or world heritage site the planning measures in respect of the special nature reserve, national park or world heritage site into which the land is to be incorporated applies as if the land were considered to have been incorporated in preparing the management plan.

59. Revenue requirements

- (1) A management authority must, when determining its revenue requirements on which licence, permit or agreed fees are based take into account at least the need to -
- (a) recover the costs of contracted in professional services;
 - (b) recover overhead, operational and maintenance costs;
 - (c) recover the cost of capital not financed through any grant, subsidy or donation;
 - (d) provide for the replacement, refurbishment and extension of any facilities;
 - (e) provide for the replacement, refurbishment and extension of any facilities; and
 - (f) and ensure that there are adequate systems for monitoring such costs.

CHAPTER 7

BIOPROSPECTING

60. Bioprospecting

No person shall undertake any manner or form of bioprospecting in a special nature reserve, national park or a world heritage site without the prior written authorisation of a management authority and subject to such conditions and against the payment of a fee as determined by the management authority.

CHAPTER 8

FINES AND PENALTIES

61. Offences

Any person who -

- (a) contravenes or fails to comply with any provisions of these Regulations;
- (b) fails to comply with any Protected Area Notice, an internal rule, or other document issued or displayed in terms of these Regulations;
- (c) fails to comply with any lawful instruction given in terms of an internal rule or these Regulations; or
- (d) obstructs or hinders any authorised official in the execution of his or her duties under these Regulations, shall be guilty of an offence.

62. Lawful instructions

Any person in a special nature reserve, national park or world heritage site who fails to comply with any internal rule issued by the management authority and in so doing-

- (a) hinders, troubles, intimidates, or obstructs a management authority or an authorised official in the execution of its or his or her duties or the performance of its or his or her functions under these Regulations; or
- (b) violates, refuses or fails to obey or comply with any prohibition, request or instruction imposed by these Regulations or by the management authority or authorised official- shall be guilty of an offence.

63. Eviction

- (1) If any person in a special nature reserve, national park or world heritage site -

REGULATIONS FOR THE PROPER ADMINISTRATION OF SPECIAL NATURE RESERVES,
NATIONAL PARKS AND WORLD HERITAGE SITES OASTAL AREA

- (a) commits or has committed an offence in terms of the Act, or these Regulations, any other Regulations applicable to special nature reserves, national parks or world heritage sites or the internal rules; or
 - (b) fails to pay a fine imposed in terms of the Act, these or other Regulations or internal rules within the prescribed time; or
 - (c) acts or has acted in an improper manner which substantially offended any other person in the special nature reserve, national park or world heritage site; an authorised official may, in addition to any further action that may be taken and/or penalty that may be imposed, withdraw any permission granted in terms of these Regulations and request such person to leave the special nature reserve, national park or world heritage site, whereupon that person must leave the special nature reserve, national park or world heritage site within a fixed time and by the shortest route open to the public.
- (2) Where any person is requested to leave a special nature reserve, national park or world heritage site as contemplated in subregulation (1), the holder of any proof of entry authorising that person to enter into or be in a special nature reserve, national park or world heritage site must on demand, hand over the proof of entry to the official concerned, who shall withdraw the permission to enter and record the place and date of such withdrawal by endorsement on the said documents.
- (3) In addition to any other penalty that may be imposed, all money already paid to a management authority by the person contemplated in subregulation (2) to enter or be in a special nature reserve, national park or world heritage site shall be forfeited to the management authority on withdrawal of the permission contemplated in subregulation (2) to enter referred to above.

64. Penalties

- (1) Any person who contravenes or fails to comply with-
- (a) a provision of these Regulations;
 - (b) a condition mentioned in a licence, permit or agreement issued or entered into in terms of these Regulations; or
 - (c) a prohibition, instruction, rule or order imposed, given or issued under these Regulations;

is guilty of an offence and liable in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.

[Subs. (1) substituted by GN R622/2014

**NATIONAL ENVIRONMENTAL MANAGEMENT:
PROTECTED AREAS ACT 57 OF 2003**

GNR 99 OF 8 FEBRUARY 2012

**REGULATIONS FOR THE PROPER ADMINISTRATION OF NATURE
RESERVES, 2012**

SCHEDULE

1. Definitions

**CHAPTER 1
APPLICATION AND INFORMATION**

2. Application of regulations
3. Information for the Register of protected areas

**CHAPTER 2
POWERS AND RESPONSIBILITIES OF MANAGEMENT AUTHORITIES**

4. Functions
5. Commercial and community activities
6. Protected area notice
7. Recreational areas
8. Internal rules

**CHAPTER 3
ESTABLISHMENT OF ADVISORY COMMITTEES FOR NATURE RESERVES**

9. Establishment of advisory committee
10. Procedure
11. Closing date for nominations
12. Composition
13. Mandate
14. Term of office

**CHAPTER 4
BIODIVERSITY MANAGEMENT AND CONSERVATION IN NATURE RESERVES**

15. Monitoring and reporting

CHAPTER 5
THE USE OF BIOLOGICAL RESOURCES IN NATURE RESERVES

16. Use of biological resources
17. Community based natural resources utilization
18. Authorization for use of biological resources

CHAPTER 6
ACCESS TO NATURE RESERVES

19. Access to nature reserve by user of biological resources
20. Admission
21. Entrance and accommodation in a nature reserve
22. Points of entry and exit
23. Proof of entry
24. Safe entering
25. Staying overnight
26. Times of entry and travel
27. Vehicles

CHAPTER 7
USE OF WATER AREA IN A NATURE RESERVE

28. Permits for vessels
29. Bathing, diving and swimming
30. Safety ropes
31. Life saving apparatus
32. Water skiing

CHAPTER 8
RESTRICTED ACTIVITIES

33. Activities which may have an adverse effect in the nature reserve
34. Specified activities
35. Research and monitoring
36. Interference with soil or substrate
37. Use of biological resources in nature reserves
38. Bio-prospecting
39. Buildings and improvements
40. French drains, pit latrines and other sewerage disposal systems
41. Holiday resort, caravan park, camping or picnic site
42. Land and in airspace

- 43. Water areas
- 44. Removal and dumping in water areas
- 45. Pets in nature reserves
- 46. Firearms and dangerous weapons
- 47. General restrictions

CHAPTER 9 **PROHIBITED ACTIVITIES**

- 48. Prohibitions relating to vehicles
- 49. Prohibitions in relation to use of water area
- 50. Prohibitions relating to development
- 51. Littering and pollution

- 52. Pollution of water
- 53. General prohibitions

CHAPTER 10 **OFFENCES**

- 54. Offences

CHAPTER 11 **SHORT TITLE AND COMMENCEMENT**

- 55. Short title and commencement

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context otherwise indicates-

“**accommodation**” means facilities of any nature for the accommodation of day and overnight visitors;

“**alien species**” has the meaning assigned to it in the Biodiversity Act;

“**angle**” means-

- (a) to catch fish by using a line and fish-hook, whether or not a rod is used; and

REGULATIONS FOR THE PROPER ADMINISTRATION OF NATURE RESERVES, 2012

- (b) the use of a landing-net to land, or a keep-net to keep fish caught in accordance with the method as described; and

“**angling**” has corresponding meaning;

“**authorised person**” means an employee of a management authority, or any other person, acting as such on the written authorisation of a management authority and includes an environmental management inspector;

“**bioprospecting**” has the meaning assigned to it in section 1 of the Biodiversity Act;

“**community-based natural resource management**” means in relation to indigenous biological resources, any utilisation of indigenous biological resources by a community for sustainable harvesting, traditional use or commercial purposes;

“**dangerous weapon**” means any object, other than a firearm, which could cause serious bodily injury in respect of people or animals;

“**development**” means any physical intervention, excavation or action, other than that caused by natural forces, which may result in a change in the, appearance or physical nature of a site in a nature reserve or influence its stability and future well-being, including -

- (a) the construction, alteration, demolition, removal or change of use of a site or a structure on the site;
- (b) the carrying out of any works on, over or under the site;
- (c) the construction or putting up for display of signs or notice boards;
- (d) any change to the natural or existing condition or topography of land; and
- (e) any removal, physical disturbance, clearing or destruction of trees or vegetation or the removal of topsoil;

“**employee**” means a person in the employ of a management authority;

“**firearm**” has the meaning assigned to it in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000);

“**in situ conservation**” means the process of protecting plant or animal species in their natural habitat.;

“**internal rules**” means rules made under section 52 of the Act;

“**invasive species**” has the meaning assigned to it in section 1 of the Biodiversity Act;

REGULATIONS FOR THE PROPER ADMINISTRATION OF NATURE RESERVES, 2012

“**lifeguard**” means a person employed in that capacity or appointed by a management authority;

“**Merchant Shipping Act**” means the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

“**open access protected nature reserve**” means a nature reserve which can be entered and traversed by any means where the entry to such nature reserve is not restricted or controlled by any access point or a gate;

“**point of entry**” means a place of entry to a nature reserve, including, but not limited to access gates;

“**point of exit**” means a place of exit from a nature reserve, including, but not limited to exit gates;

“**Protected Area Notice**” means a written notification issued by a management authority;

“**protected species**” means any indigenous species naturally found in a protected area and includes any listed threatened or protected species;

“**recreation area**” means any area set aside in terms of the management plan for general recreational use by the public;

“**specimen**” has the meaning assigned to it in [section 1](#) of the Biodiversity Act;

“**stay overnight**” means to be present in a nature reserve for the period between sunset and sunrise;

“**the Act**” means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

“**vehicle**” means any conveyance designed or adapted principally to travel on wheels or tracks;

“**vessel**” means any conveyance floating on, in or over water and designed for navigation on or in water, howsoever propelled and includes any canoe, lighter, floating platform, decked boat, carrier vessel, or any vessel equipped with an inboard or outboard motor or any other craft, whether surface craft or submarine;

“**water area**” means the water and the bed of any tidal lagoon, natural lake, tidal river, river or stream, dam, impoundment or wetland or any part thereof, situated within a nature reserve, and includes the water and the land between the lowest line and the highest line to which the water-level of such tidal lagoon, natural lake, tidal river, dam, impoundment or wetland, river or stream or any part thereof may recede or rise at any time;

“**water ski**” means to ski on or in the water with or without the assistance of any kind of skiing apparatus while the water skier is towed by a vessel by means of a towing-rope, and includes kite-surfing and para-sailing.

CHAPTER 1

APPLICATION AND INFORMATION

2. Application of regulations

- (1) These Regulations are, unless specified otherwise, applicable to all nature reserves.
- (2) A member of the management authority is not in contravention of any provision of the Regulations if that member needs to undertake the prohibited activity-
 - (a) to perform his or her obligations to achieve the purpose of these Regulations;
 - (b) to carry out public duties as a member of the management authority within a nature reserve; or
 - (c) to fulfil his or her duties.

3. Information for the Register of Protected Areas

Every management authority must submit to the Minister, within three months after the end of each financial year (31 March each year), information for the Register of Protected Areas, detailing all nature reserves under the control of, or intended to be under the control of, the management authority.

CHAPTER 2

POWERS AND RESPONSIBILITIES OF MANAGEMENT AUTHORITIES

4. Functions

- (1) The management authority may in managing the nature reserve-
 - (a) manage breeding and cultivation programmes, and reserve areas in a nature reserve as breeding places and nurseries;
 - (b) sell, exchange or donate any animal, plant or other organism occurring in a nature reserve, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to re-introduce into a specific nature reserve;

- (c) undertake and promote research;
- (d) control, remove or eradicate any species or specimens of species which it considers undesirable to protect and conserve in a nature reserve or that may negatively impact on the biodiversity of the nature reserve;
- (e) carry out any development and construct or erect any infrastructure necessary for the management of a nature reserve, subject to an environmental authorization in terms of section 24 of National Environmental Management Act and the management plan;
- (f) allow visitors to a nature reserve;
- (g) take reasonable steps to ensure the security and well-being of visitors and staff;
- (h) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;
- (i) carry on any business or trade or provide other services for the convenience of visitors and staff, including the sale of liquor;
- (j) authorise any person, subject to such conditions as it may determine, to-
 - (i) carry on any business or trade, or provide any service, which the management authority may carry on or provide in terms of this section; and
 - (ii) provide the infrastructure for such business, trade or service;
- (k) by agreement with-
 - (i) a municipality, provide any service in a nature reserve for the management of the nature reserve which that municipality may be mandated to provide in terms of legislation; or
 - (ii) any other organ of state, perform a function in a nature reserve which that organ of state may perform in terms of legislation; or
- (l) issue Protected Area Notices.

5. Commercial and community activities

A management authority may, in terms of the management plan, by means of making an internal rule set aside a part of a nature reserve, as an area in which a particular activity may be undertaken by visitors to the nature reserve, communities or interest groups and must display the internal rule in which such area is described at the entrance to the nature reserve: Provided that the activity does not compromise the purpose for which the nature reserve was established.

6. Protected Area Notice

- (1) In relation to a nature reserve, a management authority may from time to time and by means of a Protected Area Notice displayed at the entrance to or at other relevant places of a nature reserve-
 - (a) set aside any land or water area;
 - (b) designate any land or water area as a recreation area;
 - (c) designate any land or water area for any purpose other than recreation;
 - (d) prohibit or restrict the use and access of any person, vehicle, vessel, pet or species or specimen to any land or water area or any other place or part thereof; or
 - (e) designate the times and conditions during which and subject to which any sports or other activities may be practised or performed on such land or water area.
- (2) A Protected Area Notice may impose conditions in relation to the participation in or undertaking of any activity in a nature reserve and a management authority may vary or revoke a Protected Area Notice at any time by a subsequent Protected Area Notice.

7. Recreational areas

- (1) A management authority must within a recreation area display any Protected Area Notice required under these Regulations.
- (2) In relation to recreation areas, a management authority must prominently display a Protected Area Notice at every entrance to a recreation area indicating -
 - (a) the opening and closing times of that recreation area; and
 - (b) any internal rules made by the management authority in relation to that recreation area.

8. Internal rules

A management authority must, when making internal rules in terms of section 52(1) of the Act, consider at least the following:

- (a) The impact of the internal rules on the provisions of any management plan approved by the Minister in terms of section 39(2) of the Act; and
- (b) the environmental, social and financial effect of the internal rule on the environment.

CHAPTER 3

ESTABLISHMENT OF ADVISORY COMMITTEES FOR NATURE RESERVES

9. Establishment of advisory committee

A management authority may establish one or more advisory committees in respect of a nature reserve.

10. Procedure

In establishing an advisory committee contemplated in regulation 9 a management authority must-

- (a) invite community organisations, non-governmental organisations, residents of and neighbouring communities to the nature reserve to nominate persons, who could be taken into consideration when members of the advisory committee are appointed;
- (b) set the minimum requirements and other criteria which it must take into consideration when deciding which persons to appoint as members of the advisory committee; and
- (c) determine a method which will enable the invitation contemplated in paragraph (a) to reach the greatest number of residents of and, neighbouring communities to the nature reserve.

11. Closing date for nominations

An invitation contemplated in regulation 10 must specify the method of submission and a date by which the nominations contemplated in sub-regulation 10(a) must reach a management authority.

12. Composition

A management authority must, after considering any nominations submitted in terms of regulation 10, appoint members to the advisory committee: Provided that at least one employee of a management authority, nominated by the management authority, must be an ex officio member of the advisory committee: Provided further that any appointment of a member made in respect of any particular advisory committee must be based on a real interest demonstrated by the member in respect of the relevant nature reserve.

13. Mandate

A management authority must define the specific mandate of any advisory committee in writing in specific terms. The specific terms must include the terms of reference, the method of communicating advice, the acceptance and rejection of advice offered, the appointment and removal of committee members and the support to be provided together with any remuneration payable and its terms.

14. Term of office

A member of an advisory committee may be appointed by a management authority for a period determined by the management authority that may not exceed three years.

CHAPTER 4

BIODIVERSITY MANAGEMENT AND CONSERVATION IN NATURE RESERVES

15. Monitoring and reporting

Management authority to monitor and report annually, before the end of June each year to the Minister on the status of implementation of the management plan and may include the following:

- (a) an assessment of the achievement of or contributions to the management objectives of the nature reserve.

CHAPTER 5

THE USE OF BIOLOGICAL RESOURCES IN NATURE RESERVE

16. Use of biological resources

A management authority may, subject to the provisions of an approved management plan, by means of the granting of a non-transferable written authorisation or the entering into of a written agreement, on the conditions it deems necessary, grant to any person the right to the sustainable, monitored use of identified biological resources in a nature reserve.

17. Community based natural resource utilization

A management authority may, by means of the granting of a written authorization or the entering into of a written agreement, and on the conditions it deems necessary, grant to any local community the right to the sustainable use of biological resources on the same basis as set out in regulation 16.

18. Authorization for use of biological resources

- (1) A written authorization or agreement contemplated in regulation 16 or 17, must-
 - (a) not be in conflict with the purpose for which nature reserve was established;
 - (b) define the land or water area within which the use of the biological resources is granted;

- (c) indicate the period for which the right contemplated in regulation 16 and 17 is granted; and
 - (d) determine the limits to the use of the biological resources.
- (2) The management authority must demarcate the land or water area contemplated in sub-regulation (1)(b) in a manner it deems fit.
 - (3) An authorization granted in terms of regulation 16 and 17 may not interfere with the exercise of any authorization which has been granted to another person in respect of the area contemplated in sub-regulation (1)(b).
 - (4) An authorization granted in terms of regulation 16 and 17 must include a stipulated notice period for cancellation of the right or amendment of the conditions granting the right.
 - (5) The management authority may cancel an authorization granted in terms of regulation 16 and 17 in respect of the area or part thereof, if such area or part thereof is required for conservation purposes or for purposes approved by the management authority:
 - (6) A management authority may cancel an authorization granted in terms of regulation 16 and 17 if the conditions set by the management authority are not complied with by the relevant local community or the resource or any other component of the nature reserve is threatened.
 - (7) An authorised person may cause a holder of an authorization contemplated in regulation 16 or 17 to cease all activities immediately if the aforementioned holder of the right is found or deemed, to be in contravention of any conditions stipulated in the license, permit or written agreement.

CHAPTER 6

ACCESS TO NATURE RESERVES

19. Access to nature reserve by user of biological resources

- (1) The holder of an authorization granted in terms of regulation 16 or 17 may, subject to any condition contained in a written authorisation or agreement, use any road, or path, identified by the management authority, for the reasonable exercise of a right to use biological resources: Provided that -
 - (a) a management authority may close any access road or limit the use thereof for management purposes;
 - (b) if a holder of a right fails to remove or repair any obstruction on an access road caused as a result of the exercise of a right, a management authority may undertake such removal or repair and recover the cost in this regard from the holder of the right;

- (c) a management authority may impose restrictions on the type of vehicle, machinery or equipment which is permitted on an access road in order to prevent any environmental or other damage;
- (d) the holder of a right must keep every access road used, reasonable wear excluded, in a good driving condition; and
- (e) a holder of a right may not create or construct any new access road for the removal of biological resources or for any other reason, without the written authorization of a management authority.

20. Admission

- (1) Any person who has been granted entry into a nature reserve may be allowed admission only to a specific area and at designated times as determined by a management authority.
- (2) A management authority may close a nature reserve or any part of a nature reserve-
 - (a) if, in the management authority's opinion-
 - (i) the closure is necessary or desirable for the proper management of the nature reserve;
 - (ii) the closure is necessary for the management authority to perform any of its functions in terms of the Act or these Regulations; or
 - (iii) the safety of persons may be compromised;
 - (b) if a fire-ban is in force in an area that includes all or part of the nature reserve;
 - (c) if the risk of uncontrolled fire in the nature reserve is, in the management authority's opinion, extreme;
 - (d) if the management authority's staff necessary to patrol the nature reserve are unavailable; or
 - (e) if, in the management authority's opinion, it is in the interest of public safety to close the nature reserve.
- (3) No person may, without the permission of the management authority, enter or remain in a nature reserve that has been closed in terms of sub-regulation (2).

21. Entrance and accommodation in a nature reserve

Any person entering or staying in a nature reserve is subject to conditions set by the management authority.

22. Points of entry and exit

- (1) No person may, other than in an open access nature reserve, or subject to the provisions of Section 46 of the Act and regulation 21, enter or leave a nature reserve at any place other than through the point of entry or exit, without the written authorization of the management authority.
- (2) Where a public road or railway line passes through a nature reserve-
 - (a) no permission is required by a person to pass through the nature reserve on such a road or railway line to a destination outside the nature reserve in question; and
 - (b) no person may be authorised-
 - (i) to leave such a public road; or
 - (ii) to enter into a nature reserve from such public road or railway line other than in compliance with sub-regulation (1).
- (3) No person may land in a nature reserve using an aircraft without the prior permission from the management authority.
- (4) Subregulation (3) does not apply -
 - (a) in the case of an emergency; or
 - (b) to a person acting on the instructions of the management authority.

23. Proof of entry

- (1) Where the issue of a written authorization is required for entry to a nature reserve, a person who enters the nature reserve in a vehicle must ensure that the receipt for the entrance fee in respect of, or the written authorization authorising his or her entry into the nature reserve is in his or her possession at all times until he or she or the vehicle leaves the nature reserve.
- (2) Where the issue of a permit is required for camping in a nature reserve, a person who camps in the nature reserve in or near a vehicle that he or she has travelled in to get to the camp site must ensure that the permit authorising him or her to camp in the nature reserve is displayed at all times in the vehicle in accordance with sub-regulation (4) while he or she is camping in or near the vehicle.
- (3) This regulation does not apply to any person who enters, or camps in, a nature reserve as the client of a person conducting a tour for a fee or reward if the vehicle concerned is owned by, or is under the control of a tour operator approved by the management authority.

- (4) For purposes of these Regulations a permit contemplated in sub-regulations (2) is displayed in a vehicle only if-
- (a) that the permit is displayed on the inside of the windscreen on the side of the vehicle opposite to the driver's position; or
 - (b) where, because of the design of the vehicle, it is not possible to comply with paragraph (a) the permit is displayed in a permanent position in or on the vehicle, so that the permit is facing outwards from the vehicle and can be easily seen and read by a person outside the vehicle.
- (5) Any person who enters a nature reserve by aircraft or vessel may, after disembarking from such aircraft or vessel, travel by vehicle, without prior written approval or proof of entry, from the landing field or landing within the nature reserve to the nearest place designated by a management authority, to obtain the necessary proof permitting entry.
- (6) Any person who does not use a vehicle to enter a nature reserve must display or be in possession of proof of entry in a manner determined by the management authority.

24. Safe entering

No person may enter or take a vehicle or vessel in a nature reserve onto a place, road, river or water area in an unsafe, reckless or negligent manner.

25. Staying overnight

- (1) No person may stay overnight in a nature reserve-
- (a) without the written authorization of the management authority;
 - (b) without having first reported to the nature reserve reception office in a nature reserve or to an authorised person assigned by the management authority to perform escort duty;
 - (c) where no accommodation has been reserved or is available for that person;
 - (d) on a houseboat or any vessel without the permission of the management authority;
 - (e) at any place other than a place designated by the management authority.
- (2) No person may, without the permission of a management authority contemplated in sub-regulation (1), camp in a nature reserve except in an area set aside by the management authority for that purpose.

26. Times of entry and travel

No person may, without the written authorization of the management authority, enter, leave or travel in a nature reserve at any time other than the times determined by the management authority from time to time.

27. Vehicles

No person may enter or travel in a nature reserve except in a vehicle that conforms to the dimensions and other requirements determined by a management authority from time to time.

CHAPTER 7

USE OF WATER AREA IN A NATURE RESERVE

28. Permits for vessels

- (1) Any person intending to use a vessel in a water area must apply for a permit for such a vessel in a form determined by a management authority.
- (2) No person may use a vessel in a water area -
 - (a) without having a permit to do so; and
 - (b) except under strict conditions set by the management authority in the permit.
- (3) Unless in possession of a permit issued by the management authority, no person may use a vessel, including a vessel propelled by means of a propeller above the water, in any water area in a nature reserve.

29. Bathing, diving and swimming

No person may bathe, dive or swim in any area in a nature reserve-

- (1) except where bathing, diving and swimming is permitted; or
- (2) where bathing, diving or swimming is prohibited by means of a Protected Area Notice.

30. Safety ropes

No person may hang from, sit on, interfere with or cause safety ropes or other devices to sink where such safety ropes or devices are provided for the assistance of bathers in distress or for the protection of users of water area.

31. Life saving apparatus

Except in an emergency, no person, with the exception of an authorised person or lifeguard, may handle, touch or use in any manner a life-saving rope, buoy or other life-saving apparatus installed or maintained in or at a water area, or do anything which will impede the proper working of such life-saving apparatus.

32. Water skiing

No person may water ski in a water area other than in a place and at times permitted by a management authority.

CHAPTER 8

RESTRICTED ACTIVITIES

33. Activities which may have an adverse effect in the nature reserve

- (1) No person may without the prior written authorization of the management authority-
 - (a) introduce any specimen, or part thereof to a nature reserve;
 - (b) convey, move or otherwise translocate any specimen in a nature reserve;
 - (c) intentionally disturb any species or specimen in a nature reserve;
 - (d) feed any species or specimen in a nature reserve;
 - (e) use any recording of the sound of a species or specimen or the imagery or scent of a species or specimen to attract animals in a nature reserve;
 - (f) lure, bait or attract by any means or for any purpose or intention any specimen in a nature reserve;
 - (g) cut, damage, remove or destroy or be in possession of any plant or any part thereof, including dry wood or firewood in a nature reserve;
 - (h) hunt, catch, capture or kill any living specimen by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen in a nature reserve;
 - (i) gather, collect or pluck any specimen in a nature reserve;

REGULATIONS FOR THE PROPER ADMINISTRATION OF NATURE RESERVES, 2012

- (j) pick parts of, or cut, chop off, uproot, damage or destroy, any specimen in a nature reserve;
 - (k) possess or exercise physical control over any specimen in a nature reserve;
 - (l) grow, breed or in any other way propagate any specimen, or cause it to multiply in a nature reserve;
 - (m) sell or otherwise trade in, buy, receive, give, donate or accept as a gift, or in any way acquire or dispose of any specimen in a nature reserve; or
 - (n) angle, attempt to angle, catch or attempt to catch fish in a nature reserve other than in an area designated for such purpose.
- (2) Subregulation (1)(f) does not apply to the use of bait or lures for the purpose of angling where such activity is permitted in a nature reserve.
- (3) No person within a nature reserve may -
- (a) intentionally or negligently cause pollution;
 - (b) deface cultural heritage resources; or
 - (c) harm or cause death to any individual or population of any species without the prior written authorization of a management authority.
- (4) No person may, other than with the prior written authorization of a management authority and subject to the management plan, open or close the mouth of a tidal lagoon or a tidal river within any nature reserve.
- (5) No person may, within a nature reserve place, throw, dump or let out any refuse, rubbish, used containers, effluent, toilet waste or any objectionable matter in areas other than those areas designated for this purpose by the management authority.

34. Specified activities

- (1) No person may undertake any of the following activities in a nature reserve except pursuant to a licence, permit or agreement between that person, or some other person, and the management authority:
- (a) The filming and simultaneous transmitting of photographic images by the use of a webcam or other image recording or transmitting device;
 - (b) the conducting of tours;

- (c) the conducting of any kind of competition;
- (d) the selling or hiring of goods or the offering of goods for sale or hire;
- (e) the provision of, or the offering to provide, any service for a fee or reward;
- (f) the conducting of speed trials;
- (g) an activity of any kind for the purpose of fund raising, personal gain or making a profit;
- (h) any organised or special event, including sporting or cultural events; or
- (i) visual imaging of animals for purposes of any virtual hunting or other such activity.

35. Research and monitoring

- (1) No person may, without the written authorization of a management authority, carry out scientific research in a nature reserve.
- (2) Any person undertaking research or monitoring projects in a nature reserve must-
 - (a) submit a research project proposal to a management authority contemplated in sub-regulation (1) in a format determined by the management authority;
 - (b) submit all data and information gathered to the management authority in a format determined by and at stages of the project specified by the management authority;
 - (c) submit copies of all reports and publications as a result of the research project to the management authority within four weeks of their publication; and

36. Interference with soil or substrate

- (1) No person may, except with the prior written authorization of a management authority-
 - (a) remove from a nature reserve any -
 - (i) soil, sand, gravel, pebbles, stone, rock, mineral or similar material;
 - (ii) wood, mulch or other dead vegetation;
 - (iii) fossil, archaeological remains or cultural artefacts;
 - (iv) coral or sea shells;

- (v) guano; or
 - (vi) a shipwreck, flotsam or jetsam.
- (b) dig any soil or similar material in a nature reserve; or
- (c) intentionally disturb in a nature reserve -
- (i) wood, mulch, peat or other dead vegetation or animal;
 - (ii) termite mounds;
 - (iii) fossil, shell midden, archaeological remains or paleontological specimens or meteorites; or
 - (iv) any of the marine components contemplated in paragraph (a);
 - (v) any object or material that is or was used for any ritual, spiritual or other practice;
or
 - (vi) any object that has historical or cultural significance.

37. Use of biological resources in nature reserves

- (1) No person may, without the prior written authorisation of a management authority, and subject to the provisions of Chapter 7 of the Biodiversity Act, 2004 within a nature reserve undertake, support or participate in any restricted activity.
- (2) For purposes of sub-regulation (1) a restricted activity also includes -
- (a) in relation to cultural heritage elements-
 - (i) touching, removing, altering or interfering with cultural resources;
 - (ii) preventing participation in living cultural heritage; and
 - (iii) preventing the cultural or spiritual development of people, groups or communities.

38. Bioprospecting

No person may undertake any manner or form of bioprospecting in a nature reserve without the prior written authorization of a management authority and subject to such conditions as determined by the management authority.

39. Buildings and improvements

- (1) Written authorization of the management authority, for any development in a nature reserve is subject to prior environmental authorization in terms of section 24 of the National Environmental Management Act, 1998.
- (2) No person in a nature reserve may, without the prior written authorization of a management authority, erect, construct or transform or cause to be erected, constructed or transformed any building or any other improvement, including but not limited, to a building or structure of any kind, jetty, dock, pier, landing stage, landing float, marker, anchor bouy, raft, fence or any obstruction, bridge, pontoon, road or crossing in respect of a building or other immovable property.
- (3) Any person who has applied in terms of sub-regulation (2) for the erection of a building or any other improvement in respect of a building or other immovable property must, if required to do so by the management authority-
 - (a) in the case where prior environmental authorisation in terms of section 24 of National Environmental Management Act, 1998 is not required in terms of any law, employ an independent environmental consultant to conduct an assessment of the proposed erection or improvement in compliance with the minimum requirements set by the Act, or other applicable legislation, and to submit the findings of the assessment to the management authority;
 - (b) in instances where prior environmental authorisation in terms of section 24 of National Environmental Management Act, 1998 is compulsory, provide the management authority with such environmental authorisation before the management authority considers the application.

40. French drains, pit latrines and other sewerage disposal systems

No person may, without the prior written authorization of a management authority accompanied by a site plan, establish or in any way alter, extend or enlarge any french drain system, pit latrine or any other sewerage disposal system on any land situated within a nature reserve or replace it with another french drain system, pit latrine or any other sewerage disposal system.

41. Holiday resort, caravan park, camping or picnic site

No person may erect, establish, transform, extend or enlarge any holiday resort, caravan park or camping or picnic site situated on private land within a nature reserve at which members of the public can stay, camp or picnic upon payment of a fee, other than in accordance with the management plan for the nature reserve.

42. Land and in airspace

No person may in a nature reserve, except with the prior written authorization of a management authority-

REGULATIONS FOR THE PROPER ADMINISTRATION OF NATURE RESERVES, 2012

- (a) engage in the sport of climbing rock faces;
- (b) engage in the sport of parachuting or abseiling;
- (c) use a hang glider or any other kind of glider;
- (d) launch or fly a hot air balloon;
- (e) fly model planes or gliders;
- (f) engage in the sport of any kind of boarding;
- (g) operate any motorised vehicle for recreational purposes;
- (h) launch or propel, missile or flare into the airspace above a nature reserve unless such activity is a bona fide emergency; or
- (i) ignite or use any fireworks. Water areas

43.

- (1) No person may, without the written authorization of a management authority, launch, or use, a vessel on a dam, reservoir, lake, river or other body of water in a nature reserve unless the water has been set aside by the management authority for the use of vessels.
- (2) No person may paint any vessel in a water area unless the prior written approval by management authority has been obtained.
- (3) No person may dispose of any solid or liquid waste, including motor oil, into a water area other than in places designated by the management authority therefore.

44. Removal and dumping in water areas

No persons may, without the prior written authorization of a management authority and subject to the conditions imposed by the management authority, in any manner in a nature reserve-

- (a) remove, dredge, pump or move any sand, soil or stones from a water area;
- (b) deposit, dump or throw sand, soil, stones or other material of any kind in a water area.

45. Pets in nature reserves

- (1) No person may, except on conditions determined by a management authority from time to time, allow any dog, cat or other pet belonging to or under the care of that person to enter and remain in or enter or remain in a nature reserve.

- (2) Any dog, cat or other pet contemplated in sub-regulation (1) which is not in the care of any person, may either be caught and removed or destroyed at the discretion of the management authority.
- (3) Any dog, cat or other pet not in control by a leash in a nature reserve may be impounded or destroyed at the discretion of the management authority during or after such act.

46. Firearms and dangerous weapons

- (1) No person other than an authorised person entering a nature reserve may subject to the provisions of sub-regulation (2) convey into or within a nature reserve or be in possession of any firearm or dangerous weapon or any explosive, trap or poison in a nature reserve;
- (2) A person in possession of a valid licence for a firearm may convey that firearm into a nature reserve, other than an open access protected area, subject to conditions in sub-regulation (3).
- (3)
 - (a) Any person visiting a nature reserve must, at the point of entry declare to the management authority, any weapon or firearm in his or her possession.
 - (b) The management authority may require any weapon or firearm referred to in sub-regulation (1) to be sealed, for the duration of the presence of the person in the nature reserve : Provided that the management authority, in the case of any weapon or firearm left in his or her custody, issue a written receipt.
- (4) Any person who fails to declare any weapon or firearm in compliance with sub-regulation (3)(a), or any person in a nature reserve found in possession of any weapon or firearm which has not been declared as contemplated in that sub-regulation, must be guilty of an offence.

47. General restrictions

- (1) No person may in a nature reserve without the written authorisation of the management authority-
 - (a) offer any show or entertainment, conduct any business or trade or collect any money from the public;
 - (b) carry on any agricultural or gardening activities without the prior written approval of the management authority and subject to the conditions which the management authority may lay down from time to time;
 - (c) use or cause to be used, any loud speaker or similar device or other noisy equipment;

- (d) construct or erect any booth, marquee or other structure; or
 - (e) organise or cause to be organised or attend or participate in any public meeting, demonstration or gathering.
- (2) No person may -
- (a) intentionally or negligently cause a fire or discard any burning object in any place where it may set fire to any other object or otherwise act in a manner likely to cause a fire other than at a place where the making of a fire is permitted by a management authority; or
 - (b) interfere with any management authority staff member undertaking his or her duties.

CHAPTER 9

PROHIBITED ACTIVITIES

48. Prohibitions relating to vehicles

- (1) No person driving a vehicle in a nature reserve may -
- (a) drive, park, or stop in such a manner that constitutes a nuisance, disturbance, inconvenience or danger to any other person;
 - (b) drive, park or stop in any manner that causes an obstruction, blocks the pathway of a management operation or emergency vehicle;
 - (c) park a vehicle in a place other than in a place designated for that purpose by a management authority;
 - (d) drive or park anywhere except on a designated road or place;
 - (e) damage or act in a manner that could cause damage of any nature whatsoever, including but not limited to, damage to a road, plants or animals;
 - (f) drive or operate any vehicle in a reckless or negligent manner or in a deliberate or intentional disregard for the safety of any person, species, specimen or property of whatever nature; or
 - (g) drive a vehicle off-road or off designated roads or tracks, except in an area set aside by the management authority for that purpose.
- (2) The management authority may restrict or preclude the use of any vehicle within the nature reserve.

49. Prohibitions in relation to use of water areas

- (1) No person may water ski in a water area in a nature reserve between sunset and sunrise.
- (2) No person in a vessel may, subject to the provisions of the Merchant Shipping Act, enter or be in a nature reserve, except if that vessel conforms to the dimensions and meets the requirements provided for in internal rules made by a management authority from time to time.
- (3) No person may use a motor boat, in any water area in a nature reserve within 50 metres of swimmers, skiers, sailing boats, canoes, rowing boats or anglers.
- (4) No person may launch or use a vessel anywhere or in any water area in a nature reserve unless it is equipped with adequate life-saving equipment for the persons being conveyed thereon.
- (5) No person may land from a vessel in any water area except at a place, designated by the management authority for such landing.

50. Prohibitions relating to development

- (1) No development contemplated in section 50(5) of the Act may be implemented-
 - (a) in any area other than an area designated for such development in a management plan; and
 - (b) before a management authority has indicated in writing the nature and extent of the environmental impact assessment required for the development.
- (2) No commercial activity or activity contemplated in section 50 of the Act, which requires an environmental impact assessment to be undertaken, either in terms of sub-regulation (1)(b) or under any other law, may be implemented before a management authority has approved, with or without conditions, the environmental impact assessment before it is submitted to the relevant authority for approval.

51. Littering and pollution

No person may, in a nature reserve-

- (a) deposit or leave any litter which is either industrial or domestic, regardless of whether that litter is biodegradable or non-biodegradable, except in an area or receptacle provided for that purpose;
- (b) deposit or leave any litter, bottle, broken glass, china, pottery, plastic article, rubbish, refuse, seeds, fruit or vegetable matter or other waste material, except in an area or receptacle provided for that purpose;

REGULATIONS FOR THE PROPER ADMINISTRATION OF NATURE RESERVES, 2012

- (c) deposit, discharge or leave any noxious, smelly, offensive or polluting substance, matter or thing;
- (d) deposit or leave any offal, dead species or specimen or dung;
- (e) deposit, except in any receptacle provided for litter, any domestic garbage;
- (f) intentionally break any article of glass, china, pottery, plastic or other brittle material;
- (g) deposit, discharge or leave any mineral, mineral waste or other industrial waste or by-product thereof;
- (h) discard or discharge any toxic chemical or substance, pharmaceutical substance, including biocides, or any other pollutant or harmful substance; or
- (i) dispose of containers or residuals of aerosols or any other hazardous substance of such nature.

52. Pollution of water

No person may, at any time or in any manner, including by the use of detergents, pollute any water area, spring, pan, well, borehole, groundwater, dam, reservoir or lake in a nature reserve.

53. General prohibitions

- (1) No person may, in a nature reserve -
 - (a) unlawfully occupy, move into, inhabit or use any existing land, building or structure;
 - (b) at any time play any radio, compact disc player, music system, musical instrument or in any way whatsoever cause any noise in a manner that is likely to disturb any species or specimen or other person; or
 - (c) behave in an offensive, improper, indecent or disorderly manner.
- (2) No person may, in a nature reserve, intentionally obstruct, disturb, interrupt or annoy any other person engaged in the proper use of the nature reserve.
- (3) No person may discharge a firearm within a nature reserve, except-
 - (a) if that person is authorised by a management authority thereto;
 - (b) for the discharge of a blank by a life-guard during an organized competition or by any other person authorised by the management authority, during a sports meeting in a water area;
 - (c) in connection with the collection of specimens for scientific purposes, subject to the

WASTE ACT

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

(English text signed by the President)

[Assented To: 6 March 2009]

[Commencement Date: 1 July 2009 - unless otherwise indicated]

[Proc. 34 / GG 32189 / 20090430]

[Proc. 26 / GG 37547 / 20140411]

as amended by:

National Environment Laws Amendment Act 14 of 2013

[with effect from 24 July 2013]

National Environmental Management: Waste Amendment Act 26 of 2014

[with effect from 2 June 2014]

National Environmental Management Laws Amendment Act 25 of 2014

[with effect from 2 September 2014]

ACT

To reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development; to provide for institutional arrangements and planning matters; to provide for national norms and standards for regulating the management of waste by all spheres of government; to provide for specific waste management measures; to provide for the licensing and control of waste management activities; to provide for the remediation of contaminated land; to provide for the national waste information system; to provide for compliance and enforcement; and to provide for matters connected therewith.

PREAMBLE

WHEREAS everyone has the constitutional right to have an environment that is not harmful to his or her health and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that-

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

WASTE ACT

AND WHEREAS waste management practices in many areas of the Republic are not conducive to a healthy environment and the impact of improper waste management practices are often borne disproportionately by the poor;

AND WHEREAS poor waste management practices can have an adverse impact both locally and globally;

AND WHEREAS sustainable development requires that the generation of waste is avoided, or where it cannot be avoided, that it is reduced, re-used, recycled or recovered and only as a last resort treated and safely disposed of;

AND WHEREAS the minimisation of pollution and the use of natural resources through vigorous control, cleaner technologies, cleaner production and consumption practices, and waste minimisation are key to ensuring that the environment is protected from the impact of waste;

AND WHEREAS waste under certain circumstances is a resource and offers economic opportunities;

AND WHEREAS waste and management practices relating to waste are matters that-

- require national legislation to maintain essential national standards;
- in order to be dealt with effectively, require uniform norms and standards that apply throughout the Republic; and
- in order to promote and give effect to the right to an environment that is not harmful to health and well-being, have to apply uniformly throughout the Republic; and
- require strategies, norms and standards which seek to ensure best waste practices within a system of co-operative governance.

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

TABLE OF CONTENTS

CHAPTER 1 **INTERPRETATION AND PRINCIPLES**

1. Definitions
2. Objects of Act
3. General duty of State
4. Application of Act
5. Application of National Environmental Management Act

WASTE ACT

CHAPTER 2
NATIONAL WASTE MANAGEMENT STRATEGY, NORMS AND STANDARDS

Part 1: National waste management strategy

6. Establishment of national waste management strategy

Part 2: National norms and standards, provincial norms and standards and waste service standards

7. National norms and standards
8. Provincial norms and standards
9. Waste service standards

CHAPTER 3
INSTITUTIONAL AND PLANNING MATTERS

10. Designation of waste management officers
11. Certain organs of state to prepare integrated waste management plans
12. Contents of integrated waste management plans
13. Reporting on implementation of integrated waste management plans

CHAPTER 3A
FINANCIAL PROVISIONS

Waste Management Charges

- 13A. Pricing strategy for waste management charges
- 13B. Application of pricing strategy

CHAPTER 4
WASTE MANAGEMENT MEASURES

Part 1: Priority wastes

14. Declaration of priority wastes
15. Consequences of declaration of priority wastes

Part 2: General duty

16. General duty in respect of waste management

Part 3: Reduction, re-use, recycling and recovery of waste

- 17. Reduction, re-use, recycling and recovery of waste
- 18. Extended producer responsibility

Part 4: Waste management activities

- 19. Listed waste management activities
- 20. Consequences of listing waste management activities
- 20A. Prohibited or restricted activities in specified geographical areas

Part 5: Storage, collection and transportation of waste

- 21. General requirements for storage of waste
- 22. Storage of general waste
- 23. Waste collection services
- 24. Collection of waste
- 25. Duties of persons transporting waste

Part 6: Treatment, processing and disposal of waste

- 26. Prohibition of unauthorised disposal
- 27. Littering

Part 7: Industry waste management plans

- 28. Preparation of industry waste management plans by certain persons
- 29. Preparation of industry waste management plans by organs of state
- 30. Contents of industry waste management plans
- 31. Notification of industry waste management plans
- 32. Consideration of industry waste management plans
- 33. Specification of measures to be taken
- 34. Review of industry waste management plans

Part 7A: Waste Management Bureau

- 34A. Establishment of Waste Management Bureau
- 34B. Determination of policy
- 34C. Minister's supervisory powers
- 34D. Objects of Bureau
- 34E. Functions of Bureau
- 34F. Funding of Bureau
- 34G. Financial management
- 34H. Reporting and audit
- 34I. Immovable property

WASTE ACT

- 34J. Chief Executive Officer of Bureau
- 34K. Functions of Chief Executive Officer
- 34L. Employees of Bureau

Part 8: Contaminated land

- 35. Application of this Part
- 36. Identification and notification of investigation areas
- 37. Consequences of identification and notification of investigation areas
- 38. Consideration of site assessment reports
- 39. Orders to remediate contaminated land
- 40. Transfer of remediation sites
- 41. Contaminated land register

Part 9: Other measures

- 42. Recognition programmes

CHAPTER 5 **LICENSING OF WASTE MANAGEMENT ACTIVITIES**

- 43. Licensing authority
- 43A. Residue stockpiles and residue deposits
- 44. Co-operative governance in waste management licence applications
- 45. Application for waste management licences
- 46. Appointment of persons to manage waste management licence applications
- 47. Procedure for waste management licence applications
- 48. Factors to be taken into account by licensing authorities
- 49. Decision of licensing authorities on waste management licence applications
- 50. Issuing of waste management licences
- 51. Contents of waste management licences
- 52. Transfer of waste management licences
- 53. Review of waste management licences
- 54. Variation of waste management licences
- 55. Renewal of waste management licences
- 56. Revocation and suspension of waste management licences
- 57. Surrender of waste management licences
- 58. Waste management control officers
- 59. Criteria for fit and proper persons

CHAPTER 6 **WASTE INFORMATION**

- 60. Establishment of national waste information system

WASTE ACT

- 61. Objectives of national waste information system
- 62. Establishment of provincial waste information systems
- 63. Provision of information
- 64. Access to information

CHAPTER 7 **COMPLIANCE AND ENFORCEMENT**

- 65. Compliance powers of Minister of Water Affairs and Forestry
- 66. Waste impact reports
- 67. Offences
- 68. Penalties

CHAPTER 8 **GENERAL MATTERS**

Part 1: Regulations

- 69. Regulations by Minister
- 69A.Regulations for Bureau
- 70. Regulations by MECs
- 71. General regulatory powers

Part 2: Consultative process

- 72. Consultation
- 73. Public participation

Part 3: Exemptions and appeals

- 74. Applications for exemption
- 75. Consideration of applications for exemption
- 76. Decisions on applications for exemption
- 77. Review and transfer of exemptions
- 78.

CHAPTER 9 **MISCELLANEOUS**

- 79. Delegation and assignment
- 79A.Delegation by Minister responsible for mineral resources
- 80. Repeal and amendment of laws, and savings

WASTE ACT

81. Transitional provisions in respect of permits issued in terms of Environment Conservation Act
82. Transitional provision regarding listed waste management activities
83. Act regarded as specific environmental management Act
84. Short title and commencement

SCHEDULES

1. Waste management activities in respect of which a waste management licence is required
2. Laws repealed or amended
3. Defined wastes

[Table of contents amended by s. 16 of Act 26/2014]

CHAPTER 1

INTERPRETATION AND PRINCIPLES

1. Definitions

In this Act, unless the context indicates otherwise-

“acceptable exposure” means the exposure of the maximum permissible concentration of a substance to the environment that will have a minimal negative effect on health or the environment;

“associated structures and infrastructure”, when referred to in Schedule 1, means any building or infrastructure that is necessary for the functioning of a facility or waste management activity or that is used for an ancillary service or use from the facility;

“best practicable environmental option” means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term;

“building and demolition waste”

[Definition of “building and demolition waste” deleted by s. 1 of Act 26/2014]

“business waste”

[Definition of “business waste” deleted by s. 1 of Act 26/2014]

“by-product”

[Definition of “by-product” deleted by s. 1 of Act 26/2014]

WASTE ACT

“**clean production**” means the continuous application of integrated preventative environmental strategies to processes, products and services to increase overall efficiency and to reduce the impact of such processes, procedures and services on health and the environment;

“**commence**” means the start of any physical activity, including site preparation or any other activity on the site in furtherance of a waste management activity, but does not include any activity required for investigation or feasibility study purposes as long as such investigation or feasibility study does not constitute a waste management activity;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**container**” means a disposable or re-usable vessel in which waste is placed for the purposes of storing, accumulating, handling, transporting, treating or disposing of that waste, and includes bins, bin-liners and skips;

“**contaminated**”, in relation to Part 8 of Chapter 4, means the presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the environment adversely;

“**decommissioning**”, in relation to waste treatment, waste transfer or waste disposal facilities, means the planning for and management and remediation of the closure of a facility that is in operation or that no longer operates;

“**Department**” means the Department responsible for environmental affairs;

[Definition of “Department” substituted by s. 1 of Act 26/2014]

“**disposal**” means the burial, deposit, discharge, abandoning, dumping, placing or release of any waste into, or onto, any land;

“**domestic waste**”

[Definition of “domestic waste” deleted by s. 1 of Act 26/2014]

“**employment practice**” has the meaning assigned to it in section 1 of the Public Service Act, 1994;

[Definition of “employment practice” inserted by s. 1 of Act 26/2014]

“**environment**” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“**Environment Conservation Act**” means the Environment Conservation Act, 1989 (Act No. 73 of 1989);

WASTE ACT

“environmentally sound management” means the taking of all practicable steps to ensure that waste is managed in a manner that will protect health and the environment;

“export” means to take or send waste from the Republic to another country or territory;

“extended producer responsibility measures” means measures that extend a person’s financial or physical responsibility for a product to the post-consumer stage of the product, and includes -

- (a) waste minimisation programmes;
- (b) financial arrangements for any fund that has been established to promote the reduction, re-use, recycling and recovery of waste;
- (c) awareness programmes to inform the public of the impacts of waste emanating from the product on health and the environment; and
- (d) any other measures to reduce the potential impact of the product on health and the environment;

“Gazette”, when used in relation to-

- (a) the Minister, means the *Government Gazette*; and
- (b) the MEC, means the *Provincial Gazette* of the province concerned;

“general waste”

[Definition of “general waste” deleted by s. 1 of Act 26/2014]

“hazardous waste”

[Definition of “hazardous waste” deleted by s. 1 of Act 26/2014]

“high-risk activity” means an undertaking, including processes involving substances that present a likelihood of harm to health or the environment;

“holder of waste” means any person who imports, generates, stores, accumulates, transports, processes, treats, or exports waste or disposes of waste;

“import” means any entry into the Republic other than entry for transit;

“incineration” means any method, technique or process to convert waste to flue gases and residues by means of oxidation;

WASTE ACT

“**industry**” includes commercial activities, commercial agricultural activities, mining activities and the operation of power stations;

“**industry waste management plan**” means a plan referred to in Part 7 of Chapter 4;

“**inert waste**”

[Definition of “inert waste” deleted by s. 1 of Act 26/2014]

“**integrated waste management plan**” means a plan prepared in terms of section 12;

“**investigation area**” means an area identified as such in terms of section 37;

“**licensing authority**” means an authority referred to in section 43 and that is responsible for implementing the licensing system provided for in Chapter 5;

“**life cycle assessment**” means a process where the potential environmental effects or impacts of a product or service throughout the life of that product or service is being evaluated;

“**MEC**” means the Member of the Executive Council of a province who is responsible for waste management in the province;

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

[Definition of “Mineral and Petroleum Resources Development Act, 2002” included by s. 18 of Act 25/2014 w.e.f. 2 September 2014]

“**minimisation**”, when used in relation to waste, means the avoidance of the amount and toxicity of waste that is generated and, in the event where waste is generated, the reduction of the amount and toxicity of waste that is disposed of;

“**Minister**” means the Minister responsible for environmental affairs;

[Definition of “Minister” substituted by s. 1 of Act 26/2014]

“**municipality**” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“**National Environmental Management Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

WASTE ACT

“**non-substantive**”, in relation to the amendment or substitution of a regulation, notice, strategy, licence, approval, or provision thereof, includes-

- (a) any clerical mistake, unintentional error or omission;
- (b) the correction of any miscalculated figure; and
- (c) the correction of any incorrect description of any person, thing, property or waste management activity;

“**organ of state**” has the meaning assigned to it in section 239 of the Constitution;

“**person**” has the meaning assigned to it in the Interpretation Act, 1957 (Act No. 33 of 1957), and includes an organ of state;

“**pollution**” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“**prescribe**” means prescribe by regulation under this Act;

“**priority waste**” means a waste declared to be a priority waste in terms of section 14;

“**recovery**” means the controlled extraction or retrieval of any substance, material or object from waste;

[Definition of “recovery” substituted by s. 1 of Act 26/2014]

“**recycle**” means a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material;

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

[Definition of “residue deposit” inserted by s. 18 of Act 25/2014 w.e.f. 2 September 2014]

“**residue stockpile**” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

[Definition of “residue stockpile” inserted by s. 18 of Act 25/2014 w.e.f. 2 September 2014]

“**re-use**” means to utilise the whole, a portion of or a specific part of any substance, material or object from the waste stream for a similar or different purpose without changing the form or properties of such substance, material or object;

[Definition of “re-use” substituted by s. 1 of Act 26/2014]

WASTE ACT

“**specific environmental management Act**” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“**storage**” means the accumulation of waste in a manner that does not constitute treatment or disposal of that waste;

“**sustainable development**” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“**the Bureau**” means the Waste Management Bureau established by section 34A;
[Definition of “the Bureau” inserted by s. 1 of Act 26/2014]

“**this Act**” includes-

- (a) any regulations made in terms of this Act;
- (b) any notice or other subordinate legislation issued or made in terms of this Act; and
- (c) any regulation or direction that remains in force in terms of section 81;

“**transit**” means the continuous passage from one border of the Republic to another such border without storage other than temporary storage incidental to transport;

“**treatment**” means any method, technique or process that is designed to-

- (a) change the physical, biological or chemical character or composition of a waste; or
- (b) remove, separate, concentrate or recover a hazardous or toxic component of a waste; or
- (c) destroy or reduce the toxicity of a waste,

in order to minimise the impact of the waste on the environment prior to further use or disposal;

“**waste**” means-

- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to this Act; or
- (b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the *Gazette*,

WASTE ACT

but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste-

- (i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;
- (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered;
- (iii) where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or
- (iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.

[Definition of "waste" substituted by s. 38 of Act 14/2013 and s. 1 of Act 26/2014]

"waste disposal facility" means any site or premise used for the accumulation of waste with the purpose of disposing of that waste at that site or on that premise;

"waste management activity" means any activity listed in Schedule 1 or published by notice in the *Gazette* under section 19, and includes-

- (a) the importation and exportation of waste;
 - (b) the generation of waste, including the undertaking of any activity or process that is likely to result in the generation of waste;
 - (c) the accumulation and storage of waste;
 - (d) the collection and handling of waste;
- the reduction, re-use, recycling and recovery of waste;
- (f) the trading in waste;
 - (g) the transportation of waste;
 - (h) the transfer of waste;
 - (i) the treatment of waste; and
 - (j) the disposal of waste;

"waste management control officer" means a waste management control officer designated under section 58(1);

WASTE ACT

“waste management licence” means a licence issued in terms of section 49;

“waste management officer” means a waste management officer designated in terms of section 10;

“waste management services” means waste collection, treatment, recycling and disposal services;

“waste minimisation programme” means a programme that is intended to promote the reduced generation and disposal of waste;

“waste transfer facility” means a facility that is used to accumulate and temporarily store waste before it is transported to a recycling, treatment or waste disposal facility;

“waste treatment facility” means any site that is used to accumulate waste for the purpose of storage, recovery, treatment, reprocessing, recycling or sorting of that waste.

2. Objects of Act

The objects of this Act are-

- (a) to protect health, well-being and the environment by providing reasonable measures for-
 - (i) minimising the consumption of natural resources;
 - (ii) avoiding and minimising the generation of waste;
 - (iii) reducing, re-using, recycling and recovering waste;
 - (iv) treating and safely disposing of waste as a last resort;
 - (v) preventing pollution and ecological degradation;
 - (vi) securing ecologically sustainable development while promoting justifiable economic and social development;
 - (vii) promoting and ensuring the effective delivery of waste services;
 - (viii)remediating land where contamination presents, or may present, a significant risk of harm to health or the environment; and
 - (ix) achieving integrated waste management reporting and planning;
- (b) to ensure that people are aware of the impact of waste on their health, well-being and the environment;

WASTE ACT

- (c) to provide for compliance with the measures set out in paragraph (a); and
- (d) generally, to give effect to section 24 of the Constitution in order to secure an environment that is not harmful to health and well-being.

3. General duty of State

In fulfilling the rights contained in section 24 of the Constitution, the State, through the organs of state responsible for implementing this Act, must put in place uniform measures that seek to reduce the amount of waste that is generated and, where waste is generated, to ensure that waste is re-used, recycled and recovered in an environmentally sound manner before being safely treated and disposed of.

4. Application of Act

(1) This Act does not apply to-

- (a) radioactive waste that is regulated by the Hazardous Substances Act, 1973 (Act No. 15 of 1973), the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999), and the Nuclear Energy Act, 1999 (Act No. 46 of 1999);
- (b)

[Para. (b) deleted by s. 19 of Act 25/2014 w.e.f. 2 September 2014]

- (c) the disposal of explosives that is regulated by the Explosives Act, 2003 (Act No. 15 of 2003); or
- (d)

[Para. (d) deleted by s. 2 of Act 26/2014]

(2) This Act binds all organs of state.

5. Application of National Environmental Management Act

- (1) This Act must be read with the National Environmental Management Act, unless the context of this Act indicates that the National Environmental Management Act does not apply.
- (2) The interpretation and application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

CHAPTER 2

NATIONAL WASTE MANAGEMENT STRATEGY, NORMS AND STANDARDS

Part 1

National waste management strategy

6. Establishment of national waste management strategy

- (1) The Minister must, within two years of the date on which this section takes effect, by notice in the *Gazette* establish a national waste management strategy for achieving the objects of this Act, which must include-
 - (a) objectives, plans, guidelines, systems and procedures relating to the protection of the environment and the generation (including the avoidance and minimisation of such generation), re-use, recycling, recovery, treatment, disposal, use, control and management of waste in order to achieve the objects of this Act;
 - (b) mechanisms, systems and procedures for giving effect to the Republic's obligations in terms of relevant international agreements;
 - (c) practical measures for achieving co-operative governance in waste management matters;
 - (d) guidance on raising awareness regarding the impact of waste on health and the environment;
 - (e) approaches for securing compliance with the requirements of this Act, including the monitoring of compliance; and
 - (f) any other matter that the Minister considers necessary for achieving the objects of this Act.
- (2) The national waste management strategy may include targets for waste reduction.
- (3) The national waste management strategy-
 - (a) binds all organs of state in all spheres of government, and all persons if and to the extent applicable; and
 - (b) may subject to section 3 of the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997), allocate and delineate responsibilities for the implementation of this Act amongst-

WASTE ACT

- (i) the different spheres of government; and
 - (ii) different organs of state.
- (4) An organ of state must give effect to the national waste management strategy when exercising a power or performing a duty in terms of this Act or any other legislation regulating waste management.
- (5) The national waste management strategy-
- (a) may differentiate between different geographical areas;
 - (b) may differentiate between different classes or categories of waste;
 - (c) may provide for the phasing in of its provisions;
 - (d) may be amended; and
 - (e) must be reviewed by the Minister at intervals of not more than five years.
- (6) Before publishing the national strategy, or any amendment to the strategy, the Minister must follow a consultative process in accordance with sections 72 and 73.
- (7) Subsection (6) need not be complied with if the strategy is amended in a non-substantive manner.

Part 2

National norms and standards, provincial norms and standards and waste service standards

7. National norms and standards

- (1) The Minister must, by notice in the *Gazette*, set national norms and standards for the-
- (a) classification of waste;
 - (b) planning for and provision of waste management services; and
- storage, treatment and disposal of waste, including the planning and operation of waste treatment and waste disposal facilities.
- (2) The Minister may, by notice in the *Gazette*, set national norms and standards for-
- (a) the minimisation, re-use, recycling and recovery of waste, including the separation of waste at the point of generation;

WASTE ACT

- (b) extended producer responsibility;
 - (c) the regionalisation of waste management services; and
 - (d) the remediation of contaminated land and soil quality.
- (3) The Minister with the concurrence of the Minister of Finance may, by notice in the *Gazette*, set national standards in respect of tariffs for waste services provided by municipalities.
- (4) The norms and standards contemplated in subsection (1) may-
- (a) differentiate between different geographical areas;
 - (b) differentiate between different classes or categories of waste;
 - (c) provide for the phasing in of its provisions; and
 - (d) be amended.
- (5) The norms or standards contemplated in subsection (1)(b) may
- (a) differentiate on an equitable basis between-
 - (i) different users of waste management services; and
 - (ii) different types of waste management services;
 - (b) ensure that funds obtained from waste services are used for waste management services; and
 - (c) provide for tariffs to be imposed to provide for waste management infrastructure or facilities.
- (6)
- (a) Before publishing a notice in terms of subsection (1), (2) or (3), or any amendment to the notice, the Minister must follow a consultative process in accordance with sections 72 and 73.
 - (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

8. Provincial norms and standards

- (1) The relevant MEC, within his or her jurisdiction, must ensure the implementation of the national waste management strategy and national norms and standards contemplated in sections 6 and 7, respectively.

WASTE ACT

- (2) The relevant MEC, within his or her jurisdiction, may by notice in the *Gazette* set provincial norms and standards that are not in conflict with national norms and standards contemplated in section 7.
- (3) The norms and standards contemplated in subsection (2) must amongst other things facilitate and advance-
 - (a) planning and provision of waste management services;
 - (b) regionalisation of waste management services within the province;
 - (c) minimisation, re-use, recycling and recovery of waste, with the exception of standards that may have national implications or that may have a significant impact on the national economy; and
 - (d) treatment and disposal of waste, including the planning and operation of waste treatment and waste disposal facilities, licenced by provincial authorities.
- (4) The norms and standards contemplated in subsection (2) may-
 - (a) differentiate between different geographical areas in the province;
 - (b) differentiate between different classes or categories of waste;
 - (c) provide for the phasing in of its provisions; and
 - (d) be amended.
- (5)
 - (a) Before publishing a notice in terms of subsection (2), or any amendment to the notice, the MEC must follow a consultative process in accordance with sections 72 and 73.
 - (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

9. Waste service standards

- (1) A municipality must exercise its executive authority to deliver waste management services, including waste removal, waste storage and waste disposal services, in a manner that does not conflict with section 7 or 8 of this Act.
- (2) Each municipality must exercise its executive authority and perform its duty in relation to waste services, including waste collection, waste storage and waste disposal services, by-

WASTE ACT

- (a) adhering to all national and provincial norms and standards;
 - (b) integrating its waste management plans with its integrated development plans;
 - (c) ensuring access for all to such services;
 - (d) providing such services at an affordable price, in line with its tariff policy referred to in Chapter 8 of the Municipal Systems Act;
 - (e) ensuring sustainable services through effective and efficient management;
 - (f) keeping separate financial statements, including a balance sheet of the services provided.
- (3) In exercising its executive authority contemplated in subsection (1), a municipality may furthermore, amongst other things, set-
- (a) local standards for the separation, compacting and storage of solid waste that is collected as part of the municipal service or that is disposed of at a municipal waste disposal facility;
 - (b) local standards for the management of solid waste that is disposed of by the municipality or at a waste disposal facility owned by the municipality, including requirements in respect of the avoidance and minimisation of the generation of waste and the reuse, recycling and recovery of solid waste;
 - (c) local standards in respect of the directing of solid waste that is collected as part of the municipal service or that is disposed of by the municipality or at a municipal waste disposal facility to specific waste treatment and disposal facilities; and
 - (d) local standards in respect of the control of litter.
- (4) Whenever the Minister or MEC acts in terms of this Act in relation to a municipality, the Minister or MEC must seek to support and strengthen the municipality's ability or right to perform its functions in relation to waste management activities.
- (5)
- (a) Whenever a municipality intends passing a by-law so as to give effect to subsection (1), it must follow a consultative process provided for in Chapter 4 of the Municipal Systems Act.
 - (b) Paragraph (a) need not be complied with if the by-law is amended in a non-substantive manner.

CHAPTER 3

INSTITUTIONAL AND PLANNING MATTERS

10. Designation of waste management officers

- (1) The Minister must designate in writing an officer in the Department as the national waste management officer responsible for co-ordinating matters pertaining to waste management in the national government.
- (2) The MEC must designate in writing an officer in the provincial administration as the provincial waste management officer responsible for co-ordinating matters pertaining to waste management in that province.
- (3) Each municipality authorised to carry out waste management services by the Municipal Structures Act, 1998 (Act No. 117 of 1998), must designate in writing a waste management officer from its administration to be responsible for co-ordinating matters pertaining to waste management in that municipality.
- (4) A power delegated or a duty assigned to a waste management officer by virtue of subsection (1), (2) or (3) may be subdelegated or further assigned by that officer to another official in the service of the same administration, subject to such limitations or conditions as may be determined by the Minister, MEC or municipality, respectively.
- (5) Waste management officers must co-ordinate their activities with other waste management activities in the manner set out in the national waste management strategy established in terms of section 6 or determined by the Minister by notice in the *Gazette*.

11. Certain organs of state to prepare integrated waste management plans

- (1) The provincial departments responsible for waste management must prepare integrated waste management plans.

[Subs. (1) substituted by s. 3 of Act 26/2014]

- (2) A provincial department may incorporate its integrated waste management plan in any relevant provincial plan.

- (3)

[Subs. (3) deleted by s. 3 of Act 26/2014]

- (4)

- (a) Each municipality must-

WASTE ACT

- (i) submit its integrated waste management plan to the MEC for endorsement; and

[Subpara. (i) substituted by s. 3 of Act 26/2014]

- (ii) include the endorsed integrated waste management plan in its integrated development plan contemplated in Chapters of the Municipal Systems Act,

[Subpara. (ii) substituted by s. 3 of Act 26/2014]

- (b) The MEC may within 30 days of receiving an integrated waste management plan or an amendment to an integrated waste management plan-

- (i) request a municipality to adjust the plan or the amendment in accordance with the MFC's proposal if the plan or amendment-

- (aa) does not comply with a requirement of this Act; or

- (bb) is in conflict with, or is not aligned with or negates any relevant integrated waste management plan or the national waste management strategy; or

- (ii) request a municipality to comply with a specific provision of this Act relating to the process of drafting or amending integrated waste management plans if the municipality has failed to comply with the process or provision; or

- (iii) approve the plan or amendment.

- (5) The provincial departments contemplated in subsection (1) must submit their integrated waste management plans to the Minister for endorsement.

[Subs. (5) substituted by s. 3 of Act 26/2014]

- (6) When exercising the power to monitor and support a municipality as contemplated in section 31 of the Municipal Systems Act, the MEC for local government, in consultation with the MFC, must ensure that the municipal integrated waste management plan is co-ordinated and aligned with the plans, strategies and programmes of the Department and provincial departments.

(7)

- (a) Before finalising an integrated waste management plan, every provincial department contemplated in subsection (1) must follow a consultative process in accordance with sections 72 and 73.

[Para. (a) substituted by s. 3 of Act 26/2014]

(b)

[Para. (b) deleted by s. 3 of Act 26/2014]

(8) Subsection (7) need not be complied with if the integrated waste management plan is amended in a non-substantive manner.

12. Contents of integrated waste management plans

(1) An integrated waste management plan must at least-

(a) contain a situation analysis that includes-

- (i) a description of the population and development profiles of the area to which the plan relates;
- (ii) an assessment of the quantities and types of waste that are generated in the area;
- (iii) a description of the services that are provided, or that are available, for the collection, minimisation, re-use, recycling and recovery, treatment and disposal of waste; and
- (iv) the number of persons in the area who are not receiving waste collection services;

(b) within the domain of the provincial department or municipality, set out how that provincial department or municipality intends

[Words preceding subpara. (1) substituted by s. 4 of Act 26/2014]

- (i) to give effect, in respect of waste management, to Chapter 3 of the National Environmental Management Act;
- (ii) to give effect to the objects of this Act;
- (iii) to identify and address the negative impact of poor waste management practices on health and the environment;
- (iv) to provide for the implementation of waste minimisation, re-use, recycling and recovery targets and initiatives;
- (v) in the case of a municipal integrated waste management plan, to address the delivery of waste management services to residential premises;

WASTE ACT

- (vi) to implement the Republic's obligations in respect of any relevant international agreements;
- (vii) to give effect to best environmental practice in respect of waste management;
- (c) within the domain of the provincial department, set out how the provincial department intends to identify the measures that are required and that are to be implemented to support municipalities to give effect to the objects of this Act;

[Para. (c) substituted by s. 4 of Act 26/2014]

- (d) set out the priorities and objectives of the provincial department or municipality in respect of waste management;

[Para. (d) substituted by s. 4 of Act 26/2014]

- (e) establish targets for the collection, minimisation, re-use and recycling of waste;
- (f) set out the approach of the provincial department or municipality to the planning of any new facilities for disposal and decommissioning of existing waste disposal facilities;

[Para. (f) substituted by s. 4 of Act 26/2014]

- (g) indicate the financial resources that are required to give effect to the plan;
- (h) describe how the provincial department or municipality intends to give effect to its integrated waste management plan; and

[Para. (h) substituted by s. 4 of Act 26/2014]

- (i) comply with the requirements prescribed by the Minister.

- (2) In the preparation of an integrated waste management plan the provincial departments must give proper effect to the requirements contained in Chapter 5 of the Municipal Systems Act, insofar as such plan affects a municipality.

[Subs. (2) substituted by s. 4 of Act 26/2014]

13. Reporting on implementation of integrated waste management plans

- (1) Annual performance reports on the implementation of the integrated waste management plans must, in the case of a provincial department, be submitted to the MEC for approval and to the Minister for endorsement.

[Subs. (1) substituted by s. 5 of Act 26/2014]

WASTE ACT

- (2) The annual performance report that the provincial department must submit in terms of subsection (1) must contain information on the implementation of its integrated waste management plan, including information on-

[Words preceding para. (a) substituted by s. 5 of Act 26/2014]

- (a) the extent to which the plan has been implemented during the period;
 - (b) the waste management initiatives that have been undertaken during the reporting period;
 - (c) the delivery of waste management services and measures taken to secure the efficient delivery of waste management services, if applicable;
 - (d) the level of compliance with the plan and any applicable waste management standards;
 - (e) the measures taken to secure compliance with waste management standards;
 - (f) the waste management monitoring activities;
 - (g) the actual budget expended on implementing the plan;
 - (h) the measures that have been taken to make any necessary amendments to the plan;
 - (i) in the case of a province, the extent to which municipalities comply with the plan and, in the event of any non-compliance with the plan, the reasons for such non-compliance; and
 - (j) any other requirements as may be prescribed by the Minister.
- (3) The annual performance report prepared in terms of section 46 of the Municipal Systems Act must contain information on the implementation of the municipal integrated waste management plan, including the information set out in paragraphs (a) to (j) of subsection (2) insofar as it relates to the performance of the municipality.
- (4) Despite subsections (1) and (2), the Minister may specify in writing a different mechanism for the reporting on integrated waste management plans if necessary to improve the co-ordination of waste management.

CHAPTER 3A

FINANCIAL PROVISIONS

Waste Management Charges

13A. Pricing strategy for waste management charges

- (1) The Minister must, with the concurrence of the Minister of Finance, by notice in the *Gazette*, publish a pricing strategy, contemplated in subsection 13A(5)(b), to achieve the objectives of this Act in relation to waste management or any waste stream, within three months of the commencement of this Act.
- (2) The pricing strategy is to contain the basis and a guiding methodology or methodologies for setting waste management charges, including for the funding of-
 - (a) the implementation of industry waste management plans for those activities that generate specific waste streams;
 - (b) the re-use, recycling or recovery of waste in previously disadvantaged communities;
 - (c) the identification, further development and promotion of best practices in the minimisation, re-use, recycling and recovery of waste;
 - (d) implementation of approved guidelines, norms and standards for the minimisation, re-use, recycling and recovery of waste;
 - (e) the monitoring of the implementation and impact of industry waste management plans;
 - (f) the creation and the monitoring of the impacts of incentives and disincentives for the minimisation, re-use, recycling and recovery of waste; or
 - (g) the management of the disbursements of incentives for the minimisation, re-use, recycling and recovery of waste.
- (3) The pricing strategy may differentiate-
 - (a) in respect of different geographic areas, including on the basis of-
 - (i) socio-economic aspects within the area in question;
 - (ii) the physical attributes of each area; or
 - (iii) the demographic attributes of each area; or
 - (b) in respect of different types of uses, including on the basis of:
 - (i) the manner in which the waste is generated or disposed of;
 - (ii) whether it is re-used, recycled or recovered; or

WASTE ACT

- (iii) whether any previously disadvantaged group is impacted upon or derives any benefit therefrom.
- (4) The pricing strategy may provide for a differential rate for waste management charges, including on the basis of-
 - (a) the characteristics of the waste disposed of;
 - (b) the volume of the waste disposed of;
 - (c) the toxicity of the waste disposed of;
 - (d) the nature and extent of the impact on the environment caused by the waste disposed of; or
 - (e) the extent of approved deviation from prescribed waste standards or management practices.
- (5)
 - (a) Before setting a pricing strategy for waste management charges under subsection (1) the Minister must publish a notice in the *Gazette*-
 - (i) setting out the proposed pricing strategy;
 - (ii) inviting written comments to be submitted on the proposed strategy, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice; and
 - (iii) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (b) the Minister must consider all comments received on or before the date specified in the notice before publishing the final notice in the *Gazette*, within 30 days of the date contemplated in paragraph (5)(a)(ii).

13B. Application of pricing strategy

An Act of Parliament, to give effect to necessary elements of the pricing strategy contemplated in section 13A, is to be tabled in accordance with the provisions of section 77 of the Constitution, within 3 months of the publication of the pricing strategy contemplated in section 13A(5)(b) in the *Gazette*, including detail on-

- (a) the imposition of waste management charges;

WASTE ACT

- (b) the determination of waste management charges and the review of these waste management charges from time to time;
- (c) procedures for the collection through the national fiscal system; and
- (d) procedures for the appropriation and allocation of such funds referred to in paragraph (c) for the work of the Bureau and the implementation of any approved industry waste management plan for a specific waste stream as outlined in this Act.

[Chapter 3A inserted by s. 6 of Act 26/2014]

CHAPTER 4

WASTE MANAGEMENT MEASURES

Part I

Priority wastes

14. Declaration of priority wastes

- (1) The Minister may, by notice in the *Gazette*, declare a waste to be a priority waste if the Minister on reasonable grounds believes that the waste poses a threat to health, well-being or the environment because of the quantity or composition of the waste and -
 - (a) that specific waste management measures are required to address the threat; or
 - (b) that the imposition of specific waste management measures in respect of the waste may improve reduction, re-use, recycling and recovery rates or reduce health and environmental impacts.
- (2) The MEC may in writing request the Minister to declare a waste to be a priority waste in the manner contemplated in subsection (1).
- (3) If the declaration under subsection (1) or (2) of a waste as a priority waste is likely to have a significant impact on the national economy, such declaration may only be made after consultation with the Minister of Trade and Industry and the Minister of Finance.
- (4) A notice under subsection (1) or (2) must specify the waste management measures that must be taken.
- (5) The measures contemplated in subsection (4) may include-
 - (a) a requirement for identified persons falling within a category of persons to prepare an industry waste management plan in terms of section 28 in respect of the declared priority waste;

WASTE ACT

(b) a prohibition on the generation of the priority waste;

(c) measures for the management of the priority waste;

measures for the minimisation, storage, re-use, recycling and recovering, treatment and disposal of the priority waste;

(e) requirements for the registration and monitoring of, and reporting on, priority waste; and

(f) any other measures that the Minister believes are necessary to manage the threat that is presented by the waste or to achieve the objects of this Act.

(6)

(a) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Minister must consult with a person or category of persons that may be affected by the notice, and follow a consultative process in accordance with sections 72 and 73.

(b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

15. Consequences of declaration of priority wastes

(1) No person may import, manufacture, process, sell or export a priority waste or a product that is likely to result in the generation of a priority waste unless that waste or product complies with-

(a) the waste management measures contemplated in section 14(4);

(b) an industrial waste management plan which has been submitted in accordance with the requirements of a notice referred to section 28 or 29; or

(c) any other requirement in terms of this Act.

(2) No person may recycle, recover, treat or dispose of a priority waste unless it is in accordance with this Act and the waste management measures contemplated in section 14(4).

Part 2

General duty

16. General duty in respect of waste management

WASTE ACT

- (1) A holder of waste must, within the holder's power, take all reasonable measures to-
 - (a) avoid the generation of waste and where such generation cannot be avoided to minimise the toxicity and amounts of waste that are generated;
 - (b) reduce, re-use, recycle and recover waste;
 - (c) where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner;
 - (d) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts;
 - (e) prevent any employee or any person under his or her supervision from contravening this Act; and
 - (f) prevent the waste from being used for an unauthorised purpose.
- (2) Any person who sells a product that may be used by the public and that is likely to result in the generation of hazardous waste must take reasonable steps to inform the public of the impact of that waste on health and the environment.
- (3) The measures contemplated in this section may include measures to-
 - (a) investigate, assess and evaluate the impact of the waste in question on health or the environment;
 - (b) cease, modify or control any act or process causing the pollution, environmental degradation or harm to health;
 - (c) comply with any norm or standard or prescribed management practice;
 - (d) eliminate any source of pollution or environmental degradation; and
 - (e) remedy the effects of the pollution or environmental degradation.
- (4) The Minister or MEC may issue regulations to provide guidance on how to discharge this duty or identify specific requirements that must be given effect to, after following a consultative process in accordance with sections 72 and 73.
- (5) Subsection (4) need not be complied with if the regulation is amended in a non-substantive manner.

Part 3

Reduction, re-use, recycling and recovery of waste

17. Reduction, re-use, recycling and recovery of waste

- (1) Unless otherwise provided for in this Act, any person who undertakes an activity involving the reduction, re-use, recycling or recovery of waste must, before undertaking that activity, ensure that the reduction, re-use, recycling or recovery of the waste-
 - (a) uses less natural resources than disposal of such waste; and
 - (b) to the extent that it is possible, is less harmful to the environment than the disposal of such waste.
- (2) The Minister may, after consultation with the Minister of Trade and Industry and by notice in the *Gazette*, require any person or category of persons to-
 - (a) provide for the reduction, re-use, recycling and recovery of products or components of a product manufactured or imported by that person; or
 - (b) include a determined percentage of recycled material in a product that is produced, imported or manufactured by that person or category of persons.
- (3)
 - (a) Before publishing a notice in terms of subsection (2), or any amendment to the notice, the Minister must follow a consultative process in accordance with sections 72 and 73.
 - (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive manner.

18. Extended producer responsibility

- (1) The Minister after consultation with the Minister of Trade and Industry may, in order to give effect to the objects of this Act, by notice in the *Gazette*-
 - (a) identify a product or class of products in respect of which extended producer responsibility applies;
 - (b) specify the extended producer responsibility measures that must be taken in respect of that product or class of products; and
 - (c) identify the person or category of persons who must implement the extended producer responsibilities measures contemplated in paragraph (b).

WASTE ACT

- (2) The Minister may in a notice under subsection (1) specify-
- (a) the requirements in respect of the implementation and operation of an extended producer responsibility programme, including the requirements for the reduction, reuse, recycling, recovery, treatment and disposal of waste;
 - (b) the financial arrangements of a waste minimisation programme, with the concurrence of the Minister of Finance;
 - (c) the institutional arrangements for the administration of a waste minimisation programme;
 - (d) the percentage of products that must be recovered under a waste minimisation programme;
 - (e) the labelling requirements in respect of waste;
 - (f) that the producer of a product or class of products identified in that notice must carry out a life cycle assessment in relation to the product, in such manner or in accordance with such standards or procedures as may be prescribed; and
 - (g) the requirements that must be complied with in respect of the design, composition or production of a product or packaging, including a requirement that-
 - (i) clean production measures be implemented;
 - (ii) the composition, volume or weight of packaging be restricted; and
 - (iii) packaging be designed so that it can be reduced, re-used, recycled or recovered.
- (3) Before publishing a notice under subsection (1) or any amendment to the notice, the Minister must-
- (a) consult affected producers;
 - (b) follow a consultative process in accordance with sections 72 and 73, unless the notice is amended in a non-substantive manner;
 - (c) take into account the Republic's obligations in terms of any applicable international agreements; and
 - (d) consider relevant scientific information.

Part 4

Waste management activities

19. Listed waste management activities

- (1) The Minister may by notice in the *Gazette* publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment.
- (2) The Minister may amend the list by-
 - (a) adding other waste management activities to the list;
 - (b) removing waste management activities from the list; or
 - (c) making other changes to the particulars on the list.
- (3) A notice referred to in subsection (1)-
 - (a) must indicate whether a waste management licence is required to conduct the activity or, if a waste management licence is not required, the requirements or standards that must be adhered to when conducting the activity;
 - (b) may exclude certain quantities or categories of waste or categories of persons from the application of the notice if the waste in question is-
 - (i) of such a small quantity or temporary nature that it is unlikely to cause pollution to the environment or harm to human health; or
 - (ii) adequately controlled by other legislation;
 - (c) may contain transitional and other special arrangements in respect of waste management activities that are carried out at the time of their listing; and
 - (d) must determine the date on which the notice takes effect.
- (4) Until such time as the Minister has published a notice contemplated in subsection (1), Schedule 1 of this Act is applicable.
- (5) The MEC, with the concurrence of the Minister, may by notice in the *Gazette*-
 - (a) publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment in the province concerned; and

WASTE ACT

- (b) when necessary, amend the list by-
 - (i) adding other waste management activities to the list;
 - (ii) removing waste management activities from the list; or
 - (iii) making other changes to the particulars on the list.
- (6) A list published under subsection (5) by the MEC must include waste management activities listed in Schedule 1 or listed under section (1), if applicable.
- (7) A list published under subsection (5) by the MEC applies to the relevant province only.
- (8) A notice under subsection (1) or (5)-
 - (a) may contain transitional and other special arrangements in respect of waste management activities that are carried out at the time of their listing; and
 - (b) must determine the date on which the notice takes effect.
- (9) For the purposes of administrative efficiency, the lists published under subsection (1) or (5) or Schedule 1 may divide the waste management activities into different categories
- (10)
 - (a) Before publishing a notice under subsection (1) or (5), or any amendment to such notice, the Minister or MEC, as the case may be, must follow a consultative process in accordance with sections 72 and 73.
 - (b) Paragraph (a) need not be complied with if the list contemplated in subsection (1) or (5) is amended in a non-substantive manner.

20. Consequences of listing waste management activities

No person may commence, undertake or conduct a waste management activity, except in accordance with-

- (a) the requirements or standards determined in terms of section 19(3) for that activity;
or
- (b) a waste management licence issued in respect of that activity, if a licence is required.

20A. Prohibited or restricted activities in specified geographical areas

- (1) Despite section 19 and in accordance with the risk averse and cautious approach

WASTE ACT

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.

- (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.
- (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.
- (4) The Minister may by notice in the *Gazette*—
 - (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.
 - (c) Before acting in terms of subsection (1), the Minister must—
 - (d) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;
 - (e) consult the MEC that will be affected by the exercise of the power; and
 - (f) 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.

[Sec. 20A inserted by s. 19 of Act 25/2014 w.e.f. 2 September 2014]

Part 5

Storage, collection and transportation of waste

21. General requirements for storage of waste

Any person who stores waste must at least take steps, unless otherwise provided by this Act, to ensure that-

WASTE ACT

- (a) the containers in which any waste is stored, are intact and not corroded or in any other way rendered unfit for the safe storage of waste;
- (b) adequate measures are taken to prevent accidental spillage or leaking;
- (c) the waste cannot be blown away;
- (d) nuisances such as odour, visual impacts and breeding of vectors do not arise; and
- (e) pollution of the environment and harm to health are prevented.

22. Storage of general waste

- (1) Any person who generates general waste that is collected by a municipality must place the waste in a container approved, designated or provided by the municipality for that purpose and in a location approved or authorised by the municipality.
- (2) Waste that is reusable, recyclable or recoverable and that is intended to be reduced, re-used, recycled or recovered in accordance with this Act or any applicable by-laws need not be placed in a container contemplated in subsection (1).

23. Waste collection services

- (1) Waste collection services are subject to-
 - (a) the need for an equitable allocation of such services to all people in a municipal area;
 - (b) the obligation of persons utilising the service to pay any applicable charges;
 - (c) the right of a municipality to limit the provision of general waste collection services if there is a failure to comply with reasonable conditions set for the provision of such services, but where the municipality takes action to limit the provision of services, the limitation must not pose a risk to health or the environment; and
 - (d) the right of a municipality to differentiate between categories of users and geographical areas when setting service standards and levels of service for the provision of municipal services.
- (2) Every municipality must, subject to this Act, and as far as is reasonably possible, provide containers or receptacles for the collection of recyclable waste that are accessible to the public.

24. Collection of waste

No person may collect waste for removal from premises unless such person is -

WASTE ACT

- (a) a municipality or municipal service provider;
- (b) authorised by law to collect that waste, where authorisation is required; or
- (c) not prohibited from collecting that waste.

25. Duties of persons transporting waste

- (1) The Minister, an MEC or a municipality may, by notice in the *Gazette*, require any person or category of persons who transports waste for gain to-
 - (a) register with the relevant waste management officer in the Department, province or municipality, as the case may be; and
 - (b) furnish such information as is specified in that notice or as the waste management officer may reasonably require.
- (2) Any person engaged in the transportation of waste must take all reasonable steps to prevent any spillage of waste or littering from a vehicle used to transport waste.
- (3) Where waste is transported for the purposes of disposal, a person transporting the waste must, before offloading the waste from the vehicle, ensure that the facility or place to which the waste is transported, is authorised to accept such waste.
- (4) Where hazardous waste is transported for purposes other than disposal, a person transporting the waste must, before offloading the waste from the vehicle, ensure that the facility or place to which the waste is transported, is authorised to accept such waste and must obtain written continuation that the waste has been accepted.
- (5) In the absence of evidence to the contrary which raises a reasonable doubt, a person who is in control of a vehicle, or in a position to control the use of a vehicle, that is used to transport waste for the purpose of offloading that waste, is considered to knowingly cause that waste to be offloaded at the location where the waste is deposited.

Part 6

Treatment, processing and disposal of waste

26. Prohibition of unauthorised disposal

- (1) No person may-
 - (a) dispose of waste, or knowingly or negligently cause or permit waste to be disposed of, in or on any land, waterbody or at any facility unless the disposal of that waste is authorised by law; or

WASTE ACT

- (b) dispose of waste in a manner that is likely to cause pollution of the environment or harm to health and well-being.
- (2) Subsection (1) need not be complied with if-
- (a) the waste was generated as a result of normal household activities and-
 - (i) the municipality does not render a waste collection service in that area; and
 - (ii) the most environmentally and economically feasible option for the management of the waste was adopted; or
 - (b) the disposal of the waste was done to protect human life or as a result of an emergency beyond that person's control.

27. Littering

- (1) An owner of privately owned land to which the general public has access, must ensure-
- (a) that sufficient containers or places are provided to contain litter that is discarded by the public; and
 - (b) that the litter is disposed of before it becomes a nuisance, a ground for a complaint or causes a negative impact on the environment.
- (2) No person may-
- (a) throw, drop, deposit, spill or in any other way discard any litter into or onto any public place, land, vacant erf, stream, watercourse, street or road, or on any place to which the general public has access, except in a container or a place specifically provided for that purpose; or
 - (b) allow any person under that person's control to do any of the acts contemplated in paragraph (a).

Part 7

Industry waste management plans

28. Preparation of industry waste management plans by certain persons

- (1) Where any activity results in the generation of waste that affects more than one province or where such activity is conducted in more than one province, the Minister may by written notice require a person, or by notice in the *Gazette* require a category of persons or an industry, that generates waste to prepare and submit an industry waste management plan to the Minister for approval.

WASTE ACT

(1A) When exercising the power in terms of subsection (1), the Minister must consult every MEC of the province affected by the waste in question, or where the waste management activity is conducted, prior to taking a decision whether to approve the industry waste management plan or not.

[Subs. (1A) inserted by s. 7 of Act 26/2014]

(2) The MEC, with the concurrence of the Minister, may, in respect of any activity not contemplated in subsection (1) and which only affects that province concerned that results in the generation of waste, by written notice require a person, or by notice in the *Gazette* require a category of persons or an industry, that generates that waste to prepare and submit an industry waste management plan to the MEC for approval.

[Subs. (2) substituted by s. 7 of Act 26/2014]

(3)

[Subs. (3) deleted by s. 7 of Act 26/2014]

(4) When exercising a power under subsection (1) or (2), the Minister or MEC, as the case may be, must consider-

(a) the impact or potential impact of the waste on health and the environment that is generated by the applicable person, category of persons or industry;

(b) the environmentally sensitive nature of a natural resource or the amount of natural resources that is consumed in the manufacturing or production processes that result in the waste; and

(c) the manner in which an industry waste management plan may contribute to-

(i) the avoidance or minimisation of the generation of waste;

(ii) the reduction of negative impacts on health and the environment; and

(iii) the conserving of natural resources.

(5) The Minister or MEC must, before exercising a power under subsection (1) or (2), as the case may be, consult the person, category of persons or industry to be affected.

(6) The Minister or MEC, as the case may be, may give directions that an industry waste management plan must be prepared by an independent person, consistent with sections 13A and 13B, at the cost of the person, category of persons or industry contemplated in subsection (1) or (2).

[Subs. (6) substituted by s. 7 of Act 26/2014]

(7)

- (a) A person, category of persons or industry contemplated in subsection (1) or (2) may elect to prepare, consistent with sections 13A and 13B, an industry waste management plan for approval in terms of this Part without being required to do so by the Minister or MEC.

[Para. (a) substituted by s. 7 of Act 26/2014]

(Commencement date of para. (a): To be proclaimed)

- (b) When a person, category of persons or industry submits an industry waste management plan in terms of paragraph (a)-
 - (i) subsections (4), (5) and (6) apply with the changes required by the context; and
 - (ii) the Minister or MEC to whom the plan is submitted may exercise any of their respective powers set out in this Part in respect of that plan.

29. Preparation of industry waste management plans by organs of state

- (1) The Minister may, by notice in writing, require an industry waste management plan to be prepared by an organ of state, excluding a municipality, within a stipulated timeframe.
- (2)

[Subs. (2) deleted by s. 8 of Act 26/2014]

- (3) When exercising a power under subsection (1), the Minister or MEC must consider whether-

[Words preceding para. (a) substituted by s. 8 of Act 26/2014]

- (a) the diversity, complexity and competitive nature of the industry concerned would make it impractical for a category of persons other than an organ of state or provincial department responsible for environmental affairs to prepare the plan;
- (b) the knowledge or experience of the persons who are likely to be affected by the plan in the areas of waste reduction, re-use, recycling and recovery is limited;
- (c) the persons who are likely to be affected by the plan comprise of small-medium or micro enterprises; or
- (d) the person required to prepare a plan in accordance with section 28, or to revise or amend the plan in terms of section 32(1), has failed to do so.

WASTE ACT

- (4) The Minister or MEC, as the case may be, may recover the costs of preparing an industry waste management plan from-
- (a) the person contemplated in section 28 who, after written notice, failed to prepare the plan; or
 - (b) the person who is required to revise or amend the plan in terms of section 32(1), but has failed to do so.
- (5) An organ of state contemplated in subsection (1), may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan.

[Subs. (5) substituted by s. 8 of Act 26/2014]

- (6) An organ of state contemplated in subsection (1), must follow a consultative process in accordance with sections 72 and 73, unless that plan is being prepared as a result of a person who was required to prepare that plan failing to do so, in which case section 31(2) applies.

[Subs. (6) substituted by s. 8 of Act 26/2014]

30. Contents of industry waste management plans

- (1) The Minister, in a notice contemplated in section 28(1) or 29(1), or the MEC, with the concurrence of the Minister, in a notice contemplated in section 28(2), must specify the information that must be included the industry waste management plan.

[Subs. (1) substituted by s. 9 of Act 26/2014]

- (2) The information that the Minister or MEC specifies in terms of subsection (1) may include-
- (a) the amount of waste that is generated;
 - (b) measures to prevent pollution or ecological degradation;
 - (c) targets for waste minimisation through waste reduction, re-use, recycling and recovery;
 - (d) measures or programmes to minimise the generation of waste and the final disposal of waste;
 - (e) measures or actions to be taken to manage waste;
 - (f) the phasing out of the use of specified substances;

WASTE ACT

- (g) opportunities for the reduction of waste generation through changes to packaging, product design or production processes;
- (h) mechanisms for informing the public of the impact of the waste-generating products or packaging on the environment;
- (i) the extent of any financial contribution to be made to support consumer-based waste reduction programmes;
- (j) the period that is required for implementation of the plan;
- (k) methods for monitoring and reporting; and
- (l) any other matter that may be necessary to give effect to the objects of this Act.

31. Notification of industry waste management plans

- (1) Any person required to produce an industry waste management plan in terms of section 28 must take appropriate steps to bring the contents of a proposed industry waste management plan to the attention of relevant organs of state, interested persons and the public and must follow any directions given by the Minister or MEC, as the case may be, regarding the consultation process that must be followed.
- (2) An organ of state required to prepare an industry waste management plan in terms of section 29 as a result of a person who was required to prepare that plan failing to do so must bring the contents of a proposed industry waste management plan to the attention of relevant organs of state, interested persons and the public.
- (3) Any comments submitted in respect of an industry waste management plan must be considered by the person responsible for preparing the plan, and a copy of all comments must be submitted to the Minister or MEC, as the case may be, together with the plan.

32. Consideration of industry waste management plans

- (1) The Minister, acting in terms of section 28(1) or 29(1), or the MEC acting in terms of section 28(2), may on receipt of an industry waste management plan-

[Words preceding para. (a) substituted by s. 10 of Act 26/2014]

- (a) approve the plan in writing, with any amendments or conditions, and give directions for the implementation of the plan;
- (b) require additional information to be furnished and a revised plan to be submitted within timeframes specified by the Minister or MEC for approval;

WASTE ACT

- (c) require amendments to be made to the plan within timeframes specified by the Minister or MEC; or
- (d) reject the plan with reasons if it does not comply with the requirements of a notice in terms of section 28(1) or (2) or 29(1), as the case may be, or if a consultation process in accordance with section 31 was not followed.

[Para. (d) substituted by s. 10 of Act 26/2014]

- (2) Any failure to comply with a requirement referred to in subsection (1)(b) or (c) within the timeframes specified by the Minister or the MEC is regarded as constituting a failure to submit an industry waste management plan
- (3) An industry waste management plan that has been rejected in terms of subsection (1)(d) may be amended and resubmitted to the Minister or MEC.
- (4) On receipt of any information or amendments requested in terms of subsection (1)(b) or (c) or any amended industry waste management plan resubmitted in terms of subsection (2) for the first time, the Minister or MEC must reconsider the plan.
- (5) An approval in terms of subsection (1)(a) must at least specify the period for which the approval is issued, which period may be extended by the Minister or MEC.
- (5A) The Minister or the MEC, as the case may be, must in accordance with sections 72 and 73, follow such consultation process, as may be appropriate under the circumstances, before considering the industry waste management plan for approval in terms of section 28(1) or (2).

[Subs. (5A) inserted by s. 10 of Act 26/2014]

- (6) Notice must be given in the relevant *Gazette* of any industry waste management plan that has been prepared in terms of section 28 and that has been approved by the Minister or MEC, as the case may be.
- (7) An industry waste management plan that has been prepared by an organ of state in terms of section 29 and that has been approved by the Minister or MEC, as the case may be, must be published in the relevant *Gazette*, together with an indication of when and how the plan must be implemented, if applicable.

[Subs. (7) substituted by s. 10 of Act 26/2014]

33. Specification of measures to be taken

- (1) If the Minister or MEC rejects an industry waste management plan in terms of section 32, or if any person who is required in terms of section 28(1) or (2) to prepare an industry

WASTE ACT

waste management plan fails to do so, or if a person fails to revise or amend a plan as required by the Minister or the MEC in terms of section 32(1) or section 17 of the National Environmental Management: Waste Amendment Act, 2014, the Minister or MEC, as the case may be, may by notice in writing and without any criminal proceedings being affected, specify the waste management measures that must be taken by that person.

[Subs. (1) substituted by s. 11 of Act 26/2014]

- (2) When specifying the waste management measures to be taken in terms of subsection (1), the Minister or MEC, as the case may be, must consider, and to the extent possible, align the measures to be taken with the measures that are set out in any other approved industry waste management plan and that is related to the activities of the person whose plan has been rejected more than once or who failed to submit a plan.

34. Review of industry waste management plans

- (1) An industry waste management plan that has been required by the Minister in terms of section 28(1) or 29(1), or by the MEC in terms of section 28(2), must be reviewed at intervals specified in the approval or at intervals specified by the Minister or MEC by notice in writing or in the relevant *Gazette*.

[Subs. (1) substituted by s. 12 of Act 26/2014]

- (2) When specifying a review period for an industry waste management plan prepared by a person, the Minister or MEC, as the case may be, must take cognisance of the review periods that have been specified in any related waste management licence.

Part 7A

Waste Management Bureau

34A. Establishment of Waste Management Bureau

- (1) An implementation Bureau dealing with waste management to be known as the "Waste Management Bureau" is hereby established, within the Department, as a juristic person.
- (2) The Bureau must comply with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (3) In the event of absence of a functional Bureau or a Chief Executive Officer, the powers and duties of the Bureau revert to the Director-General of the Department contemplated in section 34G(1), who, in such a case, must exercise those powers and perform those duties until the Bureau is functional or a Chief Executive Officer is appointed.

34B. Determination of policy

- (1) The Minister must, after consultation with the Bureau, determine and publish a policy within which the Bureau must exercise its powers and perform its functions.
- (2) The Minister may, after consultation with the Bureau, amend, substitute or withdraw the policy determined in terms of subsection (1), and must publish the amended policy.
- (3) The Minister must, 30 days before the final publication of any policy contemplated in subsections (1) and (2), table the policy in Parliament.

34C. Minister's supervisory powers

- (1) The Bureau must exercise its powers and perform its functions subject to the policy determined in terms of section 34B (1) or (2), the service level standards and norms contemplated in subsection (2)(b) and any directives issued by the Minister in terms of subsection 2(c).
- (2) The Minister-
 - (a) must monitor the exercising of powers and performance of functions of the Bureau in terms of the policy determined in terms of section 34B(1) or (2);
 - (b) may set service level standards and norms for the Bureau in the execution of its powers and functions; or
 - (c) must issue directives to the Bureau in the case of non compliance with the policy determined in terms of section 34B(1) or (2) or the service level standards and norms issued in terms of subsection 2(b), to ensure the effective and efficient functioning of the Bureau and for the achievement of the objectives of this Act.

34D. Objects of Bureau

The objects of the Bureau are to-

- (a) function as a specialist implementing agent within the Department in respect of matters delegated to the Bureau in terms of this Act;
- (b) promote and facilitate minimisation, re-use, recycling and recovery of waste;
- (c) manage the disbursement of incentives and funds derived from waste management charges contemplated in sections 13B and 34D for the minimisation, reuse, recycling, recovery, transport, storage, treatment and disposal of waste and the implementation of industry waste management plans;

WASTE ACT

- (d) monitor implementation of industry waste management plans and the impact of incentives and disincentives;
- (e) progressively build capacity within the Bureau to provide specialist support for the development and implementation of municipal waste management plans and capacity building programmes; and
- (f) support and advise on the development of waste management plans, tools, instruments, processes, systems, norms, standards and municipal waste management plans and capacity building programmes.

34E. Functions of Bureau

(1) The Bureau must-

- (a) implement the disbursement of incentives and funds derived from waste management charges contemplated in sections 13B and 34D;
- (b) identify and promote best practices in the minimisation, re-use, recycling or recovery of waste;
- (c) progressively build capacity of the Bureau to support municipalities in the development and implementation of integrated waste management plans and capacity building programmes;
- (d) support and advise on the development of industry waste management plans, integrated waste management plans and other tools, instruments, processes and systems, including specialist support for the development of norms or standards for the minimisation, re-use, recycling or recovery of waste and the building of municipal waste management capacity;
- (e) monitor the implementation of industry waste management plans;
- (f) monitor and evaluate the impact of incentives and disincentives; and
- (g) perform any other task or function that the Minister may assign or delegate to the Bureau in relation to the implementation of this Act.

(2) The Bureau may-

- (a) invest any of its money, after having complied with section 34F(2); and
- (b) charge fees for services rendered, other than services rendered in terms of section 13A or to the Minister or the Department.

34F. Funding of Bureau

- (1) The funds of the Bureau consist of-
 - (a) money derived and allocated from charges referred to in section 13B;
 - (b) income derived by it for services rendered;
 - (c) money appropriated by Parliament;
 - (d) voluntary contributions, donations and bequests received consistent with the provisions of the regulations made in terms of section 76(1)(k) or (l) of the Public Finance Management Act, 1999; and
 - (e) income derived from investments referred to in section 34E(2)(b).
- (2) The Bureau must utilise its funds to defray expenses incurred in the performance of its functions.
- (3) The Bureau must utilise the donations and contributions referred to in subsection (1)(d) in accordance with the conditions, if any, imposed by the donor or contributor concerned, but those conditions must be approved by the Minister, in concurrence with the Minister of Finance, and must not be inconsistent with the objects of the Bureau, provisions of this Act, regulations made in terms of section 76(1)(k) or (l) of the Public Finance Management Act, 1999, or any other law.
- (4) The Chief Executive Officer must, with the concurrence of the Minister and the Minister of Finance-
 - (a) open an account in the name of the Bureau with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
 - (b) deposit therein all money received in terms of subsection (1).
- (5) The Chief Executive Officer is responsible and accountable to the Director-General of the Department as the accounting authority for all money received by the Bureau and the utilisation of that money.

34G. Financial management

- (1) The Director-General of the Department is, for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the accounting authority and must cause full and proper books of account and all the necessary records in relation thereto to be kept.
- (2) The Chief Executive Officer must ensure compliance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), including ensuring that the Bureau's annual

WASTE ACT

budgets, corporate plans, annual reports and audited financial statements are prepared and submitted.

34H. Reporting and audit

- (1) The Bureau must in each financial year, on or before a date determined by the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit an annual report on its activities and a statement of its income and estimated expenditure for the next financial year to the Minister through the Director-General for approval.
- (2) Notwithstanding subsection (1), the Bureau must submit such additional reports as the Minister or the Director-General may require.
- (3) The books, records of account and financial statements of the Bureau must be audited annually by the Auditor-General.

34I. Immovable property

- (1) The Bureau may, with the approval of the Minister, acquire, hold or dispose of immovable property in the course of its business.
- (2) The policy and procedure of the Bureau with regard to the acquisition and disposal of immovable property must be in accordance with the policies, regulations and practices of the public service.

34J. Chief Executive Officer of Bureau

- (1) The Director-General of the Department must recruit and the Minister must approve the appointment of a suitably qualified and skilled person as the Chief Executive Officer of the Bureau in accordance with the Public Service Act, 1994, including its employment practices, but at a level of remuneration and employment service conditions as determined by the Minister, in concurrence with the Minister of Finance.
- (2) The appointment of the Chief Executive Officer must follow a transparent and competitive recruitment and selection process, in accordance with the Public Service Act, 1994.
- (3) The Chief Executive Officer must be appointed for a term not exceeding five years subject to subsection (1).
- (4) The Chief Executive Officer must enter into a written performance agreement with the Minister within three months of taking up the post as Chief Executive Officer.
- (5) The Director-General of the Department, with the approval of the Minister, may terminate the Chief Executive Officer's employment in accordance with the Public Service Act, 1994.

WASTE ACT

- (6) The Chief Executive Officer may not serve for more than two consecutive terms, unless otherwise stipulated by the Minister, after consultation with the Minister of Finance.

34K. Functions of Chief Executive Officer

- (1) The Chief Executive Officer is responsible for-
- (a) the management of the operations of the Bureau, subject to the direction of the Director-General of the Department;
 - (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Director-General of the Department and the Minister;
 - (c) the appointment of members of staff;
 - (d) control of, and maintenance of discipline over, members of staff of the Bureau; and
 - (e) any other function provided for in this Act.
- (2) The Chief Executive Officer is accountable to the Director-General of the Department and must report to him or her on the activities of the Bureau.
- (3) The Chief Executive Officer must ensure that the Bureau complies with all relevant provisions of applicable public service policy, regulations and legislation.
- (4) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Director-General of the Department must, in writing, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions, but not for a period longer than six months, except under circumstances where the absence of the Chief Executive Officer is due to a disciplinary matter.
- (5) The Chief Executive Officer may, in writing and on such conditions as he or she may determine, delegate any power or duty of the Chief Executive Officer to a senior member of the Bureau, unless the Director-General of the Department or Minister prohibits a specific delegation.
- (6) A delegation made under subsection (4) does not-
- (a) divest the Chief Executive Officer of the accountability concerning the performance of the function in question; or
 - (b) prohibit the performance of the function in question by the Chief Executive Officer.
- (7) A delegation made under subsection (4) may be repealed, withdrawn or amended, but the repeal, withdrawal or amendment does not affect any right which may have accrued

to a person as a result of the function performed before the delegation was repealed, withdrawn or amended.

34L. Employees of Bureau

- (1) Subject to subsection (2), the Chief Executive Officer-
 - (a) must appoint such number of employees, within allocated resources available for that purpose, or receive on therefrom such number of persons provided to enable the Bureau to perform its functions;
 - (b) is responsible for the administrative control of the Bureau and for the discipline of the employees and persons contemplated in paragraph (a); and
 - (c) must ensure compliance with applicable public service and labour legislation.
- (2) The employees referred to in subsection (1) must at least have the following specialist expertise:
 - (a) resource economics;
 - (b) financial accounting;
 - (c) financial management;
 - (d) process chemistry or engineering; and
 - (e) technical expert knowledge in the waste and environmental resource management fields.
- (3) The provisions relating to employment practice contained in the Public Service Act, 1994, the regulations, determinations, deemed determinations contemplated in section 5(6) of that Act and directives made in terms of that Act apply, except with regard to consideration of scales of remuneration and employment conditions service of the staff referred to in subsection (3).
- (4) The Minister must determine, in concurrence with the Minister of Finance, the organisational structure and the scale of remuneration for employees referred to in paragraphs (a) to (e) of subsection (3), which may be different from those of the public service.
- (5) A person employed by the Bureau may become a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service.

- (6) The Bureau may utilise persons seconded from or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

[Part 7A inserted by s. 13 of Act 26/2014]

Part 8

Contaminated land

35. Application of this Part

This part applies to the contamination of land even if the contamination-

- (a) occurred before the commencement of this Act;
- (b) originated on land other than land referred to in section 38;
- (c) arises or is likely to arise at a different time from the actual activity that caused the contamination; or
- (d) arises through an act or activity of a person that results in a change to pre-existing contamination.

(Commencement date of s. 35: 2 May 2014)

36. Identification and notification of investigation areas

- (1) The Minister, or the MEC in respect of an area which affects the relevant province, may, after consultation with the Minister of Water Affairs and Forestry and any other organ of state concerned, by notice in the *Gazette*, identify as investigation areas-
- (a) land on which high-risk activities have taken place or are taking place that are likely to result in land contamination;
 - (b) land that the Minister or MEC, as the case may be, on reasonable grounds believes to be contaminated.
- (2) A notice under subsection (1) by the Minister applies nationally, and a notice under that subsection by the MEC applies to the relevant province only.
- (3) Before publishing a notice under subsection (1), or any amendment to the notice, the Minister or MEC, as the case may be, must follow a consultative process in accordance with sections 72 and 73.

WASTE ACT

- (4) Subsection (3) need not be complied with if the notice is amended in a non-substantive manner.
- (5) An owner of land that is significantly contaminated, or a person who undertakes an activity that caused the land to be significantly contaminated, must notify the Minister and MEC of that contamination as soon as that person becomes aware, of that contamination.
- (6) Despite subsection (1), the Minister or MEC may issue a written notice to a particular person identifying specific land as an investigation area if the Minister or MEC on reasonable grounds believes that the land is or is likely to be contaminated.

(Commencement date of s. 36: 2 May 2014)

37. Consequences of identification and notification of investigation areas

- (1) The Minister or MEC, as the case may be, may in respect of an investigation area contemplated in section 36, after consultation with the Minister of Water Affairs and Forestry-
 - (a) cause a site assessment to be conducted in respect of the relevant investigation area; or
 - (b) in a notice published under section 36(1) or issued under section 36(6)-
 - (i) direct the owner of the investigation area; or
 - (ii) direct the person who has undertaken or is undertaking the high risk activity or activity that caused or may have caused the contamination of the investigation area, to cause a site assessment to be conducted by an independent person, at own cost, and to submit a site assessment report to the Minister or MEC within a period specified in the notice.
- (2)
 - (a) A site assessment report must comply with any directions that may have been published or given by the Minister or MEC in a notice contemplated in section 36(1) or (6) and must at least include information on whether the investigation area is contaminated.
 - (b) Where the findings of the site assessment report are that the investigation area is contaminated, the site assessment report must at least contain information on whether-
 - (i) the contamination has already impacted on health or the environment;

WASTE ACT

- (ii) the substances present in or on the land are toxic, persistent or bio-accumulative or are present in large quantities or high concentrations or occur in combinations;
 - (iii) there are exposure pathways available to the substances;
 - (iv) the use or proposed use of the land and adjoining land increases or is likely to increase the risk to health or the environment;
 - (v) the substances have migrated or are likely to migrate from the land;
 - (vi) the acceptable exposure for human and environmental receptors in that environment have been exceeded;
 - (vii) any applicable standards have been exceeded; and
 - (viii) the area should be remediated or any other measures should be taken to manage or neutralise the risk.
- (3) For the purposes of this section, land may be regarded as being contaminated at any particular time if the risk of harm to health or the environment could eventuate only in certain circumstances and those circumstances do not exist at the time that the site assessment is undertaken, but those circumstances are reasonably foreseeable.

(Commencement date of s. 37: 2 May 2014)

38. Consideration of site assessment reports

- (1) On receipt of a site assessment report contemplated in section 37, the Minister or MEC, as the case may be, may, after consultation with the Minister of Water Affairs and Forestry and any other organ of state concerned, decide that-
- (a) the investigation area is contaminated, presents a risk to health or the environment, and must be remediated urgently;
 - (b) the investigation area is contaminated, presents a risk to health or the environment, and must be remediated within a specified period;
 - (c) the investigation area is contaminated and does not present an immediate risk, but that measures are required to address the monitoring and management of that risk; or
 - (d) the investigation area is not contaminated.
- (2) If the Minister or MEC, as the case may be, decides that an investigation area is contaminated and requires remediation, the Minister or MEC must declare the land to be a remediation site and make such remediation order as is necessary to neutralise that risk.

WASTE ACT

- (3) If the Minister or MEC, as the case may be, decides that the investigation area does not present an immediate risk, but that measures are required to address the monitoring and management of that risk, the Minister or MEC may make an order specifying the measures that must be taken.
- (4) Unless otherwise directed, a remediation order under subsection (2), an order under subsection (3) or a directive under section 37(1) must be complied with at the cost of the person against whom the order or directive is issued.
- (5) The Minister or MEC, as the case may be, may amend a remediation order if-
 - (a) ownership of the land is transferred and the new owner in writing assumes responsibility for the remediation; or
 - (b) new information or evidence warrants amending the order.

(Commencement date of s. 38: 2 May 2014)

39. Orders to remediate contaminated land

- (1) A remediation order issued under section 38(2) or an order issued under section 38(3) must describe, to the extent that it is applicable-
 - (a) the person who is responsible for undertaking the remediation;
 - (b) the land to which the order applies;
 - (c) the nature of the contamination;
 - (d) the measures that must be taken to remediate the land or the standards that must be complied with when remediating the land;
 - (e) the period within which the order must be complied with;
 - (f) whether any limitations in respect of the use of the land are imposed;
 - (g) the measures that must be taken to monitor or manage the risk; and
 - (h) any other prescribed matter.
- (2) Before issuing a remediation order or an amended remediation order, the Minister or MEC, as the case may be, must consult with the Minister of Water Affairs and Forestry and any other organ of state concerned.

WASTE ACT

- (3) The Minister or MEC, as the case may be, may instruct any official within his or her Department to ensure that the remediation order is complied with.

(Commencement date of s. 39: 2 May 2014)

40. Transfer of remediation sites

- (1) No person may transfer contaminated land without informing the person to whom that land is to be transferred that the land is contaminated and, in the case of a remediation site, without notifying the Minister or MEC and complying with any conditions that are specified by the Minister or MEC, as the case may be.

(2)

- (a) For the purposes of ensuring compliance with this section, the Minister must notify the relevant Registrar of Deeds appointed in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), of any land that has been declared as a remediation site.
- (b) The notification contemplated in paragraph (a) must identify the land sufficiently to enable the Registrar of Deeds to enter the necessary information in or on registers and documents kept by his or her Office.

(Commencement date of s. 40: 2 May 2014)

41. Contaminated land register

- (1) The Minister must keep a national contaminated land register of investigation areas that includes information on-

- (a) the owners and any users of investigation areas;
- (b) the location of investigation areas;
- (c) the nature and origin of the contamination;
- (d) whether an investigation area-
- (i) is contaminated, presents a risk to health or the environment, and must be remediated urgently;
- (ii) is contaminated, presents a risk to health or the environment, and must be remediated within a specified period;
- (iii) is contaminated and does not present an immediate risk, but measures are required to address the monitoring and management of that risk; or

WASTE ACT

- (iv) is not contaminated;
 - (e) the status of any remediation activities on investigation areas; and
 - (f) restrictions of use that have been imposed on investigation areas.
- (2) The Minister may change the status of an investigation area contemplated in subsection (1)(d)(i) or (ii) as provided for in subsection (1)(d)(iii) or (iv) if a remediation order has been complied with or other circumstances eventuate that justify such a change.
- (3) An MEC who has identified an investigation area must furnish the relevant information to the Minister for recording in the national contaminated land register.

(Commencement date of s. 41: 2 May 2014)

Part 9

Other measures

42. Recognition programmes

- (1) A waste management officer may establish a programme for the public recognition of significant achievements in the area of waste avoidance, minimisation or other forms of waste management.
- (2) The programme contemplated in subsection (1) may contain mechanisms to make the public aware of sound waste management practices.

CHAPTER 5

LICENSING OF WASTE MANAGEMENT ACTIVITIES

43. Licensing authority

- (1) The Minister is the licensing authority where-
- (a) unless otherwise indicated by the Minister by notice in the *Gazette*, the waste management activity involves the establishment, operation, cessation or decommissioning of a facility at which hazardous waste has been or is to be stored, treated or disposed of;
 - (b) the waste management activity involves obligations in terms of an international obligation, including the importation or exportation of hazardous waste;

WASTE ACT

- (c) the waste management activity is to be undertaken by-
 - (i) a national department;
 - (ii) a provincial department responsible for environmental affairs; or
 - (iii) a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government;
 - (d) the waste management activity will affect more than one province or traverse international boundaries; or
 - (e) two or more waste management activities are to be undertaken at the same facility and the Minister is the licensing authority for any one of those activities.
- (1A) The Minister responsible for mineral resources is 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.

[Subs. (1A) inserted by s. 21 of Act 25/2014 w.e.f. 2 September 2014]

- (1B) The Minister responsible for mineral resources is responsible for the implementation of the provisions that relate to matters referred to in subsection (1A).

[Subs. (1B) inserted by s. 21 of Act 25/2014 w.e.f. 2 September 2014]

- (2) Subject to subsection (1), the MEC of the province in which the waste management activity is being or is to be carried out is the licensing authority.
- (3) Despite subsections (1) and (2), the Minister and an MEC may agree that an application or applications for waste management licences regarding any waste management activity-
 - (a) referred to in subsection (1), may be dealt with by the MEC; orin respect of which the MEC has been identified as the licensing authority, may be dealt with by the Minister.

43A. Residue stockpiles and residue deposits

- (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

WASTE ACT

environmental management 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).

[S. (43A) inserted by s. 22 of Act 25/2014 w.e.f. 2 September 2014]

44. Co-operative governance in waste management licence applications

- (1) For the purposes of issuing a licence for a waste management activity, the licensing authority must as far as practicable in the circumstances co-ordinate or consolidate the application and decision-making processes contemplated in this Chapter with the decision-making process in Chapter 5 of the National Environmental Management Act and other legislation administered by other organs of state, without whose authorisation or approval or consent the activity may not commence, or be undertaken or conducted.
- (2) If the licensing authority decides to issue a licence it may, for the purposes of achieving coordination-
 - (a) issue an integrated licence jointly with the other organs of state contemplated in subsection (1), which licence grants approval in terms of this Act and any other legislation specified in the licence; or
 - (b) issue the licence as part of a consolidated authorisation consisting of different authorisations issued under different legislation by the persons competent to do so, that have been consolidated into a single document in order to ensure that the conditions that are imposed by each competent authority are comprehensive and mutually consistent.
- (3) If an integrated licence contemplated in subsection (2)(a) is to be regarded as a valid authorisation or approval for the purposes of other legislation specified in the integrated licence, then the decision-making process for issuing that integrated licence must comply with both the requirements of this Act and of that other legislation.
- (4) An integrated licence must-
 - (a) specify the statutory provisions in terms of which it has been issued;
 - (b) identify the authority or authorities that have issued it;
 - (c) indicate to whom applications for any amendment or cancellation of the integrated licence must be made; and
 - (d) indicate the appeal procedure to be followed.

WASTE ACT

- (5) An integrated licence may be enforced in terms of this Act and any other Act in terms of which it has been issued: Provided that a condition of an integrated licence may only be enforced in terms of the legislation that authorises the imposition of such a condition.
- (6) Where an integrated licence procedure or a consolidated authorisation procedure is established in terms of this section, the provisions of this Chapter must be read with the necessary changes as the context may require to enable a single application procedure or combined application procedure to be followed.
- (7) An integrated licence must be regarded as an integrated environmental authorisation contemplated in section 24L of the National Environmental Management Act.

45. Application for waste management licences

- (1) A person who requires a waste management licence must apply for the licence by lodging an application with the licensing authority.
- (2) An application for a waste management licence must be accompanied by-
 - (a) the prescribed processing fee; and
 - (b) such documentation and information as may be reasonably required by the licensing authority.
- (3) A person who requires a waste management licence for a waste management activity which involves the treatment of waste by incineration must submit, together with any documentation or information contemplated in subsection (2), information on-
 - (a) the types of waste that will be incinerated;
 - (b) the existence of any incinerators in the jurisdiction of the licensing authority which are authorised to incinerate waste which is substantially similar to that waste; and
 - (c) alternative environmentally sound methods, if any, that could be used to treat that waste.

46. Appointment of persons to manage waste management licence applications

- (1) The licensing authority may by written notice to an applicant require that applicant, or by notice in the *Gazette* require applicants, at own cost, to appoint an independent and suitably qualified person to manage an application.
- (2) If an applicant is required to appoint an independent person, the applicant must-
 - (a) take all reasonable steps to verify that the person to be appointed is independent and has expertise in the managing of waste management licence applications; and

WASTE ACT

- (b) provide the appointed person with access to all information at the disposal of the applicant reasonably required for the application, whether or not that information is favourable to the applicant.

(Commencement date of s. 46: To be proclaimed)

47. Procedure for waste management licence applications

- (1) The licensing authority-
 - (a) may, by written notice, require the applicant, at the applicant's cost, to obtain and provide it within a specified period with any other information in addition to the information contained in or submitted in connection with the application;
 - (b) may conduct its own investigation on the likely effect of the waste management activity on health and the environment;
 - (c) must invite written comments from any organ of state that has an interest in the matter; and
 - (d) must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.
- (2) An applicant must take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.
- (3) The steps contemplated in subsection (2) must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity applied for is to be carried out.
- (4) The notice contemplated in subsection (3) must-
 - (a) describe the nature and purpose of the waste management licence applied for;
 - (b) give particulars of the waste management activity, including the place where it is or is to be carried out;
 - (c) state where further information on the waste management activity can be obtained;
 - (d) stating a reasonable period within which written representations on, or objections to, the application may be submitted, and the address or place where representations or objections must be submitted; and
 - (e) contain such other particulars as the licensing authority may require.

48. Factors to be taken into account by licensing authority

When considering an application for a waste management licence, the licensing authority must take into account all relevant matters, including-

- (a) the need for, and desirability of, the waste management activity and alternatives considered, including similar waste management activities, if any, that have already been licensed;
- (b) the pollution caused or likely to be caused by the activity that is the subject of the application, whether alone or together with existing operations or pollution and the effect or likely effect of that pollution on the environment, including health, social conditions, economic conditions and cultural heritage;
- (c) the best practicable environmental options available and alternatives that could be taken-
 - (i) to prevent, control, abate or mitigate pollution; and
 - (ii) to protect the environment, including health, social conditions, economic conditions and cultural heritage from harm as a result of the undertaking of the waste management activity;
- (d) any increased health and environmental risks that may arise as a result of the location where the waste management activity will be undertaken;
- (e) any reasons for a decision made in terms of regulations issued under section 24 of the National Environmental Management Act;
- (f) whether the applicant is a fit and proper person as contemplated in section 59;
- (g) the applicant's submissions;
- (h) any submissions received from organs of state, interested persons and the public; and
- (i) any guidelines the licensing authority may wish to issue relevant to the application.

49. Decision of licensing authorities on waste management licence applications

(1) The licensing authority may in respect of an application for a waste management licence-

- (a) grant the application;
- (b) refuse the application; or

WASTE ACT

- (c) reject the application where it does not comply with the requirements of this Act.
- (2) A decision to grant a application for a waste management licence in respect of a waste disposal facility is subject to the concurrence of the Minister of Water Affairs and forestry.
- (3) Any decision by a licensing authority to grant an application for a waste management licence must be consistent with-
 - (a) this Act, including any integrated waste management plans prepared in terms of this Act;
 - (b) any applicable national environmental management policies and, where the MEC is the licensing authority, any applicable provincial environmental management policies;
 - (c) the national environmental management principles set out in section 2 of the National Environmental Management Act;
 - (d) any applicable industry waste management plan;
 - (e) the objectives of any applicable waste management plan; and
 - (f) any standards or requirements that have been set in terms of this Act or the waste management licence.
- (4) After a licensing authority has reached a decision in respect of an application for a waste management licence, it must within 20 days-
 - (a) notify the applicant of the decision and give written reasons for the decision;
 - (b) if the decision is to grant the application, issue a waste management licence; and
 - (c) in a manner determined by the licensing authority, instruct the applicant to notify any persons who have objected to the application of the decision and the reasons for the decision.
- (5) An application which is substantially similar to a previous application that has been refused in terms of subsection (1)(b) may only be resubmitted if-
 - (a) the new application contains new and material information not previously submitted to the licensing authority; or
 - (b) a period of three years has elapsed since the application was lodged.
- (6) An application which is rejected in terms of subsection (1)(c) may be amended and resubmitted to the licensing authority for reconsideration.

50. Issuing of waste management licences

- (1) A waste management licence is subject to such conditions and requirements-
 - (a) as specified in terms of section 51;
 - (b) as the licensing authority may determine and specify in the licence; and
 - (c) as the Minister or MEC has prescribed for the waste management activity in question.
- (2) The licensing authority may issue a single waste management licence where the applicant has applied to undertake more than one waste management activity at the same location.
- (3) The issuing of a waste management licence for a waste disposal facility is subject to the inclusion in the licence of any conditions contained in a Record of Decision issued by the Minister of Water Affairs and Forestry regarding any measures that the Minister of Water Affairs and Forestry considers necessary to protect a water resource as defined in the National Water Act, 1998 (Act No. 36 of 1998).

51. Contents of waste management licences

- (1) A waste management licence must specify-
 - (a) the waste management activity in respect of which it is issued;
 - (b) the premises or area of operation where the waste management activity may take place;
 - (c) the person to whom it is issued;
 - (d) the period from which the waste management activity may commence;
 - (e) the period for which the licence is issued and period within which any renewal of the licence must be applied for;
 - (f) the name of the licensing authority;
 - (g) the periods at which the licence may be reviewed, if applicable;
 - (h) the amount and type of waste that may be generated, handled, processed, stored, reduced, re-used, recycled, recovered or disposed of;
 - (i) if applicable, the conditions in terms of which salvaging of waste may be undertaken;
 - (j) any other operating requirements relating to the management of the waste; and

WASTE ACT

(k) monitoring, auditing and reporting requirements.

(2) A waste management licence may-

- (a) specify conditions in respect of the reduction, reuse, recycling and recovery of waste;
- (b) specify conditions for the decommissioning of a waste disposal facility or cessation of the waste management activity;
- (c) require the holder of a waste management licence to establish committees for the participation of interested and affected parties;
- (d) provide that the licence is subject to the holder of a waste management licence providing an environmental management plan, contemplated in section 11 of the National Environmental Management Act, to the satisfaction of the licensing authority;
- (e) require the holder of a waste management licence to undertake remediation work;
- (f) specify the financial arrangements that the holder of a waste management licence must make for the undertaking of remediation work during the operation of the waste management activity or on decommissioning of the waste management activity;
- (g) require the holder of the waste management licence to comply with all lawful requirements of an environmental management inspector carrying out his or her duties in terms of the National Environmental Management Act, including a requirement that the licence holder must, on request, submit to the inspector a certified statement indicating-
 - (i) the extent to which the conditions and requirements of the licence have or have not been complied with;
 - (ii) particulars of any failure to comply with any of those conditions or requirements;
 - (iii) the reasons for any failure to comply with any of those conditions or requirements; and
 - (iv) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure; and
- (h) include any other matters which are necessary for the protection of the environment.

52. Transfer of waste management licences

- (1) If ownership of a waste management activity for which a waste management licence was issued is transferred, the holder may, with the permission of a licensing authority, transfer the licence to the new owner of the waste management activity.

WASTE ACT

- (2) A person applying for permission to transfer a waste management licence must lodge the application with the licensing authority.
- (3) The application must be in the form required by the licensing authority.
- (4) An application for the transfer of a waste management licence must be accompanied by-
 - (a) the prescribed processing fee; and
 - (b) such documentation and information as may be reasonably required by the licensing authority.
- (5) If the environment or the rights or interests of other parties are likely to be adversely affected, the Minister or MEC must, before deciding the application for transfer, request the applicant to conduct a consultation process that may be appropriate in the circumstances to bring the application for the transfer of a waste management licence to the attention of relevant organs of state, interested persons and the public.
- (6) When considering an application for the transfer of a waste management licence, the licensing authority may request any additional information, and must take into account all relevant matters, including whether the person to whom the licence is to be transferred is a fit and proper person as contemplated in section 59.
- (7) If the licensing authority's decision is to grant permission for the transfer of the waste management licence, the licensing authority-
 - (a) must issue an amended licence which reflects the details of the person to whom the licence is being transferred; and
 - (b) may make such amendments to the licence as are necessary to ensure that the purpose of any financial arrangements that are required in that licence are given effect to.
- (8) The transfer of a waste management licence does not relieve the holder of the licence from whom the licence was transferred of any liability that the licence holder may have incurred whilst he or she was the holder of that licence.

53. Review of waste management licences

- (1) A licensing authority must review a waste management licence at intervals specified in the licence, or when circumstances demand that a review is necessary.
- (2) The licensing authority must inform the holder of the waste management licence, in writing, of any proposed review and the reason for such review if the review is undertaken at another interval than is provided for in a waste management licence.

WASTE ACT

- (3) For purposes of the review, a waste management officer may require the holder of the waste management licence to compile and submit a waste impact report contemplated in section 66.

54. Variation of waste management licences

- (1) A licensing authority may, by written notice to the holder of a waste management licence, vary the licence-
- (a) if it is necessary or desirable to prevent pollution;
 - (b) if it is necessary or desirable for the purposes of achieving waste management standards or minimum requirements;
 - (c) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
 - (d) to make a non-substantive amendment;
 - (e) at the written request of the holder of the waste management licence; or
 - (f) if it is reviewed in terms of section 53.
- (2) The variation of a waste management licence includes -
- (a) the attaching of an additional condition or requirement to the waste management licence;
 - (b) the substitution of a condition or requirement;
 - (c) the removal of a condition or requirement; or
 - (d) the amendment of a condition or requirement.
- (3) If a licensing authority receives a request from the holder of a waste management licence in terms of subsection (1)(e), the licensing authority must require the licence holder to take appropriate steps to bring the request to the attention of relevant organs of state, interested persons and the public if the variation of the licence is to authorise an increase in the environmental impact regulated by the waste management licence.
- (4) Steps in terms of subsection (3) must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity authorised by the waste management licence is or is to be carried out.
- (5) The notice contemplated in subsection (4) must-

WASTE ACT

- (a) describe the nature and purpose of the request;
 - (b) give particulars of the waste management activity, including the place where it is, or is to be, carried out;
 - (c) state a reasonable period within which written representations on, or objections to, the request may be submitted, and the address or place where representations or objections must be submitted; and
 - (d) contain such other particulars as the licensing authority may require.
- (6) Sections 47, 48 and 49 apply with the changes required by the context to the variation of a waste management licence.

55. Renewal of waste management licences

- (1) A waste management licence may, on application by the holder of the licence, be renewed by a licensing authority.
- (2) The holder of a waste management licence must, before the expiry date of the licence and within the period specified in the licence, apply for the renewal of the licence to the licensing authority of the area in which the activity is carried out by lodging an application with the licensing authority in the form required by the licensing authority.
- (3) An application for the renewal of a waste management licence must be accompanied by-
 - (a) the prescribed processing fee; and
 - (b) such documentation and information as may reasonably be required by the licensing authority.
- (4) If the environment or the rights or interests of other parties are likely to be adversely affected, the licensing authority must, before deciding the application, request the applicant to conduct a consultation process that may be appropriate in the circumstances to bring the application for the renewal of a waste management licence to the attention of relevant organs of state, interested persons and the public.
- (5) Sections 47, 48, 49 and 51 apply with the changes required by the context to an application for the renewal of a waste management licence.
- (6) If the holder of a waste management licence does not apply for renewal of that licence, the licence holder remains liable for taking all measures that are necessary to ensure that the cessation of the activity that was authorised by the licence is done in a manner that does not result in harm to health or the environment.

56. Revocation and suspension of waste management licences

- (1) The licensing authority may, by written notice to the holder of a waste management licence, revoke or suspend that licence if the licensing authority is of the opinion that the licence holder has contravened a provision of this Act or a condition of the licence and such contravention may have, or is having, a significant effect on health or the environment.
- (2) The licensing authority may not revoke or suspend a waste management licence before it has-
 - (a) consulted relevant organs of state;
 - (b) afforded the holder of the waste management licence an opportunity to make a submission in respect of the intended revocation or suspension; and
 - (c) in the event that the holder has made a submission contemplated in paragraph (b) the licensing authority has considered that submission.
- (3) Despite subsection (2), if urgent action is necessary for the protection of the environment, the licensing authority may immediately issue a notice of revocation or suspension and, as soon thereafter as is possible, consult with relevant organs of state and give the holder of the waste management licence an opportunity to make a submission.

57. Surrender of waste management licences

- (1) A holder of a waste management licence may surrender that licence with the permission of the licensing authority.
- (2) In considering a request to surrender a waste management licence, the licensing authority may-
 - (a) request such information as it requires to consider the request; and
 - (b) require the licence holder to take such steps as it considers necessary for the protection of the environment before accepting that surrender of the licence.
- (3) The surrender of a waste management licence does not relieve the holder of the licence of any liability that the licence holder may have incurred whilst he or she was the holder of that licence.

58. Waste management control officers

- (1) A waste management officer may require the holder of a waste management licence to designate a waste management control officer, having regard to the size and nature of the waste management activity for which the licence was granted.

WASTE ACT

- (2) A waste management control officer must-
- (a) work towards the development and introduction of clean production technologies and practices to achieve waste minimisation;
 - (b) identify and submit potential measures in respect of waste minimisation, including the reduction, recovery, re-use and recycling of waste to the waste management licence holder and the licensing authority;
 - (c) take all reasonable steps to ensure compliance by the holder of the waste management licence with the licence conditions and requirements and the provisions of this Act; and
 - (d) promptly report any non-compliance with any licence conditions or requirements or provisions of this Act to the licensing authority through the most effective means reasonably available.
- (3) This section does not affect the liability of the holder of a waste management licence or the liability of that licence holder to comply with the conditions and requirements of the licence.

59. Criteria for fit and proper persons

In order to determine whether a person is a fit and proper person for the purposes of an application in terms of this Chapter, a licensing authority must take into account all relevant facts, including whether-

- (a) that person has contravened or failed to comply with this Act, the Environment Conservation Act, the National Environmental Management Act or any other legislation applicable to waste management;
- (b) that person has held a waste management licence or other authorisation that has been suspended or revoked or that person has not complied with a material condition of such waste management licence or authorisation;
- (c) that person is or has been a director or senior manager of a company, firm or entity to whom paragraph (a) or (b) applies;
- (d) that person has the ability to comply with this Act and any conditions subject to which the application may be granted; and
- (e) the management of the waste management activity that is the subject of the application will be in the hands of a technically competent person.

CHAPTER 6

WASTE INFORMATION

60. Establishment of national waste information systems

- (1) The Minister must establish a national waste information system for the recording, collection, management and analysis of data and information that must include-
 - (a) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, re-used, recycled, recovered and disposed of; and
 - (b) a register of-
 - (i) waste management activities that have been licensed;
 - (ii) the holders of waste management licences authorised to commence the waste management activities recorded in terms of subparagraph (i); and
 - (iii) the locations where the licensed waste management activities are or may be conducted.
- (2) The waste information system may include information on-
 - (a) the levels and extent of waste management services provided by municipalities;
 - (b) information on compliance with this Act; and
 - (c) any other information that is necessary for the purposes of effective administration of this Act.
- (3) The national waste information system may be implemented incrementally.

61. Objectives of national waste information system

The objective of the national waste information system is to-

- (a) store, verify, analyse, evaluate and provide data and information for the protection of the environment and management of waste;
- (b) provide information for the development and implementation of any integrated waste management plan required in terms of this Act; and
- (c) provide information to organs of state and the public-

WASTE ACT

- (i) for education, awareness raising, research and development purposes;
- (ii) for planning, including the prioritisation of regulatory, waste minimisation and other initiatives;
- (iii) for obligations to report in terms of any legislation;
- (iv) for public safety management;
- (v) on the status of the generation, collection, reduction, re-use, recycling and recovery, transportation, treatment and disposal of waste; and
- (vi) the impact of waste on health and the environment.

62. Establishment of provincial waste information system

- (1) The MEC may establish a provincial waste information system.
- (2) A provincial waste information system must at least include the information required by the national information system.
- (3) The Minister may, by notice in the *Gazette*, and for the purposes of ensuring efficient administration, exempt a category of persons who must furnish information to the provincial waste information system established in terms of subsection (1) from furnishing that information to the national waste information system established in terms of section 60.
- (4) If the Minister exercises a power under subsection (3), the MEC is responsible for furnishing that information to the Minister, unless otherwise directed by the Minister by notice in the *Gazette*.

63. Provision of information

- (1) The Minister may, by notice in the *Gazette* or in writing, require any person to provide, within a reasonable time or on a regular basis, any data, information, documents, samples or materials to the Minister that are reasonably required for the purposes of the national waste information system established in terms of section 60 or the management of waste.
- (2) The MEC may, by notice in the *Gazette* or in writing, require any person or organ of state to provide, within a reasonable time or on a regular basis, any data, information, documents, samples or materials to the MEC that are reasonably required for the purposes of a provincial waste information system established in terms of section 62 or the management of waste in the province.
- (3) A notice under subsection (1) or (2) may also indicate the manner in which the information must be furnished and, if required, how the information must be verified.

- (4) Where the Minister or MEC requires a municipality to furnish data, information, documents, samples or materials in terms of subsection (1) or (2), the municipality concerned may, by notice in the *Gazette* or in writing, require any person or organ of state to provide, within a reasonable time or on a regular basis, such data, information, documents, samples or materials, and the verification of such information, to the municipality that are reasonably required to discharge its obligations in terms of subsection (1) or (2).

64. Access to information

Information contained in the national waste information system or a provincial waste information system established in terms of section 60 or 62, as the case may be, must be made available by the Minister or MEC, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

CHAPTER 7

COMPLIANCE AND ENFORCEMENT

65. Compliance powers of Minister of Water Affairs and Forestry

- (1) Despite the powers conferred on the Minister or MEC by or under this Act, the Minister of Water Affairs and Forestry may exercise any powers conferred on him or her by section 19, 53 and 155 or the National Water Act, 1998 (Act No. 36 of 1998), in respect of a person who contravenes or fails to comply with any condition of a waste management licence, a remediation order or measures specified in terms of section 38(3) that may lead to an impact on a water resource.
- (2) The Minister of Water Affairs and Forestry must exercise the powers contemplated in subsection (1) after consultation with the Minister or MEC.

66. Waste impact reports

- (1) An environmental management inspector appointed in terms of the National Environmental Management Act may, in writing, require any person to submit a waste impact report in a specified form and within a specified period to the environmental management inspector if the environmental management inspector on reasonable grounds suspects that such person has on one or more occasions contravened or failed to comply with this Act or any conditions of a waste management licence or exemption and that the contravention or failure has had or is likely to have a detrimental effect on health or the environment, including social conditions, economic conditions, ecological conditions or cultural heritage, or has contributed to the degradation of the environment.
- (2) A waste management officer may, in writing, require any person to submit a waste impact report in a specified form and within a specified period to the waste management officer if a review of a waste management licence is undertaken in terms of section 53.

WASTE ACT

- (3) An environmental management inspector or waste management officer must stipulate the documentation and information that should be included in a report submitted in terms of subsection (1) or (2).
- (4) Before making a request in terms of subsection (1) an environmental management inspector must afford the person to whom the request is to be made an opportunity to show cause why a waste impact report should not be required.
- (5) A waste management officer may indicate that a waste impact report to be submitted in terms of subsection (1) or (2) must be compiled by an independent person.
- (6) The costs incurred in compiling a waste impact report, including any costs of an independent person, are the liability of the person required to submit the report.
- (7) If the person who is required to submit a waste impact report in terms of subsection (1) or (2) fails to submit the report within the specified period, the waste management officer may-
 - (a) appoint an independent person to compile the report; and
 - (b) recover the cost of compiling the report from the person required to submit the report.

67. Offences

- (1) A person commits an offence if that person-
 - (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);

[Subs. (a) substituted by s. 23 of Act 25/2014 w.e.f. 2 September 2014]

- (b) contravenes or fails to comply with a provision of section 21, 22(1), 24, 27(2), 36(5) or 40(1);
- (c) fails to submit or to prepare an industry waste management plan when required to do so in terms of section 28;
- (d) contravenes or fails to comply with an industry waste management plan;
- (e) contravenes or fails to comply with a waste management measure specified in terms of section 14(4) or 33(1);
- (f) contravenes or fails to comply with a norm or standard established in terms of this Act;

WASTE ACT

- (g) fails to conduct a site assessment or to submit a site assessment report in terms of section 37(1);
 - (h) contravenes or fails to comply with a condition or requirement of a waste management licence or an integrated licence contemplated in section 44;
 - (i) fails to submit a waste impact report required in terms of section 66(1) or (2);
 - (j) contravenes or fails to comply with a condition subject to which exemption from a provision of this Act was granted in terms of section 76(3)(c);
 - (k) knowingly supplies false or misleading information in any application made in terms of this Act;
 - (l) knowingly supplies false or misleading information to a waste management officer or environmental management inspector for the purpose of this Act;
 - (m) fails to provide the information contemplated in section 29(5) or 63(4).
- (2) A person who is in control of a vehicle, or in a position to control the use of a vehicle, that is used to transport waste for the purpose of offloading that waste, is guilty of an offence if that person -
- (a) fails to take all reasonable steps to prevent spillage of waste or littering from the vehicle;
 - (b) intentionally or negligently cause spillage or littering from the vehicle;
 - (c) dispose of waste at a facility which is not authorised to accept such waste;
 - (d) fails to ensure that waste is disposed of at a facility that is authorised to accept such waste; or
 - (e) fails to comply with any duty set out in section 25(4).

68. Penalties

- (1) A person convicted of an offence referred to in section 67(1)(a), (g) or (h) is liable to a fine not exceeding R10 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the National Environmental Management Act.
- (2) A person convicted of an offence referred to in section 67(1)(b), (c), (d), (e), (f), (i), (j), (k) or (l) or section 67(2)(a), (b), (c), (d) or (e) is liable to a fine not exceeding R5 000 000 or to imprisonment for a period not exceeding five years, or to both a fine and such

WASTE ACT

imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the National Environmental Management Act.

- (3) Any person convicted of an offence referred to in section 67(1)(m) is liable to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.
- (4) A person who is convicted of an offence in terms of this Act and who persists after conviction in the act or omission that constituted the offence commits a continuing offence and is liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 20 days, or to both such fine and such imprisonment, in respect of each day that person persists with that act or omission.
- (5) A fine contemplated in subsection (1), (2), (3) or (4) must be determined with due consideration of-
 - (a) the severity of the offence in terms of its impact or potential impact on health, well-being, safety and the environment; and
 - (b) the monetary or other benefits that accrued to the convicted person through the commission of the offence.

CHAPTER 8

GENERAL MATTERS

Part 1

Regulations

69. Regulations by Minister

- (1) The Minister may make regulations regarding-
 - (a) the identification and categorisation of waste;
 - (b) the manner in which particular waste types must be dealt with and managed;
 - (c) the manner in which priority waste must be dealt with and managed;
 - (d) requirements for monitoring of compliance with this Act or any licence issued in terms of this Act;
 - (e) waste management planning;

WASTE ACT

- (f) the exercise of the duty of care;
- (g) measures that are required for the environmentally sound management of waste;
- (h) requirements in respect of waste management activities;
 - (i) measures that must be taken in respect of the implementation of waste minimisation, including the separation of waste at the point of generation and setting of targets or percentage of products that must be recovered under a re-use, recycling, refundable deposit or take-back programme;
 - (iA) the management and control of residue stockpiles and residue deposits from a prospecting, mining, exploration or production operation.

[Para. (iA) inserted by s. 24 of Act 25/2014 w.e.f. 2 September 2014]

- (j) the control of the import or export of waste;
- (k) the obligation of producers of a specified product or class of product to carry out a life cycle assessment in relation to the product, in such manner or in accordance with such standards or procedures as may be specified;
- (l) the requirements that must be complied with in respect of the design, composition or production of a product or packaging, including requirements in respect of-
 - (i) the restriction of the composition, volume or weight of packaging;
 - (ii) the reduction, re-use, recycling and recovery of packaging; and
 - (iii) the use of alternate materials that are less harmful to the environment;
- (m) the utilisation of waste by way of recovery, re-use and recycling;
- (n) the reduction of waste by-
 - (i) the adoption of certain manufacturing processes; and
 - (ii) the use of alternative materials or products;
- (o) the financial arrangements of waste minimisation programmes;
- (p) the institutional arrangements for the administration of waste minimisation programmes;
- (q) the control over waste management facilities;

WASTE ACT

- (r) labelling requirements in respect of waste management;
 - (s) the location, planning and design of waste management activities;
 - (t) the registration of persons transporting waste;
 - (u) the manner in which a site assessment in terms of section 37 must be conducted and the person who may conduct such assessments;
 - (v) the contents of a site assessment report contemplated in section 37, including persons who may undertake such site assessments;
 - (w) the manner in which an application for a waste management licence must be made, including the persons who may manage such applications;
 - (x) requirements in respect of the funding or insuring of a waste management activity;
 - (y) the nature, type, time period and format of data and information to be submitted in terms of a waste information system established in terms of this Act;
 - (z) the procedure for the institution of appeals against decisions of officials in the performance of their functions in terms of this Act;
 - (aa) the dissemination of information to the public;
 - (bb) incentives and disincentives to encourage a change in behaviour towards the generation of waste and waste management by all sectors of society;
 - (cc) matters that must be regulated by a contract between a municipality and any waste management service provider;
 - (dd) any matter that may or must be prescribed in terms of this Act; and
 - (ee) any other administrative or procedural matter that it is necessary for the proper administration and implementation of this Act.
- (2) A regulation under subsection (1)(i), (j), (k), (l), (n) and (r) may only be made after consultation with the Minister of Trade and Industry.
- (3) A regulation under subsection (1)(o) and (x) and a regulation in respect of financial incentives and disincentives made under subsection (1)(bb), may only be made with the concurrence of the Minister of Finance.
- (4) A regulation under subsection (1)(cc) may only be made after consultation with the Minister for Provincial and Local Government.

WASTE ACT

- (5) A regulation under subsection (1)(u), (v) and (w) may only be made after consultation with the Minister of Water Affairs and Forestry.
- (6) Any regulation which pertains to the treatment of waste by means of incineration must be submitted to the National Assembly 30 days prior to publication.

69A. Regulations for Bureau

The Minister must make regulations regarding-

- (a) any matter required or to be prescribed in terms of Part 7A;
- (b) the setting or determination of service fees by the Bureau, other than those referred to in section 13B;
- (c) the circumstances under which service fees can be charged;
- (d) the manner in which the Bureau will receive and disburse funds referred to in section 34F(1); or
- (e) any other matter in relation to the Bureau that is necessary to be prescribed for the proper implementation of this Act.

[S. 69A inserted by s. 14 of Act 26/2014]

70. Regulations by MECs

- (1) The MEC with the concurrence of the Minister may make regulations for the province concerned in respect of any matter for which the MEC may or must make regulations in terms of this Act, including any matter referred to in section 69(1)(b) to (h), inclusive, (m), (p), (q), (s) to (w), inclusive, and (y) to (dd), inclusive.
- (2) A regulation in respect to a matter referred to in section 69(1)(cc) may only be made after consultation with the Minister for Provincial and Local Government.
- (3) A regulation in respect of a matter referred to in terms of section 69(1)(u),(v) and (w) may only be made after consultation with the Minister of Water Affairs and Forestry.

71. General regulatory powers

- (1) Regulations made under this Act may-
 - (a) restrict or prohibit any act, either absolutely or conditionally;
 - (b) apply-

WASTE ACT

- (i) generally to the Republic or a province, or only in a specified areas or category of areas; or
 - (ii) generally to all persons or only to a specified category of persons;
 - (c) differentiate between different-
 - (i) areas or category of areas;
 - (ii) persons or categories of persons; or
 - (iii) types, classes or categories of waste;
 - (d) incorporate by reference any guideline, minimum requirements, code of practice or any national or international standard relating to waste management.
- (2) Regulations made under this Act may provide that any person who contravenes or fails to comply with a provision thereof commits an offence and is liable on conviction to-
- (a) imprisonment for a period not exceeding 15 years;
 - (b) an appropriate fine; or
 - (c) both a fine and imprisonment.
- (3)
- (a) Before publishing any regulation under this Act, or any amendment to the regulations, the Minister or MEC, as the case may be, must follow a consultative process in accordance with sections 72 and 73.
 - (b) Paragraph (a) need not be complied with if the regulations are amended in a non-substantive manner.

Part 2

Consultative process

72. Consultation

- (1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section and section 73, the Minister or MEC must follow such consultative process as may be appropriate in the circumstances.
- (2) When conducting the consultations contemplated in subsection (1), the Minister must-

WASTE ACT

- (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the powers;
 - (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution and subject to the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), consult the MEC responsible for waste management in each province that will be affected by the exercise of the power; and
 - (c) conduct a public participation process in accordance with section 73.
- (3) When conducting the consultations contemplated in subsection (1), the MEC must-
- (a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the powers;
 - (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution and subject to the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), consult the Minister and all other national organs of state that will be affected by the exercise of the power; and
 - (c) conduct a public participation process in accordance with section 73.

73. Public participation

- (1) Before exercising a power that, in terms of this Act, must be exercised in accordance with this section, the Minister or MEC, as the case may be, must give notice of the proposed exercise of the relevant power-
- (a) in the *Gazette*; and
 - (b) in at least one newspaper distributed nationally or, if the exercise of power will only affect a specific area, in at least one newspaper distributed in that area.
- (2) The notice must-
- (a) invite members of the public to submit to the Minister or MEC, as the case may be, within no less than 30 days of publication of the notice in the *Gazette*, written representations on or objections to the proposed exercise of power; and
 - (b) contain sufficient information to enable members of the public to submit representations or objections.
- (3) The Minister or MEC, as the case may be, may, in appropriate circumstances, allow any interested person or community to present oral representations or objections to the Minister or MEC, or a person designated by the Minister or MEC.

- (4) The Minister or MEC, as the case may be, must give due consideration to all representations or objections received or presented before exercising the relevant power.

Part 3

Exemptions and appeals

74. Applications for exemption

- (1) Any person may apply in writing for exemption from the application of a provision of this Act to the Minister or, where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the MEC.
- (2) An application in terms of subsection (1) must be accompanied by-
 - (a) an explanation of the reasons for the application; and
 - (b) any applicable supporting documents.

75. Consideration of applications for exemption

- (1) The Minister or MEC, as the case may be, may request an applicant contemplated in section 74 to furnish additional information where such information is necessary for the purposes of informing the Minister or MEC's decision.
- (2) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the Minister or MEC, as the case may be, must, before deciding the application, request the applicant to-
 - (a) bring the application to the attention of relevant organs of state, interested persons and the public by conducting a public participation process indicated by the Minister or MEC; and
 - (b) to submit any comments received from the public following such process to the Minister or MEC.

76. Decisions on applications for exemption

- (1) The Minister or the MEC, as the case may be, may-
 - (a) grant an exemption from the application of a provision of this Act; or
 - (b) refuse to grant such exemption.
- (2) Sections 48 and 49(2) to (6), inclusive, apply with the changes required by the context to the consideration of applications for exemptions.

WASTE ACT

- (3) If an application is granted, the Minister or MEC must issue a written exemption notice to the applicant stating-
 - (a) the name, address and telephone number of the person to whom the exemption is granted;
 - (b) the provision of this Act from which exemption is granted;
 - (c) the conditions subject to which the exemption is granted, if the exemption is granted subject to conditions; and
 - (d) the period for which exemption is granted, if the exemption is granted for a period.
- (4) The Minister or the MEC, as the case may be, may by notice in the *Gazette* exempt an organ of state from a provision of this Act if-
 - (a) the provision, but for the definition of "person" contained in section (1), clearly should not apply to an organ of state;
 - (b) the exemption would not defeat the objects of this Act; and
 - (c) it is in the public interest to grant the exemption.

77. Review and transfer of exemptions

- (1) The Minister or MEC may-
 - (a) from time to time review any exemption granted in terms of section 76; and
 - (b) on good grounds suspend or withdraw such exemption or amend the exemption, or any part thereof.
- (2) Before suspending, withdrawing or amending an exemption, the Minister or MEC must give the person to whom the exemption was granted an opportunity to comment, in writing, on the reasons for the suspension, withdrawal or amendment.
- (3) If an exemption has been granted in respect of a waste management activity, or part thereof, and ownership of that waste management activity is transferred, the exemption may, with the permission of the Minister or MEC, be transferred by the holder of the exemption to the new owner of the waste management activity.
- (4) Section 52 applies with the changes required by the context to the transfer of exemptions.

78.

[S. 78 repealed by s. 15 of Act 26/2014]

CHAPTER 9

MISCELLANEOUS

79. Delegation and assignment

- (1) The Minister or MEC, respectively, may delegate or assign to an official in their respective departments any power or duty conferred on the Minister or MEC, by or under this Act, except-
 - (a) the power conferred on the Minister or MEC, respectively, by section 7(2) or (3), 8(1), 14, 18, 19, 28, 69 or 70; or
 - (b) the duty imposed on the Minister by section 6 or 7(1).
- (2) The Minister or MEC must regularly review and, if necessary, amend or withdraw a delegation or assignment under subsection (1).
- (3) A delegation or assignment to an official under subsection (1)-
 - (a) is subject to such limitations and conditions as the Minister or MEC may impose;
 - (b) may either be to a specific official or to the holder of a specific post in the relevant department;
 - (c) may authorise that official to subdelegate or further assign, in writing, the power or duty to another official in the Department, or to the holder of a specific post in the Department;
 - (d) does not prevent the exercise of that power or the performance of that duty by the Minister or MEC; and
 - (e) does not divest the Minister or MEC of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (4) The Minister or MEC may confirm, vary or revoke any decision taken by an official as a result of a delegation or subdelegation under this section, subject to any rights that may have become vested as a consequence of that decision.

79A. Delegation by Minister responsible for mineral resources

- (1) The Minister responsible for mineral resources may delegate a function entrusted to him or her in terms of this Act to—
 - (a) the Director-General of the Department responsible for mineral resources; or

WASTE ACT

- (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.
- (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.

[S79A. inserted by s25 of Act 25/2014 w.e.f. 2 September 2014]

80. Repeal and amendment of laws, and savings

- (1) Subject to subsections (2) and (3) and section 81, the laws set out in Schedule 2 are hereby repealed or amended to the extent set out in the third column thereof.
- (2) Any regulation or direction made in terms of a provision of the Environment Conservation Act repealed by section (1) and in force immediately before the date of the coming into effect of this Act, remains in force and is considered to have been made under this Act until anything done under this Act overrides it.
- (3) Anything lawfully done under a provision repealed by subsection (1) remains valid until anything done under this Act overrides it.
- (4) A person operating a waste disposal facility that was established before the coming into effect of the Environment Conservation Act and that is operational on the date of the coming into effect of this Act may continue to operate the facility until such time as the Minister, by notice in the *Gazette*, calls upon that person to apply for a waste management licence.
- (5) Any criminal proceedings instituted under section 19, 19A or 20(1) of the Environment Conservation Act that have not been finalised on the date of coming into effect of this Act, must be finalised as if those sections had not been repealed.

81. Transitional provisions in respect of permits issued in terms of Environment Conservation Act

- (1) Despite the repeal of section 20 of the Environment Conservation Act by this Act, a permit issued in terms of that section remains valid subject to subsections (2) and (3).
- (2) The holder of a permit issued in terms of section 20 of the Environment Conservation Act must apply for a waste management licence in terms of this Act, when required to do so by the licensing authority, in writing, and within the period stipulated by the licensing authority.

WASTE ACT

- (3) A permit issued in terms of section 20 of the Environment Conservation Act lapses-
- (a) if a waste management licence is issued in terms of this Act to the same person in respect of the same waste management activity;
 - (b) if the holder of the permit did not apply, within the stipulated period, for a waste management licence within the period contemplated in subsection (2); or
 - (c) if the licensing authority refuses an application contemplated in subsection (2).
- (4) If a permit issued in terms of section 20 of the Environment Conservation Act lapses as contemplated in subsection (3)(b) or (c), the permit holder remains liable for taking all measures that are necessary to ensure that the cessation of the activity is done in a manner that does not result in harm to health or the environment.
- (5) During the period for which a permit issued in terms of section 20 of the Environment Conservation Act continues to be valid, the provisions of this Act apply in respect of the holder of such a permit, as if that person were the holder of a waste management licence issued in terms of this Act.
- (6) Despite the repeal of section 20 of the Environment Conservation Act by this Act, an application for a permit made in terms of section 20 of the Environment Conservation Act that was not decided when section 81 of this Act took effect, must be proceeded with in terms of this Act as if that application were an application for a waste management licence in terms of this Act.

82. Transitional provision regarding listed waste management activities

A person who conducts a waste management activity listed in Schedule 1 on the date of coming into effect of this Act, and who immediately before that date lawfully conducted that waste management activity under Government Notice No. 91 of 1 February 2002, may continue with the activity until such time that the Minister by notice in the *Gazette* directs that person to apply for a waste management licence under this Act.

83. Act regarded as specific environmental management Act

This Act must be regarded as a specific environmental management Act for the purposes of the definition of "specific environmental management Act" contained in section 1 of the National Environmental Management Act.

84. Short title and commencement

- (1) This Act is called the National Environmental Management: Waste Act, 2008, and takes effect on a date determined by the Minister by proclamation in the *Gazette*.

- (2) Different dates may be so determined for different provisions of this Act.

SCHEDULE 1

(Section 19)

Waste management activities in respect of which a waste management licence is required

CATEGORY A

The activities listed under Category A are equivalent to those that require a basic assessment process as stipulated in the environmental impact assessment regulations made under section 24(5) of the National Environmental Management Act, 1998 (Act No. 101 of 1998)

Storage and transfer of waste

1. The temporary storage of general waste at a facility, including a waste transfer facility and container yard, that has the capacity to receive in excess of 30 tonnes of general waste per day or that has a throughput capacity in excess of 20m³ per day, including the construction of a facility and associated structures and infrastructure for such storage.
2. The temporary storage of hazardous waste at a facility, including a waste transfer facility and container yard, that has the capacity to receive in excess of three tonnes of hazardous waste per day, including the construction of a facility and associated structures and infrastructure for such storage.

Recycling and recovery

3. The sorting and shredding of general waste at a facility that has the capacity to receive in excess of one ton of general waste per day, including the construction of a facility and associated structures and infrastructure for such sorting or shredding.
4. The recovery of waste, excluding recovery that takes place as an integral part of an internal manufacturing process, at a facility that has the capacity to receive in excess of three tonnes of general waste or 100 kilograms of hazardous waste per day, including the construction of a facility and associated structures and infrastructure for such recovery.

Treatment of waste

5. The biological, physical or physicochemical treatment of general waste or the autoclaving, drying or microwaving of general waste at a facility that has the capacity to receive in excess of 10 tonnes of general waste per day, including the construction of a facility and associated structures and infrastructure for such treatment.

WASTE ACT

6. The biological or physicochemical treatment of hazardous waste or the autoclaving, drying or microwaving of hazardous waste, including the construction of a facility and associated structures and infrastructure for such treatment.
7. The treatment of waste in sludge lagoons.

Disposal of waste on land

8. The disposal of inert waste, excluding the disposal of less than 25 tonnes of inert waste for the purposes of levelling and building that has been authorised by or under legislation, including the construction of a facility and associated structures and infrastructure for such disposal.
9. The disposal of general waste to land covering an area of less than 100 m² or 200 m³ air space, including the construction of a facility and associated structures and infrastructure for such disposal.

Storage, treatment and processing of animal waste

10. The storage, treatment or processing of animal manure, including the composting of animal manure, at a facility that has a throughput capacity in excess of 10 tonnes per month, including the construction of a facility and associated structures and infrastructure for such storage, treatment or processing.
11. The processing of waste at biogas installations with a capacity for receiving five tonnes or more per day of animal waste, animal manure, abattoir waste or vegetable waste, including the construction of a facility and associated structures and infrastructure for such processing animal manure and abattoir waste.

Expansion or decommissioning of facilities and associated structures and infrastructure

12. The expansion or decommissioning of facilities and associated structures and infrastructure for activities listed in this Schedule.

CATEGORY B

The activities listed under Category B are equivalent to those that require an environmental impact assessment process stipulated in the environmental impact assessment regulations made under section 24(5) of the National Environmental Management Act, 1998 (Act No. 107 of 1998)

Treatment of waste

1. The treatment of general waste by a method other than biological, physical or physicochemical treatment at a facility with the capacity to receive in excess of 10 tonnes

WASTE ACT

of general waste per day, including the construction of a facility and associated structures and infrastructure for such treatment.

2. The treatment of hazardous waste by a method other than biological or physicochemical treatment, including the construction of a facility and associated structures and infrastructure for such treatment.
3. The incineration of waste, including the construction of a facility and associated structures and infrastructure for the incineration of waste.

Disposal of waste on land

4. The disposal of hazardous waste to land, including the construction of a facility and associated structures and infrastructure for such disposal.
5. The disposal of general waste to land covering an area of more than 100m² or 200 m³ of airspace, including the construction of a facility and associated structures and infrastructure for such disposal.

SCHEDULE 2

(Section 80)

Laws repealed or amended

No. and year of Law	Short title	Extent of repeal or amendment
Act No. 73 of 1989	Environment Conservation Act, 1989	<p>1. The amendment of section 1 by the deletion of the definitions of "disposal site" and "waste".</p> <p>2. The repeal of sections 19, 19A, 20, 24, 24A, 24B and 24C.</p> <p>3. The amendment of section 29-</p> <p>(a) by the substitution for subsection (3) of the following subsection;</p> <p>"(3) Any person who [contravenes a provision of section 19 or 19A or fails to comply therewith, or] fails to comply with a direction in terms of section 31A(1) or (2), or prevents any person authorized in terms of section 41A to enter upon such land or hinders him <u>or</u></p>

WASTE ACT

		<p>her in the execution of his or her powers, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months.”; and</p> <p>(b) by the substitution for subsection (4) of the following subsection: “(4) Any person who contravenes a provision of section [20(1), 20(9),] 22(1) or 23(2) [or a direction issued under section 20(8)] or fails to comply with [a condition of a permit, permission or] an authorization [or direction] issued [or granted] under the said provisions shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.”.</p>
Act No. 79 of 1992	Environment Conservation Amendment Act, 1992	The repeal of sections 8 and 9.
Government Notice No. 1986. 1 August 1990		The repeal of the whole.
Government Notice No. 292. 28 February 2003		The repeal of the whole.

SCHEDULE 3

Defined Wastes

CATEGORY A: Hazardous Waste

“**hazardous waste**” means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment and includes hazardous substances, materials or objects within business waste, residue deposits and residue stockpiles as outlined below:

“**business waste**” means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes, which include:

WASTE ACT

1. Wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing, food preparation and processing	(a) hazardous portion of wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing
2. Wastes from wood processing and the production of panels and furniture, pulp, paper and cardboard	(a) hazardous portion of wastes from wood processing and the production of panels and furniture
	(b) hazardous portion of wastes from wood preservation
	(c) hazardous portion of wastes from pulp, paper and cardboard production and processing
3. Wastes from the leather, fur and textile industries	(a) hazardous portion of wastes from the leather and fur industry
	(b) hazardous portion of wastes from the textile industry
4. Wastes from petroleum refining, natural gas purification and pyrolytic treatment of coal	(a) wastes from petroleum refining
	(b) wastes from the pyrolytic treatment of coal
	(c) wastes from natural gas purification and transportation
5. Wastes from inorganic chemical processes acids	(a) wastes from the manufacture, formulation, supply and use (MFSU) of acids
	(b) wastes from the MFSU of bases
	(c) wastes from the MFSU of salts and their solutions and metallic oxides
	(d) metal-containing wastes
	(e) wastes from the MFSU of sulphur chemicals, sulphur chemical processes and desulphurisation processes
	(f) wastes from the MFSU of halogens and halogen chemical processes
	(g) wastes from the MFSU of silicon and silicon derivatives
	(h) wastes from the MFSU of phosphorous chemicals and phosphorous chemical processes
	(i) wastes from the MFSU of nitrogen chemicals, nitrogen chemical processes and fertiliser manufacture
	(j) wastes from the manufacture of inorganic pigments
	(k) other wastes from inorganic chemical processes

WASTE ACT

6. Wastes from organic chemical processes	(a) wastes from the manufacture, formulation, supply and use (MFSU) of basic organic chemicals
	(b) wastes from the MFSU of plastics, synthetic rubber and man-made fibres
	(c) wastes from the MFSU of organic dyes and pigments
	(d) wastes from the MFSU of organic plant protection products, wood preserving agents and other biocides
	(e) wastes from the MFSU of pharmaceuticals
	(f) wastes from the MFSU of fats, grease, soaps, detergents, disinfectants and cosmetics
	(g) other wastes from the MFSU of fine chemicals and chemical products
7. Wastes from thermal processes	(a) hazardous portion of wastes from power stations and other combustion plants
	(b) hazardous portion of wastes from the iron and steel industry
	(c) wastes from aluminium thermal metallurgy
	(d) wastes from lead thermal metallurgy
	(e) wastes from zinc thermal metallurgy
	(f) wastes from copper thermal metallurgy
	(g) wastes from silver, gold and platinum thermal metallurgy
	(h) wastes from other non-ferrous thermal metallurgy
	(i) hazardous portion of wastes from casting of ferrous pieces
	(j) hazardous portion of wastes from casting of non-ferrous pieces
	(k) hazardous portion of wastes from manufacture of glass and glass products
	(l) hazardous portion of wastes from manufacture of ceramic goods, bricks, tiles and construction products
	(m) hazardous portion of wastes from manufacture of cement, lime and plaster and articles and products made from them
8. Waste from the photographic industry	(a) hazardous portion of waste from the photographic industry

WASTE ACT

9. Wastes from the manufacture, formulation, supply and use (MFSU) of coatings (paints, varnishes and vitreous enamels), adhesives, sealants and printing inks	(a) wastes from MFSU and removal of paint and varnish
	(b) wastes from MFSU of other coatings (including ceramic materials)
	(c) wastes from MFSU of printing inks
	(d) wastes from MFSU of adhesives and sealants (including waterproofing products)
10. Wastes from chemical surface treatment and coating of metals and other materials; non-ferrous hydrometallurgy	(a) wastes from chemical surface treatment and coating of metals and other materials (for example galvanic processes, zinc coating processes, pickling processes, etching, phosphating, alkaline degreasing, anodising)
	(b) wastes from non-ferrous hydrometallurgical processes
	(c) wastes from sludges and solids from tempering processes
	(d) wastes from hot galvanising processes
11. Wastes from shaping and physical and mechanical surface treatment of metals and plastics	(a) hazardous portion of wastes from shaping and physical and mechanical surface treatment of metals and plastics
	(b) wastes from water and steam degreasing processes
12. Oil wastes and wastes of liquid fuels (except edible oils)	(a) waste hydraulic oils
	(b) waste engine, gear and lubricating oils
	(c) waste insulating and heat transmission oils
	(d) oil/water separator contents
	(e) wastes of liquid fuels
13. Waste organic solvents, refrigerants and propellants	(a) waste organic solvents, refrigerants and foam/aerosol propellants
14. Other wastes not specified in the list	(a) hazardous portion of wastes from end-of-life vehicles from different means of transport (including off-road machinery) and wastes from dismantling of end-of-life vehicles and vehicle maintenance
	(b) hazardous portion of wastes from electrical and electronic equipment
	(c) hazardous portion of wastes from off-specification batches and unused products
	(d) wastes from discarded gases in pressure containers and discarded chemicals
	(e) wastes from discarded batteries and accumulators

WASTE ACT

	(f) wastes from transport tank, storage tank and barrel cleaning
	(g) spent catalysts wastes
	(h) oxidising substances wastes
	(i) aqueous liquid wastes destined for off-site treatment
	(j) waste linings and refractories
15. Construction wastes	(a) wastes from bituminous mixtures, coal tar and tarred products
	(b) discarded metals (including their alloys)
	(c) waste soil (including excavated soil from contaminated sites), stones and dredging spoil
	(d) wastes from insulation materials and asbestos-containing construction materials
	(e) wastes from gypsum-based construction material
	(f) wastes from other construction and demolition
16. Wastes from human or animal health care and/or related research (except kitchen and restaurant wastes not arising from immediate health care)	(a) wastes from natal care, diagnosis, treatment or prevention of disease in humans
	(b) wastes from research, diagnosis, treatment or prevention of disease involving animals
17. Wastes from waste management facilities	(a) hazardous portion of wastes from incineration or pyrolysis of waste
	(b) hazardous portion of wastes from physico/chemical treatments of waste
	(c) hazardous portion of stabilised/solidified wastes
	(d) hazardous portion of wastes from aerobic treatment of solid wastes
	(e) hazardous portion of wastes from anaerobic treatment of waste
	(f) landfill leachate wastes
	(g) wastes from shredding of metal-containing wastes
	(h) wastes from oil regeneration
	(i) wastes from soil remediation

“**residue deposits**” means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right or production right;

WASTE ACT

“**residue stockpile**” means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, mineral processing plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated within the mining area for potential re-use, or which is disposed of, by the holder of a mining right, mining permit or, production right or an old order right, including historic mines and dumps created before the implementation of this Act.

Residue deposits and residue stockpiles include:

1) Wastes resulting from exploration, mining, quarrying, and physical and chemical treatment of minerals	(a) wastes from mineral excavation
	(b) wastes from physical and chemical processing of metalliferous minerals
	(c) wastes from physical and chemical processing of non-metalliferous minerals
	(d) wastes from drilling muds and other drilling operations

CATEGORY B: General Waste

“**general waste**” means waste that does not pose an immediate hazard or threat to health or to the environment, and includes-

- (a) domestic waste;
- (b) building and demolition waste;
- (c) business waste;
- (d) inert waste; or
- (e) any waste classified as non-hazardous waste in terms of the regulations made under section 69,

and includes non-hazardous substances, materials or objects within business, domestic, inert, building and demolition wastes as outlined below:

“**business waste**” means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes, which include:

1. Wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing, food preparation and processing	(a) wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing not otherwise specified in Category A
	(b) wastes from the preparation and processing of meat, fish and other foods of animal origin

WASTE ACT

	(c) wastes from fruit, vegetables, cereals, edible oils, cocoa, coffee, tea and tobacco preparation and processing; conserve production; yeast and yeast extract production, molasses preparation and fermentation
	(d) wastes from sugar processing
	(e) wastes from the dairy products industry
	(f) wastes from the baking and confectionery industry
	(g) wastes from the production of alcoholic and non-alcoholic beverages (except coffee, tea and cocoa)
2. Wastes from wood processing and the production of panels and furniture, pulp, paper and cardboard	(a) wastes from wood processing and the production of panels and furniture not otherwise specified in Category A
	(b) wastes from wood preservation not otherwise specified in Category A
	(c) wastes from pulp, paper and cardboard production and processing not otherwise specified in Category A
3. Wastes from the leather, fur and textile industries	(a) wastes from the leather and fur industry not otherwise specified in Category A
	(b) wastes from the textile industry not otherwise specified in Category A
4. Wastes from thermal processes	(a) wastes from power stations and other combustion plants not otherwise specified in Category A
	(b) wastes from the iron and steel industry not otherwise specified in Category A
	(c) wastes from casting of ferrous pieces not otherwise specified in Category A
	(d) wastes from casting of non-ferrous pieces not otherwise specified in Category A
	(e) wastes from manufacture of glass and glass products not otherwise specified in Category A
	(f) wastes from manufacture of ceramic goods, bricks, tiles and construction products not otherwise specified in Category A
	(g) wastes from manufacture of cement, lime and plaster and articles and products made from them not otherwise specified in Category A

WASTE ACT

5. Waste from the photographic industry	(a) waste from the photographic industry not otherwise specified in Category A
6. Wastes from shaping and physical and mechanical surface treatment of metals and plastics	(a) wastes from shaping and physical and mechanical surface treatment of metals and plastics not otherwise specified in Category A
7. Oil wastes and wastes of liquid fuels	(a) oil wastes not otherwise specified in Category A
8. Other wastes not specified in the list	<p>(a) wastes from end-of-life vehicles from different means of transport (including off-road machinery) and wastes from dismantling of end-of-life vehicles and vehicle maintenance not otherwise specified in Category A</p> <p>(b) wastes from electrical and electronic equipment not otherwise specified in Category A</p> <p>(c) wastes from off-specification batches and unused products not otherwise specified in Category A</p>
9. Food wastes	(a) waste from kitchen and restaurant facilities
10. Wastes from waste management facilities	<p>(a) wastes from incineration or pyrolysis of waste not otherwise specified in Category A</p> <p>(b) wastes from aerobic treatment of solid wastes not otherwise specified in Category A</p> <p>(c) wastes from anaerobic treatment of waste not otherwise specified in Category A</p> <p>(d) wastes from shredding of metal-containing wastes not otherwise specified in Category A</p> <p>(e) wastes from the mechanical treatment of waste not otherwise specified in Category A (for example sorting, crushing, compacting, pelletising) not otherwise specified</p>

“**building and demolition waste**” means waste, excluding hazardous waste, produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition, which include:

WASTE ACT

11. Building and demolition wastes	(a) discarded concrete, bricks, tiles and ceramics
	(b) discarded wood, glass and plastic
	(c) discarded metals
	(d) discarded soil, stones and dredging spoil
	(e) Other discarded building and demolition wastes

“domestic waste” means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential, educational, health care, sport or recreation purposes, which include:

12. Domestic wastes	(a) garden and park wastes
	(b) municipal waste
	(c) food waste

“inert waste” means waste that-

- (a) does not undergo any significant physical, chemical or biological transformation after disposal;
- (b) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and
- (c) does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant; and which include:

13. Inert waste	(a) discarded concrete, bricks, tiles and ceramics
	(b) discarded glass
	(c) discarded soil, stones and dredging spoil

[Schedule 3 inserted by s. 18 of Act 26/2014]

LIST OF WASTE MANAGEMENT ACTIVITIES THAT HAVE, OR ARE LIKELY TO HAVE, A DETRIMENTAL
EFFECT ON THE ENVIRONMENT

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GN 921 OF 29 NOVEMBER 2013:

**LIST OF WASTE MANAGEMENT ACTIVITIES THAT HAVE, OR ARE
LIKELY TO HAVE, A DETRIMENTAL EFFECT ON THE ENVIRONMENT**

Amended by:

GN 332

GG 37604

2/5/2014

**SCHEDULE
(Section 19(2))**

**WASTE MANAGEMENT ACTIVITIES IN RESPECT OF WHICH A WASTE MANAGEMENT
LICENCE IS REQUIRED IN ACCORDANCE WITH SECTION 20(b) OF THE NATIONAL
ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 (ACT NO. 59 OF 2008)**

1. Definitions
2. General
3. Category A
4. Category B
5. Category C
6. Transitional provisions
7. Transitional provisions
8. Special arrangements
9. Repeal of laws

1. Definitions

In this Schedule any word or expression to which a meaning has been assigned in the Act and associated regulations, shall have the meaning so assigned, and unless the context otherwise indicates-

“construction” means the building, erection or establishment of a facility, structure or infrastructure that is necessary for the undertaking of a waste management activity, but excludes any modification, expansion, alteration or upgrading of such facility, structure or infrastructure that does not result in a change to the nature of the activity being undertaken or an increase in the range of outputs for the facility;

“co-processing” means the utilisation of alternative fuels and/or raw materials in industrial processes for the purpose of energy and/or resource recovery and resultant reduction in the use of conventional fuels and/or raw materials through substitution;

LIST OF WASTE MANAGEMENT ACTIVITIES THAT HAVE, OR ARE LIKELY TO HAVE, A DETRIMENTAL
EFFECT ON THE ENVIRONMENT

“expansion” means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which a waste management activity takes place in such a manner that the capacity of the facility or the volume of waste recycled, used, treated, processed or disposed of is increased;

“facility” means a place, infrastructure, structure or containment of any kind including associated structures or infrastructure, wherein, upon or at, a waste management activity takes place and includes a waste transfer facility, a waste storage facility, container yard, waste disposal facility, incinerators, lagoons, recycling, co-processing or composting facilities;

“lagoon” means the containment of waste in excavations and includes evaporation dams, earth cells, sewage treatment facilities and sludge farms;

“operational area” an area where waste is handled including the storage areas;

“temporary storage” means a once off storage of waste for a period not exceeding 90 days;

“the Act” means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

2. General

No person may commence, undertake or conduct a waste management activity listed in this Schedule unless a waste management licence is issued in respect of the waste management activity.

3. Category A

A person who wishes to commence, undertake or conduct a waste management activity listed under this Category, must conduct a basic assessment process set out in the Environmental Impact Assessment Regulations made under section 24(5) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as part of a waste management licence application contemplated in section 45 read with section 20(b) of this Act.

Storage of waste

- (1) The storage of general waste in lagoons.

Recycling or recovery of waste

- (2) The sorting, shredding, grinding, crushing, screening or bailing of general waste at a facility that has an operational area in excess of 1000m².
- (3) The recycling of general waste at a facility that has an operational area in excess of 500m², excluding recycling that takes place as an integral part of an internal manufacturing process within the same premises.

LIST OF WASTE MANAGEMENT ACTIVITIES THAT HAVE, OR ARE LIKELY TO HAVE, A DETRIMENTAL
EFFECT ON THE ENVIRONMENT

- (4) The recycling of hazardous waste in excess of 500kg but less than 1 ton per day calculated as a monthly average, excluding recycling that takes place as an integral part of an internal manufacturing process within the same premises.
- (5) The recovery of waste including the refining, utilisation, or co-processing of waste in excess of 10 tons but less than 100 tons of general waste per day or in excess of 500kg but less than 1 ton of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.

Treatment of waste

- (6) The treatment of general waste using any form of treatment at a facility that has the capacity to process in excess of 10 tons but less than 100 tons.
- (7) The treatment of hazardous waste using any form of treatment at a facility that has the capacity to process in excess of 500kg but less than 1 ton per day excluding the treatment of effluent, wastewater or sewage.
- (8)

[Activity (8) "the remediation of contaminated land" deleted by GN 332/2014]

Disposal of waste

- (9) The disposal of inert waste to land in excess of 25 tons but not exceeding 25 000 tons, excluding the disposal of such waste for the purposes of levelling and building which has been authorised by or under other legislation.
- (10) The disposal of general waste to land covering an area of more than 50m² but less than 200m² and with a total capacity not exceeding 25 000 tons.
- (11) The disposal of domestic waste generated on premises in areas not serviced by the municipal service where the waste disposed exceeds 500kg per month.

Construction, expansion or decommissioning of facilities and associated structures and infrastructure

- (12) The construction of a facility for a waste management activity listed in Category A of this Schedule (not in isolation to associated waste management activity).
- (13) The expansion of a waste management activity listed in Category A or B of this Schedule which does not trigger an additional waste management activity in terms of this Schedule.
- (14) The decommissioning of a facility for a waste management activity listed in Category A or B of this Schedule.

LIST OF WASTE MANAGEMENT ACTIVITIES THAT HAVE, OR ARE LIKELY TO HAVE, A DETRIMENTAL
EFFECT ON THE ENVIRONMENT

4. Category B

A person who wishes to commence, undertake or conduct a waste management activity listed under this Category, must conduct a scoping and environmental impact reporting process set out in the Environmental Impact Assessment Regulations made under section 24(5) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as part of a waste management licence application contemplated in section 45 read with section 20(b) of this Act.

Storage of hazardous waste

- (1) The storage of hazardous waste in lagoons excluding storage of effluent, wastewater or sewage.

Reuse, recycling or recovery of waste

- (2) The reuse or recycling of hazardous waste in excess of 1 ton per day, excluding reuse or recycling that takes place as an integral part of an internal manufacturing process within the same premises.
- (3) The recovery of waste including the refining, utilisation, or co-processing of the waste at a facility that processes in excess of 100 tons of general waste per day or in excess of 1 ton of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.

Treatment of waste

- (4) The treatment of hazardous waste in excess of 1 ton per day calculated as a monthly average; using any form of treatment excluding the treatment of effluent, wastewater or sewage.
- (5) The treatment of hazardous waste in lagoons, excluding the treatment of effluent, wastewater or sewage.
- (6) The treatment of general waste in excess of 100 tons per day calculated as a monthly average, using any form of treatment.

Disposal of waste on land

- (7) The disposal of any quantity of hazardous waste to land.
- (8) The disposal of general waste to land covering an area in excess of 200m² and with a total capacity exceeding 25 000 tons.
- (9) The disposal of inert waste to land in excess of 25 000 tons, excluding the disposal of such waste for the purposes of levelling and building which has been authorised by or under other legislation.

LIST OF WASTE MANAGEMENT ACTIVITIES THAT HAVE, OR ARE LIKELY TO HAVE, A DETRIMENTAL
EFFECT ON THE ENVIRONMENT

Construction of facilities and associated structures and infrastructure

- (10) The construction of a facility for a waste management activity listed in Category B of this Schedule (not in isolation to associated waste management activity).

5. Category C

A person who wishes to commence, undertake or conduct a waste management activity listed under this Category, must comply with the relevant requirements or standards determined by the Minister listed below-

- (a) Norms and Standards for Storage of Waste, 2013; or
- (b) Standards for Extraction, Flaring or Recovery of Landfill Gas, 2013; or
- (c) Standards for Scrapping or Recovery of Motor Vehicles, 2013.

Storage of waste

- (1) The storage of general waste at a facility that has the capacity to store in excess of 100m³ of general waste at any one time, excluding the storage of waste in lagoons or temporary storage of such waste.
- (2) The storage of hazardous waste at a facility that has the capacity to store in excess of 80m³ of hazardous waste at any one time, excluding the storage of hazardous waste in lagoons or temporary storage of such waste.
- (3) The storage of waste tyres in a storage area exceeding 500m².

Recycling or recovery of waste

- (4) The scrapping or recovery of motor vehicles at a facility that has an operational area in excess of 500m².
- (5) The extraction, recovery or flaring of landfill gas.

6. Transitional provisions

Definition

- (6) In this paragraph-

previous Waste Management Activities List Notice” contemplated in these transitional arrangements, means the previous notice published in terms of section 19(1) of this Act (Government Notice No. 718 in the Government Gazette No. 32368 of 3 July 2009).

7.

- (1) A person who lawfully conducts a waste management activity listed in this Schedule on the date of the coming into effect of this Notice may continue with the waste management activity until such time that the Minister by notice in a Gazette calls upon such a person to apply for a waste management licence.
- (2) An application for a waste management activity which was listed under the previous Waste Management Activities List Notice which is no longer listed in terms of this Schedule and a decision on such an application is still pending on the date of coming into effect of this Notice, such an application will be considered withdrawn.
- (3) If a situation arises where waste management activities, listed under the previous Waste Management Activities List Notice, are listed differently under the current list of waste management activities, and a decision on such an application is still pending, such an application will still be processed by the licensing authority in accordance with this Notice, except if it is an application for a waste management activity A 3(11) or waste management activity B 4(7) listed under the previous Waste Management Activity List Notice.
- (4) A person who submitted an application for a waste management licence for a waste management activity which is no longer listed in Category A or B but listed in Category C of this Schedule on the date of coming into effect of this Notice, must consider such an application for that activity withdrawn, and must comply with the requirements or standards for that waste management activity.
- (5) A person who lawfully conducted a waste management activity that is no longer listed in Category A or B, but listed in Category C of this Schedule, on the date of coming into effect of this Notice, may continue with the waste management activity for the duration stipulated in the permit or waste management licence until the expiry date of the permit or waste management licence whereafter such a person must comply with the requirements or standards for that waste management activity.
- (6) An application submitted for a waste management activity A 3(11) or waste management activity B 4(7) listed under the previous Waste Management Activity List Notice and is still pending on the date of coming into effect of this Notice, such an application will be considered by the relevant licensing authority and will be assessed and decided upon under the previous Waste Management Activities List Notice up to the construction phase of that facility.
- (7) A person who obtained a waste management licence for waste management activity A 3(11) or waste management activity B 4(7) listed under the previous Waste Management Activity List Notice prior to the coming into effect of this Notice, must comply with the waste management licence conditions up to the completion of the construction phase and thereafter must comply with any applicable authorisation or legislation.

LIST OF WASTE MANAGEMENT ACTIVITIES THAT HAVE, OR ARE LIKELY TO HAVE, A DETRIMENTAL
EFFECT ON THE ENVIRONMENT

- (8) A person who submitted an application for a waste management licence for activity A 3(11) or B 4(7) listed under the previous Waste Management Activity List Notice and such an application falls outside the revised thresholds for these activities under the NEMA Listing Notices, wherein a decision is still pending on the date of coming into effect of this Notice, must consider such an application withdrawn.

8. Special arrangements

An application submitted for an environmental authorisation in terms of the list of activities and competent authorities identified in terms of section 24 and 24D of the National Environmental Management Act, 1998, published under Government Notice No. R. 386 of 21 April 2006 and R. 387 of 21 April 2006 and still pending on the date of coming into effect of the previous Waste Management Activities List Notice, published in Government Notice No. 718 under *Government Gazette* No. 32368 dated 3 July 2009, such an application will be considered an application for a waste management licence in the Act, and will be assessed and decided by the licensing authority in terms of this Act, and any assessments undertaken will be considered as assessments under such application.

9. Repeal of laws

The Notice on the List of Waste Management Activities That Have, Or Are Likely to Have a Detrimental Effect on the Environment, published in Government Notice No. 718 under *Government Gazette* No. 32368 dated 3 July 2009, is hereby repealed.

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GNR625 OF 13 AUGUST 2012:

NATIONAL WASTE INFORMATION REGULATIONS, 2012

SCHEDULE

CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

1. Definitions
2. Purpose of Regulations
3. Application of Regulations
4. Confidentiality of information
5. Application for registration

CHAPTER 2

REGISTRATION

6. Consideration of applications for registration
7. Changes to registration certificates

CHAPTER 3

REPORTING AND RECORD KEEPING

8. Reporting or submission of information
9. Record keeping

CHAPTER 4

VERIFICATION OF INFORMATION AND GENERAL MATTERS

10. Verification of information
11. General matters
12. Offences and penalties
13. Short title and commencement

ANNEXURE 1 : LIST OF PERSONS CONDUCTING THE FOLLOWING ACTIVITIES MUST REGISTER ON THE SAWIS IN TERMS OF REGULATION 5

ANNEXURE 2: REPORTING REQUIREMENTS IN TERMS OF REGULATION 8(1)

ANNEXURE 3: GENERAL WASTE TYPES FOR REPORTING TO THE SAWIS

ANNEXURE 4: HAZARDOUS WASTE TYPES FOR REPORTING TO THE SAWIS

ANNEXURE 5: WASTE MANAGEMENT METHODS: LIST OF RECYCLING, RECOVERY, TREATMENT AND DISPOSAL (R, R, T & D) CODES FOR CATEGORIZATION

CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

1. Definitions

(1) In these Regulations, unless the context indicates otherwise, a word or expression that is defined in the Act bears the same meaning in these Regulations, and in addition -

“independent person” means a person who is not an employee of, and not otherwise related to, the entity he or she is auditing;

“provincial authority” means Provincial Government Department or an agency responsible for the management of waste in the province;

“provincial waste information system” means a provincial waste information system established in terms of section 62 of the Act;

“registration certificate” means a written proof issued by the Department to a registered person to submit information to the South African Waste Information System in terms of Chapter 3 of the Regulations;

“registered person” means a person who is the holder of a registration certificate;

“reporting period” means the quarterly period of a year calculated from January in respect of which information must be reported;

“source” means the point of origin of waste whereby registered hazardous waste generators are selected or municipality or province in the case of general waste;

“South African Waste Information System” or **“SAWIS”** means a national waste information system established in terms of section 60 of the Act;

“The Act” means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

“**these Regulations**” include the Annexures to these Regulations;

“**waste information registration number**” or “**WIR number**” means the unique number allocated by the Department to a registered person in terms of these Regulations;

“**waste management method**” means a systematic procedure, technique, or process for the management of waste;

“**waste quantification equipment**” means a measuring device used to determine or express the quantity of waste; and

“**waste quantification survey**” means the collection of data which is performed for the purpose of obtaining measurements and analysis of waste quantities.

- (2) When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

2. Purpose of Regulations

The purpose of these Regulations is to regulate the collection of data and information to fulfill the objectives of the national waste information system as set out in section 61 of the Act.

3. Application of Regulations

- (1) These Regulations apply uniformly to all persons conducting an activity listed in Annexure 1 to these Regulations.
- (2) A person who conducts an activity in a province that has an established waste information system in terms of section 62 of the Act and collects the minimum information required by these Regulations must submit the information to the provincial waste information system.
- (3) Where a province has developed waste information regulations that are compatible with these Regulations, a person who conducts an activity contemplated in Annexure 1 to these Regulations must comply with the provincial waste information regulations.

4. Confidentiality of information

- (1) No person may disclose confidential information obtained in terms of these Regulations, unless-
 - (a) the information is disclosed in compliance with the provisions of any law;

- (b) the person is ordered to disclose the information by a court of law;
- (c) the information is disclosed to enable a person to perform a function in terms of these Regulations.

CHAPTER 2

REGISTRATION

5. Application for registration

- (1) Any person conducting an existing activity listed in Annexure 1 must apply to the Department to be registered on the SAWIS within ninety (90) days of the coming into operation of these Regulations.
- (2) Any person commencing such an activity after the promulgation of the Regulations must apply to be registered on the SAWIS thirty (30) days after the commencement of such an activity.
- (3) Where a person in subregulation (1)(a) conducts more than one activity in different facilities, such activities must be registered individually.
- (4) An application contemplated in subregulation (1) must be in a form determined by the Department.

6. Consideration of applications for registration

- (1) The Department must, within thirty (30) days of receiving an application for registration, either-
 - (a) register the applicant and issue a registration certificate to the applicant which contains-
 - (i) name of the activity;
 - (ii) a waste information registration number;
 - (iii) waste management method or hazardous waste generator; and
 - (iv) the date of registration; or
 - (b) refer the application for registration back to the applicant for correction.
- (2) An application for registration which has been referred back for correction must be amended and resubmitted to the Department within thirty (30) days after the date the Department issued a written notification to the applicant for correction.

- (3) The provisions of subregulation (1)(a) shall apply to an application for registration which has been referred back, corrected and resubmitted.

7. Changes to registration certificate

- (1) A registered person must notify the Department of any change in respect of that person's registration certificate within thirty (30) days of such change occurring.
- (2) If a registered person transfers ownership of the business or no longer undertakes the activity which caused that person to register, the registered person must notify the Department in the form determined by the Department within thirty (30) days prior to the business being transferred or the activity being discontinued.
- (3) The person to whom the business is transferred to in subregulation (2), must within thirty (30) days of taking ownership of the business, amend the registration details of the business in a form determined by the Department.
- (4) On receipt of a notification in subregulations (1) and (2) and after the amendment of the registration details of a registered person in subregulation (3), the first application is deemed withdrawn.
- (5) If a person intends to recommence with an activity for which the registration was withdrawn, the person must comply with the legal requirements as set out in regulation 6.

CHAPTER 3

REPORTING AND RECORD KEEPING

8. Reporting or submission of information

- (1) The submission of information to the SAWIS commence ninety (90) days after the end of registration period in regulation 6(1).
- (2) A registered person conducting an activity listed in Annexure 1 must submit quarterly information as prescribed in Annexure 2, within sixty (60) days of the end of a reporting period.
- (3) Subregulation (1) does not apply to the registered generators of hazardous waste.
- (4) A registered person submitting information on hazardous waste must submit the information based on actual quantities.
- (5) A registered person submitting information on general waste may submit information that is based on an estimation of quantities for a period of five (5) years after promulgation of the Regulations, where after the information must be based on actual quantities.

- (6) The five (5) year period in subregulation (5) does not apply to waste disposal of general waste to land covering an area in excess of 200m².
- (7) The provision in subregulation (5) regarding estimation of quantities for a period of five (5) years does not apply to waste management facilities installed with waste quantification equipment.
- (8) The information must be submitted to the SAWIS.
- (9) If a registered person is not able to submit the required information to the SAWIS, a registered person must submit the required information to the Department by facsimile, post or hand delivery within sixty (60) days of the end of a reporting period.

9. Record keeping

- (1) A registered person must keep a record of the information submitted to the SAWIS or the Department.
- (2) The records contemplated in subregulation (1) must be-
 - (a) retained for a period of at least 5 (five) years; and
 - (b) made available for inspection by a representative of the Department on request.

CHAPTER 4

VERIFICATION OF INFORMATION AND GENERAL MATTERS

10. Verification of information

- (1) If a provincial authority responsible for the management of waste information in that province reasonably believes that the information submitted is incorrect or misleading, a provincial authority as the case may be, may instruct a registered person who the information belongs to, in writing, to-
 - (a) submit an audit report prepared by an independent person on the accuracy of the information that has been submitted to the Department; or
 - (b) undertake a waste quantification survey and submit a waste quantification report prepared by an independent person.
- (2) An audit report or waste quantification report requested in terms of subregulation (1) must be submitted within the period determined by a provincial authority, which period may not be less than thirty (30) days.

NATIONAL WASTE INFORMATION REGULATIONS, 2012

- (3) A registered person is liable for all costs in connection with compliance with an instruction in terms of sub-regulation (2).
- (4) If a registered person fails to submit an audit report or waste quantification survey report contemplated in subregulation (2) within the period determined by a provincial authority, a provincial authority may-
 - (a) appoint an independent auditor/person to perform the audit or waste quantification survey; and
 - (b) recover the cost of the audit or waste quantification survey from the registered person.

11. General matters

Where a provincial authority is not able to conduct the requirements in terms of regulation 10 the Department may, after consultation with the provincial authority, conduct such requirements as stipulated in these Regulations.

12. Offences and penalties

- (1) A person commits an offence if that person-
 - (a) provides incorrect or misleading information to the SAWIS; or
 - (b) fails to comply with regulations 4, 5, 6(2), 7, 8 and 9.
- (2) A person who commits an offence in terms of subregulation (1) is liable on conviction to-
 - (a) imprisonment for a period not exceeding fifteen (15) years;
 - (b) an appropriate fine; or
 - (c) both a fine and imprisonment.

13. Short title and commencement

These Regulations are called the National Waste Information Regulations, 2012 and take effect on 1 January 2013.

ANNEXURE 1

LIST OF PERSONS CONDUCTING THE FOLLOWING ACTIVITIES MUST REGISTER ON THE SAWIS IN TERMS OF REGULATION 5

Generators of waste

- (a) Generators of hazardous waste in excess of 20kg per day.

Recovery or recycling of waste

- (b) Recovery of energy from general waste in excess of three (3) tons per day.
- (c) Recovery of waste at a facility that has the capacity to process in excess of 10 tons of general waste or in excess of 500kg of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.
- (d) The scrapping or recovery of motor vehicles at a facility that has an operational area in excess of 500m².
- (e) Recycling of general waste at a facility that has an operational area in excess of 500m².
- (f) Recycling of hazardous waste in excess of 500kg per day calculated as a monthly average.

Treatment of waste

- (g) Treatment of general waste using any form of treatment at a facility that has the capacity to process in excess of 10 tons of general waste or 500kg of hazardous waste per day excluding the treatment of effluent, wastewater or sewerage.
- (h) Treatment of health care risk waste regardless of size or capacity of the facility.

Disposal of waste

- (i) Disposal of general waste to land covering an area in excess of 200m².
- (j) Disposal of any quantity of hazardous waste to land.

Exportation of hazardous waste

- (k) Hazardous waste exported from the Republic of South Africa.

ANNEXURE 2

REPORTING REQUIREMENTS IN TERMS OF REGULATION 8(1)

The required quarterly information for reporting to the SAWIS, read with the Annexure 1 of these Regulations must include-

- (a) The month and year to which the information applies;
- (b) Categories of waste as detailed in Annexures 3 and 4;
- (c) Source from which waste comes
- (d) The quantity of waste reported in tons.

ANNEXURE 3

GENERAL WASTE TYPES FOR REPORTING TO THE SAWIS

	No	Name	No	Name
General waste	GW 01	Municipal waste	01	
	GW 10	Commercial and industrial waste	01	
	GW 13	Brine	01	
	GW 14	Fly ash and dust from miscellaneous filter sources	01	
	GW 15	Bottom ash	01	
	GW 16	Slag	01	Ferrous metal slag
			02	Non-ferrous metal slag
			03	Other
	GW 17	Mineral waste	01	Foundry sand
			02	Refractory waste
			03	Other
	GW 18	Waste of electric and electronic equipment (WEEE) from which hazardous components / substances have been removed	01	Large household appliances
			02	Small household appliances
			03	Office, information and communication equipment

NATIONAL WASTE INFORMATION REGULATIONS, 2012

		04	Entertainment and consumer electronics and toys, leisure, sports and recreational equipment and automatic issuing machines
		05	Lighting equipment
		06	Electric and electronic tools
		07	Security and health care equipment
		08	Mixed WEEE
GW 20	Organic waste	01	Garden waste
		02	Food waste
		03	Wood waste
GW 21	Sewage sludge	01	Sewage sludge
GW 30	Construction and demolition waste	01	
GW 50	Paper	01	Newsprint and magazines
		02	Brown grades
		03	White grades
		04	Mixed grades
GW 51	Plastics	01	Polyethylene terephthalate (PET)
		02	Polyvinyl Chloride (PVC)
		03	Low-density polyethylene (LPDE)
		04	Polypropylene (PP)
		05	Polystyrene (PS)
		06	Other
GW 52	Glass	01	
GW 53	Metals	01	Ferrous metal
		02	Non-ferrous metal
GW 54	Tyres	01	
GW 99	Other	01	

ANNEXURE 4

HAZARDOUS WASTE TYPES FOR REPORTING TO THE SAWIS

	No	Name	No	Name
Hazardous waste	HW 01	Gaseous waste	01	Gases (excluding Greenhouse gases)
			02	Obsolete ozone depleting gases
	HW 02	Mercury containing waste	01	Liquid waste containing mercury
			02	Solid waste containing mercury
	HW 03	Batteries	01	Lead batteries
			02	Mercury batteries
			03	Ni/Cd batteries
			04	Manganese dioxide and alkali batteries
			05	Lithium and Lithium ion batteries
			06	Nickel-metal hydride batteries
			07	Mixed batteries
	HW 04	POP waste	01	PCB containing waste (>50mg/kg)
			02	Other POP-containing waste
	HW 05	Inorganic waste	01	Liquid and sludge inorganic waste
			02	Solid inorganic waste
			03	Spent pot lining (inorganic)
	HW 06	Asbestos containing waste	01	Asbestos containing waste
	HW 07	Waste oils	01	Waste oil
	HW 08	Organic halogenated and / or sulphur containing solvents	01	Solvents containing halogens and / or sulphur
	HW 09	Organic halogenated and / or sulphur containing waste	01	Liquids and sludges containing halogens and / or sulphur
02			Solids containing halogens and / or sulphur	
HW 10	Organic solvents without halogens and sulphur	01	Solvents without halogens and sulphur	

NATIONAL WASTE INFORMATION REGULATIONS, 2012

	HW 11	Other organic waste without halogen or sulphur	01	Liquid and sludge organic waste
			02	Solid organic waste
			03	Spent pot lining (organic)
	HW 12	Tarry and bituminous waste	01	Tarry waste
			02	Bituminous waste
	HW 13	Brine	01	Brine
	HW 14	Fly ash and dust from miscellaneous filter sources	01	Fly ash
	HW 15	Bottom ash	01	Bottom ash
	HW 16	Slag	01	Ferrous metal slag
			02	Non-ferrous metal slag
			03	Other
	HW 17	Mineral waste	01	Foundry sand
			02	Refractory waste
			03	Other
	HW 18	Waste of electric and electronic equipment (WEEE)	01	Large household appliances
			02	Small household appliances
			03	Office, information and communication equipment
			04	Entertainment and consumer electronics and toys, leisure, sports and recreational equipment and automatic issuing machines
			05	Lighting equipment
			06	Electric and electronic tools
07			Security and health care equipment	
08			Mixed WEEE	
HW 19	Health care risk waste	01	Pathological waste	
		02	Infectious waste and sharps	
		03	Chemical waste	
HW 20	Sewage sludge	01	Sewage sludge	
HW 99	Miscellaneous	01	Miscellaneous	

For mixtures, report under the waste type which represents the largest fraction of the waste under consideration. Report under a specific waste type e.g. mercury battery would be reported under mercury battery and not mercury containing waste.

ANNEXURE 5

**WASTE MANAGEMENT METHODS:
LIST OF RECYCLING, RECOVERY, TREATMENT AND DISPOSAL
(R, R, T & D) CODES FOR CATEGORIZATION**

Code	Description
Recycling and recovery	
R1	Direct recovery of energy from waste
R2	Direct recovery of raw material from waste
R3	Regeneration or rejuvenation of waste (solvents, carbons, acids & alkalis)
R4	Recycling of organic substances
R5	Recycling of metals and metal compounds
R6	Recycling of other inorganic materials
Treatment (treatment not for the purposes of disposal)	
T1	Biological treatment (e.g. biodegradation, composting, biogas generation)
T2	Physical treatment
T3	Chemical treatment
T4	Thermal treatment (incineration, pyrolysis, etc.)
Disposal	
D1	Disposal of waste to land (e.g. specially engineered landfill)
D2	Disposal of waste to landfill (e.g. non-engineered landfill)
D3	Storage/disposal of waste in surface impoundments (e.g. placement of liquid or sludge discards into pits, ponds, lagoons etc.)
D4	Release of waste into water bodies (except seas/oceans)
D5	Permanent storage (stabilization, micro-encapsulation, macro-encapsulation)

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GNR 634 OF 21 AUGUST 2013

WASTE CLASSIFICATION AND MANAGEMENT REGULATIONS, 2013

SCHEDULE

CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION OF REGULATIONS

1. Definitions
2. Purpose of Regulations
3. Application of Regulations

CHAPTER 2

WASTE CLASSIFICATION

4. Waste Classification
5. Safety Data Sheets

CHAPTER 3

WASTE MANAGEMENT

6. General
7. Waste Treatment
8. Waste Disposal to Landfill

CHAPTER 4

**WASTE MANAGEMENT ACTIVITIES THAT DO NOT REQUIRE A WASTE
MANAGEMENT LICENCE**

9. Motivation for and consideration of listing Waste Management Activities that do not require a Waste Management Licence

CHAPTER 5

RECORD KEEPING AND WASTE MANIFEST SYSTEM

10. Records of Waste Generation and Management
11. Waste Manifest System

**CHAPTER 6
GENERAL MATTERS**

12. Implementation and Transitional Provisions
13. Offences and Penalties
14. Short Title and Commencement

**CHAPTER 7
ANNEXURES TO REGULATIONS**

ANNEXURE 1: WASTES THAT DO NOT REQUIRE CLASSIFICATION OR ASSESSMENT

ANNEXURE 2: WASTE MANIFEST SYSTEM INFORMATION REQUIREMENTS

**CHAPTER 1
INTERPRETATION AND PURPOSE OF REGULATIONS**

1. Definitions

- (1) In these Regulations, any word or expression to which a meaning has been assigned in the Act has that same meaning, and unless the context indicates otherwise-

“emergency” means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed;

“SANS 10234” means the latest edition of the South African National Standard Globally Harmonized System of Classification and Labelling of Chemicals (GHS);

“the Act” means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

“waste classification” means establishing-

- (a) whether a waste is hazardous based on the nature of its physical, health and environmental hazardous properties (hazard classes); and
- (b) the degree or severity of hazard posed (hazard categories);

“waste generator” means any person whose actions, production processes or activities, including waste management activities, results in the generation of waste;

“waste manager” means any person who re-uses, recycles, recovers, treats or disposes of waste;

“waste management facility” means a place, infrastructure, structure or containment of any kind, wherein, upon or at, a waste management activity takes place and includes a waste transfer station, container yard, landfill site, incinerator, a lagoon, recycling or a composting facility;

“waste manifest system” means a system of control documentation, which accompanies a load of hazardous waste transported from the point of generation to the waste management facility;

“waste transporter” means any person who conveys or transfers waste-

- (a) between the waste generator and a waste management facility; or
- (b) between waste management facilities.

(2) The term waste in these Regulations has the meaning as assigned by the Act, and is deemed to include both general waste and hazardous waste.

(3) General waste and hazardous waste have the meanings as assigned by the Act, and are referred to as such in these Regulations, where specific provisions are only applicable to either general or hazardous waste.

(4) For any action contemplated in terms of these Regulations for which a timeframe is prescribed, the specified numbers of days are ordinary days.

2. Purpose of Regulations

(1) The purpose of these Regulations is to-

- (a) regulate the classification and management of waste in a manner which supports and implements the provisions of the Act;
- (b) establish a mechanism and procedure for the listing of waste management activities that do not require a Waste Management Licence;
- (c) prescribe requirements for the disposal of waste to landfill;
- (d) prescribe requirements and timeframes for the management of certain wastes; and
- (e) prescribe general duties of waste generators, transporters and managers.

3. Application of Regulations

(1) These Regulations apply uniformly in all Provinces of the Republic of South Africa.

- (2) These Regulations do not apply to generators of domestic waste that is collected by a municipality.
- (3) Subject to subregulation (2), these regulations apply to all waste generators, waste transporters and waste managers.

CHAPTER 2

WASTE CLASSIFICATION

4. Waste Classification

- (1) Wastes listed in Annexure 1 of these Regulations do not require classification in terms of SANS 10234.
- (2) Subject to subregulation (1), all waste generators must ensure that the waste they generate is classified in accordance with SANS 10234 within one hundred and eighty (180) days of generation.
- (3) Waste must be kept separate for the purposes of classification in terms of subregulation (2), and must not be mixed prior to classification.
- (4) Waste must be re-classified in terms of subregulation (2) every five (5) years, or within 30 days of modification to the process or activity that generated the waste, changes in raw materials or other inputs, or any other variation of relevant factors.
- (5) Waste that has been subjected to any form of treatment must be re-classified in terms of subregulation (2), including any waste from the treatment process.
- (6) If the Minister reasonably believes that a waste has not been classified correctly in terms of subregulation (2), he or she may require the waste generator to have the classification peer reviewed to confirm the classification.

5. Safety Data Sheets

- (1) Subject to Regulation 4(2) and subregulations (2) and (3), generators of hazardous waste must ensure that a safety data sheet for the hazardous waste is prepared in accordance with SANS 10234.
- (2) Subregulation (1) does not apply to generators of waste listed in item (2)(b) of Annexure 1 to these Regulations provided that the safety data sheets for these wastes are prepared as follows-
 - (a) safety data sheets for waste listed in item (2)(b)(i) of Annexure 1 to these Regulations must be prepared in accordance with SANS 10234 for the product the waste originates from; and

- (b) safety data sheets for waste listed in item (2)(b)(ii) of Annexure 1 to these Regulations must be prepared in accordance with SANS 10234 reflecting the details of the specific hazardous waste/s or hazardous chemical/s in the waste.
- (3) Generators of waste listed in item (2)(b)(iii) of Annexure 1 to these Regulations do not have to prepare a safety data sheet for the waste.
- (4) Every holder of hazardous waste, except waste listed in item (2)(b)(iii) of Annexure 1 to these Regulations, must be in possession of the safety data sheet/s for the waste referred to in subregulations (1) and (2).

CHAPTER 3

WASTE MANAGEMENT

6. General

- (1) Waste transporters and waste managers must not accept waste that has not been classified in terms of Regulation 4 unless such waste is listed in Annexure 1 of these Regulations.
- (2) Waste must not be diluted solely to reduce the concentration of its constituents for the purposes of classification in terms of Regulation 4(2), or assessment of the waste in accordance with the Norms and Standards for Assessment of Waste for Landfill Disposal set in terms of section 7(1) of the Act.
- (3) Any container or storage impoundment holding waste must be labelled, or where labelling is not possible, records must be kept, reflecting the following-
 - (a) the date on which waste was first placed in the container;
 - (b) the date on which waste was placed in the container for the last time when the container was filled, closed, sealed or covered;
 - (c) the dates when, and quantities of, waste added and waste removed from containers or storage impoundments, if relevant;
 - (d) the specific category or categories of waste in the container or storage impoundment as identified in terms of the National Waste Information Regulations, 2012; and
 - (e) the classification of the waste in terms of Regulation 4 once it has been completed.
- (4) Waste generators must ensure that their waste is re-used, recycled, recovered, treated and/or disposed of within eighteen (18) months of generation.

- (5) Waste managers must not store waste for more than eighteen (18) months from the date of receipt from the waste generator.
- (6) The re-use, recycling, recovery, treatment or disposal of waste stored in an existing facility prior to promulgation of these Regulations must be commenced with within five (5) years from the date of commencement of these Regulations.

7. Waste Treatment

- (1) Waste must not be mixed or treated where this would-
 - (a) reduce the potential for re-use, recycling or recovery; or
 - (b) result in treatment that is not controlled and not permanent.
- (2) Notwithstanding Regulations 6(2) and 7(1), waste may be blended or pre-treated to-
 - (a) enable potential for re-use, recycling, recovery or treatment; or
 - (b) reduce the risk associated with the management of the waste.

8. Waste Disposal to Landfill

- (1) Unless otherwise directed by the Minister to ensure a better environmental outcome, or in response to an emergency so as to protect human health, property or the environment-
 - (a) waste generators must ensure that their waste is assessed in accordance with the Norms and Standards for Assessment of Waste for Landfill Disposal set in terms of section 7(1) of the Act prior to the disposal of the waste to landfill;
 - (b) waste generators must ensure that the disposal of their waste to landfill is done in accordance with the Norms and Standards for Disposal of Waste to Landfill set in terms of section 7(1) of the Act; and
 - (c) waste managers disposing of waste to landfill must only do so in accordance with the Norms and Standards for Disposal of Waste to Landfill set in terms of section 7 (1) of the Act.
- (2) Subregulation (1)(a) applies to all waste generators, excluding-
 - (a) generators of waste listed in items (2)(a) and (b) of Annexure 1 to these Regulations; and
 - (b) generators of business waste that is collected by a municipality.

- (3) Subregulation (1)(b) applies to all waste generators, excluding-
- (a) generators of waste listed in item (2)(a) of Annexure 1 to these Regulations; and
 - (b) generators of business waste that is collected by a municipality.

CHAPTER 4

WASTE MANAGEMENT ACTIVITIES THAT DO NOT REQUIRE A WASTE MANAGEMENT LICENCE

9. Motivation for and consideration of listing Waste Management Activities that do not require a Waste Management Licence

- (1) Any person may submit a motivation to the Minister to list a specific waste management activity as an activity that does not require a waste management licence in terms of section 19 of the Act, but that is required to adhere to the requirements or standards determined in terms of section 19(3)(a) of the Act for that activity.
- (2) A motivation to the Minister in terms of subregulation (1) must demonstrate that the waste management activity, including associated storage and handling, can be implemented and conducted consistently and repeatedly in a controlled manner without unacceptable impact on, or risk to, the environment or health.
- (3) In accordance with subregulation (2), a motivation to the Minister in terms of subregulation (1) must contain the following information, as relevant to the proposed waste management activity:
 - (a) basis for the motivation, including benefits of the proposed activity relating to achieving waste minimisation or diversion of waste from landfill;
 - (b) description of the waste or wastes the proposed activity relates to, including quantities, classification, physical characteristics, chemical composition, sources generating the waste, and current management thereof;
 - (c) description of the proposed waste management activity and processes, including the waste manager, storage and handling, infrastructure, pre-treatment activities, and other inputs or raw materials required;
 - (d) description of the quantity, classification and management of any waste generated by the proposed activity;
 - (e) information on the successful implementation of the proposed activity, or similar activities, locally and internationally, where available;

- (f) details of local and international specifications or standards relating to the waste and the proposed waste management activity, where available;
- (g) reference to legislation and policy applicable to the proposed activity, including relevant waste minimisation or waste management plans;
- (h) description of how the physical, biological, social, economic and cultural aspects of the environment may be adversely affected by the proposed activity, and how these would be mitigated or managed;
- (i) identification of aspects that may constrain the wide or general implementation of the proposed activity, and how these can be managed;
- (j) an assessment of the potential environmental and health impacts and risks that could result from the proposed activity, which would test the general implementation of the proposed activity at several sites with different characteristics;
- (k) proposed requirements or standards specific to the proposed waste management activity, including associated storage and handling, that would ensure that the activity can be implemented and conducted consistently and in a controlled manner, which must include the following as relevant to the proposed waste management activity:
 - (i) roles and responsibilities of the waste generator and waste manager;
 - (ii) management, monitoring and reporting procedures;
 - (iii) quality assurance and control measures, including sampling and analyses, as well as chemical concentration limits for specific components in the waste, or other characteristics of the waste, which may render it unsuitable for the proposed waste management activity;
 - (iv) sources from which the waste may originate, and any other limitations to the use or prohibited uses of the waste;
 - (v) locality or geographical area where the proposed activity may or may not take place;
 - (vi) standard operating procedures;
 - (vii) environmental management plan; and
 - (viii) design specifications or standards.
- (l) discussion on the practicality of, and ability to effectively implement, the requirements or standards that the activity may be subjected to;

- (m) a description of any assumptions made and any uncertainties or gaps in knowledge;
and
 - (n) any other specific information that may be required by the Minister, including an independent review of information submitted in support of the motivation.
- (4) Based on the review and consideration of the information supplied in support of a motivation in terms of Regulation 9(1) the Minister may-
- (a) subject to section 19(10)(a) of the Act, list the specific waste management activity in terms of section 19(1) and (3)(a) of the Act as an activity that does not require a waste management licence;
 - (b) require additional information to be furnished within a specified timeframe; or
 - (c) reject the motivation with reasons.
- (5) A motivation in terms of Regulation 9(1) which is substantially similar to a previous motivation that had been rejected in terms of subregulation (2)(c), may only be resubmitted if-
- (a) the application contains new and material information not previously submitted to the Minister; or
 - (b) a period of three (3) years has elapsed since the application was lodged.

CHAPTER 5

RECORD KEEPING AND WASTE MANIFEST SYSTEM

10. Records of waste generation and management

- (1) Waste generators must keep accurate and up to date records of the management of the waste they generate, which records must reflect-
- (a) the classification of the wastes;
 - (b) the quantity of each waste generated, expressed in tons or cubic metres per month;
 - (c) the quantities of each waste that has either been re-used, recycled, recovered, treated or disposed of; and
 - (d) by whom the waste was managed.

- (2) Subregulation (1) does not apply to generators of waste listed in item (2)(a) of Annexure 1 to these Regulations.
- (3) The records contemplated in subregulation (1) must be-
 - (a) retained for a period of at least five (5) years; and
 - (b) made available to the Department upon request.

11. Waste Manifest System

- (1) Every holder of waste that has been classified as hazardous in terms of Regulation 4(2) or a waste that is listed in item (2)(b) of Annexure 1 to these Regulations, must be in possession of a waste manifest document containing the relevant information specified in Annexure 2 to these Regulations.
- (2) Generators of waste classified as hazardous in terms of Regulation 4(2) or waste that is listed in item (2)(b) of Annexure 1 to these Regulations, must complete a waste manifest document containing the information specified in item (2)(a) of Annexure 2 to these Regulations for each consignment of waste transported to a waste manager.
- (3) Subregulations (1) and (2) do not apply to waste generators who are also the waste manager and manage the waste at the same premises where it was generated.
- (4) Waste transporters must not accept waste classified as hazardous in terms of Regulation 4(2) or waste that is listed in item (2)(b) of Annexure 1 to these Regulations for transport, unless the waste manifest document accompanies the waste.
- (5) All transporters of waste classified as hazardous in terms of Regulation 4(2) or waste that is listed in item (2)(b) of Annexure 1 to these Regulations must-
 - (a) complete a waste manifest document containing the information specified in item (2) (b) of Annexure 2 to these Regulations for each consignment of waste transported;
 - (b) provide the information to the generator before the waste is transported from the premises of the generator; and
 - (c) provide the information to the waste manager at the time of delivery of the waste to the facility for a waste management activity.
- (6) Waste managers must not accept waste classified as hazardous in terms of Regulation 4(2) or waste that is listed in item (2)(b) of Annexure 1 to these Regulations, unless the waste manifest document accompanies the waste.
- (7) All managers of waste classified as hazardous in terms of Regulation 4(2) or waste that is listed in item (2)(b) of Annexure 1 to these Regulations, must complete the waste

manifest document with the information specified in item (2)(c) of Annexure 2 to these Regulations, confirming that the waste load has been accepted and that the waste has been managed.

- (8) All waste generators, transporters and managers subjected to the requirements of subregulations (1), (2), (4), (5), (6) and (7) must-
- (a) retain copies, or be able to access copies/records, of the waste manifest documentation for a period of at least five (5) years; and
 - (b) make the waste manifest documentation available to the Department upon request.

CHAPTER 6

GENERAL MATTERS

12. Implementation and Transitional Provisions

- (1) All wastes that were classified in terms of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (2nd Edition, 1998; Department of Water Affairs and Forestry), or waste for which an alternative classification was approved by the Department of Water Affairs or Department of Environmental Affairs, prior to these Regulations taking effect, must be-
- (a) re-classified in terms of Regulation 4(2); and
 - (b) assessed in terms of Regulation 8(1)(a) if the waste is to be disposed to landfill, within three (3) years from the date of commencement of these Regulations.
- (2) Waste that has been produced prior to these Regulations taking effect, but that has not been classified at the date of commencement of these Regulations must be-
- (a) classified in terms of Regulation 4(2); and
 - (b) assessed in terms of Regulation 8(1)(a) if the waste is to be disposed to landfill, within eighteen (18) months from the date of commencement of these Regulations.
- (3) Regulations 4(2) and 6(1) do not apply for a period of three (3) years from the date of commencement of these Regulations, provided that the waste has been classified in terms of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (2nd Edition, 1998; Department of Water Affairs and Forestry) or an alternative classification of the waste was approved by the Department of Water Affairs or Department of Environmental Affairs prior to these Regulations taking effect.

WASTE CLASSIFICATION AND MANAGEMENT REGULATIONS, 2013

- (4) Regulation 4(2) does not apply for a period of eighteen (18) months from the date of commencement of these Regulations, provided that the waste has been generated but not classified prior to the date of commencement of these Regulations.
- (5) Subject to subregulation (6), Regulation 6(3) must be complied with within one (1) year from the date of commencement of these Regulations.
- (6) Regulation 6(3)(e) does not apply for a period of-
 - (a) three (3) years from the date of commencement of these Regulations, provided that the waste has been classified in terms of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (2nd Edition, 1998; Department of Water Affairs and Forestry) prior to these Regulations taking effect, and this classification is reflected in the labelling or records required in terms of Regulation 6(3); or
 - (b) three (3) years from the date of commencement of these Regulations, provided that an alternative classification of the waste was approved by the Department of Water Affairs or Department of Environmental Affairs prior to these Regulations taking effect, and this classification is reflected in the labelling or records required in terms of Regulation 6(3).
- (7) Regulation 6(6) does not apply to waste that has been or is being treated through macro-encapsulation approved by the Department of Water Affairs or the Department of Environmental Affairs.
- (8) Regulation 8(1)(a) does not apply for a period of-
 - (a) three (3) years from the date of commencement of these Regulations, provided that the waste has been classified in terms of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (2nd Edition, 1998; Department of Water Affairs and Forestry) prior to the date of commencement of these Regulations; or
 - (b) three (3) years from the date of commencement of these Regulations, provided that an alternative classification of the waste was approved by the Department of Water Affairs or the Department of Environmental Affairs prior to the date of commencement of these Regulations.
- (9) Regulations 10 and 11 take effect one (1) year after the date of commencement of these Regulations.
- (10) The requirements of Regulations 10 and 11 apply to waste that was classified in terms of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (2nd Edition, 1998; Department of Water Affairs and Forestry) prior to the date of commencement of these Regulations.

13. Offences and Penalties

- (1) A person is guilty of an offence if that person-
 - (a) fails to comply with Regulations 4(2), (3), (4), (5), (6), 5, 6, 7(1), 8(1), 10(1), 10(3), 11(1), (2), (4), (5), (6), (7), (8) or 12; or
 - (b) provides incorrect or misleading information in any record or document required or submitted in terms of these Regulations.
- (2) A person convicted of an offence under subregulation (1)(a) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.
- (3) A person convicted of an offence under subregulation (1)(b) is liable to a fine of R20 000 or to imprisonment for a period not exceeding 1 year or to both a fine and such imprisonment.

14. Short Title and Commencement

These Regulations are called the Waste Classification and Management Regulations, 2013.

CHAPTER 7

ANNEXURES TO REGULATIONS

Annexure 1: Wastes that do not require Classification or Assessment

- (1) The wastes specified in item 2 of this Annexure do not require classification in terms of Regulation 4(1), nor assessment in terms of Regulation 8(1)(a).
- (2)
 - (a) General waste-
 - (i) Domestic waste;
 - (ii) Business waste not containing hazardous waste or hazardous chemicals;
 - (iii) Non-infectious animal carcasses;
 - (iv) Garden waste;
 - (v) Waste packaging;

- (vi) Waste tyres;
 - (vii) Building and demolition waste not containing hazardous waste or hazardous chemicals; and
 - (viii) Excavated earth material not containing hazardous waste or hazardous chemicals.
- (2)
- (b) Hazardous waste-
- (i) Waste Products:
 - Asbestos Waste;
 - PCB waste or PCB containing waste (> 50 mg/kg or 50 ppm); and
 - Expired, spoilt or unusable hazardous products.
 - (ii) Mixed Waste:
 - General waste, excluding domestic waste, which contains hazardous waste or hazardous chemicals; and
 - Mixed, hazardous chemical wastes from analytical laboratories and laboratories from academic institutions in containers less than 100 litres.
 - (iii) Other:
 - Health Care Risk Waste (HCRW).

Annexure 2: Waste Manifest System Information Requirements

- (1) The information specified in item 2 of this Annexure must be reflected in the waste manifest document required in terms of Regulation 11.
- (2)
- (a) Information to be supplied by the Waste Generator (Consignor)-
- (i) Unique consignment identification number;
 - (ii) If applicable, the SAWIS Registration number in terms of the National Waste Information Regulations, 2012;

WASTE CLASSIFICATION AND MANAGEMENT REGULATIONS, 2013

- (iii) Generator's contact details (contact person, physical & postal address, phone, fax, email);
 - (iv) Physical address of the site where the waste was generated (if different from (iii));
 - (v) Contact number in case of an incident or after hours;
 - (vi) Origin / source of the waste (process or activity);
 - (vii) Classification of the waste and Safety Data Sheet;
 - (viii) Quantity of waste by volume (m³) or weight (tons);
 - (ix) Date of collection / dispatch;
 - (x) Intended receiver (waste manager); and
 - (xi) Declaration (content of the consignment is fully and accurately described, classified, packed, marked and labelled, and in all respects in proper condition for transportation in accordance with the applicable laws and regulations).
- (b) Information to be supplied by the Waste Transporter-
- (i) Name of transporter;
 - (ii) Address and telephone number of transporter; and
 - (iii) Declaration acknowledging receipt of the waste.
- (c) Information to be supplied by the Waste Manager (Consignee)-
- (i) Name, address and contact details;
 - (ii) Receiving waste management facility name, address and contact details (where different);
 - (iii) Waste management facility licence number;
 - (iv) Date of receipt;
 - (v) Quantity of waste received by weight (tons), and volume (m³) if applicable;
 - (vi) Type of waste management applied (re-use, recycling, recovery, treatment, disposal);

WASTE CLASSIFICATION AND MANAGEMENT REGULATIONS, 2013

- (vii) Any discrepancies in information between the different holders of the waste (related to waste quantity, type, classification, physical and chemical properties);
- (viii) Waste management reporting description and code in terms of the National Waste Information Regulations, 2012;
- (ix) Details on any waste diverted to another waste management facility, and details of the facility; and
- (x) Certification and declaration of receipt and final management of the waste.

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GNR 635 OF 23 AUGUST 2013

**NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF
WASTE FOR LANDFILL DISPOSAL**

SCHEDULE

**CHAPTER 1
INTEPRETATION AND PURPOSE**

1. Definitions
2. Purpose and Application

**CHAPTER 2
STANDARD ASSESSMENT METHODOLOGY**

3. Approach
4. Total Concentration (TC) Analysis
5. Leachable Concentration (LC) Analysis
6. LCT and TCT Limits
7. Determining Waste Types for Landfill Disposal

**CHAPTER 1
INTERPRETATION AND PURPOSE**

1. Definitions

In these National Norms and Standards, any word or expression to which a meaning has been assigned in the Act has that same meaning, and unless the context indicates otherwise-

“**Leachable Concentration (LC)**” means the leachable concentration of a particular element or chemical substance in a waste, expressed as mg/l;

“**Leachable Concentration Threshold (LCT)**” means the leachable concentration threshold limit for particular elements and chemical substances in a waste, expressed as mg/l, prescribed in section 6 of these Norms and Standards;

“**putrescible waste**” means waste that contains organic matter capable of being decomposed by microorganisms, or that will readily decay under normal conditions, giving rise to offensive odours, or which is capable of providing food for birds and animals, thereby attracting vermin or disease-causing vectors such as flies and rodents;

“**Total Concentration (TC)**” means the total concentration of a particular element or chemical substance in a waste, expressed as mg/kg;

“**Total Concentration Threshold (TCT)**” means the total concentration threshold limit for particular elements or chemical substances in a waste, expressed as mg/kg, prescribed in section 6 of these Norms and Standards;

“**the Act**” means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

“**the Regulations**” means the Waste Classification and Management Regulations, 2013.

2. Purpose and Application

These Norms and Standards prescribe the requirements for the assessment of waste prior to disposal to landfill in terms of Regulation 8(1)(a) of the Regulations.

CHAPTER 2

STANDARD ASSESSMENT METHODOLOGY

3. Approach

- (1) To assess waste for the purpose of disposal to landfill, the following are required-
 - (a) identification of chemical substances present in the waste; and
 - (b) sampling and analysis to determine the total concentrations (TC) and leachable concentrations (LC) of the elements and chemical substances that have been identified in the waste and that are specified in section 6 of these Norms and Standards.
- (2) Within three (3) years of the date of commencement of the Regulations, all analyses of the TC and LC of elements and chemical substances in waste must be conducted by laboratories accredited by the South African National Accreditation System (SANAS) to conduct the particular techniques and analysis methods required.
- (3) The TC and LC limits of the chemical substances in the waste must be compared to the threshold limits specified in section 6 of these Norms and Standards for total

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

concentrations (TCT limits) and leachable concentrations (LCT limits) of specific elements and chemical substances.

- (4) Based on the TC and LC limits of the elements and chemical substances in the waste exceeding the corresponding TCT and LCT limits respectively, the specific type of waste for disposal to landfill must be determined in terms of section 7 of these Norms and Standards.

4. Total Concentration (TC) Analysis

- (1) The TC of all the elements and chemical substances specified in section 6 of these Norms and Standards that are known to occur, likely to occur or can reasonably be expected to occur in the waste must be determined.
- (2) The TC of elements and chemical substances in waste must be determined using techniques and analysis methods that will provide reliable, accurate and repeatable results of the TC of elements and chemical substances specified in section 6 of these Norms and Standards.

5. Leachable Concentration (LC) Analysis

- (1) The LC of elements and chemical substances must be determined using the Australian Standard Leaching Procedure (AS 4439.1, 4439.2 and 4439.3).
- (2) The type of leaching fluid (section 5.2 and 5.3 of AS 4439.3) used in the leaching procedure must be selected as follows -
 - (a) Waste to be disposed of with, or waste that contains, putrescible wastes: Use 0.1 M acetic acid solution with altered pH 5.0 or pH 2.9 determined as per section 7.5(a-e) of AS 4439.3;
 - (b) Waste to be disposed of with non-putrescible waste: Use a basic 0.1 M sodium tetraborate decahydrate solution of pH 9.2 \pm 0.1, as well as an acetic acid solution with pH 5.0 or pH 2.9) determined as per section 7.5(a-e) of AS 4439.3; or
 - (c) Non-putrescible waste to be disposed of without any other wastes: Use reagent water.
- (3) Existing LC results for elements and chemical substances in wastes, which have been determined in terms of the Toxicity Characteristic Leaching Procedure (TCLP) leach test criteria of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (2nd Edition, 1998; Department of Water Affairs and Forestry) prior to the Regulations taking effect, may be utilised for comparison with the LCT limits in section 6 of these Norms and Standards to assess waste for the purpose of disposal of the waste to landfill, for a period not exceeding three (3) years from the date of publication of this Notice.

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

6. LCT and TCT Limits

(1) Total Concentration Threshold (TCT) Limits (mg/kg):

Elements & Chemical	TCT0	TCT1	TCT2
Substances in Waste			
<i>Metal Ions</i>			
As, Arsenic	5.8	500	2000
B, Boron	150	15000	60000
Ba, Barium	62.5	6250	25000
Cd, Cadmium	7.5	260	1040
Co, Cobalt	50	5000	20000
Crtotal, Chromium Total	46000	800000	N/A
Cr(VI), Chromium (VI)	6.5	500	2000
Cu, Copper	16	19500	78000
Hg, Mercury	0.93	160	640
Mn, Manganese	1000	25000	100000
Mo, Molybdenum	40	1000	4000
Ni, Nickel	91	10600	42400
Pb, Lead	20	1900	7600
Sb, Antimony	10	75	300
Se, Selenium	10	50	200
V, Vanadium	150	2680	10720
Zn, Zinc	240	160000	640000
<i>Inorganic Anions</i>			
TDS			
Chloride			
Sulphate			
NO ₃ as N, Nitrate-N			
F, Fluoride	100	10000	40000
CN- (total), Cyanide Total	14	10500	42000

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

Organics			
Benzene		10	40
Benzo(a)pyrene		1.7	6.8
Carbon tetrachloride		4	16
Chlorobenzene		8800	35200
Chloroform		700	2800
2-Chlorophenol		2100	8400
Di (2 ethylhexyl) phthalate		40	160
1,2-Dichlorobenzene		31900	127600
1,4-Dichlorobenzene		18400	73600
1,2-Dichloroethane		3.7	14.8
1,1-Dichloroethylene		150	600
1-2-Dichloroethylene		3750	15000
Elements & Chemical	TCT0	TCT1	TCT2
Substances in Waste			
Dichloromethane		16	64
2,4-Dichlorophenol		800	3200
2,4-Dinitrotoluene		5.2	20.8
Ethylbenzene		540	2160
Formaldehyde		2000	8000
Hexachlorobutadiene		2.8	5.4
Methyl ethyl ketone		8000	32000
MTBE (Methyl t-butyl ether)		1435	5740
Nitrobenzene		45	180
PAHs (total)		50	200
Petroleum H/Cs, C6 to C9		650	2600
Petroleum H/Cs, C10 to C36		10000	40000
Phenols (total, non-halogenated)		560	2240
Polychlorinated biphenyls		12	48
Styrene		120	480
1,1,1,2-Tetrachloroethane		400	1600

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

1,1,2,2-Tetrachloroethane		5.0	20
Tetrachloroethylene		200	800
Toluene		1150	4600
Trichlorobenzenes (total)		3300	13200
1,1,1-Trichloroethane		1200	4800
1,1,2-Trichloroethane		48	192
Trichloroethylene		11600	46400
2,4,6-Trichlorophenol		1770	7080
Vinyl chloride		1.5	6.0
Xylenes (total)		890	3560
<i>Pesticides</i>			
Aldrin + Dieldrin	0.05	1.2	4.8
DDT + DDD + DDE	0.05	50	200
2,4-D	0.05	120	480
Chlordane	0.05	4	16
Heptachlor	0.05	1.2	4.8

Notes:

- TCT1 limits, where appropriate, have been derived from the land remediation values for commercial/industrial land determined by the Department of Environmental Affairs' "Framework for the Management of Contaminated Land", March 2010. The TCT2 limits were derived by multiplying TCT1 by a factor of 4, as used by the Environmental Protection Agency, Australian State of Victoria.
- If South African limits for TCT1 were unavailable, in general, the limits published by the Environmental Protection Agency, Australian State of Victoria have been used.
- Some TC limits have been adjusted because of various attenuation factors that are observed in landfills.
- Where available, the TCT0 limits for have been obtained from SA Soil Screening Values that are protective of water resources. If not available, the State of Victoria value for fill material (EPA Victoria, Classification of Wastes) has been selected. If limits were not available in these references a conservative value was obtained by dividing the TCT1 value by 100.

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

(2) Leachable Concentration Threshold (LCT) Limits (mg/l):

Elements & Chemical Substances in Waste	LCT0	LCT1	LCT2	LCT3
<i>Metal Ions</i>				
As, Arsenic	0.01	0.5	1	4
B, Boron	0.5	25	50	200
Ba, Barium	0.7	35	70	280
Cd, Cadmium	0.003	0.15	0.3	1.2
Co, Cobalt	0.5	25	50	200
Cr(VI), Chromium Total	0.1	5	10	40
Cr(VI), Chromium (VI)	0.05	2.5	5	20
Cu, Copper	2.0	100	200	800
Hg, Mercury	0.006	0.3	0.6	2.4
Mn, Manganese	0.5	25	50	200
Mo, Molybdenum	0.07	3.5	7	28
Ni, Nickel	0.07	3.5	7	28
Pb, Lead	0.01	0.5	1	4
Sb, Antimony	0.02	1.0	2	8
Se, Selenium	0.01	0.5	1	4
V, Vanadium	0.2	10	20	80
Zn, Zinc	5.0	250	500	2000
<i>Inorganic Anions</i>				
TDS	1000	12 500	25 000	100 000
Chloride	300	15 000	30 000	120 000
Sulphate	250	12 500	25 000	100 000
NO ₃ as N, Nitrate-N	11	550	1100	4400
F, Fluoride	1.5	75	150	600
CN ⁻ (total), Cyanide Total	0.07	3.5	7	28
<i>Organics</i>				
Benzene		0.01	0.02	0.08

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

Benzo(a)pyrene		0.035	0.07	0.28
Carbon tetrachloride		0.20	0.40	1.6
Chlorobenzene		5.0	10	40
Chloroform		15	30	120
2-Chlorophenol		15	30	120
Di (2 ethylhexyl) phthalate		0.50	1	4
1,2-Dichlorobenzene		5	10	40
1,4-Dichlorobenzene		15	30	120
1,2-Dichloroethane		1.5	3	12
1,1-Dichloroethylene		0.35	0.7	2.8
1-2-Dichloroethylene		2.5	5	20
Dichloromethane		0.25	0.5	2
2,4-Dichlorophenol		10	20	80
2,4-Dinitrotoluene		0.065	0.13	0.52
Elements & Chemical Substances in Waste	LCT0	LCT1	LCT2	LCT3
Ethylbenzene		3.5	7	28
Formaldehyde		25	50	200
Hexachlorobutadiene		0.03	0.06	0.24
Methyl ethyl ketone		100	200	800
MTBE (Methyl t-butyl ether)		2.5	5.0	20.0
Nitrobenzene		1	2	8
PAHs (total)		N/A	N/A	N/A
Petroleum H/Cs, C6 to C9		N/A	N/A	N/A
Petroleum H/Cs, C10toC36		N/A	N/A	N/A
Phenols (total, non-halogenated)		7	14	56
Polychlorinated biphenyls		0.025	0.05	0.2
Styrene		1.0	2	8
1,1,1,2-Tetrachloroethane		5	10	40
1,1,1,2,2-Tetrachloroethane		0.65	1.3	5.3
Tetrachloroethylene		0.25	0.5	2

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

Toluene		35	70	280
Trichlorobenzenes (total)		3.5	7	28
1,1,1-Trichloroethane		15	30	120
1,1,2-Trichloroethane		0.6	1	4
Trichloroethylene		0.25	2	8
2,4,6-Trichlorophenol		10.0	20	80
Vinyl chloride		0.015	0.03	0.12
Xylenes (total)		25	50	200
Pesticides				
Aldrin + Dieldrin		0.015	0.03	0.03
DDT + DDD + DDE		1	2	2
2,4-D		1.5	3	3
Chlordane		0.05	0.1	0.1
Heptachlor		0.015	0.03	0.03

Notes:

- LCT1 limits have, where possible, been derived from the lowest value of the standard for human health effects listed for drinking water (LCT0) in South Africa (DWAF, SANS) by multiplying with a Dilution Attenuation Factor (DAF) of 50 as proposed by the Australian State of Victoria, "Industrial Waste Resource Guidelines: Solid Industrial Waste Hazard Categorisation and Management", June 2009 (www.epa.vic.gov.au). If no standard was available in South Africa then the limits given by the WHO or other appropriate drinking water standard, such as those published in the California Regulations have been used.
- LCT2 limits were derived by multiplying the LCT1 value with a factor of 2, and the LCT3 limits have been derived by multiplying the LCT2 value with a factor of 4. The factors applied represents a conservative assessment of the decrease in risk achieved by the increase in environmental protection provided by more comprehensive liner designs in higher classes of landfill and landfill operating requirements.

7. Determining Waste Types for Landfill Disposal

- (1) The specific type of waste for disposal to landfill must be determined by comparing the TC and LC of the elements and chemical substances in the waste with the TCT and LCT limits specified in section 6 of these Norms and Standards.
- (2) Based on the assessment of the particular waste destined for disposal to landfill, the type of waste is determined as follows-

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

- (a) Wastes with any element or chemical substance concentration above the LCT3 or TCT2 limits ($LC > LCT3$ or $TC > TCT2$) are Type 0 Wastes;
- (b) Wastes with any element or chemical substance concentration above the LCT2 but below or equal to the LCT3 limits, or above the TCT1 but below or equal to the TCT2 limits ($LCT2 < LC \leq LCT3$ or $TCT1 < TC \leq TCT2$), are Type 1 Wastes;
- (c) Wastes with any element or chemical substance concentration above the LCT1 but below or equal to the LCT2 limits and all concentrations below or equal to the TCT1 limits ($LCT1 < LC \leq LCT2$ and $TC \leq TCT1$) are Type 2 Wastes;
- (d) Wastes with any element or chemical substance concentration above the LCT0 but below or equal to the LCT1 limits and all TC concentrations below or equal to the TCT1 limits ($LCT0 < LC \leq LCT1$ and $TC \leq TCT1$) are Type 3 Wastes; or
- (e) Wastes with all element and chemical substance concentration levels for metal ions and inorganic anions below or equal to the LCT0 and TCT0 limits ($LC \leq LCT0$ and $TC \leq TCT0$), and with all chemical substance concentration levels also below the following total concentration limits for organics and pesticides, are Type 4 Wastes-

Chemical Substances in Waste	Total Concentration (mg/kg)
Organics	
TOC	30 000 (= 3%)
BTEX	6
PCBs	1
Mineral Oil (C10 to C40)	500
Pesticides	
Aldrin + Dieldrin	0.05
DDT + DDD + DDE	0.05
Chemical Substances in Waste	Total Concentration (mg/kg)
2,4-D	0.05
Chlordane	0.05
Heptachlor	0.05

- (3) If a particular chemical substance in a waste is not listed with corresponding LCT and TCT limits in section 6 of these Norms and Standards, and the waste has been classified as hazardous in terms of regulation 4(2) of the Regulations based on the health or environmental hazard characteristics of the particular element or chemical substance, the following applies -

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

- (a) the waste is considered to be Type 1 Waste; and
 - (b) the Department must be informed in writing in 30 days of the particular element or chemical substance not listed in section 6 of these Norms and Standards.
- (4) Notwithstanding section 7(2) of these Norms and Standards, if the TC of an element or chemical substance is above the TCT2 limit, and the concentration cannot be reduced to below the TCT2 limit, but the LC for the particular element or chemical substance is below the LCT3 limit, the waste is considered to be Type 1 Waste.
- (5) Wastes listed in item (2)(b) of Annexure 1 to the Regulations are considered to be Type 1 Waste, unless assessed and determined otherwise in terms of these Norms and Standards.
- (6) Notwithstanding section 7(2) of these Norms and Standards, wastes with all element or chemical substance leachable concentration levels for metal ions and inorganic anions below or equal to the LCT0 limits are considered to be Type 3 waste, irrespective of the total concentration of elements or chemical substances in the waste, provided that-
- (a) all chemical substance concentration levels are below the following total concentration limits for organics and pesticides:

Chemical Substances in Waste	Total Concentration (mg/kg)
<i>Organics</i>	
TOC	30 000 (= 3%)
Chemical Substances in Waste	Total Concentration (mg/kg)
BTEX	6
PCBs	1
Mineral Oil (C10 to C40)	500
<i>Pesticides</i>	
Aldrin + Dieldrin	0.05
DDT + DDD + DDE	0.05
2,4-D	0.05
Chlordane	0.05
Heptachlor	0.05

NATIONAL NORMS AND STANDARDS FOR THE ASSESSMENT OF WASTE FOR LANDFILL DISPOSAL

- (b) the inherent physical and chemical character of the waste is stable and will not change over time; and
- (c) the waste is disposed of to landfill without any other waste.

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GN 21 OF 21 JANUARY 2011

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

The date of effect will be 1 February 2011.

Definitions

1. Background and purpose
2. Principles
3. Level of Service
4. Collection
 - 4.1 Separation at source
 - 4.2 Collection of recyclable waste
 - 4.3 Receptacles
 - 4.4 Bulk Containers
 - 4.5 Communal collection points
 - 4.6 Frequency of collection
5. Drop-off centres for Recyclables
6. Collection vehicles
7. Health and Safety
8. Communication, awareness creation and complaints
 - 8.1. Waste Management officer
 - 8.2. Awareness creation and guidelines to inform the households
9. Waste Collection customer service standards for Kerbside collection
10. General

Definitions

In this document the following definitions apply unless the context indicates otherwise:

“Basic Refuse Removal Service” means a baseline service level as established under Clause 9.1 of the National Policy on the Provision of Basic Refuse Removal to indigent Households.

“Building Rubble” means waste produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during such a construction, alteration, repair or demolition.

“Collection” means the act of collecting domestic waste at the place of waste generation or storage by an approved service provider or the municipality.

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

“Collection Vehicle or Equipment” means any vehicle or equipment used in the collection of domestic waste.

“Domestic Health Care Waste” means waste generated in a household for medical purposes and includes waste such as syringes, unused medicines and pills, used bandages, etc. that could cause a health hazard when not appropriately disposed of.

“Domestic Waste” means waste, excluding hazardous waste, that emanates from premises that are wholly or mainly for residential, educational, health care, sport or recreational purposes. Domestic waste can be classified into recyclable and reusable, compostable and also non-recyclable or non-usable waste; Domestic waste for the purposes of the standards does not include commercial and industrial waste, building rubble and ‘hard’ or non-compostable garden waste.

“Hard or Non-compostable Garden waste” means branches and tree stumps that needs to be shredded in order to become compostable.

“Hazardous Waste” means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment.

“Household” means a collection of individuals staying on a distinctive property and/or premises regardless of their relationships to one another.

“Municipality” means a municipality as defined by the Municipal Systems Act, 2000 (Act No 32 of 2000).

“Receptacle” is the container designated solely for the purpose of temporary storage of household waste at the household, either provided by the municipality or the household, until such time of collection by the service provider/municipality.

“Service Provider” means the providers of the domestic waste collection service, be it the municipality, external entity or community that is contracted by the municipality to render a municipal service.

“Standard” for the purposes of this document is a list of principles, procedures, processes and benchmarks established for ensuring that domestic waste collection services is fit for its intended purpose and performed in the manner it was intended for. The Standards further define quality and establish safety criteria.

1. Background and purpose

To redress past imbalances in the provision of waste collection services, it is imperative that acceptable, affordable and sustainable waste collection services be rendered to all South Africans. The provision of waste collection services improves the quality of life of the entire

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

community and ensures a clean and more acceptable place to live and work in. The lack of or poor quality waste collection services can however result in a number of environmental and human health problems.

The National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) stipulates that standards are required to “give effect to the right to an environment that is not harmful to health and well-being,” and that this right have to be applied “uniformly throughout the Republic”. It is recognised that South Africa is a developing country and the purpose of the setting of standards is to ensure a service to all while complying with health and safety regulations without unnecessarily changing current creative collection processes as long as they function well and deliver a service of acceptable standard to all households. These National Domestic Waste Collection Standards are therefore applicable to all domestic waste collection services throughout the country.

The setting of National Domestic Waste Collection Standards, was informed by the Constitution of the Republic of South Africa, 1996, the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), the General Waste Collection Standards of Gauteng Province, the current international waste management standards and good practices in both developed and developing countries, the current waste collection practices in South African municipalities as well as stakeholder consultations.

NOTE: Guidelines in support of the standards are provided in text boxes throughout the document.

2. Principles

The standards are set based on the following principles agreed upon during the consultation process:

- Equity;
- Affordability and availability of resources within municipalities;
- Clarity and ease at which the standards can be implemented;
- Practicality; and
- Community participation in design of applicable and appropriate collection systems.

3. Level of Service

It is recognised that service levels may differ between areas depending on the practicality and cost efficiency of delivering the service. However, the standards for domestic waste collection as outlined below will be equally relevant to all different levels of domestic waste collection services.

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

Service levels may vary between:

- a. On-site appropriate and regularly supervised disposal (applicable mainly to remote rural areas with low density settlements and farms supervised by a waste management officer);
- b. Community transfer to central collection point (medium density settlements);
- c. Organised transfer to central collection points and/or kerbside collection (high density settlements); or
- d. Mixture of b and c above for the medium to high density settlements.

4. Collection

Equitable waste collection services must be provided to all households within the jurisdiction of the municipality. In areas where travelling distances and the resulting costs may render regular waste collection services impractical, the municipality, through by-laws, must allow for more feasible alternative ways of waste handling, such as on-site disposal (refer to level of service in paragraph 3 above).

4.1 Separation at source

Separation at source must be encouraged and supported in line with the relevant industry waste management plans. In addition:

- a. All domestic waste must be sorted at source (i.e. the households) in all Metropolitan and secondary cities;
- b. The service provider/municipality must provide clear guidelines to households regarding types of waste, the sorting of the waste, appropriate containers, and removal schedules for each type of waste; and
- c. Community involvement in recycling must be encouraged.

4.2 Collection of recyclable waste

The municipality must provide an enabling environment for households to recycle domestic waste. An enabling environment could include kerbside collection and/or well-kept drop-off centres within easy reach. Where the municipality does not provide for kerbside collection of the recyclable component of source separated waste, it must co-operate with the recycling sector to ensure the provision of facilities where recyclables can be dropped-off for collection by service providers.

- a. Mainstream recyclables (paper, cardboard, newspapers, magazines, plastic, glass, metal cans and tins) must therefore, according to the level of service provided (see

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

section 3 above), be either collected at households or from communal collection points by the municipality or service providers.

- b. Non-mainstream recyclables (electronic waste, scrap metal, batteries, fluorescent lights, used oil etc) must be routed to clearly marked drop-off centres at well advertised locations for collection by service providers in the relevant recycling sector.

Guideline for collection of recyclables

The viability of recycling relies heavily on economies of scale. It is therefore important that enough clean recyclables (from separation at source including households) must be accumulated to justify the cost of transport associated with the collection of recyclables.

The following issues must be considered:

- The use of existing infrastructure (i.e. garden waste centres, landfills) for temporary accumulation and storage of recyclable waste. This may require an amendment to existing landfill permits;
- Bulk waste transfer facilities for recyclable waste by district municipalities;
- Regionalisation of collection of recyclables to ensure economies of scale especially in remote areas; and
- Collaboration with recycling companies to avoid potential bottlenecks.
- If there is no recycling market for source separated recyclables, waste-to-energy options must be considered prior to disposal.

4.3 Receptacles

The following specifications and procedures are applicable to all receptacles for domestic waste collection (refer to the guideline box below when selecting suitable receptacles);

- a. Receptacles for the storage of non-reusable and non-recyclable waste must be easily distinguishable from those for the storage of recyclable waste;
- b. Receptacles for the storage of non-recyclable waste at households must be:
 - (i) fit for the safe storage of waste;
 - (ii) such that pollution of the environment and harm to health are prevented;
 - (iii) rigid and durable to within reason prevent accidental tipping, accidental spillage and leaking;

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

- (iv) intact and not corroded or worn out;
 - (v) covered to ensure that animals and insects cannot enter and that the waste cannot be blown away; and
 - (vi) not bigger than 240 l;
- c. Each household supplied with a bin or wheelie bin takes responsibility for the hygiene as well as safekeeping of the bin, and must not purposely damage it or use it for any other purpose than for keeping waste until collection day;
 - d. The service provider/municipality must take care to return the emptied receptacle to the same household from where it was collected for emptying;
 - e. Where returnable receptacles are in use, household members must mark his or her receptacle to assist the service provider/municipality in returning the receptacle to the same household from where it was collected; and
 - f. Elderly and disabled persons' households must have the choice to use smaller receptacles or bins that handle more easily than the standard bins provided by the municipality.

Guideline for selecting receptacle type.

The following must be taken into account:

Cost - Bins/wheelie bins are more costly than plastic bags, but have a longer lifespan.

Size - The size of the receptacle will be determined by the bulk (volume) of non-recyclable and recyclable waste generated by an average household in a certain area. The frequency of collection must be considered, as frequencies of less than once a week become a health hazard in South African climatic conditions. The maximum size of receptacles for a household is therefore set at 240l.

Pollution - Plastic bags create an additional source of pollution if not re-used and/or recycled.

Compatibility - The receptacles must be compatible with the type of collection vehicles in use. Where applicable, and in areas where the use of wheelie bins will be feasible, wheelie bins must be phased in as and when transport vehicles that are not currently compatible with wheelie bins are replaced. However, compactor trucks may not be the best method of collection for mixed recyclables, nor for the collection of non-recyclable waste with low compaction potential.

Handling - The receptacles must be easy to handle by the household and the service provider/ municipality and must be easy to clean and have no sharp edges. However, some high density areas on steep slopes (although there are proper roads for trucks), might need other types of receptacles than areas on flat ground.

Vermin and vector control - The receptacles must be impermeable to vermin and flies. This implies that receptacles must not allow moisture or rain water to enter and must not discharge any leachate.

Durability - the receptacles must be fairly resistant to mechanical damage as well as be 'animal proof. Various domestic and other animals may damage receptacles in search of food.

Availability - The receptacles must be freely available in the market at competitive prices (to both municipalities and consumers as the case may be).

Number of receptacles - The size of the household will determine the number of receptacles required. A fixed number can be provided per household and additional receptacles on request and possibly at a cost to the household.

4.4 Bulk Containers

Where bulk containers are the most appropriate receptacles, the same standards apply as for receptacles as stipulated above (section 4.3). In addition, bulk containers must be fitted with reflectors and where appropriate be placed next to a platform for ease of access.

A formalised domestic waste collection system must be provided to transfer the waste from individual households to the bulk containers in cases where such containers are used for domestic waste. The job creation potential (i.e. involvement of community contractors) of such a domestic waste collection systems must be optimised in favour of the local community.

Skips

It must be noted that skips are designed for collection of bulky waste such as building rubble or 'hard' garden waste which will not become windblown during transportation. Skips are therefore not appropriate for domestic waste collection unless appropriate measures are put in place to prevent windblown litter from the skips.

4.5 Communal collection points

Communal collection points must be clearly demarcated areas with appropriate receptacles where household waste can be deposited for collection by the service provider/municipality. The municipality must ensure that communal collection points are kept tidy at all times.

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

The receptacles must be:

- a. Covered so as to prevent windblown litter; and
- b. User friendly to allow even children and disabled persons to safely deposit waste into the receptacles.

The collection points must:

- a. Be easily accessible for waste collection vehicles; and
- b. Encourage waste separation at source.

4.6 Frequency of collection

Acknowledging that waste minimisation is encouraged, the frequency of waste collection must not encourage illegal dumping or cause a nuisance in terms of odours and volumes of waste being stored.

Non-recyclable waste must be removed at least once a week. [Also see health issues hereunder.]

Recyclable waste must be removed at least once every two weeks and removal must be coordinated with industry (the users of the recyclables) to minimise costs and the clogging of space at transfer stations and depots.

Waste deposited at communal collection points must be collected within 24 hours of receptacles being reported as full or at regular intervals so as not to attract vermin and increase health risks.

Bulk containers must be collected once filled up or within 24 hours of being reported as full, but not less than once a week.

Frequency of collection of recyclable and non-recyclable waste may differ depending on:

- a. The size of the bins provided and the volumes of waste generated;
- b. The area of collection in terms of:
 - (i) type of service provided including types of vehicles and equipment used; and
 - (ii) distances between collection points and disposal sites to minimise transport costs;
- c. Climatic conditions - In South Africa's hot weather conditions, the collection of non-recyclable waste less than once a week is a health hazard.

5. Drop-off centres for Recyclables

Drop-off centres for recyclables not collected at the households must be easily accessible to the public. Such centres must also be conducive to reinforcing recycling behaviour - it must be clean and user friendly. Drive-through options should be considered and implemented where feasible. Collection from drop-off centres must be at regular intervals so as not to cause a nuisance.

6. Collection vehicles

Collection vehicles that are the most appropriate for the specific task and geographical terrain must be used. See the guideline box below on selecting collection vehicles. The following shall apply:

- a. Collection vehicles, used for the collection and transportation of waste must not be used for any other purpose while collecting and transporting waste.
- b. Health issues [regular cleaning of the vehicles is required] must be considered.
- c. Waste must be collected and transported in closed vehicles (covered to ensure no windblown litter generation) to prevent littering during transportation. Non-compatible vehicles must be phased out.
- d. Maintenance schedules must be adhered to and roadworthiness of vehicles ensured where applicable in order to ensure a reliable waste collection service.

Guideline on Collection Vehicles

Collection vehicles that are the most appropriate for the specific task should be used. Consideration must be given to the following:

- (i) type of waste to be removed - recyclable or non-recyclable;
- (ii) the geographical area of collection; and
- (iii) the method of collection - e.g. whether the receptacles in use need specialised equipment to be lifted or not.

Collection vehicles used for the collection of non-recyclable waste might not be appropriate for the collection of recyclable waste. In choosing the type of vehicle for the collection of non-recyclable and recyclable waste the following must be taken into consideration:

- (i) how much each type of waste can be compacted;
- (ii) any leachate forming when compacting the waste; and
- (iii) whether different types of recyclables are collected in one receptacle at the households.

7. Health and Safety

- a. In addressing the general health of the waste collection workers, all waste collection workers must receive:
 - (i) regular medical check-ups to ensure their health and well-being;
 - (ii) appropriate personal protective equipment, e.g. gloves, masks, overalls and raincoats, gumboots; and
 - (iii) ongoing training on health and safety issues.
- b. Existing Occupational Health and Safety legislation must be adhered to.

8. Communication, awareness creation and complaints

8.1 Waste Management officer

The Waste Management Officer will be designated to deal with general communications and awareness raising regarding waste. This officer will also be responsible for the handling of all complaints and resolving such complaints within a set period, as follows:

- a. The complaint handling mechanisms will be in line with the type of municipality and availability of infrastructure to handle such complaint mechanisms;
- b. The time frame for responding to complaints is a maximum of 24 hours. The complainer must receive notification of how the complaint will be addressed within this 24 hour period;
- c. Complaints from both households and waste collectors (including service providers/ municipality) must be dealt with;
- d. Where complaints arise from negligence or lack of awareness on the part of households, communication and general awareness creation must be improved; and
- e. An efficient and effective register containing all complaints must be kept.

8.2 Awareness creation and guidelines to inform the households

- a. The municipality must create awareness amongst households about the following:
 - (i) the types of waste collection services provided;
 - (ii) separation at source - the removal of recyclables and re-usable waste from the general household waste;

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

- (iii) the potential of composting of some of the household waste and the benefit of such to the household;
 - (iv) the unacceptability of illegal dumping and littering;
 - (v) measures to be taken against individuals that litter and dump waste illegally;
 - (vi) the cost of cleaning up illegal dumping and littering, and the implications on household waste collection rates; and
 - (vii) the advantages of reporting illegal dumping activities.
- b. The municipality must provide clear guidelines to households about the following:
- (i) the different types of waste generated in households;
 - (ii) separation of non-recyclable and non-reusable household waste from compostable waste and recyclable waste;
 - (iii) appropriate containers for each type of waste;
 - (iv) removal schedules for each type of waste; and
 - (v) what to do with waste other than those waste forming part of the regular schedule of waste collection services.
- c. Awareness raising and guideline communications must be done at regular intervals to ensure that all households are well informed about all issues listed under (b) above.

9. Waste Collection customer service standards for Kerbside collection

- a. Weekly waste collection must be done on the same day every week according to the municipality's schedule.
- b. When the scheduled municipal services are interrupted for whatever reason, the municipality must resume the service as soon as is practical and address all backlogs so caused as a matter of priority.
- c. When collection has been missed the waste must be removed not later than on the next scheduled collection day.
- d. The collection team will make every effort to return the same bin to the premises of the household if bins are used as receptacles.

NATIONAL DOMESTIC WASTE COLLECTION STANDARDS

- e. A charge will be set for replacement of waste bins reported as:
 - (i) lost or stolen;
 - (ii) vandalized; or
 - (iii) damaged (other than by the service provider/municipality or equipment or normal wear and tear).
- f. Revised collection arrangements during the December holidays or for public holidays will be widely publicized if applicable. Residents will be informed of revised collection arrangement in advance by one or more appropriate method.
- g. A charge does not apply in the following circumstances:
 - (i) receptacles damaged by the service provider/ municipality or equipment; or
 - (ii) receptacles provided to indigent households qualifying for fully rebated service.
- h. The municipality must stipulate the time at which the waste receptacle must be put out for collection on the collection day.
- i. If the waste receptacle contains unacceptable material as specified in the by-laws (such as builders rubble) the waste may not be removed.
- j. All complaints about the service must be addressed as follows:
 - (i) promptly (within the time frame specified by the municipality);
 - (ii) appropriately and realistically; and
 - (iii) efficiently and effectively.

10 General

- a. All communication to household residents must be via the waste management officer.
 - (i) waste collectors may not enter into debate with household residents;
 - (ii) waste collectors may not intimidate household residents; and
 - (iii) household residents may not intimidate or force waste collectors to collect waste which is not separated according to the guidelines or which was disposed of in contravention of a by-law or other legislation.

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GNR 635 OF 23 AUGUST 2013

**NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO
LANDFILL**

SCHEDULE

**CHAPTER 1
INTERPRETATION AND PURPOSE**

1. Definitions
2. Purpose and Application

**CHAPTER 2
STANDARD CONTAINMENT BARRIER DESIGN, WASTE ACCEPTANCE AND
WASTE DISPOSAL REQUIREMENTS**

3. Landfill Classification and Containment Barrier Design
4. Waste Acceptance Criteria for Disposal to Landfill
5. Waste Disposal Restrictions

**CHAPTER 1
INTERPRETATION AND PURPOSE**

1. Definitions

In these National Norms and Standards, any word or expression to which a meaning has been assigned in the Act has that same meaning, and unless the context requires otherwise-

“**the Act**” means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

“**the Regulations**” means the Waste Classification and Management Regulations, 2013.

2. Purpose and Application

These Norms and Standards determine the requirements for the disposal of waste to landfill as contemplated in regulation 8(1)(b) and (c) of the Regulations.

CHAPTER 2

STANDARD CONTAINMENT BARRIER DESIGN, WASTE ACCEPTANCE AND WASTE DISPOSAL REQUIREMENTS

3. Landfill Classification and Containment Barrier Design

- (1) The containment barriers of landfills for the disposal of waste in terms of section 4 of these Norms and Standards must comply with the following minimum engineering design requirements-
 - (a) Class A Landfill
 - (b) Class B Landfill
 - (c) Class C Landfill
 - (d) Class D Landfill
- (2) The following containment barrier requirements must be included in an application for waste management licence approval of a landfill site or cell -
 - (a) design reports and drawings that must be certified by a registered, professional civil engineer prior to submission to the competent authority;
 - (b) service life considerations that must be quantified taking into account temperature effects on containment barriers;
 - (c) total solute seepage (inorganic and organic) that must be calculated in determining acceptable leakage rates and action leakage rates;
 - (d) alternative elements of proven equivalent performance which has been considered, such as the replacement of-
 - (i) granular filters or drains with geosynthetic filters or drains;
 - (ii) protective soil layers with geotextiles; or
 - (iii) clay components with geomembranes or geosynthetic clay liners;
 - (e) All drainage layers must contain drainage pipes of adequate size, spacing and strength to ensure atmospheric pressure within the drainage application for the service life of the landfill;
 - (f) Alternative design layouts for slopes exceeding 1:4 (vertical: horizontal) may be considered provided equivalent performance is demonstrated;

NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO LANDFILL

- (g) Construction Quality Assurance during construction;
 - (h) Geosynthetic materials must comply with relevant South African National Standard specifications, or any prescribed management practice or standards which ensure equivalent performance; and
 - (i) Consideration of the compatibility of liner material with the waste stream, in particular noting the compatibility of natural and modified clay soils exposed to waste containing salts.
- (3) The classification and containment barrier design of all new landfills, as well as new working cells at existing landfills, must be implemented in accordance with section 3(1) and (2) of these Norms and Standards.
- (4) Notwithstanding section 3(3) of these Norms and Standards, waste may be disposed of in terms of section 4(1), (2), (3) and (4) of these Norms and Standards at landfills with the liner design requirements for landfills contained in the Minimum Requirements for Waste Disposal by Landfill (2nd Edition, 1998; Department of Water Affairs and Forestry), or at landfills with an alternative liner design approved by the competent authority for the life-span of the operational cell, subject to the following conditions-
- (a) the current working cell at the landfill was operating lawfully in terms of the Act prior to the Regulations coming into operation;
 - (b) the next working cell at the landfill was legally approved prior to the Regulations coming into operation; or
 - (c) an application for approval of a new landfill or working cell was submitted to the competent authority, and a decision has not been taken or is still under consideration prior to the Regulations coming into operation.

4. Waste Acceptance Criteria for Disposal to Landfill

- (1) Waste assessed in terms of the *Norms and Standards for Assessment of Waste for Landfill Disposal* set in terms of section 7(1) of the Act must be disposed to a licensed landfill as follows:

NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO LANDFILL

Waste Type	Landfill Disposal Requirements
Type 0 Waste	The disposal of Type 0 waste to landfill is not allowed . The waste must be treated and re-assessed in terms of the <i>Norms and Standards for Assessment of Waste for Landfill Disposal</i> .
Type 1 Waste	Type 1 waste may only be disposed of at a Class A landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and Standards, may be disposed of at a landfill site designed in accordance with the requirements for a Hh / HH landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2 nd Ed., Department of Water Affairs and Forestry, 1998).
Type 2 Waste	Type 2 waste may only be disposed of at a Class B landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and Standards, may be disposed of at a landfill site designed in accordance with the requirements for a GLB+ landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2 nd Ed., DWAF, 1998).
Type 3 Waste	Type 3 waste may only be disposed of at a Class C landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and Standards, may be disposed of at a landfill site designed in accordance with the requirements for a GLB+ landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2 nd Ed., DWAF, 1998).
Type 4 Waste	Type 4 waste may only be disposed of at a Class D landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and Standards, may be disposed of at a landfill site designed in accordance with the requirements for a GLB- landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2 nd Ed., DWAF, 1998).

NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO LANDFILL

(2) Waste listed in section 2(a) of Annexure 1 to the Regulations and destined for disposal to landfill must be disposed of as follows-

Listed Waste	Landfill Disposal Requirements
(i) Domestic waste. (ii) Business waste not containing hazardous waste or hazardous chemicals. (iii) Non-infectious animal carcasses. (iv) Garden waste.	Disposal only allowed at a Class B landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norm and Standards, at a landfill site designed in accordance with the requirements for a GLB+ landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2nd Ed., DWAF, 1998).
(v) Post-consumer packaging. (vi) Waste tyres.	Disposal only allowed at a Class C landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and Standards, at a landfill site designed in accordance with the requirements for a GLB+ landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2nd Ed., DWAF, 1998).
(vii) Building and demolition waste not containing hazardous waste or hazardous chemicals. (viii) Excavated earth material not containing hazardous waste or hazardous chemicals.	Disposal allowed at a Class D landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and Standards, at a landfill site designed in accordance with the requirements for a GLB- landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2nd Ed., DWAF, 1998).

NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO LANDFILL

- (3) Unless assessed in terms of the *Norms and Standards for Assessment of Waste for Landfill Disposal* set in terms of section 7(1) of the Act and disposed of in terms of section 4(1) of these Norms and Standards, the following wastes included in section 2(b) of Annexure 1 to the Regulations and destined for disposal to landfill must be disposed of as follows-

Listed Waste	Landfill Disposal Requirements
(i) Asbestos Waste. (ii) Expired, spoilt or unusable hazardous products.	Disposal only allowed at a Class A landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and
(iii) PCBs (or rather PCB containing waste (>50ppm)) (iv) General waste, excluding domestic waste, which contains hazardous waste or hazardous chemicals. (v) Mixed, hazardous chemical wastes from analytical laboratories and laboratories from academic institutions in containers less than 100 litres.	Standards, at a landfill site designed in accordance with the requirements for a Hh / HH landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2nd Ed., DWAF, 1998).

NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO LANDFILL

- (4) Waste that has been classified in terms of the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (2nd Edition, 1998; Department of Water Affairs and Forestry) prior to the Regulations coming into operation, may be accepted and disposed of as set out below for a period not exceeding three (3) years after the date of coming into operation of the Regulations-

Waste	Landfill Disposal Requirements
Hazardous Waste - Hazard Rating 1 or 2	Disposal only allowed at a Class A landfill designed in accordance with Section 3(1) and 3(2) of these Norms and Standards, or, subject to Section 3(4) of these Norms and Standards, at a landfill site designed in accordance with the requirements for a HH landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2nd Ed., DWAF, 1998).
Hazardous Waste - Hazard Rating 3 or 4	Disposal only allowed at a Class A landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of these Norms and Standards, at a landfill site designed in accordance with the requirements for a Hh landfill as specified in the Minimum Requirements for Waste Disposal by Landfill (2nd Ed., DWAF, 1998).
Hazardous Waste - Delisted	Disposal only allowed at a Class B landfill designed in accordance with section 3(1) and (2) of these Norms and Standards, or, subject to section 3(4) of this Norms and Standards, at a landfill site designed in accordance with the requirements for a GLB+ landfill as specified in the Minimum Requirements for Waste
	Disposal by Landfill (2nd Ed., DWAF, 1998).
General Waste	Disposal only allowed at a Class B landfill designed in accordance with Section 3(1) and (2) of these Norms and Standards, or, subject to Section 3(4) of these Norms and Standards, at a landfill site designed in accordance with the requirements for a general waste site, G S/M/L B-/B+ as specified in the Minimum Requirements for Waste Disposal by Landfill (2nd Ed., DWAF, 1998).

- (5) Notwithstanding the requirements of section 4(1), (2) and (3) of these Norms and Standards, waste may be disposed of at landfills with a higher level of containment design than specified, subject to the restriction in section 5(2)(a)(ii) of these Norms and Standards.

5. Waste Disposal Restrictions

- (1) The following prohibitions and restrictions on the disposal of waste to landfill comes into effect after the timeframes indicated for each waste from the date of the Regulations coming into operation-

Waste Prohibited or Restricted in terms of Disposal	Compliance Timeframe
(a) Waste which, in the conditions of a landfill, is explosive, corrosive, oxidizing (according to SANS 10234 or SANS10228).	Immediate
(b) Waste with a pH value of <6 or >12.	Immediate
(c) Flammable waste with a closed cup flashpoint lower than 61° Celsius.	Immediate
(d) Reactive waste that may react with water, air, acids or components of the waste, or that could generate unacceptable amounts of toxic gases within the landfill.	Immediate
(e) Waste compressed gases (according to SANS 10234 or SANS 10228).	Immediate
(f) Untreated Healthcare Risk Waste (HCRW).	Immediate
(g) (i) POPs pesticides listed under the Stockholm Convention, (ii) Other waste pesticides.	Eight (8) years Four (4) years
(h) Lead acid batteries.	Immediate
(i) Other batteries.	Eight (8) years
(j) Re-usable, recoverable or recyclable used lubricating mineral oils, as well as oil filters, but excluding other oil containing wastes.	Four (4) years
Waste Prohibited or Restricted in terms of Disposal	Compliance Timeframe
(k) Re-usable, recoverable or recyclable used or spent solvents.	Five (5) years
(l) PCB containing wastes (>50 mg/kg or 50 ppm).	Five (5) years
(m) Hazardous Waste Electric and Electronic Equipment (WEEE) - Lamps.	Three (3) years
(n) Hazardous Waste Electric and Electronic Equipment (WEEE) - Other.	Eight (8) years
(o) Waste tyres: Whole.	Immediate
(p) Waste tyres: Quartered.	Five (5) years

NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO LANDFILL

<p>(q) Liquid waste-</p> <p>(i) Waste which has an angle of repose of less than 5 degrees, or becomes free-flowing at or below 60° C or when it is transported, or is not generally capable of being picked up by a spade or shovel; or</p> <p>(ii) Waste with a moisture content of > 40% or that liberates moisture under pressure in landfill conditions, and which has not been stabilised by treatment.</p>	<p>Six (6) years</p>
<p>(r) Hazardous waste with a calorific value of:</p> <p>(i) > 25MJ/kg.</p> <p>(ii) > 20MJ/kg.</p> <p>(iii) > 10 MJ/kg.</p> <p>(iv) > 6% TOC.</p>	<p>Four (4) years</p> <p>Six (6) years</p> <p>Twelve (12) years</p> <p>Fifteen (15) years</p>
<p>(s) Brine or waste with a high salt content (TDS > 5%), and a teachable concentration for TDS of more than 100 000 mg/l.</p>	<p>Eight (8) years</p>
<p>(t) Disposal of garden waste:</p> <p>(i) 25% diversion from the baseline at a particular landfill of separated garden waste.</p> <p>(ii) 50% diversion from the baseline at a particular landfill of separated garden waste</p>	<p>Five (5) years</p> <p>Ten (10) years</p>
<p>(u) Infectious animal carcasses and animal waste.</p>	<p>Immediate</p>

NATIONAL NORMS AND STANDARDS FOR DISPOSAL OF WASTE TO LANDFILL

- (2) The following prohibitions and restrictions on activities related to the disposal of waste to landfill comes into effect after the timeframes indicated for each activity from the date of the Regulations taking effect-

Prohibited or Restricted Waste Disposal Activities	Timeframe
(a) Disposal of- (i) Type 1 Waste that has been treated, with waste listed in paragraph (2)(a) of Annexure 1 to the Regulations;	Five (5) years
(ii) Waste classified as hazardous in terms of regulation 4(1), or waste listed in paragraph (2)(b) of Annexure 1 to the Regulations, with waste listed in paragraph (2)(a) of Annexure 1 to the Regulations; and	Five (5) years
(iii) Type 4 Waste with any waste other than Type 4, unless part of treatment.	Five (5) years
(b) Macro-encapsulation of waste, meaning the isolation (or long-term storage) of waste through containment in containers within a sealed or reinforced cell in a specifically prepared and engineered area within a permitted hazardous waste landfill.	Eight (8) years

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GN 924 OF 29 NOVEMBER 2013

**NATIONAL STANDARDS FOR THE EXTRACTION, FLARING OR
RECOVERY OF LANDFILL GAS**

SCHEDULE

1. Definition
2. Purpose
3. Legislative framework
4. Application
5. Requirements during preparation or planning phase
6. Requirements during construction phase
7. Requirements during operational phase
8. Training and capacity building
9. Management of emergency situations
10. Monitoring and reporting requirements
11. General requirements
12. Requirements during decommissioning phase
13. Transitional arrangements

ACRONYMS

CDM:	Clean Development Mechanism
CH₄:	Methane gas
CO₂:	Carbon dioxide
CO:	Carbon Monoxide
EA:	Environmental Agency
EMP:	Environmental Management Plan
ERP:	Emergency Response Procedure
GHG:	Greenhouse gases
HOPE:	High Density Polyethylene
LFG:	Landfill Gas
NO_x:	Oxides of Nitrogen
SABS:	South African Bureau of Standards
SEMA:	Specific Environmental Management Acts
VOCs:	Volatile Organic Compounds

1. Definitions

In these Standards, any word or expression to which a meaning has been assigned in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) shall have the meaning so assigned and, unless the context otherwise indicates.

“**Basic Assessment**” has the meaning assigned in the Environmental Impact Assessment Regulations;

“**Burner**” means a device inside the flaring unit to ignite or combust the gas;

“**Condensate**” means liquid that forms as gas cools down in a landfill gas collection system;

“**Extraction**” means the removal of gas from a landfill site by means of a network of pipes connected to a header and the gas sucking system;

“**Flame arrester**” means a crimped ribbon aluminum or stainless steel flame cell to protect against rapid burn backs in low-pressure situations to prevent flame fronts from propagating back through lines, destroying facilities, and causing injuries;

“**Flame detector**” means a device inside the flaring unit to minimise potential explosions especially on start ups and to check that ignition has been successful and combustion is indeed taking place;

“**Flare System**” means a system that safely disposes of waste gases through the use of combustion;

“**Flare Unit**” means a combustion device that uses a flame (in these standards an enclosed flame) to burn combustible gases in a landfill site;

“**Flaring**” means the burning of landfill gas in a flare;

“**Knockout Drum**” means a drum installed near the flare base, and serves to recover liquid hydrocarbons, prevent liquid slugs, and remove large liquid particles from the gas stream released from relief system;

“**Knock off points**” means specific sections in a LFG extraction system where condensate formed is allowed to settle and from which such condensate can be pumped out of the system;

“**Landfill Gas**” means a combination of gases that form as a result of the anaerobic decomposition of organic waste in a landfill site; and

“**Spark Ignition Engine**” means an internal combustion engine for electricity generation in a landfill site, in which an electrical discharge ignites the explosive mixture of fuel and air.

2. Purpose

The standards aim at controlling the extraction, flaring or recovery of landfill gas at facilities as described in paragraph 4 of these Standards in order to prevent or minimize potential negative impacts on the bio-physical and socio-economic environments.

3. Legislative framework

The Bill of Rights contained in Chapter 2 of the Constitution of the Republic of South Africa, 1996 places an obligation on the State to (through reasonable legislative and other measures) give effect to the right to an environment that is not harmful to the health or well-being of its citizens, and to have the environment protected for the benefit of present and future generations. South African legislators responded to this provision of the Constitution by developing and promulgating the National Environmental Management Act, 1998 (Act No. 107 of 1998) which sets principles for environmental management in the country. The National Environmental Management Act, 1998 was followed by a number of SEMAs, including amongst others the National Environmental Management: Waste Act, 2008 (Act No.59 of 2008), which makes provisions for the development of standards set in this notice.

4. Application

- (1) These standards apply to a landfill gas extraction, flaring or recovery facility initiated, constructed or upgraded after the coming into operation of the standards.
- (2) The standards are applicable throughout the Republic of South Africa.

5. Requirements during preparation or planning phase

- (1) A landfill site, where a LFG project is to be constructed, must as part of the project planning and preparation, undertake the following:
 - (a) identify and list all environmental aspects or hazards of the proposed project and associated potential negative impacts or risks on the bio-logical and socio-economic environments;
 - (b) evaluate the level of significance of such impacts or risks;
 - (c) develop an EMP specifying actions or measures, timeframes and responsibilities for mitigating potential negative impacts or risks on bio-physical and socio-economic environments during the construction, operation and decommissioning phases of the project. The EMP must be implemented throughout the project phases and must as a minimum, address all the requirements stipulated in these standards; and
 - (d) conduct studies or develop models to determine the depth of the landfill site and the landfill lining system prior to the digging of wells.

6. Requirements during construction phase

(1) LFG Extraction System

- (a) Vertical wells must be drilled in such a way that no damage will be caused to the underlying landfill lining system.
- (b) The wells and associated vertical piping must be designed in a manner that will discourage excessive sucking in of leachate and dirty material into the system, which in turn may cause system clogging.
- (c) The wells and the piping system must be sealed in a manner that will prevent or minimise unnatural migration of the gas through the wells and the pipes.
- (d) All landfill gas transmission pipe work that operates under pressure should be pressure-tested to demonstrate its integrity.
- (e) Gas pipelines must be laid in a way that will encourage easy draining of condensate from one pipe to the other until condensate settles at the condensate collection points.
- (f) Where natural stones or crush aggregates are used in the construction of gas extraction wells, these must have a low calcareous content to reduce fugitive emissions from exhaust pipes.
- (g) Condensate knockoff points must be installed at lower level points of the gas collection system.
- (h) Condensate must be handled in a manner that does not pose a threat to the environment and in a way that landfill stability and or gas extraction is not compromised.

(2) LFG Flaring System

- (a) The type of the flare required for a particular site must be determined based on a site specific survey or modeling of the key elements of the landfill gas in question. In order to minimise potential adverse impacts on the bio-physical and socio-economic environments, all the requirements in this section on the design of the flare unit, must be complied with.
- (b) To prevent unauthorised entry and potential tampering with the system, the flaring plant or unit must be fenced off and warning signage erected with only operational staff allowed to enter the premises unaccompanied.
- (c) Any other person, including visitors and temporary contractors working on the site must on entry to the facility be accompanied by operational staff.

NATIONAL STANDARDS FOR THE EXTRACTION, FLARING OR RECOVERY OF LANDFILL GAS

- (d) An emergency diesel generator must be installed to provide alternative power source for the unit in case unexpected electricity power disruptions take place.
 - (e) The flare unit must be enclosed and be wind and/or tamper proof to minimise the generation of back fires, noise emission, light pollution and to provide high combustion temperatures and specific residence periods to destroy unwanted constituents. The unit must be equipped with gas analyzer to monitor the composition and amount of gas extracted from the wells and that is coming into the flare unit.
 - (f) To be able to destroy unwanted gas impurities and to minimise emissions to the atmosphere, the flaring unit must be designed and operated in accordance with the manufacture's specifications with regard to the level of gas combustion temperatures, destruction efficiencies and retention time in the burner.
 - (g) The flare unit must be designed with the following features:
 - i. a flame arrester in the landfill gas feed line to prevent flash-back of the flame down the pipe;
 - ii. a burner designed in such a way that it maintains turbulent mixing of air and fuel and that the velocity of the gas is high enough to reduce the risk of flash-back of the flame down the feed pipe without blowing off the flame;
 - iii. a flame detector to minimise potential explosions especially on start ups and to check that ignition has been successful and combustion is indeed taking place;
 - iv. a method of controlling the flow rate of landfill gas to the burner and the supply of combustion air;
 - v. a method of cleaning/conditioning the gas before the flare to remove moisture and possibly impurities, such as airborne debris, from the landfill gas;
 - vi. a condensate knock-out drums to collect condensate as well as a pumping system to divert condensate to the condensate treatment or collection system.
 - (h) On delivery to the site, the unit must be issued with a manufactures' certification, which confirms that the unit is indeed able to meet the above specifications.
- (3) LFG to Energy System
- (a) The electricity generating plant must be fenced off with only operational staff allowed to enter the premises unaccompanied in order to prevent unauthorised entry and potential tampering with the system.
 - (b) Any other person, including visitors and temporary contractors working on the site must on entry to the facility be accompanied by operational staff.

NATIONAL STANDARDS FOR THE EXTRACTION, FLARING OR RECOVERY OF LANDFILL GAS

- (c) Where spark ignition engine or generators are used, these must be enclosed in units or containers acoustically designed for noise reduction. Alternatively, these engines or generators should be placed in sound proofed housing facilities.
- (d) The gas combustion and power generating systems must be designed with the following features in place:
 - i. A generator or generators with exhausts or stacks fitted with silencers to minimise noise emission. These stacks must be designed to point at an upward direction in order to encourage easy dispersion of emissions from the generator;
 - ii. A chamber capable of combusting the gas at temperatures high enough to effectively destroy potential pollutants;
 - iii. A leachate or condensate collection and pumping system;
 - iv. A gas filtration or treatment system to remove impurities.
- (e) Install lightning conductors to prevent or minimize potential damage of the facility by lightning.

(4) General Construction Requirements

- (a) Construction within the site must be carried out under the supervision of a registered professional engineer appointed by the site owner and according to the approved engineering site plans.
- (b) The construction site must be defined, warning signage erected and limited to authorized persons only. All activities must be confined to the construction site.
- (c) Fugitive emissions of dust during the construction site from the movement of motor vehicles must be minimised by road wetting and speed limits.
- (d) Onsite fueling and servicing of construction equipment and motor vehicles must only occur in a designated area.
- (e) A motor vehicle requiring maintenance must be removed from site and repaired at a service workshop or garage.
- (f) During the digging of vertical gas collection wells and horizontal trenches, dug up waste material must be put back into the landfill as soon as practically possible.

7. Requirements during operational phase

(1) LFG Extraction and Flaring Systems

NATIONAL STANDARDS FOR THE EXTRACTION, FLARING OR RECOVERY OF LANDFILL GAS

- (a) A scheduled maintenance plan must be prepared and the efficiency of the flaring system as well as details of the volume and types of gases that are flared must be maintained in accordance with the manufacturer's specifications and in a manner that prevents or minimises the generation of environmental pollution.
- (b) During the shutting down of the flaring system for scheduled maintenance, LFG must be sealed off and only allowed to escape the system through the natural migration process.
- (c) The emergency generator required in terms of paragraph 6(2) of these standards must be maintained according to the manufacturer's specifications.
- (d) The area where the generator will be stored or located must be made of impermeable surfaces and must be bunded, with capability to hold up to 110% of the engine oil, and fuel in case of accidental spillages or leaks.
- (e) The generator must be operated in a manner that prevents or minimises environmental pollution.
- (f) Any liquid or solid waste generated during the maintenance of the emergency generator and during the maintenance of the flaring unit must be handled in a manner that does not cause pollution to the environment.
- (g) Smoking or fire making must not be allowed in and near the vicinity of the LFG extraction and flaring system and the signs indicating such must be erected on entrance to the facility.
- (h) Bins or receptacles for the storage of waste must be made available at all times and placed at a designated area.
- (i) The contents of the bins or receptacles must be removed from the site on a regular basis for disposal at a licensed disposal facility.
- (j) Leachate or condensate extracted from the flaring system must be handled in a manner that does not pose a threat to the environment and in such a way that the landfill stability and gas extraction is not compromised.
- (k) Washing of machinery or equipment, motor vehicles, materials, clothes or bathing is prohibited unless it is done in a designated area that has suitable impervious flooring designed for this purpose.
- (l) Bunded areas must be regularly inspected to ensure no leakages, overflows or spillages occur.
- (m) Any spillages must be cleaned-up immediately.

(n) Contaminated soil must be removed and disposed at licensed landfill sites.

(2) LFG to Energy Plant

(a) The LFG must be flared off during scheduled maintenance, emergency shutdowns or process upsets of the engines.

(b) The LFG must be sealed off completely and only allowed to escape the system through the natural migration process when engines and flaring system are shut down for any reasons.

(c) Any liquid and solid waste (including used oil, cooling system liquids, air and oil filters and any other waste emanating from the engines during maintenance) must be handled and stored in a manner that does not cause pollution to the environment prior to them being reused, recycled or disposed.

(d) The engine performance must be measured and monitored throughout the duration of the project in order to ensure adherence to the manufacture efficiency specifications.

(e) The gas extracted from the landfill must be used to run the electricity generating engine or engines.

(f) All engine exhausts must be fitted with silencers to minimize noise emissions.

8. Training and capacity building

(1) All personnel on site, including visitors, temporary and permanent contractors as well as full time employees must undergo a safety; health and environmental induction which must as a minimum capacitate them to be able to identify, prevent, minimize or manage actions or behaviours that are likely to cause adverse impacts on the environment as a result of construction, operation and decommissioning of a LFG project.

(2) Only suitably qualified and trained personnel must maintain and service (in accordance with the manufacture's specifications) the flaring unit, the energy generating engines and associated infrastructure as well as the emergency generator.

9. Management of emergency situations

Emergency incidents must be managed and reported in accordance with section 30 of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

10. Monitoring and reporting requirements

(1) For the purpose of compliance monitoring, all facilities that fall within the scope as described in section 4 of these standards must prior to commencement with the

NATIONAL STANDARDS FOR THE EXTRACTION, FLARING OR RECOVERY OF LANDFILL GAS

construction of the landfill gas, flaring or recovery facility inform the Department for a once off registration of the facility in the Departmental database.

- (2) The registration application referred to in section 10(1) must as a minimum include the following:
 - (a) the owner of the facility;
 - (b) the area where the facility is situated;
 - (c) the location of the facility in terms of the name of the local municipality, erf number and geographical coordinates;
 - (d) the size of the facility;
 - (e) the proximity of the facility to the nearest residential area; and
 - (f) the land use/zoning.
- (3) The relevant authority must be given access to audit or site inspection at any time and at such frequency as they may decide or to have the site audited or inspected at any time and at such frequency as they may decide.
- (4) During such audits or site inspections, the site must make any records or documentation available to the inspection team as may be required.
- (5) Gas extraction must be monitored for the duration of the project lifetime and this should include a gas well monitoring programme to monitor potential deterioration in gas well performance.
- (6) Air quality monitoring should be conducted throughout the landfill gas flaring period at the perimeter of the site as a safety precaution.
- (7) Records of all hazardous waste removed from the site must be recorded and kept on file for future reference and these must be submitted to the relevant authority on request.
- (8) The environmental performance of the LFG extraction, flaring or recovery project should be reported and discussed in the landfill site steering committee meetings.
- (9) An annual environmental performance audit must be conducted at the site by a suitably qualified person and the results of the audit kept on record and handed over to the relevant authority upon request.
- (10) The annual environmental performance audit should include the following:

NATIONAL STANDARDS FOR THE EXTRACTION, FLARING OR RECOVERY OF LANDFILL GAS

- (a) Confirmation of compliance of the facility to these standards;
- (b) Confirmation of compliance with any specific requirements issued by the relevant authority (local, provincial or national sphere of government);
- (c) Reporting on any environmental incidences that occurred and detail of the manner the incidences were handled;
- (d) Confirmation of compliance with the environmental management plan of the project;
- (e) Confirmation of compliance with the air quality plan of the project;
- (f) Confirmation of the inclusion of the project in the agenda for the landfill site steering committee.

11. General requirements

- (1) Compliance with these standards does not exempt the facility from complying with the requirements stipulated in other sector legislation.
- (2) These requirements are binding to the contractors and sub-contractors working on site and should be included in tender documentation for the construction contract.
- (3) Gaseous emissions from the flaring and electricity generation process must comply with the requirements of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004).
- (4) The requirements set in these standards including any other requirements by the relevant authority must be complied with in full.
- (5) A safety data sheet for each of the chemical products purchased from a manufacturer or vendor must be obtained, kept on site, maintained and updated regularly.
- (6) A hard copy of the safety data sheet must be kept in an easily accessible location to employees.
- (7) Waste stored temporarily, must be kept on bins or receptacles which are labeled or colour coded.
- (8) Waste bins should be placed on an impermeable surface to avoid soil, groundwater and surface water contamination.
- (9) Burning of waste is not allowed on the site.
- (10) The project owner is responsible to ensure that noise levels do not exceed the applicable noise standards in the relevant municipality or province.

12. Requirements during decommissioning phase

- (1) A rehabilitation plan for the site, including the indication of possible future use must be developed and kept on file at the facility.
- (2) The type of rehabilitation adopted would be dependent on the planned future use of the facility. The following requirements however apply where the future use is no longer the LFG project:
 - (a) When the amount of gas in the landfill site is no longer able to generate electricity, the gas engines or generators and all associated infrastructure must be removed from the site;
 - (b) The gas engines or generators and associated infrastructure may be reused in other landfill gas to energy projects elsewhere or recycled as scrap material;
 - (c) When no more gas is extractable from the landfill site to justify the need for the flaring operation, the flaring system and associated infrastructure must be removed;
 - (d) The flaring system and associated infrastructure may be reused in other LFG projects elsewhere or recycled as scrap material;
 - (e) When no more flaring is taking place, all valves (including inlet valves to the flaring system, valves at the monitoring points at the manifolds) must be shut off in order to prevent the remaining minor gas from escaping the landfill site unnaturally. The pipes buried inside the landfill may however be left buried provided that no subsequent gas generated in the landfill will migrate through them;
 - (f) All containers that were used to store waste or raw materials must be removed from the site for reuse, recycle or disposal at a licensed disposal facility;
 - (g) The owner of the facility at any given point in time, including the subsequent owner of the facility will remain responsible for any adverse impacts on the environment, even after operations have ceased;
 - (h) All remaining construction infrastructure, building rubble and waste are to be removed from the site;
 - (i) Use of topsoil for rehabilitation, that contains the seeds of alien vegetation, will not be permitted unless a program to germinate indigenous seed and eradicate alien seedlings is implemented;
 - (j) A grass mix should be selected for rehabilitation of disturbed open areas.

13. Transitional arrangements

A person who lawfully conducted the activity of extracting, flaring or recovering of landfill gas prior to and on the date of coming into effect of these standards may continue with the activity for the duration as stipulated in the approval, authorisation or licence and after the expiry of the approval, authorisation or licence must comply with these standards.

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GN 925 OF 29 NOVEMBER 2013

**NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY
OF MOTOR VEHICLES**

SCHEDULE

1. Definitions
2. Purpose
3. Legislative framework
4. Application
5. Minimum requirements for the design, construction or upgrading of a facility
6. Minimum requirements during operational phase
7. General requirements
8. Training and capacity building
9. Management of emergency situations
10. Monitoring, auditing and reporting
11. Minimum requirements during decommissioning phase
12. Transitional arrangements

1. Definitions

In these standards, any word or expression to which a meaning has been assigned in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) have the meaning so assigned, unless the context otherwise indicates-

“Asbestos regulations” means the Asbestos Regulations published under Government Notice R. 155 of 10 February 2002, in terms of section 43 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

“Auto fluff” means waste residue from the vehicle shredding operation;

“Best practice” means to perform or exercise a particular activity or activities in the most suitable, appropriate, advantageous or best advised manner in order to achieve the highest standards while performing or exercising such activity or activities;

“Ground water” means water that occupies pores in the soil and cavities and spaces found in the rocks which are situated in the saturated zone of the profile by rising from a deep magmatic source or by the infiltration of rainfall;

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

“**Handling**” means functions associated with the movement of waste, including storage, treatment and ultimate disposal, by the use of manual systems or automated systems;

“**Holding tank**” means a container installed above ground or underground at the lowest point at the scrap yard, where contaminated water from the scrap yard collects and from which it is pumped out;

“**Monitoring**” means continuous or non-continuous measurement of a concentration or other parameters for purpose of assessment or control of environmental quality or exposure and the interpretation of such measurements;

“**Motor vehicle**” means an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails;

“**Oil or water separator**” means an engineering designed drainage system at the lowest point of the motor vehicle scrapping or a recovery facility which separates hydrocarbons from water;

“**Scrapping or recovery facility**” means an operational area in excess of 500m² where vehicles are dismantled and valuable material extracted for reuse or recycling;

“**Scrapping**” means the dismantling of a motor vehicle and the recovery and separation of useful material for re-use or recycling in an operational area in excess of 500m²;

“**Sewer**” means the system for collection and transportation of effluent, waste water or sewage, including conduits, pipes, and pumping stations;

“**Sustainable**” means - capable of being continued with minimal long-term effect on the environment.

ACRONYMS

NEMA: National Environmental Management Act, 1998 (Act No. 107 of 1998);

NEMWA: National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

SANS: South African National Standards;

SDS: Safety Data Sheet;

SEMA: Specific Environmental Management Acts.

2. Purpose

The standards aim at controlling the scrapping or recovery of motor vehicles at a facility that falls within the threshold as described in paragraph 4 of these standards in order to prevent or minimize potential negative impacts on the bio-physical and socio-economic environment.

3. Legislative framework

The Bill of Rights contained in Chapter 2 of the Constitution of the Republic of South Africa, 1996 places an obligation on the State to (through reasonable legislative and other measures) give effect to the right to an environment that is not harmful to the health or well-being of its citizens, and to have the environment protected for the benefit of present and future generations. South African legislators responded to this provision of the Constitution by developing and promulgating the National Environmental Management Act, 1998 (Act No. 107 of 1998) which sets principles for environmental management in the country. The National Environmental Management Act, 1998 was followed by a number of SEMAs, including amongst others the National Environmental Management: Waste Act, 2008 (Act No.59 of 2008), which makes provisions for the development of standards set in this document.

4. Application

- (1) These standards apply to a vehicle scrapping or recovery facility with an operational area in excess of 500m², which was initiated, constructed or upgraded after the coming into effect of the standards.
- (2) These standards are applicable throughout the Republic of South Africa.

5. Minimum requirements for the design, construction or upgrading of a facility

- (1) A scrapping or recovery facility must not be constructed in an environmentally sensitive area such as floodplain, residential area, wetland and any other conservation or protected area and within 100m from such areas.
- (2) A scrapping or recovery facility must be constructed in an area that is accessible to emergency response personnel and equipment.
- (3) Construction at the scrapping or recovery facility must be carried out under the supervision of a registered professional engineer appointed by the facility owner and according to the approved engineering drawings, which must set out the following:
 - (a) drainage systems (including storm water, sewerage and waste water drains);
 - (b) Floor area design, including the-
 - i. storage yard for all motor vehicles brought on site;
 - ii. motor vehicle dismantling area;
 - iii. storage area for solid dismantled parts;
 - iv. storage area for liquid parts (including used oil, fuel and other fluids);

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

- v. vehicle shredding area;
 - vi. location of a liquid waste treatment area (including oil or water separator system);
 - vii. location of a dispatching area for shredded parts; and
 - viii. location of a storage area for recyclable or re-usable materials.
- (4) The floor in the following areas within the scrapping or recovery facility must be designed and paved with an impermeable concrete layer with impermeable joints to prevent pollutants ingress into the soil or ground water in an area-
- (a) that stores a motor vehicle that still contains motor vehicle fluids;
 - (b) where a dismantled and unclean part that still contains fluid is stored;
 - (c) where a fluid containing container or tank is stored;
 - (d) where a crushing operation is undertaken;
 - (e) where a shredding operation takes place; and
 - (f) where a storage for recyclable or re-usable material takes place.
- (5) The floor design area must make provision for the storage of recyclable materials.
- (6) This floor must be designed and sloped towards an oil or water separation system, which should be located down gradient of the scrapping or recovery facility.
- (7) The design of the oil or water separation system must be dependent on the locality of the scrapping or recovery facility and oil or water separation system must be designed to prevent or minimise the escape of pollutants that will likely cause adverse impacts on the environment.
- (8) A storage area for oil and fuel drained from the motor vehicle engines must be constructed. The storage area must have impermeable floors with bund walls capable of holding up to 110% of oil or fuel in the case of accidental leaks, spillages, or overflows. The storage area must also be surrounded by an interception trench with a sump for intercepting and recovering potential leakages, spillages or overflows.
- (9) The installation of a waste storage container or tank (above-ground or underground) including a secondary containment equipment and mitigation measure must be undertaken by an experienced professional.
- (10) The construction times and noise levels must comply with relevant applicable legislation or municipal by-laws in order to minimise the impact of noise on the neighboring properties.

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

- (11) Onsite fueling and servicing of construction equipment and motor vehicle must only occur in a designated area. A motor vehicle requiring maintenance must be removed from site and repaired at a service workshop or garage.
- (12) An area under construction must be demarcated to prevent unauthorised access during the construction phase.
- (13) Dust generated by construction activities must be minimised by dust suppression techniques.

6. Minimum requirements during operational phase

(1) Vehicle dismantling operation

- (a) A motor vehicle must not be shredded or crushed with the following parts and or lubricants still attached to it:
 - (i) Asbestos containing parts (including brake pads);
 - (ii) Mercury containing parts from hood and trunk light switches, anti-lock braking systems, high-intensity headlights, and virtual-image instrument panels, especially from old motor vehicle models;
 - (iii) Lead containing parts (including acid lead batteries, lead tire weights and battery cable ends);
 - (iv) Petrol or diesel or gas, liquid petroleum gas, brake fluid, oil and oil filters;
 - (v) Refrigerants;
 - (vi) Tyres; and
 - (vii) Any other part made of or containing hazardous substance(s).
- (b) The dismantling operation must be undertaken on a concrete floor linked to an oil or water separation and/or collection system.
- (c) The requirement for the removal of oil and oil filters and does not apply to a motor vehicle engine intended to be removed from the motor vehicle for reuse.

(2) Solid waste management

- (a) Tyres that are damaged beyond repair (i.e. are road un-worthy, not suitable to be retreaded, repaired or sold as a part, and not fit for their original intended use) should be managed in accordance with the Waste Tyre Regulations, 2009. In case the

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

scrapping or recovery facility falls within a sector that has an approved Integrated Industry Waste Tyre Management Plan, the damaged tyres must be managed in accordance with such a plan.

- (b) Brake pads containing asbestos should be placed in heavy plastic bags, double tied, and stored in a leak proof, airtight container designated for asbestos waste. Disposal of such parts should be carried out in accordance with the provisions of the NEMWA and Asbestos Regulations, 2001.
- (c) Unbroken mercury containing lamps and switches must be stored in a dry locked container labeled "Used Mercury Switches". The mercury containing material must be taken to a facility that is approved or registered to handle or dispose of mercury or mercury containing material.
- (d) Cracked or leaking acid battery must be placed separately in a closed leak-proof and acid resistant storage container and the container must be labeled as "Hazardous Waste-Lead Acid Batteries". The waste must be removed by an approved or registered hazardous waste handling company for disposal in an approved or licensed hazardous waste disposal facility. Spilled battery acid must be neutralised with a basic material such as lime or baking soda with residue from battery cleanup to be managed and disposed of as hazardous waste.
- (e) Reusable or recyclable battery must be stored indoors, upright and in heavy plastic sheeting or on pallets in an area that will prevent the battery from being damaged by moving or falling objects, prior to dispatch to a customer or commercial battery recycler.
- (f) Filters removed from a motor vehicle engine must be drained of oil and fuel completely and stored in a container labeled "used oil or fuel filters". Completely drained metal filters must either be recycled or disposed at a licensed disposal facility. Incompletely drained or not drained fuel filter must be stored in a separate fireproof container marked "Hazardous Waste Filters Only" away from potential sources of ignition and must be handled by an approved hazardous waste handling company for recycling or disposal at an approved or licensed hazardous waste disposal facility.
- (g) Parts containing gas, such as gas for fueling the motor vehicle in the case of a hybrid motor vehicle, as well as gas from the air-conditioning refrigerants, should be kept in an area designated for temporary storage of such parts. No gas must be vented into the atmosphere. The parts containing gas must be handled by a facility registered to safely recycle or dispose the gas.
- (h) The sludge removed from the oil or water separation system must be stored in a container labeled "Hazardous Waste-Sludge". The container must be handled and disposed at a hazardous waste disposal facility by an approved or registered hazardous waste handling company.

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

- (i) Waste oily rags and any other contaminated cloths from the cleaning of parts must be stored in a closed, fireproof container with no structural defects. The container must be labeled "Used contaminated rugs or cloths". The oily rugs or contaminated cloths must be disposed at licensed hazardous waste disposal facility where such cloths may not be reused or recycled.
 - (j) Auto fluff, at a shredding plant, must be stored separately from the clean and valuable scrap metal picked up following the shredding process. The auto fluff must be stored in a covered or closed container labeled "Auto Shredder Residue", and where the recycling market for such does not exist; the auto fluff must be regarded as hazardous and disposed at a licensed hazardous waste disposal facility.
 - (k) A facility must put in place measures to prevent soil contamination from occurring. Where soil contamination has occurred, the source of the contamination must be identified and cleanup activities undertaken to remove contaminated soil.
 - (l) Contaminated soil must be collected and stored in a leak proof container labeled "Hazardous Waste-Contaminated Soil" until it can be treated or transported to a waste treatment or disposal facility.
 - (m) Minor leakage within the bunded area must be contained by use of appropriate spill kits, with contaminated material handled as hazardous waste.
- (3) Liquid waste management
- (a) Oil drained from motor vehicle engine, oil filters, fuel drained from fuel tanks, fuel filters and any other motor vehicle fluid such as brake fluid, must be poured into a container designated for the temporary storage of such liquids. The container must be labeled with the name of the fluid they are holding, and must be stored in a bunded area, capable of holding up to 110% of liquid in case of major leakage, overflows or spillages. In addition, a facility must ensure compliance with provisions made in the norms and standards for the storage of waste, with regard to the design of such a container.
 - (b) The container must be in good condition and must not exhibit any structural defects, rust, leaks or deterioration.
 - (c) Where underground containers are used to store used fuel, the scrapping or recovery facility must ensure compliance with the design specifications for underground tanks, as set out in the norms and standards for the storage of waste. The following additional requirements must be complied with:
 - (i) the underground tank must have monitoring wells and fitted with a leak detection system;

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

- (ii) the underground tank must be fitted with overfill shut-off valve to prevent potential overflows and spillages.
- (d) To minimise potential overflows and spillages the above ground or underground containers must be emptied before fuel or oil reach the level of 80%.
- (e) No fuel, oil, brake fluid or other motor vehicle fluids must be allowed to drip or poured direct into the soil, storm water drain, sewer lines, septic tanks or to any water course.
- (f) Used oil may be given or sold to an approved used oil recycling company or disposed at a licensed hazardous waste disposal facility.
- (g) Brake fluid must be handled as hazardous waste by an approved hazardous waste handling and disposal company.
- (h) Hydrocarbon contaminated water from the scrapping or recovery facility must be passed through an oil or water separation system.
- (i) Water residue from the oil or water separation system must not be discharged direct into the storm water drains, nearby water streams; soils; ground water or wetlands without an approval from the National Department responsible for water affairs.
- (j) Disposal of such residue water into the municipal sewer must be in compliance with municipal by-laws regulating sewerage systems, and may only be undertaken after authorization has been granted in writing from the relevant municipality.
- (k) The opportunity for the onsite reuse and recycling of contaminated water must be investigated prior to disposal.
- (l) The oil or water separation system must be inspected daily and maintained by trained personnel in such a way that oil or contaminated water does not overflow and spill direct into storm water drains or direct into the environment.
- (m) Oil from the oil or water separation system must be pumped out for recycling by a registered waste oil handling company or for disposal at a licensed hazardous waste handling and management facility.
- (n) If the antifreeze is not reused or recycled, it must be handled as hazardous waste and disposed at a licensed hazardous waste landfill site by a registered hazardous waste handling company.
- (o) Used hot tank solutions must be stored in a container designed to hold strong corrosives and labeled "Hazardous Waste-Corrosive" and must be disposed as hazardous waste at a hazardous waste landfill site by a registered hazardous waste handling company.

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

- (p) Liquids or solvents from mineral spirits and petroleum based parts washers must be handled and disposed as hazardous waste.

7. General requirements

- (1) These standards do not replace any other relevant requirements stipulated in terms of other legislation, unless the requirements in terms of the other legislation are less stringent than these requirements.
- (2) Pollution of the biological and physical environments (including habitats for animal and plant species, water resources, land, soil and air) as a result of operations within the facility must at all times be prevented or minimized.
- (3) Waste streams must not be mixed. While general waste generated during the construction, operation and decommissioning phases of the facility may be disposed at a general waste management site, all hazardous waste material must be disposed at a licensed hazardous waste disposal or handling facility.
- (4) The yard area where a core pile of auto shells are kept must be well maintained, with weed growth and dust emissions kept under control.
- (5) A Safety Data Sheet for each of the chemical products utilised must be kept on site. The SDS information must be obtained, maintained and updated and the files to be kept in an easily accessible location to employees. If SDSs are kept on a file in a computer, a hard copy should also be available.
- (6) Non-recyclable general waste must be stored in a storage container designed for such waste and must be disposed at a licensed waste disposal or handling facility.
- (7) The installation and maintenance of underground fuel storage tanks must comply with SANS10089 or any other applicable and valid national standards.

8. Training and capacity building

- (1) A motor vehicle scrapping or recovery facility must, during the safety, health and environment induction, train a new employee or employees on waste management in order to be able to identify, prevent, minimise or manage actions or behavior that is likely to cause adverse impacts on air, water, land, fauna and flora as a result of construction, operation and decommissioning of the facility.
- (2) Members of staff must be trained to manage all types of wastes in accordance with the provisions of these standards and any other relevant legislative requirements applicable to the motor vehicle scrapping or recovery facility.
- (3) The oil or water separation system must be maintained and serviced by only suitably qualified and trained personnel.

9. Management of emergency situations

- (1) Response measures must be put in place to deal with overflows of the oil or water separator system or holding tank into the environment or into the municipal sewerage system.
- (2) Emergency incidents must be dealt with in accordance with section 30 of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

10. Monitoring, auditing and reporting

- (1) The site must be inspected on a daily basis to ensure early detection and addressing of environmental pollution.
- (2) The relevant authority must be given access to audit or inspect the site at any time and at such frequency as the authority may decide. The audit or inspection reports by the authority must be made available to the facility owner within sixty (60) days of the audit or inspection.
- (3) The oil storage area (including the oil or water separation system) must be inspected daily to ensure early detection of leakages, overflows or spillages and a speedy cleanup response.
- (4) The site owner must, during the audit or inspection, make any records or documentation available to the audit or inspection team as may be required.
- (5) Safe disposal certificates for hazardous waste removed from site must be kept on record.
- (6) A certificate of compliance with relevant SANS standards regarding the installation of above ground or underground waste storage containers must be kept in the files and made available to the relevant authority on request.
- (7) A record of any non-compliance findings by the relevant authority and the manner such non-compliances were addressed must be kept in the file.
- (8) Internal audits detailing environmental performance of the facility must be conducted bi-annually and official reports thereof must be prepared. Each of the internal audits must be made available to the external auditor referred to in paragraph (9) below and to the relevant authority upon request.
- (9) External audits of the facility must be conducted biennially by an independent auditor and the auditor must prepare an official audit report documenting the audit findings. The external audit report must be submitted to the Department and must include the following:
 - (a) Confirmation of compliance of the facility to these standards;

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

- (b) Confirmation of compliance with any specific requirements issued by the relevant authority either at national, provincial or local sphere of government;
 - (c) Confirmation that the oil or water separation system is functioning well and maintained in good order;
 - (d) Confirmation of any major environmental incidences that occurred and details of the manner the incidences were addressed;
 - (e) Confirmation that hazardous waste is separated from non-hazardous waste and that such waste is removed by a registered waste handling company for either recycling or disposal at licensed disposal facility; and
 - (f) Confirmation of the presence of records of safe disposal certificates for all hazardous waste removed from the facility.
- (10) For the purposes of compliance monitoring, all facilities that fall within the scope as described in paragraph 4 of these standards must prior to commencement with the construction of this activity inform the Department for a once off registration of the activity in the Departmental database.
- (11) The registration application referred to in subparagraph (10) above must as a minimum include the following:
- (a) the name of the owner of the facility where the activity is intended to take place;
 - (b) the location of the facility in terms of the name of the local municipality, erf number and geographical coordinates;
 - (c) the size of the facility;
 - (d) the proximity of the facility to the nearest residential area; and
 - (e) the land use or zoning.

11. Minimum requirements during decommissioning phase

- (1) A facility to be discontinued, for whatever reasons, must be rehabilitated to the satisfaction of the Department.
- (2) A rehabilitation plan for the site, including the indication of end use of the area must be developed and submitted to the Department for approval not more than one (1) year prior to the intended closure of the facility.
- (3) The rehabilitation plan must set out the following:

NATIONAL STANDARDS FOR THE SCRAPPING OR RECOVERY OF MOTOR VEHICLES

- (a) Rehabilitation measures for contaminated areas within the facility;
 - (b) Indication of the intended use of containers or tanks and related piping that previously stored hazardous fluids such as used fuel, used brake fluid, used engine and transmission oil drained from the dismantled motor vehicles; and
 - (c) Measures to be undertaken to deal with infrastructure such as oil or water separation systems, bund walls within which fluid storage tanks or containers were kept, the contaminated floor and shredding areas as well as any waste material still kept on site such as auto shells, tyres, auto fluff, used fuel, used oil, etc.
- (4) The site must be rehabilitated according to the rehabilitation plan.
- (5) The owner of the facility, including the subsequent owner of the facility will remain responsible for any adverse impacts on the environment, even after operations have ceased.

12. Transitional arrangements

A person who lawfully conducted the activity of scrapping or recovery of motor vehicle prior to and on the date of coming into operation of these standards may continue with the activity for the duration as stipulated in the approval, authorisation or licence and after the expiry of the approval, authorisation or licence comply with the provisions of these standards.

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GN 926 OF 29 NOVEMBER 2013

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

SCHEDULE

CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION

1. Definitions
2. Purpose
3. Legislative framework
4. Application

CHAPTER 2

REQUIREMENTS FOR WASTE STORAGE FACILITIES

Part 1

Registration, Location and Construction

5. Registration
6. Location
7. Construction and design

Part 2

Management of Waste Storage Facilities

8. Access control and notices
9. Operation
10. General requirements of waste storage containers
11. Minimum requirements for above ground waste storage facilities
12. Minimum requirements for underground waste storage containers

CHAPTER 3

GENERAL PROVISIONS

13. Training
14. Emergency preparedness plan

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

15. Monitoring and inspection
16. Auditing
17. Relevant authority audits and inspections
18. Reporting
19. Records
20. Minimum requirements during the decommissioning phase

CHAPTER 4 **MISCELLANEOUS**

21. Transitional provisions

CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION

1. Definitions

In this Schedule, unless the context indicates otherwise, any word or expression that is defined in the National Environmental Management: Waste Act, 2008 (Act No.59 of 2008) has the same meaning, and-

“Applicable legislation” includes, but is not limited to-

- (a) the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (b) the National Environmental Management: Waste Act, 2008 (Act No.59 of 2008);

“Best environmental practice” means to perform or exercise a particular activity or activities in the most suitable, appropriate, advantageous or best advised manner in order to achieve the highest standards while performing or exercising such activity or activities;

“Colour coding” means the use of colour on a container or bag or the label attached to such, that serves to identify the category of waste that it contains;

“Constitution” means the Constitution of the Republic of South Africa, 1996

“General waste storage facility” means a storage facility that has a capacity to store in excess of 100m³ of general waste continuously;

“Ground water” means water that occupies pores in the soil and cavities and spaces found in the rocks which are situated in the saturated zone of the profile by rising from a deep magmatic source or by the infiltration of rainfall;

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

“**Handling**” means the functions associated with the movement of waste, including storage, treatment and ultimate disposal, by the use of manual systems and automated systems;

“**Hazard**” means the intrinsic potential property or the ability of any agent, equipment, material or process to cause harm;

“**Hazardous waste storage facility**” means a storage facility that has a capacity to store in excess of 80m³ of hazardous waste continuously;

“**Impermeable surface**” means a physical barrier or a membrane that prevents leaching of waste;

“**Monitoring**” means continuous or non-continuous measurement of a concentration or other parameters for purpose of assessment or control of environmental quality or exposure and the interpretation of such measurements;

“**Tank**” means a container designed for the accumulation of waste.

LIST OF ACRONYMS

CBO: Community Based Organization

DEA: Department of Environmental Affairs

NEMA: National Environmental Management Act, 1998(Act No. 107 of 1998)

NEM: WA: National Environmental Management: Waste Act, 2008(Act No.59 of 2008)

NGOs: Non Governmental Organizations

SEMA: Specific Environmental Management Acts

2. Purpose

- (1) The purpose of these norms and standards is to-
 - (a) provide a uniform national approach relating to the management of waste storage facilities;
 - (b) ensure best practice in the management of waste storage facilities; and
 - (c) provide minimum standards for the design and operation of new and existing waste storage facilities.

3. Legislative Framework

- (1) The Constitution provides the foundation for environmental regulation and policy. Section 24 of the Constitution makes provision for environmental protection for the benefit of present and future generation and the right to an environment that is not harmful to health and well-being. This can only be achieved through a reasonable legislative framework and

other measures that prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and the sustainable use of natural resources. The responsibility of ensuring a safe and healthy environment rests upon the State, reference can be made to the provisions of section 7(2) of the Constitution that reads "The State must respect, protect and fulfill the bill of rights". The DEA fulfill these rights through the application of the NEMA and the SEMAs among other tools.

- (2) The NEMA introduced a number of guiding principles into the South African environmental legislation, including the life-cycle approach to waste management, producer responsibility, the precautionary principle and the polluter pays principle. NEMA also places a duty of care on any person who causes significant pollution or degradation to the environment, requiring them to institute measures to prevent pollution from occurring, or to minimise and rectify the pollution or degradation where it cannot reasonably be avoided. The development of the norms and standards is the foundation of the regulatory system established in terms section 7(1)(c) of the NEM: WA.

4. Application

- (1) These norms and standards apply to any person who stores general or hazardous waste in a waste storage facility.
- (2) These facilities are required to comply with the norms and standards without a need to conduct a basic assessment and obtain a waste management licence as required by the Government Notice No. 718 of 3 July 2009.
- (3) The norms and standards do not apply to the storage of general or hazardous waste in surface impoundments or lagoons.

CHAPTER 2

REQUIREMENTS FOR WASTE STORAGE FACILITIES

Part 1

Registration, Location and Construction

5. Registration

- (1) A new waste storage facility must be registered with the competent authority within 90 (ninety) days prior to the construction taking place.
- (2) The applicant must provide at least the following information to be registered:
 - (a) Demarcation of the area where the storage facility will be located;

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

- (b) Name of the waste storage facility;
- (c) Name of the owner of the waste storage facility;
- (d) Types of waste to be stored at the facility;
- (e) Size of the storage facility;
- (f) Sources of waste to be stored at the facility;
- (g) Time frames for the storage of waste; and
- (h) Geographical co-ordinates of the waste storage facility.

6. Location

- (1) In locating the waste storage facility consideration must be given to the public health and environmental protection. The location of the waste storage facility must also take into consideration the requirements in respect of existing servitudes.
- (2) A new hazardous waste storage facility must be located within an industrial demarcated zone. A storage facility that is not located within the industrial demarcated zone must have a buffer zone of at least 100m unless there is a prescribed buffer zone by the relevant municipality.
- (3) A general waste storage facility may be located within a residential area and must be located such that the facility is easily accessible by the public.
- (4) A waste storage facility must be located in such a manner that it can provide optimum handling and transportation of waste material.
- (5) The location of the hazardous waste storage facility must also take into consideration the hazards including the flammability and toxicity of the waste stored and applicable codes and standards.
- (6) A waste storage facility must be located in areas accessible by emergency response personnel and equipments.

7. Construction and Design

- (1) Construction and development of the waste storage facility must be carried out under the supervision of a registered professional engineer and must be in accordance with the approved civil engineering designs. The plan must only be amended and approved by a registered professional engineer.

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

- (2) The liquid waste storage area must have firm, impermeable, chemical resistant floors and a roof. Liquid waste containers that are not stored under a roofed area must be coated to prevent direct sunlight and rain water from getting in contact with the waste.
- (3) A hazardous waste storage facility must have impermeable and chemical resistant floors.
- (4) A liquid waste storage facility must be surrounded by an interception trench with a sump for intercepting and recovering potential spills and must be lined in compliance with the requirements set out in paragraph 7(2) of these standards.
- (5) A waste storage facility must be constructed to maintain on a continuous basis a drainage and containment system capable of collecting and storing all runoff water arising from the storage facility in the event of a flood. The system must under the said rainfall event, maintain a freeboard of half a meter.
- (6) A liquid waste storage area must have a secondary containment system (e.g. bund, drip tray) of a capacity which can contain at least 110% of the maximum contents of the waste storage facility. Where more than one container or tank is stored, the bund must be capable of storing at least 110% of the largest tank or 25% of the total storage capacity, whichever is greater (in the case of drums the tray or bund size must be at least 25% of total storage capacity).

Part 2

Management of Waste Storage Facilities

8. Access Control and Notices

- (1) A waste storage facility must have effective access control to prevent unauthorised entry. Weatherproof, durable and legible signs in at least 3 (three) official languages applicable in the area must be displayed at each entrance to the facility. The signs must indicate the risks involved in entering the site, hours of operation, the name, address, telephone number and the person responsible for the operation of the facility as a minimum.
- (2) Access to a hazardous waste storage facility must be limited to employees who have been trained with respect to the operation of the hazardous waste storage facility and emergency response procedures and any other person authorised by the owner of the hazardous waste storage facility.

9. Operation

- (1) A waste storage facility must be free from odour or emissions at levels likely to cause annoyance.
- (2) Waste must be sorted at source into various categories (recyclables and non-recyclables) and a documented procedure must be implemented to prevent any mixing of

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

hazardous and general waste integrated waste management plan and/or Industry Waste Management Plan, if any.

- (4) A waste storage facility must be operated within its design capacity and the waste storage container must not be overfilled.
- (5) Liquid waste must be stored in leak resistant containers which must be inspected weekly for early detection of leaks.

10. General Requirements of Waste Storage Containers

- (1) A liquid waste container must be of sufficient strength and structural integrity to ensure that it is unlikely to burst or leak in its ordinary use.
- (2) Waste that is spilled or blown by wind during opening, handling or storage must be contained.
- (3) Hazardous waste must be stored in covered containers and only open when waste is added or emptied.
- (4) Below-ground pipes connected to the container must be protected from physical damage (e.g. excessive surface loading, ground movement or disturbance). If mechanical joints have to be used, they must be readily accessible for inspection.
- (5) A hazardous waste storage container, associated piping and equipment must be of sufficient structural strength to withstand normal handling and installed on stable foundation.
- (6) The foundation of a hazardous waste storage container must be protected from, or resistant to all forms of internal and external wear, vibration, corrosion, fire, heat, vacuum and pressure which might cause the storage tank foundation to fail.
- (7) A leak monitoring device must be installed on an underground liquid waste storage container and piping to and from the container in order to keep operating personnel informed.
- (8) If a container is lined or internally coated, the coating must be compatible with the substance stored. Furthermore the coating specification must adhere to existing engineering practices and the applicable standards or requirements.
- (9) The waste storage tank must be a closed system and pressure resistant.
- (10) In a case where a tank or vent pipe is not visible during the filling process an automatic overflow prevention device must be fitted onto the tank.

11. Minimum Requirements for above ground waste storage facilities

- (1) A hazardous waste container resting on the ground must be underlain by barriers, which will not deteriorate with permeability rate of the waste stored.
- (2) Bottoms of the container in contact with soil and are subject to corrosion must be protected from external corrosion by either ensuring that the container is made of corrosion resistant materials or the container have a cathodic protection system.
- (3) A waste storage tank must not have mechanical joints, except if it can be accessed for inspection.
- (4) The screw fitting or other fixed coupling fitted to the tank must be maintained in good condition and must only be used when filling the tank.

12. Minimum Requirements for underground waste storage containers

- (1) Underground waste storage container must have double walled and synthetic liners and underground vaults must be installed.
- (2) A steel underground tank and piping in contact with soil must be protected from corrosion using corrosion resistant materials or cathodic protection.
- (3) Container components that are placed underground and backfilled must be provided with a backfill material that is a non-corrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.
- (4) If external coating is used to protect the tank from external corrosion, the coating must be fiberglass, reinforced, plastic, epoxy, or any other suitable dielectric material.

CHAPTER 3

GENERAL PROVISIONS

13. Training

- (1) Training must be provided continuously to all employees working with waste and to all contract workers that might be exposed to the waste.
- (2) The training programme must amongst others include the following:
 - (a) Precautionary measures that need to be taken;

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

- (b) Procedures that the employees must apply to their particular type of work;
 - (c) Procedures for dealing with spillages and accidents;
 - (d) Appropriate use of protective clothing; and
 - (e) The risks of the hazardous substances to their health which they are likely to be exposed to.
- (3) A sufficient number of employees must receive training to cover for leave periods, absences due to illness, public holidays or any other reason.
 - (4) An attendance register must be kept and signed by each employee at each training session and made available to the relevant authorities when required.
 - (5) Only trained persons must be allowed to handle hazardous waste.

14. Emergency Preparedness Plan

- (1) Waste can be hazardous or dangerous to the environment if not handled properly or if stored inappropriately. To minimise environmental impacts, a waste storage facility must have an emergency preparedness plan including the following:
 - (a) Hazard identification;
 - (b) Prevention measures;
 - (c) Emergency planning;
 - (d) Emergency response;
 - (e) Remedial actions.
- (2) Immediate action must be taken to contain spillage and prevent it from entering storm water drains or environment.

15. Monitoring and Inspection

- (1) Containers, tanks, valves and piping containing hazardous waste must be inspected for leaks, structural integrity and any sign of deterioration (e.g. corrosion or wearing of protective coatings) on a weekly basis.
- (2) A registered engineer must inspect tanks containing hazardous waste at least once per annum to check tank integrity, corrosion, piping, valves, bunding, and impermeability of the bund wall and bund floor.

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

- (3) The secondary containment system must be examined at least weekly or after each significant precipitation event to ensure that the containment is free of debris, rainwater and other materials that would compromise the capacity and integrity of the system.
- (4) Ventilation systems, sump pumps, emergency alarms, impressed current corrosion protection systems, level alarms and other mechanical systems must be inspected on a weekly basis to ensure proper functioning based on manufacturer recommendations, regulatory requirements or best practice.
- (5) Inspection must include the review of the adequacy and accessibility of spill response equipment.
- (6) If environmental pollution is suspected or is occurring from the waste storage facility, an investigation must be initiated into the cause of the problem or suspected problem and remedial action taken.

16. Auditing

Internal Audits

- (1) Internal audits must be conducted bi-annually and on each audit occasion an official report must be compiled by the relevant auditor to report the findings of the audits, which must be made available to the external auditor.

External Audits

- (2) An independent external auditor must be appointed to audit the waste storage facility biennially and the auditor must compile an audit report documenting the findings of the audit, which must be submitted to the relevant authority.
- (3) The external audit report must-
 - (a) specifically state whether conditions of these standards are adhered to;
 - (b) include an interpretation of all available data and test results regarding the operation of the storage facility and all its impacts on the environment;
 - (c) specify target dates for the implementation of the recommendations to achieve compliance;
 - (d) contain recommendations regarding non-compliance or potential non-compliance and must specify target dates for the implementation of the recommendations and whether corrective action taken for the previous audit non conformities was adequate; and
 - (e) show monitoring results graphically and conduct trend analysis.

17. Relevant Authority Audits and Inspections

- (1) The relevant authority responsible for waste management reserves the right to audit and/or inspect the waste storage facility without prior notification at any time.
- (2) Any records or documentation pertaining management of the waste storage facility must be available to the relevant authorities upon request, as well as any other information which may be required.

18. Reporting

- (1) An emergency incident must be reported in accordance with section 30 of NEMA.
- (2) An action plan which includes a detailed time schedule, and resource allocation to address any incident must be signed off by the senior management of the organisation.
- (3) Complaints register and incident report must be made available to the external auditor and relevant authority.
- (4) Each external audit report must be submitted to the relevant authority within 30 days from the date on which the external auditor finalized the audit.

19. Records

- (1) Each waste storage facility must be able to provide documentation verifying the following:
 - (a) number of waste storage containers or tanks within the facility;
 - (b) date of collection; and
 - (c) authorized collector or collectors and proposed final point of treatment, recycling or disposal.
- (2) Any deviations from the approved integrated or industry waste management plan must be recorded.
- (3) Records must be kept for a minimum of 5 (five) years and must also be available for inspection by the relevant authority.

20. Minimum Requirements during the Decommissioning Phase

- (1) A waste storage facility to be discontinued, the site must be rehabilitated to the satisfaction of the relevant authority.
- (2) A rehabilitation plan for the site, including the indication of end use of the area must be developed and submitted to the DEA for approval not more than 1 (one) year prior to the intended closure of the facility.

NATIONAL NORMS AND STANDARDS FOR THE STORAGE OF WASTE

- (3) The rehabilitation plan must indicate the following:
 - (a) measures for rehabilitating contaminated areas within the facility; and
 - (b) manner in which the waste resulted from decommissioning activities will be managed.
- (4) The site must be rehabilitated according to such a plan.
- (5) The owner of the facility, including the subsequent owner of the facility will remain responsible for any adverse impacts on the environment, even after operations have ceased.

CHAPTER 4

MISCELLANEOUS

21. Transitional provisions

A person who lawfully operated a waste storage facility for the storage of general and hazardous waste prior to and on the date of coming into operation of these standards may continue with the activity for the duration as stipulated in the permit or licence and after the expiry of the permit or licence comply with these standards.

**NATIONAL ENVIRONMENTAL MANAGEMENT:
WASTE ACT 59 OF 2008**

GN 331 OF 2 MAY 2014:

**NATIONAL NORMS AND STANDARDS FOR THE REMEDIATION OF
CONTAMINATED LAND AND SOIL QUALITY IN THE REPUBLIC OF
SOUTH AFRICA**

SCHEDULE

1. Definitions
2. Purpose
3. Application
4. Scope of this Norms and Standards
5. Soil Screening Values
6. Transitional Arrangements
7. Short Title

1. Definitions

In these norms and standards, unless the context indicates otherwise, word or expression that is defined in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and the National Environmental Management Act, 1998, has the same meaning-

“**Contaminant**” means any substance present in an environmental medium at concentrations in excess of natural background concentrations that has a potential to cause harm to human health or the environment;

“**Informal Residential**” means an unplanned settlement on land which has not been zoned as a residential consisting mainly of makeshift structure not erected according to approved architectural plans;

“**Remediation**” means the management of a contaminated site to prevent, minimise, or mitigate harm to human health or the environment;

“**Soil Screening Value 1**” means soil quality values that are protective of both human health and eco-toxicological risk for multi-exposure pathways, inclusive of contaminant migration to the water resource;

“**Soil Screening Value 2**” means soil quality values that are protective of risk to human health in the absence of a water resource;

“**Standard Residential**” means settlement that is formally zoned and serviced, and generally developed according to approved building plans, including land parcels such as plots or erven.

2. Purpose

The purpose of these norms and standards is to-

- (a) provide a uniform national approach to determine the contamination status of an investigation area;
- (b) limit uncertainties about the most appropriate criteria and method to apply in the assessment of contaminated land; and
- (c) provide minimum standards for assessing necessary environmental protection measures for remediation activities.

3. Application

The requirements set out in these norms and standards apply to an owner of land or any person who undertakes site assessment and remediation activity in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

4. Scope of this Norms and Standards

- (1) These norms and standards must be used for the screening of a site after a site assessment report is required as a result of declaration of an investigation area as contemplated in section 36 of the National Environmental Management Act, 2008 (Act No. 59 of 2008).
- (2) Where a contaminant is not listed in Table 1 or Table 2, values which are scientifically validated for the contaminants of interest may be used.
- (3) The Soil Screening Values in Table 1 and Table 2 must not be seen as-
 - (i) absolute minimum values; or
 - (ii) default remediation values.

5. Soil Screening Values

- (1) The Soil Screening Values in Table 1 and Table 2 below are for screening purpose.

NATIONAL NORMS AND STANDARDS FOR THE REMEDIATION OF CONTAMINATED LAND AND SOIL QUALITY IN
THE REPUBLIC OF SOUTH AFRICA

Table 1: Soil Screening Values for Metals and Organics

Parameter	Units	SSV1All Land-Uses Protective of the Water Resource	SSV2 Informal Residential	SSV2 Standard Residential	SSV2 Commercial Residential
Metals & metalloids					
Arsenic	mg/kg	5,8	23	48	150
Cadium	mg/kg	7,5	15	32	260
Chromium (III)	mg/kg	46 000	46 000	96 000	790 000
Chromium (VI)	mg/kg	6,5	6,5	13	40
Cobalt	mg/kg	300	300	630	5 000
Copper	mg/kg	16	1 100	1 300	19 000
Lead	mg/kg	20	110	230	1 900
Manganese	mg/kg	740	740	1500	12 000
Mercury	mg/kg	0,93	0,93	1,0	6,5
Nickel	mg/kg	91	620	1200	10 000
Vanadium	mg/kg	150	150	320	2600
Zinc	mg/kg	140	9 200	19 000	150 000
Alkanes					
C7-C9	mg/kg	2 300	2 300	2 400	23 000
C10-C14	mg/kg	440	440	500	4 400
C15-C36	mg/kg	45 000	45 000	91 000	740 000
Monocyclic Aromatic Hydrocarbons					
Benzene	mg/kg	0,03	1,3	1,4	10
Toluene	mg/kg	25	120	120	1 100
Ethylbenzene	mg/kg	26	57	60	540
Xylenes	mg/kg	45	91	95	890
Aromatics					
Naphthalene	mg/kg	28	28	33	290
Pyrene	mg/kg	5,3	920	1 900	15 000
Benzo(a)pyrene	mg/kg	0,34	0,34	0,71	1,7
MTBE	mg/kg	0,0036	260	370	5 800
Organics					
Carbon Tetrachloride	mg/kg	0,25	0,27	0,26	4
Chlorobenzene	mg/kg	620	620	1 200	10 000
Chloroform	mg/kg	0,11	0,11	0,11	1,7
2 Chlorophenol	mg/kg	140	150	320	2 600
1,2 Dichlorobenzene	mg/kg	89	2 700	5 800	47 000

NATIONAL NORMS AND STANDARDS FOR THE REMEDIATION OF CONTAMINATED LAND AND SOIL QUALITY IN
THE REPUBLIC OF SOUTH AFRICA

1,4 Dichlorobenzene	mg/kg	26	1 100	1 200	19 000
1,2 Dichloroethene	mg/kg	0,23	0,23	0,24	3,7
1,1 Dichloroethene	mg/kg	10	10	10	150
1,2,3-Trimethylbenzene	mg/kg	0,28	53	55	860
1,2 Dichloroethene	mg/kg	0,4	620	1,200	10 000
Trichlorobenzenes (total)	mg/kg	0,069	310	650	5 300
Nitrobenzene	mg/kg	2,8	2,8	2,9	45
1,1,2,2 Tetrachloroethane	mg/kg	0,32	0,32	0,34	5
2,4,6 Trichlorophenol	mg/kg	4	210	320	1 800
Vinyl Chloride	mg/kg	0,0037	0,10	0,11	1,5
PCBs	mg/kg	0,61	1,7	3,6	11
Cyanide	mg/kg	14	620	1 200	10 000

Table 2: Soil Screening Values for Anions

Anions	Soil Screening Level (mg/kg)
Chlorides	12 000
Fluorides	30
Nitrates-nitrite	120
Sulphates	4 000

6. Transitional Arrangements

- (1) Any person who is remediating contaminated land in compliance with a directive or compliance notice issued in terms of any legislation applicable to land remediation before coming into effect of these norms and standards, must comply with the conditions set out in the directive or compliance notice.
- (2) Any person who is remediating contaminated land in terms of a waste management licence issued in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), before coming into effect of these norms and standards, must comply with the conditions set out in the waste management licence.

7. Short Title

These norms and standards are called the National Norms and Standards for the Remediation of Contaminated Land and Soil Quality in the Republic of South Africa.

NATIONAL WATER ACT 36 OF 1998

(English text signed by the President)

[Assented To: 20 August 1998]

[Commencement Date: 1 October 1998 – unless otherwise indicated]

[Proc. R95 / GG 19269 / 19980925]

[Proc. 131 / GG 19618 / 19981224]

[Proc. R102 / GG 20513 / 19991001]

as amended by:

National Water Amendment Act 45 of 1999

National Water Amendment Act 27 of 2014

[w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2
September 2014]

ACT

To provide for fundamental reform of the law relating to water resources; to repeal certain laws; and to provide for matters connected therewith.

PREAMBLE

Recognising that water is a scarce and unevenly distributed national resource which occurs in many different forms which are all part of a unitary, inter-dependent cycle;

Recognising that while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water, and use of water resources;

Acknowledging the National Government's overall responsibility for and authority over the nation's water resources and their use, including the equitable allocation of water for beneficial use, the redistribution of water, and international water matters;

Recognising that the ultimate aim of water resource management is to achieve the sustainable use of water for the benefit of all users;

Recognising that the protection of the quality of water resources is necessary to ensure sustainability of the nation's water resources in the interests of all water users; and

Recognising the need for the integrated management of all aspects of water resources and, where appropriate, the delegation of management functions to a regional or catchment level so as to enable everyone to participate;

ARRANGEMENT OF SECTIONS

CHAPTER 1 **INTERPRETATION AND FUNDAMENTAL PRINCIPLES**

1. Definitions and interpretation
2. Purpose of Act
3. Public trusteeship of nation's water resources
4. Entitlement to water use

CHAPTER 2 **WATER MANAGEMENT STRATEGIES**

Part 1: National water resource strategy

5. Establishment of national water resource strategy
6. Contents of national water resource strategy
7. Giving effect to national water resource strategy

Part 2: Catchment management strategies

8. Establishment of catchment management strategies
9. Contents of catchment management strategy
10. Guidelines for and consultation on catchment management strategies
11. Giving effect to catchment management strategies

CHAPTER 3 **PROTECTION OF WATER RESOURCES**

Part 1: Classification system for water resources

12. Prescription of classification system

Part 2: Classification of water resources and resource quality objectives

13. Determination of class of water resources and resource quality objectives
14. Preliminary determination of class or resource quality objectives
15. Giving effect to determination of class of water resource and resource quality objectives

Part 3: The Reserve

16. Determination of Reserve

17. Preliminary determinations of Reserve
18. Giving effect to Reserve

Part 4: Pollution prevention

19. Prevention and remedying effects of pollution

Part 5: Emergency incidents

20. Control of emergency incidents

**CHAPTER 4
USE OF WATER**

Part 1: General principles

21. Water use
22. Permissible water use
23. Determination of quantity of water which may be allocated by responsible authority
24. Licences for use of water found underground on property of another person
25. Transfer of water use authorisations
26. Regulations on use of water

Part 2: Considerations, conditions and essential requirements of general authorisations and licences

27. Considerations for issue of general authorisations and licences
28. Essential requirements of licences
29. Conditions for issue of general authorisations and licences
30. Security by applicant
31. Issue of licence no guarantee of supply

Part 3: Existing lawful water uses

32. Definition of existing lawful water use
33. Declaration of water use as existing lawful water use
34. Authority to continue with existing lawful water use
35. Verification of existing water uses

Part 4: Stream flow reduction activities

36. Declaration of stream flow reduction activities

Part 5: Controlled activities

- 37. Controlled activity
- 38. Declaration of certain activities as controlled activities

Part 6: General authorisations

- 39. General authorisations to use water

Part 7: Individual applications for licences

- 40. Application for licence
- 41. Procedure for licence applications
- 42. Reasons for decisions

Part 8: Compulsory licences for water use in respect of specific resource

- 43. Compulsory licence applications
- 44. Late applications
- 45. Proposed allocation schedules
- 46. Preliminary allocation schedules
- 47. Final allocation schedule
- 48. Licences replace previous entitlements

Part 9: Review and renewal of licences, and amendment and substitution of conditions of licences

- 49. Review and amendment of licences
- 50. Formal amendment of licences
- 51. Successors in title
- 52. Procedure for earlier renewal or amendment of licences

Part 10: Contravention of or failure to comply with authorisations

- 53. Rectification of contraventions
- 54. Suspension or withdrawal of entitlements to use water
- 55. Surrender of licence

CHAPTER 5
FINANCIAL PROVISIONS

Part 1: Water use charges

- 56. Pricing strategy for water use charges

- 57. Application of pricing strategy
- 58. Recovery of water use charges
- 59. Liability for water use charges
- 60. Water use charges are charges on land

Part 2: Financial assistance

- 61. Financial assistance by Minister
- 62. Regulations on financial assistance

CHAPTER 6
GENERAL POWERS AND DUTIES OF MINISTER AND DIRECTOR GENERAL

Part 1: Delegation, directives, expropriation, condonation and additional powers

- 63. Delegation of powers and duties by Minister
- 64. Expropriation of property
- 65. Expropriation for rehabilitation and other remedial work
- 66. Condonation of failure to comply with time period
- 67. Dispensing with certain requirements of Act
- 68. Intervention in litigation

Part 2: General provisions regarding regulations

- 69. Making of regulations
- 70. Consideration of regulations
- 71. Rejected regulations

Part 3: Powers relating to catchment management agencies

- 72. Powers and duties of catchment management agencies vest in Minister in certain circumstances
- 73. Assignment of powers and duties to catchment management agencies
- 74. Directives to water management institutions

Part 4: Powers of Director-General

- 75. Delegation of powers by Director-General
- 76. Appointment of persons on contract

CHAPTER 7
CATCHMENT MANAGEMENT AGENCIES

Part 1: Establishment and powers of catchment management agencies

77. Proposal for establishment of catchment management agency
78. Procedure for establishment of catchment management agencies
79. General powers and duties of catchment management agencies
80. Initial functions of catchment management agencies

Part 2: Governing board of catchment management agencies

81. Appointment of governing board of catchment management agency
82. Chairperson
83. Removal of members from governing board

Part 3: Operation of catchment management agencies

84. Funding of catchment management agencies
85. Documents relating to litigation
86. Delegation of powers by catchment management agency

Part 4: Intervention, disestablishment or change of water management areas of catchment management agencies

87. Intervention by Minister
88. Disestablishment of catchment management agency
89. Transfer of assets and liabilities after change of water management area or disestablishment
90. Regulations on catchment management agencies

CHAPTER 8
WATER USER ASSOCIATIONS

91. Proposal for establishment of water user association
92. Procedure for establishment of water user association
93. Constitution of water user association
94. Powers of water user association
95. Directives to water user association
96. Disestablishment of water user association
97. Winding up affairs of disestablished water user association
98. Transitional provisions for certain existing organisations

CHAPTER 9
ADVISORY COMMITTEES

99. Establishment of advisory committees
100. Regulations regarding advisory committees
101. Transitional provisions relating to advisory committees

CHAPTER 10
INTERNATIONAL WATER MANAGEMENT

- 102. Establishment of bodies to implement international agreements
- 103. Governance and functions of bodies
- 104. Powers of bodies
- 105. Bodies must manage different functions as separate units
- 106. Reports on performance of functions
- 107. Investigation of affairs or financial position of bodies
- 108. Transitional provisions relating to existing bodies

CHAPTER 11
GOVERNMENT WATERWORKS

- 109. Acquisition, construction, alteration, repair, operation and control of government waterworks.
- 110. Consultation and environmental impact assessment
- 111. Financing of government waterworks
- 112. Water from government waterworks
- 113. Access to and use of government waterworks for recreational purposes
- 114. Government waterworks constructed before commencement of Act
- 115. Disposal of government waterworks
- 116. Regulations regarding government waterworks

CHAPTER 12
SAFETY OF DAMS

- 117. Definitions
- 118. Control measures for dam with safety risk
- 119. Responsibilities of approved professional persons
- 120. Registration of dam with safety risk
- 121. Factors to be considered in declaring dam or category of dams with safety risk
- 122. Exemptions
- 123. Regulations regarding dam safety

CHAPTER 13
ACCESS TO AND RIGHTS OVER LAND

Part 1: Entry and inspection

- 124. Appointment of authorised persons
- 125. Powers and duties of authorised persons

Part 2: Servitudes

- 126. Definitions
- 127. Acquisition of servitudes
- 128. Rights and duties of servitude holders and landowners
- 129. Procedure for acquisition and amendment of servitudes
- 130. Powers of High Court in respect of claim for servitude
- 131. Compensation payable for granting of servitudes
- 132. Noting of servitude and amendment by endorsement against title deed
- 133. Cancellation of servitude
- 134. Joint waterwork involving servitude

Part 3: Waterworks and personal servitudes

- 135. Ownership of waterworks on land belonging to another
- 136. Transfer of personal servitudes

CHAPTER 14
MONITORING, ASSESSMENT AND INFORMATION

Part 1: National monitoring systems

- 137. Establishment of national monitoring systems
- 138. Establishment of mechanisms to co-ordinate monitoring of water resources

Part 2: National information systems on water resources

- 139. Establishment of national information systems
- 140. Objectives of national information systems
- 141. Provision of information
- 142. Access to information
- 143. Regulations for monitoring, assessment and information

Part 3: Information on floodlines, floods and droughts

- 144. Floodlines on plans for establishment of townships
- 145. Duty to make information available to public

CHAPTER 15
APPEALS AND DISPUTE RESOLUTION

- 146. Establishment of Water Tribunal
- 147. Operation of Water Tribunal

- 148. Appeals to Water Tribunal
- 149. Appeals from decisions of Water Tribunal
- 150. Mediation

CHAPTER 16 **OFFENCES AND REMEDIES**

- 151. Offences
- 152. Enquiry in respect of compensation for harm
- 153. Award of damages
- 154. Offences in relation to employer and employee relationships
- 155. Interdict or other order by High Court

CHAPTER 17 **GENERAL AND TRANSITIONAL PROVISIONS**

Part 1: Liability

- 156. State bound
- 157. Limitation of liability
- 158. Amendment or substitution of instruments
- 159. Effect of delegation

Part 2: Powers and authorisations

- 160. Documents deemed to be properly authorised and issued
- 161. Documents and steps valid under certain circumstances
- 162. Service of documents
- 163. Repeal of laws, and savings
- 163A. Amendments to this Act
- 164. Short title and commencement

Schedule 1 - Permissible use of water

Schedule 2 - Procedural matters regarding servitudes

Schedule 3 - Powers which may be exercised and duties to be performed by catchment management agencies on assignment or delegation

Schedule 4 - Management and planning of water management institutions

Schedule 5 - Model constitution of water user association

Schedule 6 - Water tribunal

Schedule 7 - Acts repealed

[Arrangement of sections amended by s. 6 of of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

CHAPTER 1

INTERPRETATION AND FUNDAMENTAL PRINCIPLES

This Chapter sets out the fundamental principles of the Act. Sustainability and equity are identified as central guiding principles in the protection, use, development, conservation, management and control of water resources. These guiding principles recognise the basic human needs of present and future generations, the need to protect water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water and the need to establish suitable institutions in order to achieve the purpose of the Act. National Government, acting through the Minister, is responsible for the achievement of these fundamental principles in accordance with the Constitutional mandate for water reform. Being empowered to act on behalf of the nation, the Minister has the ultimate responsibility to fulfil certain obligations relating to the use, allocation and protection of and access to water resources.

This Chapter also contains definitions explaining the meaning of certain words used in the Act as well as provisions regarding the interpretation of the Act.

1. Definitions and interpretation

(1) In this Act, unless the context shows that another meaning is intended -

“**aquifer**” means a geological formation which has structures or textures that hold water or permit appreciable water movement through them;

“**borehole**” includes a well, excavation or any artificially constructed or improved underground cavity which can be used for the purpose of -

- (a) intercepting, collecting or storing water in or removing water from an aquifer;
- (b) observing and collecting data and information on water in an aquifer; or
- (c) recharging an aquifer;

“**catchment**”, in relation to a watercourse or watercourses or part of a watercourse, means the area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, through surface flow to a common point or common points;

“**charge**” includes a fee, price or tariff imposed under this Act;

“**conservation**” in relation to a water resource means the efficient use and saving of water, achieved through measures such as water saving devices, waterefficient processes, water demand management and water rationing;

“Department” means the Department responsible for water affairs;

[Definition of “Department” substituted by s. 1 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

“Director-General” means the Director-General of the Department;

“entitlement” means a right to use water in terms of any provision of this Act or in terms of an instrument issued under this Act;

“estuary” means a partially or fully enclosed body of water -

- (a) which is open to the sea permanently or periodically; and
- (b) within which the sea water can be diluted, to an extent that is measurable, with fresh water drained from land;

“government waterwork” means a waterwork owned or controlled by the Minister and includes the land on which it is situated;

“instream habitat” includes the physical structure of a watercourse and the associated vegetation in relation to the bed of the watercourse;

“Minister” means the Minister responsible for water affairs;

[Definition of “Minister” substituted by s. 1 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

“organ of state” has the meaning set out in section 239 of the Constitution;

“person” includes a natural person, a juristic person, an unincorporated body, an association, an organ of state and the Minister;

“pollution” means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it -

- (a) less fit for any beneficial purpose for which it may reasonably be expected to be used; or
- (b) harmful or potentially harmful -
 - (aa) to the welfare, health or safety of human beings;
 - (bb) to any aquatic or nonaquatic organisms;
 - (cc) to the resource quality; or

(dd) to property;

“prescribe” means prescribe by regulation;

“protection”, in relation to a water resource, means -

- (a) maintenance of the quality of the water resource to the extent that the water resource may be used in an ecologically sustainable way;
- (b) prevention of the degradation of the water resource; and
- (c) the rehabilitation of the water resource;

“Reserve” means the quantity and quality of water required -

- (a) to satisfy basic human needs by securing a basic water supply, as prescribed under the Water Services Act, 1997 (Act No. 108 of 1997), for people who are now or who will, in the reasonably near future, be -
 - (i) relying upon;
 - (ii) taking water from; or
 - (iii) being supplied from,

the relevant water resource; and

- (b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource;

“resource quality” means the quality of all the aspects of a water resource including -

- (a) the quantity, pattern, timing, water level and assurance of instream flow;
- (b) the water quality, including the physical, chemical and biological characteristics of the water;
- (c) the character and condition of the instream and riparian habitat; and
- (d) the characteristics, condition and distribution of the aquatic biota;

“responsible authority”, in relation to a specific power or duty in respect of water uses, means -

- (a) if that power or duty has been assigned by the Minister to a catchment management agency, that catchment management agency; or

(b) if that power or duty has not been so assigned, the Minister;

“riparian habitat” includes the physical structure and associated vegetation of the areas associated with a watercourse which are commonly characterised by alluvial soils, and which are inundated or flooded to an extent and with a frequency sufficient to support vegetation of species with a composition and physical structure distinct from those of adjacent land areas;

“specific environmental management Act” has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

[Definition of “specific environmental management Act” inserted by s. 1 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

“this Act” includes any regulations made under this Act;

“waste” includes any solid material or material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into a water resource in such volume, composition or manner as to cause, or to be reasonably likely to cause, the water resource to be polluted;

“watercourse” means -

- (a) a river or spring;
- (b) a natural channel in which water flows regularly or intermittently;
- (c) a wetland, lake or dam into which, or from which, water flows; and
- (d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse,

and a reference to a watercourse includes, where relevant, its bed and banks;

“water management area” is an area established as a management unit in the national water resource strategy within which a catchment management agency will conduct the protection, use, development, conservation, management and control of water resources;

“water management institution” means a catchment management agency, a water user association, a body responsible for international water management or any person who fulfils the functions of a water management institution in terms of this Act;

“water resource” includes a watercourse, surface water, estuary, or aquifer;

“waterwork” includes any borehole, structure, earthwork or equipment installed or used for or in connection with water use;

“**wetland**” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

- (2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, corresponding meanings.
- (3) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the purpose of this Act as stated in section 2, must be preferred over any alternative interpretation which is inconsistent with that purpose.
- (4) Explanatory notes, printed in bold italics, at the commencement of Chapters and Parts must not be used in the interpretation of any provision of this Act.
- (5) Any directive or notice given in terms of this Act must be in writing, unless otherwise specified in this Act.

2. Purpose of Act

The purpose of this Act is to ensure that the nation’s water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors -

- (a) meeting the basic human needs of present and future generations;
- (b) promoting equitable access to water;
- (c) redressing the results of past racial and gender discrimination;
- (d) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (e) facilitating social and economic development;
- (f) providing for growing demand for water use;
- (g) protecting aquatic and associated ecosystems and their biological diversity;
- (h) reducing and preventing pollution and degradation of water resources;
- (i) meeting international obligations;
- (j) promoting dam safety;

(k) managing floods and droughts,

and for achieving this purpose, to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation.

3. Public trusteeship of nation's water resources

- (1) As the public trustee of the nation's water resources the National Government, acting through the Minister, must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.
- (2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values.
- (3) The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

4. Entitlement to water use

- (1) A person may use water in or from a water resource for purposes such as reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use, as set out in Schedule 1.
- (2) A person may continue with an existing lawful water use in accordance with section 34.
- (3) A person may use water in terms of a general authorisation or licence under this Act.
- (4) Any entitlement granted to a person by or under this Act replaces any right to use water which that person might otherwise have been able to enjoy or enforce under any other law -
 - (a) to take or use water;
 - (b) to obstruct or divert a flow of water;
 - (c) to affect the quality of any water;
 - (d) to receive any particular flow of water;
 - (e) to receive a flow of water of any particular quality; or
 - (f) to construct, operate or maintain any waterwork.

CHAPTER 2

WATER MANAGEMENT STRATEGIES

This Chapter deals with the development of strategies to facilitate the proper management of water resources.

Part 1

National water resource strategy

Part 1 requires the progressive development, by the Minister, after consultation with society at large, of a national water resource strategy. The national water resource strategy provides the framework for the protection, use, development, conservation, management and control of water resources for the country as a whole. It also provides the framework within which water will be managed at regional or catchment level, in defined water management areas. The national water resource strategy, which must be formally reviewed from time to time, is binding on all authorities and institutions exercising powers or performing duties under this Act.

5. Establishment of national water resource strategy

- (1) Subject to subsection (4), the Minister must, as soon as reasonably practicable, by notice in the *Gazette*, establish a national water resource strategy.
- (2) The notice must state the address where the strategy may be inspected.
- (3) The water resources of the Republic must be protected, used, developed, conserved, managed and controlled in accordance with the national water resource strategy.
- (4) A national water resource strategy -
 - (a) may be established in a phased and progressive manner and in separate components over time; and
 - (b) must be reviewed at intervals of not more than five years.
- (5) Before establishing a national water resource strategy or any component of that strategy in terms of subsection (1), the Minister must -
 - (a) publish a notice in the *Gazette* -
 - (i) setting out a summary of the proposed strategy or the component in question;
 - (ii) stating the address where the proposed strategy or the component in question is available for inspection; and

- (iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a) (iii).

6. Contents of national water resource strategy

- (1) The national water resource strategy must, subject to section 5 (4) (a) -
 - (a) set out the strategies, objectives, plans, guidelines and procedures of the Minister and institutional arrangements relating to the protection, use, development, conservation, management and control of water resources within the framework of existing relevant government policy in order to achieve -
 - (i) the purpose of this Act; and
 - (ii) any compulsory national standards prescribed under section 9 (1) of the Water Services Act, 1997 (Act No. 108 of 1997);
 - (b) provide for at least -
 - (i) the requirements of the Reserve and identify, where appropriate, water resources from which particular requirements must be met;
 - (ii) international rights and obligations;
 - (iii) actions to be taken to meet projected future water needs; and
 - (iv) water use of strategic importance;
 - (c) establish water management areas and determine their boundaries;
 - (d) contain estimates of present and future water requirements;
 - (e) state the total quantity of water available within each water management area;
 - (f) state water management area surpluses or deficits;
 - (g) provide for intercatchment water transfers between surplus water management areas and deficit water management areas;

- (h) set out principles relating to water conservation and water demand management;
 - (i) state the objectives in respect of water quality to be achieved through the classification system for water resources provided for in this Act;
 - (j) contain objectives for the establishment of institutions to undertake water resource management;
 - (k) determine the interrelationship between institutions involved in water resource management; and
 - (l) promote the management of catchments within a water management area in a holistic and integrated manner.
- (2) In determining a water management area in terms of subsection (1) (c), the Minister must take into account -
- (a) watercourse catchment boundaries;
 - (b) social and economic development patterns;
 - (c) efficiency considerations; and
 - (d) communal interests within the area in question.

7. Giving effect to national water resource strategy

The Minister, the Director-General, an organ of state and a water management institution must give effect to the national water resource strategy when exercising any power or performing any duty in terms of this Act.

Part 2

Catchment management strategies

Part 2 requires every catchment management agency to progressively develop a catchment management strategy for the water resources within its water management area. Catchment management strategies must be in harmony with the national water resource strategy. In the process of developing this strategy, a catchment management agency must seek cooperation and agreement on water-related matters from the various stakeholders and interested persons. The catchment management strategy, which must be reviewed from time to time, will include a water allocation plan. A catchment management strategy must set principles for allocating water to existing and prospective users, taking into account all matters relevant to the protection, use, development, conservation, management and control of water resources.

8. Establishment of catchment management strategies

- (1) A catchment management agency contemplated in Chapter 7 must, by notice in the *Gazette*, establish a catchment management strategy for the protection, use, development, conservation, management and control of water resources within its water management area.
- (2) The notice must state the address where the strategy may be inspected.
- (3) A catchment management strategy -
 - (a) may be established in a phased and progressive manner and in separate components over time; and
 - (b) must be reviewed at intervals of not more than five years.
- (4) A catchment management strategy or any component of that strategy may only be established with the written consent of the Minister.
- (5) Before establishing a catchment management strategy or any component of that strategy in terms of subsection (1), a catchment management agency must -
 - (a) publish a notice in the *Gazette* -
 - (i) setting out a summary of the proposed catchment management strategy or the component in question;
 - (ii) stating the address where the proposed strategy or the component in question is available for inspection; and
 - (iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a) (iii).

9. Contents of catchment management strategy

A catchment management strategy must -

NATIONAL WATER ACT 36 OF 1998

- (a) take into account the class of water resources and resource quality objectives contemplated in Chapter 3, the requirements of the Reserve and, where applicable, international obligations;
- (b) not be in conflict with the national water resource strategy;
- (c) set out the strategies, objectives, plans, guidelines and procedures of the catchment management agency for the protection, use, development, conservation, management and control of water resources within its water management area;
- (d) take into account the geology, demography, land use, climate, vegetation and waterworks within its water management area;
- (e) contain water allocation plans which are subject to section 23, and which must set out principles for allocating water, taking into account the factors mentioned in section 27 (1);
- (f) take account of any relevant national or regional plans prepared in terms of any other law, including any development plan adopted in terms of the Water Services Act, 1997 (Act No. 108 of 1997);
- (g) enable the public to participate in managing the water resources within its water management area;
- (h) take into account the needs and expectations of existing and potential water users;
and
- (i) set out the institutions to be established.

10. Guidelines for and consultation on catchment management strategies

- (1) The Minister may establish guidelines for the preparation of catchment management strategies.
- (2) In developing a catchment management strategy, a catchment management agency must consult with -
 - (a) the Minister;
 - (b) any organ of state which has an interest in the content, effect or implementation of the catchment management strategy; and
 - (c) any persons, or their representative organisations -
 - (i) whose activities affect or might affect water resources within its water

management area; and

- (ii) who have an interest in the content, effect or implementation of the catchment management strategy.
- (3) A catchment management agency must, before the publication of a notice in terms of section 8 (5) (a), refer to the Minister for consideration and determination, any proposed component of a catchment management strategy which in the opinion of the catchment management agency -
- (a) raises a material question of policy; or
 - (b) raises a question concerning -
 - (i) the relationship between the Department and other organs of state; or
 - (ii) the relationship between organs of state and their respective roles in developing or implementing a catchment management strategy.

11. Giving effect to catchment management strategies

The Minister and the catchment management agency concerned must give effect to any catchment management strategy established under this Part when exercising any power or performing any duty in terms of this Act.

CHAPTER 3

PROTECTION OF WATER RESOURCES

The protection of water resources is fundamentally related to their use, development, conservation, management and control. Parts 1, 2 and 3 of this Chapter lay down a series of measures which are together intended to ensure the comprehensive protection of all water resources. These measures are to be developed progressively within the contexts of the national water resource strategy and the catchment management strategies provided for in Chapter 2. Parts 4 and 5 deal with measures to prevent the pollution of water resources and measures to remedy the effects of pollution of water resources.

Part 1

Classification system for water resources

Part 1 provides for the first stage in the protection process, which is the development by the Minister of a system to classify the nation's water resources. The system provides guidelines and procedures for determining different classes of water resources.

12. Prescription of classification system

- (1) As soon as is reasonably practicable, the Minister must prescribe a system for classifying water resources.
- (2) The system for classifying water resources may -
 - (a) establish guidelines and procedures for determining different classes of water resources;
 - (b) in respect of each class of water resource -
 - (i) establish procedures for determining the Reserve;
 - (ii) establish procedures which are designed to satisfy the water quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the resource;
 - (iii) set out water uses for instream or landbased activities which activities must be regulated or prohibited in order to protect the water resource; and
 - (c) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources, as the Minister considers necessary.

Part 2

Classification of water resources and resource quality objectives

Under Part 2 the Minister is required to use the classification system established in Part 1 to determine the class and resource quality objectives of all or part of water resources considered to be significant. The purpose of the resource quality objectives is to establish clear goals relating to the quality of the relevant water resources. In determining resource quality objectives a balance must be sought between the need to protect and sustain water resources on the one hand, and the need to develop and use them on the other. Provision is made for preliminary determinations of the class and resource quality objectives of water resources before the formal classification system is established. Once the class of a water resource and the resource quality objectives have been determined they are binding on all authorities and institutions when exercising any power or performing any duty under this Act.

13. Determination of class of water resources and resource quality objectives

- (1) As soon as reasonably practicable after the Minister has prescribed a system for classifying water resources the Minister must, subject to subsection (4), by notice in the *Gazette*, determine for all or part of every significant water resource -

NATIONAL WATER ACT 36 OF 1998

- (a) a class in accordance with the prescribed classification system; and
 - (b) resource quality objectives based on the class determined in terms of paragraph (a).
- (2) A notice in terms of subsection (1) must state the geographical area in respect of which the resource quality objectives will apply, the requirements for achieving the objectives, and the dates from which the objectives will apply.
- (3) The objectives determined in terms of subsection (1) may relate to -
- (a) the Reserve;
 - (b) the instream flow;
 - (c) the water level;
 - (d) the presence and concentration of particular substances in the water;
 - (e) the characteristics and quality of the water resource and the instream and riparian habitat;
 - (f) the characteristics and distribution of aquatic biota;
 - (g) the regulation or prohibition of instream or landbased activities which may affect the quantity of water in or quality of the water resource; and
 - (h) any other characteristic,
- of the water resource in question.
- (4) Before determining a class or the resource quality objectives in terms of subsection (1), the Minister must in respect of each water resource -
- (a) publish a notice in the *Gazette* -
 - (i) setting out -
 - (aa) the proposed class;
 - (bb) the proposed resource quality objectives;
 - (cc) the geographical area in respect of which the objectives will apply;
 - (dd) the dates from which specific objectives will apply; and

- (ee) the requirements for complying with the objectives; and
 - (ii) inviting written comments to be submitted on the proposed class or proposed resource quality objectives (as the case may be), specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a) (ii).

14. Preliminary determination of class or resource quality objectives

(1) Until -

- (a) a system for classifying water resources has been prescribed; or
- (b) a class of a water resource or resource quality objectives has been determined,

the Minister may, for all or part of a water resource make a preliminary determination of the class or resource quality objectives.

(2) A determination in terms of section 13 supersedes a preliminary determination.

15. Giving effect to determination of class of water resource and resource quality objectives

The Minister, the Director-General, an organ of state and a water management institution, when exercising any power or performing any duty in terms of this Act, must give effect to any determination of a class of a water resource and the resource quality objectives as determined in terms of this Part and any requirements for complying with the resource quality objectives.

Part 3

The Reserve

Part 3 deals with the Reserve, which consists of two parts - the basic human needs reserve and the ecological reserve. The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource. The Reserve refers to both the quantity and quality of the water in the resource, and will vary depending on the class of the resource. The Minister is required to determine the Reserve for all or part of any significant

water resource. If a resource has not yet been classified, a preliminary determination of the Reserve may be made and later superseded by a new one. Once the Reserve is determined for a water resource it is binding in the same way as the class and the resource quality objectives.

16. Determination of Reserve

- (1) As soon as reasonably practicable after the class of all or part of a water resource has been determined, the Minister must, by notice in the *Gazette*, determine the Reserve for all or part of that water resource.
- (2) A determination of the Reserve must -
 - (a) be in accordance with the class of the water resource as determined in terms of section 13; and
 - (b) ensure that adequate allowance is made for each component of the Reserve.
- (3) Before determining the Reserve in terms of subsection (1), the Minister must -
 - (a) publish a notice in the *Gazette* -
 - (i) setting out the proposed Reserve; and
 - (ii) inviting written comments to be submitted on the proposed Reserve, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a) (ii).

17. Preliminary determinations of Reserve

- (1) Until a system for classifying water resources has been prescribed or a class of a water resource has been determined, the Minister -
 - (a) may, for all or part of a water resource; and
 - (b) must, before authorising the use of water under section 22 (5),
make a preliminary determination of the Reserve.

(2) A determination in terms of section 16 (1) supersedes a preliminary determination.

18. Giving effect to Reserve

The Minister, the Director-General, an organ of state and a water management institution, must give effect to the Reserve as determined in terms of this Part when exercising any power or performing any duty in terms of this Act.

Part 4

Pollution prevention

Part 4 deals with pollution prevention, and in particular the situation where pollution of a water resource occurs or might occur as a result of activities on land. The person who owns, controls, occupies or uses the land in question is responsible for taking measures to prevent pollution of water resources. If these measures are not taken, the catchment management agency concerned may itself do whatever is necessary to prevent the pollution or to remedy its effects, and to recover all reasonable costs from the persons responsible for the pollution.

19. Prevention and remedying effects of pollution

(1) An owner of land, a person in control of land or a person who occupies or uses the land on which -

- (a) any activity or process is or was performed or undertaken; or
- (b) any other situation exists,

which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

(2) The measures referred to in subsection (1) may include measures to -

- (a) cease, modify or control any act or process causing the pollution;
- (b) comply with any prescribed waste standard or management practice;
- (c) contain or prevent the movement of pollutants;
- (d) eliminate any source of the pollution;
- (e) remedy the effects of the pollution; and
- (f) remedy the effects of any disturbance to the bed and banks of a watercourse.

- (3) A catchment management agency may direct any person who fails to take the measures required under subsection (1) to -
- (a) commence taking specific measures before a given date;
 - (b) diligently continue with those measures; and
 - (c) complete them before a given date.
- (4) Should a person fail to comply, or comply inadequately with a directive given under subsection (3), the catchment management agency may take the measures it considers necessary to remedy the situation.
- (5) Subject to subsection (6), a catchment management agency may recover all costs incurred as a result of it acting under subsection (4) jointly and severally from the following persons:
- (a) Any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution;
 - (b) the owner of the land at the time when the pollution or the potential for pollution occurred, or that owner's successor in title;
 - (c) the person in control of the land or any person who has a right to use the land at the time when -
 - (i) the activity or the process is or was performed or undertaken; or
 - (ii) the situation came about; or
 - (d) any person who negligently failed to prevent -
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about.
- (6) The catchment management agency may in respect of the recovery of costs under subsection (5), claim from any other person who, in the opinion of the catchment management agency, benefited from the measures undertaken under subsection (4), to the extent of such benefit.
- (7) The costs claimed under subsection (5) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.
- (8) If more than one person is liable in terms of subsection (5), the catchment management agency must, at the request of any of those persons, and after giving the others an

opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

Part 5

Emergency incidents

Part 5 deals with pollution of water resources following an emergency incident, such as an accident involving the spilling of a harmful substance that finds or may find its way into a water resource. The responsibility for remedying the situation rests with the person responsible for the incident or the substance involved. If there is a failure to act, the relevant catchment management agency may take the necessary steps and recover the costs from every responsible person.

20. Control of emergency incidents

- (1) In this section "incident" includes any incident or accident in which a substance -
 - (a) pollutes or has the potential to pollute a water resource; or
 - (b) has, or is likely to have, a detrimental effect on a water resource.
- (2) In this section, "responsible person" includes any person who -
 - (a) is responsible for the incident;
 - (b) owns the substance involved in the incident; or
 - (c) was in control of the substance involved in the incident at the time of the incident.
- (3) The responsible person, any other person involved in the incident or any other person with knowledge of the incident must, as soon as reasonably practicable after obtaining knowledge of the incident, report to -
 - (a) the Department;
 - (b) the South African Police Service or the relevant fire department; or
 - (c) the relevant catchment management agency.
- (4) A responsible person must -
 - (a) take all reasonable measures to contain and minimise the effects of the incident;
 - (b) undertake cleanup procedures;

- (c) remedy the effects of the incident; and
 - (d) take such measures as the catchment management agency may either verbally or in writing direct within the time specified by such institution.
- (5) A verbal directive must be confirmed in writing within 14 days, failing which it will be deemed to have been withdrawn.
- (6) Should -
- (a) the responsible person fail to comply, or inadequately comply with a directive; or
 - (b) it not be possible to give the directive to the responsible person timeously,
- the catchment management agency may take the measures it considers necessary to -
- (i) contain and minimise the effects of the incident;
 - (ii) undertake cleanup procedures; and
 - (iii) remedy the effects of the incident.
- (7) The catchment management agency may recover all reasonable costs incurred by it from every responsible person jointly and severally.
- (8) The costs claimed under subsection (7) may include, without being limited to, labour, administration and overhead costs.
- (9) If more than one person is liable in terms of subsection (7), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

CHAPTER 4

USE OF WATER

As this Act is founded on the principle that National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest, a person can only be entitled to use water if the use is permissible under the Act. This Chapter is therefore of central significance to the Act, as it lays the basis for regulating water use. The various types of licensed and unlicensed entitlements to use water are dealt with in detail.

Part 1

General Principles

This Part sets out general principles for regulating water use. Water use is defined broadly, and includes taking and storing water, activities which reduce stream flow, waste discharges and disposals, controlled activities (activities which impact detrimentally on a water resource), altering a watercourse, removing water found underground for certain purposes, and recreation. In general a water use must be licensed unless it is listed in Schedule 1, is an existing lawful use, is permissible under a general authorisation, or if a responsible authority waives the need for a licence. The Minister may limit the amount of water which a responsible authority may allocate. In making regulations the Minister may differentiate between different water resources, classes of water resources and geographical areas.

21. Water use

For the purposes of this Act, water use includes -

- (a) taking water from a water resource;
- (b) storing water;
- (c) impeding or diverting the flow of water in a watercourse;
- (d) engaging in a stream flow reduction activity contemplated in section 36;
- (e) engaging in a controlled activity identified as such in section 37 (1) or declared under section 38 (1);
- (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) disposing of waste in a manner which may detrimentally impact on a water resource;
- (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- (i) altering the bed, banks, course or characteristics of a watercourse;
- (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- (k) using water for recreational purposes.

22. Permissible water use

- (1) A person may only use water -
 - (a) without a licence -
 - (i) if that water use is permissible under Schedule 1;
 - (ii) if that water use is permissible as a continuation of an existing lawful use; or
 - (iii) if that water use is permissible in terms of a general authorisation issued under section 39;
 - (b) if the water use is authorised by a licence under this Act; or
 - (c) if the responsible authority has dispensed with a licence requirement under subsection (3).
- (2) A person who uses water as contemplated in subsection (1) -
 - (a) must use the water subject to any condition of the relevant authorisation for that use;
 - (b) is subject to any limitation, restriction or prohibition in terms of this Act or any other applicable law;
 - (c) in the case of the discharge or disposal of waste or water containing waste contemplated in section 21 (f), (g), (h) or (j), must comply with any applicable waste standards or management practices prescribed under section 26 (1) (h) and (i), unless the conditions of the relevant authorisation provide otherwise;
 - (d) may not waste that water; and
 - (e) must return any seepage, runoff or water containing waste which emanates from that use, to the water resource from which the water was taken, unless the responsible authority directs otherwise or the relevant authorisation provides otherwise.
- (3) A responsible authority may dispense with the requirement for a licence for water use if it is satisfied that the purpose of this Act will be met by the grant of a licence, permit or other authorisation under any other law.
- (4) In the interests of cooperative governance, a responsible authority may promote arrangements with other organs of state to combine their respective licence requirements into a single licence requirement.
- (5) A responsible authority may, subject to section 17, authorise the use of water before -

- (a) a national water resource strategy has been established;
 - (b) a catchment management strategy in respect of the water resource in question has been established;
 - (c) a classification system for water resources has been established;
 - (d) the class and resource quality objectives for the water resource in question have been determined; or
 - (e) the Reserve for the water resource in question has been finally determined.
- (6) Any person who has applied for a licence in terms of section 43 in respect of an existing lawful water use as contemplated in section 32, and whose application has been refused or who has been granted a licence for a lesser use than the existing lawful water use, resulting in severe prejudice to the economic viability of an undertaking in respect of which the water was beneficially used, may, subject to subsections (7) and (8), claim compensation for any financial loss suffered in consequence.
- (7) The amount of any compensation payable must be determined -
- (a) in accordance with section 25 (3) of the Constitution; and
 - (b) by disregarding any reduction in the existing lawful water use made in order to -
 - (i) provide for the Reserve;
 - (ii) rectify an overallocation of water use from the resource in question; or
 - (iii) rectify an unfair or disproportionate water use.
- (8) A claim for compensation must be lodged with the Water Tribunal within six months of the relevant decision of the responsible authority.
- (9) The Water Tribunal has jurisdiction to determine liability for compensation and the amount of compensation payable in terms of this section.
- (10) After the Water Tribunal has decided that compensation is payable and determined the amount of compensation, the responsible authority may enter into negotiations with the claimant and, within 30 days after the decision of the Water Tribunal, offer an allocation of water instead of compensation.

23. Determination of quantity of water which may be allocated by responsible authority

- (1) Subject to the national water resource strategy the Minister may determine the quantity of water in respect of which a responsible authority may issue a general authorisation and a licence from water resources in its water management area.

- (2) Until a national water resource strategy has been established, the Minister may make a preliminary determination of the quantity of water in respect of which a responsible authority may issue a general authorisation and licence.
- (3) A preliminary determination must be replaced by a determination under subsection (1) once the national water resource strategy has been established.
- (4) A responsible authority must comply with any determination made under subsection (1) or (2).
- (5) In making a determination under subsections (1) and (2) the Minister must take account of the water available in the resource.

24. Licences for use of water found underground on property of another person

A licence may be granted to use water found underground on land not owned by the applicant if the owner of the land consents or if there is good reason to do so.

25. Transfer of water use authorisations

- (1) A water management institution may, at the request of a person authorised to use water for irrigation under this Act, allow that person on a temporary basis and on such conditions as the water management institution may determine, to use some or all of that water for a different purpose, or to allow the use of some or all of that water on another property in the same vicinity for the same or a similar purpose.
- (2) A person holding an entitlement to use water from a water resource in respect of any land may surrender that entitlement or part of that entitlement -
 - (a) in order to facilitate a particular licence application under section 41 for the use of water from the same resource in respect of other land; and
 - (b) on condition that the surrender only becomes effective if and when such application is granted.
- (3) The annual report of a water management institution or a responsible authority, as the case may be, must, in addition to any other information required under this Act, contain details in respect of every permission granted under subsection (1) or every application granted under subsection (2).

26. Regulations on use of water

- (1) Subject to subsection (4), the Minister may make regulations -
 - (a) limiting or restricting the purpose, manner or extent of water use;

- (b) requiring that the use of water from a water resource be monitored, measured and recorded;
- (c) requiring that any water use be registered with the responsible authority;
- (d) prescribing the outcome or effect which must be achieved by the installation and operation of any waterwork;
- (e) regulating the design, construction, installation, operation and maintenance of any waterwork, where it is necessary or desirable to monitor any water use or to protect a water resource;
- (f) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any waterwork, in order to protect the public and to safeguard human life and property;
- (g) regulating or prohibiting any activity in order to protect a water resource or instream or riparian habitat;
- (h) prescribing waste standards which specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource;
- (i) prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource;
- (j) requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis;
- (k) prescribing procedural requirements for licence applications;
- (l) relating to transactions in respect of authorisations to use water, including but not limited to -
 - (i) the circumstances under which a transaction may be permitted;
 - (ii) the conditions subject to which a transaction may take place; and
 - (iii) the procedure to deal with a transaction;
- (m) prescribing methods for making a volumetric determination of water to be ascribed to a stream flow reduction activity for purposes of water use allocation and the imposition of charges;

(n) prescribing procedures for the allocation of water by means of public tender or auction; and

(o) prescribing -

(i) procedures for obtaining; and

(ii) the required contents of,

assessments of the likely effect which any proposed licence may have on the quality of the water resource in question.

(2) Regulations made under subsection (1) may -

(a) differentiate between different water resources and different classes of water resources;

(b) differentiate between different geographical areas; and

(c) create offences and prescribe penalties.

(3) Regulations made under subsection (1) (h), (i) and (j) may contain -

(a) general provisions applicable to all waste; and

(b) specific provisions applicable to waste with specific characteristics.

(4) When making regulations, the Minister must take into account all relevant considerations, including the need to -

(a) promote the economic and sustainable use of water;

(b) conserve and protect water resources or, instream and riparian habitat;

(c) prevent wasteful water use;

(d) facilitate the management of water use and waterworks;

(e) facilitate the monitoring of water use and water resources; and

(f) facilitate the imposition and recovery of charges.

(5) Regulations made in terms of this Act that may have the effect of amending the provisions of the Agreement referred to in section 163A must be made by the Minister in concurrence with the Minister responsible for mineral resources and the Minister

responsible for environmental affairs and must be tabled in Parliament 30 days prior to the final publication of the regulations in the *Gazette*.

[Subs. (5) added by s. 2 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

Part 2

Considerations, conditions and essential requirements of general authorisations and licences

This Part deals with matters relevant to all general authorisations and licences issued under the Act. It guides responsible authorities in the exercise of their discretion to issue and to attach conditions to general authorisations and licences. It also sets out the essential features of licences, such as effective periods, purposes and places for which they may be issued, and the nature of conditions that may be attached to them. The granting of a licence does not imply any guarantee regarding the availability or quality of water which it covers.

27. Considerations for issue of general authorisations and licences

- (1) In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including -
 - (a) existing lawful water uses;
 - (b) the need to redress the results of past racial and gender discrimination;
 - (c) efficient and beneficial use of water in the public interest;
 - (d) the socio-economic impact -
 - (i) of the water use or uses if authorised; or
 - (ii) of the failure to authorise the water use or uses;
 - (e) any catchment management strategy applicable to the relevant water resource;
 - (f) the likely effect of the water use to be authorised on the water resource and on other water users;
 - (g) the class and the resource quality objectives of the water resource;
 - (h) investments already made and to be made by the water user in respect of the water use in question;

- (i) the strategic importance of the water use to be authorised;
 - (j) the quality of water in the water resource which may be required for the Reserve and for meeting international obligations; and
 - (k) the probable duration of any undertaking for which a water use is to be authorised.
- (2) A responsible authority may not issue a licence to itself without the written approval of the Minister.

28. Essential requirements of licences

- (1) A licence contemplated in this Chapter must specify -
- (a) the water use or uses for which it is issued;
 - (b) the property or area in respect of which it is issued;
 - (c) the person to whom it is issued;
 - (d) the conditions subject to which it is issued;
 - (e) the licence period, which may not exceed forty years; and
 - (f) the review periods during which the licence may be reviewed under section 49, which must be at intervals of not more than five years.
- (2) Subject to subsection (3), restriction, suspension or termination in terms of this Act and review under section 49, a licence remains in force until the end of the licence period, when it expires.
- (3) Subject to subsection (4) and notwithstanding section 49 (2), a responsible authority may extend the licence period of a licence if this is done as part of a general review of licences carried out in terms of section 49.
- (4) An extension of a licence period contemplated in subsection (3) may only be made after the responsible authority has considered the factors specified in section 49 (2) and all other relevant factors, including new applications for water use and has concluded that there are no substantial grounds not to grant an extension.
- (5) An extension of a licence period in terms of subsection (3) may only be given for a single review period at a time as stipulated in subsection (1) (f).
- (6) If the licence period of a licence is extended in terms of subsection (3), the licence may, in respect of the period for which it is extended, be issued subject to different conditions which may include a lesser permitted water use.

29. Conditions for issue of general authorisations and licences

(1) A responsible authority may attach conditions to every general authorisation or licence -

(a) relating to the protection of -

- (i) the water resource in question;
- (ii) the stream flow regime; and
- (iii) other existing and potential water users;

(b) relating to water management by -

- (i) specifying management practices and general requirements for any water use, including water conservation measures;
- (ii) requiring the monitoring and analysis of and reporting on every water use and imposing a duty to measure and record aspects of water use, specifying measuring and recording devices to be used;
- (iii) requiring the preparation and approval of and adherence to, a water management plan;
- (iv) requiring the payment of charges for water use as provided for in Chapter 5;
- (v) requiring the licensee to provide or make water available to a person specified in the licence; and
- (vi) in the case of a general authorisation, requiring the registration of the water use with the responsible authority and the payment of a registration fee as a precondition of that use;

(c) relating to return flow and discharge or disposal of waste, by -

- (i) specifying a water resource to which it must be returned or other manner in which it must be disposed of;
- (ii) specifying permissible levels for some or all of its chemical and physical components;
- (iii) specifying treatment to which it must be subjected, before it is discharged; and
- (iv) specifying the volume which may be returned;

- (d) in the case of a controlled activity -
 - (i) specifying the waste treatment, pollution control and monitoring equipment to be installed, maintained and operated; and
 - (ii) specifying the management practices to be followed to prevent the pollution of any water resource;
- (e) in the case of taking or storage of water -
 - (i) setting out the specific quantity of water or percentage of flow which may be taken;
 - (ii) setting out the rate of abstraction;
 - (iii) specifying the method of construction of a borehole and the method of abstraction from the borehole;
 - (iv) specifying the place from where water may be taken;
 - (v) specifying the times when water may be taken;
 - (vi) identifying or limiting the area of land on which any water taken from a resource may be used;
 - (vii) limiting the quantity of water which may be stored;
 - (viii) specifying locations where water may be stored; and
 - (ix) requiring the licensee to become a member of a water user association before water may be taken;
- (f) in the case of a stream flow reduction activity -
 - (i) specifying practices to be followed to limit stream flow reduction and other detrimental impacts on the water resource; and
 - (ii) setting or prescribing a method for determining the extent of the stream flow reduction caused by the authorised activity;
- (g) which are necessary or desirable to achieve the purpose for which the licence was issued;
- (h) which are necessary or desirable to ensure compliance with the provisions of this Act; and

- (i) in the case of a licence -
 - (i) specifying times when water may or may not be used;
 - (ii) containing provisions for its termination if an authorised use of water is not implemented or not fully implemented;
 - (iii) designating water for future or contingent use; or
 - (iv) which have been agreed to by the licensee.
- (2) If a licensee has agreed to pay compensation to another person in terms of any arrangement to use water, the responsible authority may make the obligation to pay compensation a condition of the licence.

30. Security by applicant

- (1) A responsible authority may, if it is necessary for the protection of the water resource or property, require the applicant to give security in respect of any obligation or potential obligation arising from a licence to be issued under this Act.
- (2) The security referred to in subsection (1) may include any of the following:
 - (i) A letter of credit from a bank;
 - (ii) a surety or a bank guarantee;
 - (iii) a bond;
 - (iv) an insurance policy; or
 - (v) any other appropriate form of security.
- (3) The responsible authority must determine the type, extent and duration of any security required.
- (4) The duration of the security may extend beyond the time period specified in the licence in question.
- (5) If the responsible authority requires security in the form of an insurance policy, it may require that it be jointly insured under or be a beneficiary of the insurance policy and where appropriate, the responsible authority must be regarded as having an insurable interest in the subject matter of the insurance policy.
- (6) A person may apply in writing to the responsible authority to have any security given by that person in terms of this section amended or discharged at any time, which application may not be unreasonably refused.

31. Issue of licence no guarantee of supply

The issue of a licence to use water does not imply a guarantee relating to -

- (a) the statistical probability of supply;
- (b) the availability of water; or
- (c) the quality of water.

Part 3

Existing lawful water uses

This Part permits the continuation under certain conditions of an existing water use derived from a law repealed by this Act. An existing lawful water use, with any conditions attached, is recognised but may continue only to the extent that it is not limited, prohibited or terminated by this Act. No licence is required to continue with an existing lawful water use until a responsible authority requires a person claiming such an entitlement to apply for a licence. If a licence is issued it becomes the source of authority for the water use. If a licence is not granted the use is no longer permissible.

32. Definition of existing lawful water use

(1) An existing lawful water use means a water use -

- (a) which has taken place at any time during a period of two years immediately before the Commencement date of this Act and which -
 - (i) was authorised by or under any law which was in force immediately before the Commencement date of this Act;
 - (ii) is a stream flow reduction activity contemplated in section 36 (1); or
 - (iii) is a controlled activity contemplated in section 37 (1); or
- (b) which has been declared an existing lawful water use under section 33.

[Sub-s. (1) substituted by s. 1 of Act 45/99]

(2) In the case of -

- (a) a stream flow reduction activity declared under section 36 (1); or
- (b) a controlled activity declared under section 38,

existing lawful water use means a water use which has taken place at any time during a period of two years immediately before the date of the declaration.

33. Declaration of water use as existing lawful water use

(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32 (1) (a), declared to be an existing lawful water use.

[Sub-s. (1) substituted by s. 2 of Act 45/99]

(Commencement date of sub-s. (1): 1 January 1999)

(2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32 (1) (a), to be an existing lawful water use.

[Sub-s. (2) substituted by s. 2 of Act 45/99]

(Commencement date of sub-s. (2): 1 January 1999)

(3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use -

(a) took place lawfully more than two years before the date of commencement of this Act and was discontinued for good reason; or

(b) had not yet taken place at any time before the Commencement date of this Act but -

(i) would have been lawful had it so taken place; and

(ii) steps towards effecting the use had been taken in good faith before the Commencement date of this Act.

[Sub-s. (3) substituted by s. 2 of Act 45/99]

(Commencement date of sub-s. (3): 1 January 1999)

(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

(Commencement date of sub-s. (4): 1 October 1999)

34. Authority to continue with existing lawful water use

(1) A person, or that person's successor in title, may continue with an existing lawful water use, subject to -

- (a) any existing conditions or obligations attaching to that use;
 - (b) its replacement by a licence in terms of this Act; or
 - (c) any other limitation or prohibition by or under this Act.
- (2) A responsible authority may, subject to any regulation made under section 26 (1) (c), require the registration of an existing lawful water use.

35. Verification of existing water uses

- (1) The responsible authority may, in order to verify the lawfulness or extent of an existing water use, by written notice require any person claiming an entitlement to that water use to apply for a verification of that use.
- (2) A notice under subsection (1) must -
- (a) have a suitable application form annexed to it;
 - (b) specify a date before which the application must be submitted;
 - (c) inform the person concerned that any entitlement to continue with the water use may lapse if an application is not made on or before the specified date; and
 - (d) be delivered personally or sent by registered mail to the person concerned.
- (3) A responsible authority -
- (a) may require the applicant, at the applicant's expense, to obtain and provide it with other information, in addition to the information contained in the application;
 - (b) may conduct its own investigation into the veracity and the lawfulness of the water use in question;
 - (c) may invite written comments from any person who has an interest in the matter; and
 - (d) must afford the applicant an opportunity to make representations on any aspect of the application.
- (4) A responsible authority may determine the extent and lawfulness of a water use pursuant to an application under this section, and such determination limits the extent of any existing lawful water use contemplated in section 32 (1).
- (5) No person who has been required to apply for verification under subsection (1) in respect of an existing lawful water use may exercise that water use -

- (a) after the closing date specified in the notice, if that person has not applied for verification; or
 - (b) after the verification application has been refused, if that person applied for verification.
- (6) A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

Part 4

Stream flow reduction activities

This Part allows the Minister, after public consultation, to regulate landbased activities which reduce stream flow, by declaring such activities to be stream flow reduction activities. Whether or not an activity is declared to be a stream flow reduction activity depends on various factors, such as the extent of stream flow reduction, its duration, and its impact on any relevant water resource and on other water users. The control of forestry for its impact on water resources, currently exercised in terms of the Forest Act, is now exercised under this Part.

36. Declaration of stream flow reduction activities

- (1) The following are stream flow reduction activities:
- (a) the use of land for afforestation which has been or is being established for commercial purposes; and
 - (b) an activity which has been declared as such under subsection (2).
- (2) The Minister may, by notice in the *Gazette*, in relation to a particular area specified in that notice, declare any activity (including the cultivation of any particular crop or other vegetation) to be a stream flow reduction activity if that activity is likely to reduce the availability of water in a watercourse to the Reserve, to meet international obligations, or to other water users significantly.
- (3) In making a declaration under subsection (2), the Minister must consider -
- (a) the extent to which the activity significantly reduces the water availability in the watercourse;
 - (b) the effect of the stream flow reduction on the water resource in terms of its class and the Reserve;
 - (c) the probable duration of the activity;

- (d) any national water resource strategy established under section 5; and
 - (e) any catchment management strategy established under section 8.
- (4) Before making a declaration under subsection (2), the Minister must -
- (a) publish a notice in the *Gazette* -
 - (i) setting out the activity proposed to be declared a stream flow reduction activity; and
 - (ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a) (ii).
- (5) Every notice published in terms of subsection (4) (a) must contain a schedule in which must be listed all stream flow reduction activities set out in subsection (1) and those which have, up to the date of the notice, been declared to be stream flow reduction activities under subsection (2).

Part 5

Controlled activities

This Part allows the Minister to regulate activities having a detrimental impact on water resources by declaring them to be controlled activities. Four such activities - irrigation using waste or water containing waste from certain sources, modification of atmospheric precipitation, altering the flow regime of a water resource as a result of power generation, and aquifer recharge using waste or water containing waste - are identified in the Act as controlled activities. Provision is made for the Minister to declare other controlled activities as the need arises, but in these cases public consultation is required. Following the identification or declaration of a controlled activity an authorisation for that particular category of activity is required under this Act.

37. Controlled activity

- (1) The following are controlled activities:
- (a) irrigation of any land with waste or water containing waste generated through any industrial activity or by a waterwork;

- (b) an activity aimed at the modification of atmospheric precipitation;
 - (c) a power generation activity which alters the flow regime of a water resource;
 - (d) intentional recharging of an aquifer with any waste or water containing waste; and
 - (e) an activity which has been declared as such under section 38.
- (2) No person may undertake a controlled activity unless such person is authorised to do so by or under this Act.

(Commencement date of s. 37: 1 October 1999)

38. Declaration of certain activities as controlled activities

- (1) The Minister may, by notice in the *Gazette*, in general or specifically, declare an activity to be a controlled activity.
- (2) Before declaring an activity to be a controlled activity the Minister must be satisfied that the activity in question is likely to impact detrimentally on a water resource.
- (3) Before making a declaration under subsection (1) the Minister -
- (a) must publish a notice in the *Gazette* -
 - (i) setting out the activity or category of activities proposed to be declared; and
 - (ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice; and
 - (b) may, in the case of a specific activity on a specific site, make the notice known by delivering or sending a copy to the owner or the person in control of the site in question, and to every organ of state which, and every person who, has an interest in the matter;
 - (c) must consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (d) must consider all comments received on or before the date specified in paragraph (a) (ii).
- (4) Every notice published in terms of subsection (1) must contain a schedule on which must be listed all controlled activities set out in section 37 (1) (a) to (d) and those which have, up to the date of the notice, been declared to be controlled activities under subsection (1).

(Commencement date of s. 38: 1 October 1999)

Part 6

General authorisations

This Part establishes a procedure to enable a responsible authority, after public consultation, to permit the use of water by publishing general authorisations in the *Gazette*. A general authorisation may be restricted to a particular water resource, a particular category of persons, a defined geographical area or a period of time, and requires conformity with other relevant laws. The use of water under a general authorisation does not require a licence until the general authorisation is revoked, in which case licensing will be necessary. A general authorisation does not replace or limit an entitlement to use water, such as an existing lawful water use or a licence, which a person may otherwise have under this Act.

39. General authorisations to use water

(1) A responsible authority may, subject to Schedule 1, by notice in the *Gazette* -

- (a) generally;
- (b) in relation to a specific water resource; or
- (c) within an area specified in the notice,

authorise all or any category of persons to use water, subject to any regulation made under section 26 and any conditions imposed under section 29.

(2) The notice must state the geographical area in respect of which the general authorisation will apply, and the date upon which the general authorisation will come into force, and may state the date on which the general authorisation will lapse.

(3) A water use may be authorised under subsection (1) on condition that the user obtains any permission or authority required by any other specified law.

(4) Before issuing a general authorisation, the responsible authority must -

- (a) publish a notice in the *Gazette* -
 - (i) setting out the proposed general authorisation; and
 - (ii) inviting written comments to be submitted on the proposed general authorisation, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the responsible authority considers to be appropriate; and

- (c) consider all comments received on or before the date specified in paragraph (a) (ii).
- (5) An authorisation to use water under this section does not replace or limit any entitlement to use water which a person may otherwise have under this Act.

Part 7

Individual applications for licences

This Part sets out the procedures which apply in all cases where a licence is required to use water, but where no general invitation to apply for licences has been issued under Part 8. Water users who are not required to license their use, but who wish to convert the use to licensed use, may also use the procedure set out in this Part, but the responsible authority may decline to grant a licence when the applicant is entitled to the use of water under an existing lawful use or by a general authorisation. In considering an application a responsible authority may require additional information from the applicant, and may also require the applicant to undertake an environmental or other assessment, which assessments may be subject to independent review.

40. Application for licence

- (1) A person who is required or wishes to obtain a licence to use water must apply to the relevant responsible authority for a licence.
- (2) Where a person has made an application for an authorisation to use water under another Act, and that application has not been finalised when this Act takes effect, the application must be regarded as being an application for a water use under this Act.
- (3) A responsible authority may charge a reasonable fee for processing a licence application, which may be waived in deserving cases.
- (4) A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.

(Commencement date of s. 40: 1 October 1999)

41. Procedure for licence applications

- (1) An application for a licence for water use must -
 - (a) be made in the form;
 - (b) contain the information; and

(c) be accompanied by the processing fee,

determined by the responsible authority.

(2) A responsible authority -

(a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant's expense, to obtain and provide it by a given date with -

(i) other information, in addition to the information contained in the application;

(ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quality; and

(iii) an independent review of the assessment furnished in terms of subparagraph (ii), by a person acceptable to the responsible authority;

(b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water resource;

(c) may invite written comments from any organ of state which or person who has an interest in the matter; and

(d) must afford the applicant an opportunity to make representations on any aspect of the licence application.

(3) A responsible authority may direct that any assessment under subsection (2)(a)(ii) must comply with the requirements contained in regulations made under sections 24(5) and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

[Subs. (3) substituted by s. 3 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

(4) A responsible authority may, at any stage of the application process, require the applicant -

(a) to give suitable notice in newspapers and other media -

(i) describing the licence applied for;

(ii) stating that written objections may be lodged against the application before a specified date, which must be not less than 60 days after the last publication of the notice;

(iii) giving an address where written objections must be lodged; and

NATIONAL WATER ACT 36 OF 1998

- (iv) containing such other particulars as the responsible authority may require;
- (b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and
- (c) to satisfy the responsible authority that the interests of any other person having an interest in the land will not be adversely affected.

(Commencement date of s. 41: 1 October 1999)

- (5) The Minister must align and integrate the process for consideration of a water use licence with the timeframes and processes applicable to applications for-
 - (a) licences, permits or rights for prospecting, exploration, mining and production in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); and
 - (b) environmental authorisations in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or any specific environmental management act.

[Subs. (5) added by s. 3 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

- (6) Notwithstanding the provisions of section 148, any applicant for a water use licence arising out of the integration process contemplated in subsection (5), who is aggrieved by a decision of the responsible authority, may lodge an appeal to the Minister against the decision.

[Subs. (6) added by s. 3 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

42. Reasons for decisions

After a responsible authority has reached a decision on a licence application, it must promptly -

- (a) notify the applicant and any person who has objected to the application; and
- (b) at the request of any person contemplated in paragraph (a), give written reasons for its decision.

(Commencement date of s. 42: 1 October 1999)

Part 8: Compulsory licences for water use in respect of specific resource

This Part establishes a procedure for a responsible authority to undertake compulsory licensing of any aspect of water use in respect of one or more water resources within a specific geographic area. It includes requirements for a responsible authority to prepare schedules for allocating quantities of water to existing and new users. The procedure is intended to be used in areas which are, or are soon likely to be, under "water stress" (for example, where the demands for water are approaching or exceed the available supply, where water quality problems are imminent or already exist, or where the water resource quality is under threat), or where it is necessary to review prevailing water use to achieve equity of access to water.

In such cases the responsible authority must publish a notice in the *Gazette* and other appropriate media, requiring people to apply for licences in the designated area. Applicants may be required to submit additional information, and may also be required to undertake an environmental or other assessment, which assessment may be subject to independent review.

In determining the quantities of water to be allocated to users, the responsible authority must consider all applications received, and draw up a schedule detailing how the available water will be allocated among the applicants. In drawing up an allocation schedule the responsible authority must comply with the plans, strategies and criteria set out elsewhere in the Act and must give special consideration to certain categories of applicants. A responsible authority need not allocate all the available water in a water resource, and may reserve some of the water for future needs. Provision is also made for any water still available after the requirements of the Reserve, international obligations and corrective action have been met to be allocated on the basis of public auction or tender. A system of objections and appeals in relation to proposed and preliminary allocation schedules ensures that licences may be issued only after the allocation schedule has been finalised.

Licences issued under this Part replace previous entitlements to any existing lawful water use by the applicant.

43. Compulsory licence applications

- (1) If it is desirable that water use in respect of one or more water resources within a specific geographic area be licensed -
 - (a) to achieve a fair allocation of water from a water resource in accordance with section 45 -
 - (i) which is under water stress; or
 - (ii) when it is necessary to review prevailing water use to achieve equity in allocations;

- (b) to promote beneficial use of water in the public interest;
- (c) to facilitate efficient management of the water resource; or
- (d) to protect water resource quality,

the responsible authority may issue a notice requiring persons to apply for licences for one or more types of water use contemplated in section 21.

- (2) A notice in terms of subsection (1) must -
 - (a) identify the water resource and the water use in question;
 - (b) state where licence application forms may be obtained;
 - (c) state the address to which licence applications must be submitted;
 - (d) state the closing date for licence applications;
 - (e) state the application fee; and
 - (f) contain such other information as the responsible authority considers appropriate.
- (3) A notice in terms of subsection (1) must be made known by publishing the notice in the *Gazette* at least 60 days before the closing date, giving suitable notice in newspapers and other media and taking other steps to bring the notice to the attention of interested persons.
- (4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

44. Late applications

A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

45. Proposed allocation schedules

- (1) A responsible authority must, after considering -
 - (a) all applications received in response to the publication of a notice in terms of section 43 (1);
 - (b) any further information or assessment obtained; and

(c) the factors contemplated in section 27,

prepare a proposed allocation schedule specifying how water from the water resource in question will be allocated.

(2) A proposed allocation schedule must, subject to subsection (3), reflect the quantity of water to be -

(a) assigned to the Reserve and any relevant international obligations;

(b) assigned to meet the requirements of existing licences;

(c) allocated to each of the applicants to whom licences ought to be issued in order to redress the results of past racial and gender discrimination in accordance with the constitutional mandate for water reform;

(d) allocated to each of the applicants exercising existing lawful water uses to whom the licensing authority determines that licences should be issued;

(e) allocated to each of the applicants, taking into account the factors set out in section 27; and

(f) allocated to every other applicant by public tender or auction, subject to any regulation made under section 26 (1) (n).

(3) A responsible authority is under no obligation to allocate all available water.

(4) After completing a proposed allocation schedule the responsible authority must publish a notice in the *Gazette* -

(a) containing a copy of the proposed schedule, or stating the address where it may be inspected;

(b) inviting written objections to be submitted on the proposed schedule, specifying an address to which the objections are to be submitted and specifying a date before which the objections are to be submitted, which date must be not less than 60 days after the date of publication of the notice; and

(c) must consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the responsible authority considers to be appropriate.

46. Preliminary allocation schedules

(1) After considering all objections received on the proposed allocation schedule on or before the date specified in the notice contemplated in section 45 (4), the responsible authority must prepare a preliminary allocation schedule and publish a notice in the *Gazette* -

- (a) containing a copy of the preliminary allocation schedule, or stating the address where it may be inspected; and
 - (b) stating that an appeal in respect of any unsuccessful objection to the preliminary allocation schedule may be made in accordance with Chapter 15.
- (2) If an appeal under subsection (1) (b) succeeds, the responsible authority must amend the preliminary allocation schedule as directed by the Water Tribunal.

47. Final allocation schedule

- (1) A preliminary allocation schedule becomes a final allocation schedule -
- (a)
 - (i) if no appeal is lodged within the time limit;
 - (ii) if it has been amended following every successful appeal; or
 - (iii) if every appeal lodged is dismissed; and
 - (b) on publication by the responsible authority of a notice in the *Gazette* -
 - (i) stating that a preliminary allocation schedule has become final; and
 - (ii) containing a copy of the final allocation schedule, or stating the address where it may be inspected.
- (2) A responsible authority must, as soon as reasonably practicable after a preliminary allocation schedule becomes final, issue licences according to the allocations provided for in it.

48. Licences replace previous entitlements

- (1) Any licence issued pursuant to an application contemplated in section 43 (1) replaces any existing lawful water use entitlement of that person in respect of the water use in question.
- (2) Notwithstanding the provisions of section 4, no person to whom a general notice to apply for a licence has been directed in terms of section 43 in respect of an existing lawful water use may exercise that water use -
- (a) after the closing date stated in the notice if that person did not apply for a licence; or
 - (b) after the licence application has been finally disposed of, if that person did apply for a licence.

Part 9

Review and renewal of licences, and amendment and substitution of conditions of licences

This Part deals with the review and renewal of licences, and the amendment and substitution of their conditions. Review of a licence is by the relevant responsible authority, at periods stipulated in the licence as part of a general review process.

A review of a licence may lead to the amendment or substitution of its conditions, but only if certain requirements are satisfied. If the amendment or substitution of conditions severely prejudices the economic viability of any undertaking in respect of which the licence was issued there is a claim for compensation. Minor amendments to licences (for instance, to correct clerical mistakes, or changes in format), and those agreed to by the licensee may be made outside of the review process. In addition, a licensee may apply to the responsible authority for the renewal or amendment of a licence before it expires. In considering such applications the responsible authority must again consider the matters dealt with in the initial application, and there are limitations to the new conditions to which the licence may be subjected.

49. Review and amendment of licences

- (1) A responsible authority may review a licence only at the time periods stipulated for that purpose in the licence.
- (2) On reviewing a licence, a responsible authority may amend any condition of the licence, other than the period thereof, if -
 - (a) it is necessary or desirable to prevent deterioration or further deterioration of the quality of the water resource;
 - (b) there is insufficient water in the water resource to accommodate all authorised water uses after allowing for the Reserve and international obligations; or
 - (c) it is necessary or desirable to accommodate demands brought about by changes in socio-economic circumstances, and it is in the public interest to meet those demands.
- (3) An amendment contemplated in subsection (2) may only be made if the conditions of other licences for similar water use from the same water resource in the same vicinity, all as determined by the responsible authority, have also been amended in an equitable manner through a general review process.
- (4) If an amendment of a licence condition on review severely prejudices the economic viability of any undertaking in respect of which the licence was issued, the provisions of section 22 (6) to (10) apply.

- (5) A responsible authority must afford the licensee an opportunity to be heard before amending any licence condition on review.

50. Formal amendment of licences

- (1) A responsible authority may amend or substitute a licence condition -
- (a) if the licensee or successor in title has consented to or requested the amendment or substitution;
 - (b) to reflect one or more successors in title as new licensees; and
 - (c) to change the description of the property to which the licence applies, if the property described in the licence has been subdivided or consolidated with other property.
- (2) The responsible authority may require the licensee -
- (a) to obtain the written consent of any affected person before amending or substituting the licence; or
 - (b) to make a formal application for the amendment or substitution in terms of section 52;
- (3) A responsible authority may only amend or substitute a licence condition under this section if it is satisfied that -
- (a) the amendment or substitution will not have a significant detrimental impact on the water resource; and
 - (b) the interests of any other person are not adversely affected, unless that person has consented thereto.

51. Successors in title

- (1) A responsible authority may, after giving all parties an opportunity to be heard, adjudicate upon conflicting claims between a licensee and a successor in title, or between different successors in title, in respect of claims for the amendment or substitution of licence conditions.
- (2) A successor in title of any person to whom a licence to use water has been issued -
- (a) may, subject to the conditions of the relevant licence and paragraph (b), continue with the water use; and
 - (b) must promptly inform the responsible authority of the succession, for the substitution of the name of the licensee, for the remainder of the term.

52. Procedure for earlier renewal or amendment of licences

- (1) A licensee may, before the expiry date of a licence, apply to the responsible authority for the renewal or amendment of the licence.
- (2) Unless an application for the renewal or amendment of a licence is made in terms of section 50, it must -
 - (a) be made in such form, contain such information and be accompanied by such processing fee as may be determined by the responsible authority; and
 - (b) be dealt with according to the procedure as set out in section 41.
- (3) In considering an application to amend or renew a licence, the responsible authority must have regard to the same matters which it was required to consider when deciding the initial application for that licence.
- (4) A responsible authority may amend any condition of a licence by agreement with the licensee.

Part 10

Contravention of or failure to comply with authorisations

This Part deals with the consequences of contraventions of licence conditions. These range from the responsible authority requiring the licensee to take remedial action, failing which it may take the necessary action and recover reasonable costs from that person, to the suspension or withdrawal of a licence. Where a licensee offers to surrender a licence the responsible authority is obliged to accept the surrender and cancel the licence unless there is good reason for refusal.

53. Rectification of contraventions

- (1) A responsible authority may, by notice in writing to a person who contravenes -
 - (a) any provision of this Chapter;
 - (b) a requirement set or directive given by the responsible authority under this Chapter; or
 - (c) a condition which applies to any authority to use water,

direct that person, or the owner of the property in relation to which the contravention occurs, to take any action specified in the notice to rectify the contravention, within the time (being not less than two working days) specified in the notice or any other longer time allowed by the responsible authority.

- (2) If the action is not taken within the time specified in the notice, or any longer time allowed, the responsible authority may -
 - (a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person on whom the notice was served; or
 - (b) apply to a competent court for appropriate relief.

54. Suspension or withdrawal of entitlements to use water

- (1) Subject to subsections (3) and (4), a responsible authority may by notice to any person entitled to use water under this Act suspend or withdraw the entitlement if the person fails -
 - (a) to comply with any condition of the entitlement;
 - (b) to comply with this Act; or
 - (c) to pay a charge which is payable in terms of Chapter 5.
- (2) An entitlement may be suspended under subsection (1) -
 - (a) for the period specified in the notice of suspension; or
 - (b) until the responsible authority is satisfied that the person concerned has rectified the failure which led to the suspension.
- (3) A responsible authority may only suspend or withdraw an entitlement under subsection (1) if the responsible authority has directed the person concerned to take specified steps to rectify the failure within a specified period, and the person concerned has failed to do so to the satisfaction of the responsible authority.
- (4) The person concerned must be given an opportunity to make representations, within a reasonable period, on any proposed suspension or withdrawal of an entitlement to use water.
- (5) A responsible authority may, for good reason, reinstate an entitlement withdrawn under subsection (1).

55. Surrender of licence

- (1) A licensee may offer to surrender any licence issued to that licensee under this Chapter, whereupon, unless there is good reason not to do so, the responsible authority must accept the surrender and cancel the licence.
- (2) A responsible authority may refund to a licensee any charge or part of any charge paid in respect of a licence surrendered under subsection (1).

CHAPTER 5

FINANCIAL PROVISIONS

This Chapter deals with the measures to finance the provision of water resource management services as well as financial and economic measures to support the implementation of strategies aimed at water resource protection, conservation of water and the beneficial use of water.

Part 1

Water use charges

In terms of Part 1 the Minister may from time to time, after public consultation, establish a pricing strategy which may differentiate among geographical areas, categories of water users or individual water users. The achievement of social equity is one of the considerations in setting differentiated charges. Water use charges are to be used to fund the direct and related costs of water resource management, development and use, and may also be used to achieve an equitable and efficient allocation of water. In addition, they may also be used to ensure compliance with prescribed standards and water management practices according to the user pays and polluter pays principles. Water use charges will be used as a means of encouraging reduction in waste, and provision is made for incentives for effective and efficient water use. Non-payment of water use charges will attract penalties, including the possible restriction or suspension of water supply from a waterwork or of an authorisation to use water.

56. Pricing strategy for water use charges

- (1) The Minister may, with the concurrence of the Ministry of Finance, from time to time by notice in the *Gazette*, establish a pricing strategy for charges for any water use within the framework of existing relevant government policy.
- (2) The pricing strategy may contain a strategy for setting water use charges -
 - (a) for funding water resource management, including the related costs of -
 - (i) gathering information;
 - (ii) monitoring water resources and their use;
 - (iii) controlling water resources;
 - (iv) water resource protection, including the discharge of waste and the protection of the Reserve; and
 - (v) water conservation;

- (b) for funding water resource development and use of waterworks, including -
 - (i) the costs of investigation and planning;
 - (ii) the costs of design and construction;
 - (iii) prefinancing of development;
 - (iv) the costs of operation and maintenance of waterworks;
 - (v) a return on assets; and
 - (vi) the costs of water distribution; and
 - (c) for achieving the equitable and efficient allocation of water.
- (3) The pricing strategy may -
- (a) differentiate on an equitable basis between -
 - (i) different types of geographic areas;
 - (ii) different categories of water use; and
 - (iii) different water users;
 - (b) provide for charges to be paid by either -
 - (i) an appropriate water management institution; or
 - (ii) consumers directly;
 - (c) provide for the basis of establishing charges;
 - (d) provide for a rebate for water returned to a water resource; and
 - (e) provide on an equitable basis for some elements of the charges to be waived in respect of specific users for a specified period of time.
- (4) The pricing strategy may differentiate under subsection (3) (a) -
- (a) in respect of different geographic areas, on the basis of -
 - (i) socio-economic aspects within the area in question;

NATIONAL WATER ACT 36 OF 1998

- (ii) the physical attributes of each area; and
- (iii) the demographic attributes of each area;
- (b) in respect of different types of water uses, on the basis of -
 - (i) the manner in which the water is taken, supplied, discharged or disposed of;
 - (ii) whether the use is consumptive or nonconsumptive;
 - (iii) the assurance and reliability of supply and water quality;
 - (iv) the effect of return flows on a water resource;
 - (v) the extent of the benefit to be derived from the development of a new water resource;
 - (vi) the class and resource quality objectives of the water resource in question; and
 - (vii) the required quality of the water to be used; and
- (c) in respect of different water users, on the basis of -
 - (i) the extent of their water use;
 - (ii) the quantity of water returned by them to a water resource;
 - (iii) their economic circumstances; and
 - (iv) the statistical probability of the supply of water to them.
- (5) The pricing strategy may provide for a differential rate for waste discharges, taking into account -
 - (a) the characteristics of the waste discharged;
 - (b) the amount and quality of the waste discharged;
 - (c) the nature and extent of the impact on a water resource caused by the waste discharged;
 - (d) the extent of permitted deviation from prescribed waste standards or management practices; and
 - (e) the required extent and nature of monitoring the water use.

- (6) In setting a pricing strategy for water use charges, the Minister -
- (a) must consider the class and resource quality objectives for different water resources;
 - (b) may consider incentives and disincentives -
 - (i) to promote the efficient use and beneficial use of water;
 - (ii) to reduce detrimental impacts on water resources; and
 - (iii) to prevent the waste of water; and
 - (c) must consider measures necessary to support the establishment of tariffs by water services authorities in terms of section 10 of the Water Services Act, 1997 (Act No. 108 of 1997), and the use of lifeline tariffs and progressive block tariffs.
- (7) Before setting a pricing strategy for water use charges under subsection (1), the Minister must -
- (a) publish a notice in the *Gazette* -
 - (i) setting out the proposed pricing strategy; and
 - (ii) inviting written comments to be submitted on the proposed strategy, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 90 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in the notice.

(Commencement date of s. 56: 1 October 1999)

57. Application of pricing strategy

- (1) Water use charges -
- (a) may be made -
 - (i) within a specific water management area; or
 - (ii) on a national or regional basis; and

- (b) must be made in accordance with the pricing strategy for water use charges set by the Minister.
- (2) Charges made within a specific water management area may be made by and are payable to the relevant water management institution.
- (3) Charges made on a national or regional basis -
 - (a) may be made by the Minister and are payable to the state; and
 - (b) may be apportioned between different water management areas according to the extent of the specific benefits which each water management area derives or will derive from the water uses for which the charges are made.
- (4) Any person liable to pay water charges to a water services institution as defined in the Water Services Act, 1997 (Act No. 108 of 1997), for water supply services or sanitation services may not be charged for those services in terms of this Act.
- (5) No charge made under this Act may be of such a nature as to constitute the imposition of a tax, levy or duty.

(Commencement date of s. 57: 1 October 1999)

58. Recovery of water use charges

- (1) The Minister may direct any water management institution to recover any charges for water use made by the Minister under section 57 (1) (a) from water users within its water management area or area of operation, as the case may be.
- (2) A water management institution which has been directed to recover any such charges may retain such portion of all charges recovered in order to recompense it for expenses and losses, as the Minister may allow.
- (3) A water management institution which has been directed to recover any such charges -
 - (a) is jointly and severally liable to the state with the water users concerned; and
 - (b) may recover any amounts paid by it in terms of paragraph (a) from the water users concerned.

(Commencement date of s. 58: 1 October 1999)

59. Liability for water use charges

- (1) Water use charges contemplated in this Chapter -

- (a) may only be made in respect of a water use to which a person is voluntarily committed; and
 - (b) must bear a direct relationship to the water use in question.
- (2) Any person registered in terms of a regulation under section 26 or holding a licence to use water must pay all charges imposed under section 57 in respect of that water use.
- (3) If a water use charge is not paid -
- (a) interest is payable during the period of default at a rate determined from time to time by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*; and
 - (b) the supply of water to the water user from a waterwork or the authorisation to use water may be restricted or suspended until the charges, together with interest, have been paid.
- (4) A person must be given an opportunity to make representations within a reasonable period on any proposed restriction or suspension before the restriction or suspension is imposed.
- (5) Where there is a fixed charge, a restriction or suspension does not relieve a person of the obligation to pay the charges due for the period of the restriction or suspension.
- (6) A person whose water use is restricted or suspended for any lawful reason may not later claim the water to which that person would otherwise have been entitled during the period of restriction or suspension.

(Commencement date of s. 59: 1 October 1999)

60. Water use charges are charges on land

- (1) A charge made in terms of section 57 (1), including any interest, is a charge on the land to which the water use relates and is recoverable from the current owner of the land without releasing any other person who may be liable for the charge.
- (2) The Minister or relevant water management institution must -
- (a) on written application by any person; and
 - (b) within 30 days of the application,

issue a certificate stating the amount of any unpaid water charges and any interest due in respect of any land.

- (3) If a certificate is not issued within the period of 30 days, the provisions of subsection (1) cease to apply to that property, notwithstanding section 66.

(Commencement date of s. 60: 1 October 1999)

Part 2

Financial assistance

Part 2 deals with financial assistance, which may be granted once certain considerations are taken into account.

61. Financial assistance by Minister

- (1) The Minister may, subject to a regulation made under section 62, give financial assistance to any person for the purposes of this Act, including assistance for making licence applications, in the form of grants, loans or subsidies, which may be made subject to such conditions as the Minister may determine.
- (2) The financial assistance must be from funds -
- (a) appropriated by Parliament; or
 - (b) which may under this Act or otherwise lawfully be used for the purposes in question.
- (3) Before giving any financial assistance, the Minister must take into account all relevant considerations, including -
- (a) the need for equity;
 - (b) the need for transparency;
 - (c) the need for redressing the results of past racial and gender discrimination;
 - (d) the purpose of the financial assistance;
 - (e) the financial position of the recipient; and
 - (f) the need for water resource protection.
- (4) A person who wilfully fails to comply with any obligations imposed by this Act is not eligible for financial assistance under this Act.

62. Regulations on financial assistance

The Minister may make regulations concerning -

- (a) the eligibility for financial assistance;
- (b) the manner in which financial assistance must be applied for; and
- (c) terms and conditions applicable to any financial assistance granted.

CHAPTER 6

GENERAL POWERS AND DUTIES OF MINISTER AND DIRECTORGENERAL

Part 1

Delegations, directives, expropriation, condonation and additional powers

Part 1 of this Chapter sets out various powers and duties of the Minister which are of a general nature, such as the powers of delegation and expropriation, and intervention in litigation. More specific powers and duties are dealt with elsewhere in the Act.

63. Delegation of powers and duties by Minister

- (1) The Minister may, in writing and subject to conditions, delegate a power and duty vested in the Minister in terms of this Act to -
 - (a) an official of the Department by name;
 - (b) the holder of an office in the Department;
 - (c) a water management institution;
 - (d) an advisory committee established under section 99; or
 - (e) a water board as defined in section 1 of the Water Services Act, 1997 (Act No. 108 of 1997).
- (2) The Minister may not delegate the power -
 - (a) to make a regulation;
 - (b) to authorise a water management institution to expropriate under section 64 (1);
 - (c) to appoint a member of the governing board of a catchment management agency; or
 - (d) to appoint a member of the Water Tribunal.

- (3) The Minister may, in writing and subject to conditions, permit a person to whom a power or duty has been delegated to delegate that function to another person.
- (4) The Minister may give a directive to the Director-General in relation to the exercise of any of the Director-General's powers or performance of any of the Director-General's duties, including any power delegated to the Director-General.
- (5) The Director-General must give effect to a directive in terms of subsection (4).

64. Expropriation of property

- (1) The Minister, or a water management institution authorised by the Minister in writing, may expropriate any property for any purpose contemplated in this Act, if that purpose is a public purpose or is in the public interest.
- (2) Subject to this Act, the Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations in terms of this Act.
- (3) Where the Minister expropriates any property under this Act, any reference to "Minister" in the Expropriation Act, 1975, must be construed as being a reference to the Minister.
- (4) Where any water management institution expropriates property under this Act, any reference to "Minister" and "State" in the Expropriation Act, 1975, must be regarded as being a reference to that water management institution.

65. Expropriation for rehabilitation and other remedial work

- (1) If a person who is required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to that land in order to effect the rehabilitation or remedial work, but is unable to acquire access on reasonable terms, the Minister may -
 - (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and
 - (b) recover all costs incurred in connection with the expropriation, including any compensation payable, from the person for whose benefit the expropriation was effected.
- (2) Where a servitude of abutment, aqueduct or submersion is expropriated under this section, the Minister or water management institution responsible for the expropriation has the same rights as those vesting in the holder of a servitude under section 128.

66. Condonation of failure to comply with time period

The Minister may, in exceptional circumstances and for a good reason, extend a time period or condone a failure to comply with a time period.

67. Dispensing with certain requirements of Act

- (1) In an emergency situation, or in cases of extreme urgency involving the safety of humans or property or the protection of a water resource or the environment, the Minister may -
 - (a) dispense with the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument contemplated in section 158 (1) is made or issued;
 - (b) dispense with notice periods or time limits required by or under this Act;
 - (c) authorise a water management institution to dispense with -
 - (i) the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument is made or issued; and
 - (ii) notice periods or time limits required by or under this Act.
- (2) Anything done under subsection (1) -
 - (a) must be withdrawn or repealed within a maximum period of two years after the emergency situation or the urgency ceases to exist; and
 - (b) must be mentioned in the Minister's annual report to Parliament.

68. Intervention in litigation

The Minister may intervene in litigation before a court or in a hearing before the Water Tribunal with regard to any matter contemplated in this Act.

Part 2: General provisions regarding regulations

Part 2 requires the Minister to consult with the public when making regulations under this Act, and also to submit regulations for scrutiny by the National Assembly and by the National Council of Provinces. If the National Assembly rejects a regulation it must be repealed or amended.

69. Making of regulations

- (1) The Minister must, before making any regulations under this Act -

- (a) publish a notice in the *Gazette* -
 - (i) setting out the draft regulations; and
 - (ii) inviting written comments to be submitted on the proposed regulations, specifying an address to which and a date before which the comments must be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a) (ii); and
 - (d) on request by the National Assembly or the National Council of Provinces or a committee of the National Assembly or the National Council of Provinces report the extent to which a specific comment has been taken into account, or if a comment was not taken into account, provide the reason why it was not taken into account.
- (2) Any regulation made under this Act may provide that a contravention of or failure to comply with a regulation is an offence and that any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding 5 years.

70. Consideration of regulations.

- (1) The Minister must, within 30 days after making any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces for consideration.
- (2) In considering regulations -
 - (a) tabled in the National Assembly, a committee of the National Assembly must consider and report to the National Assembly; and
 - (b) tabled in the National Council of Provinces, a committee of the National Council of Provinces must consider and report to the National Council of Provinces,

whether the regulations -

- (i) are consistent with the purposes of this Act;
- (ii) are within the powers conferred by this Act;
- (iii) are consistent with the Constitution; and

- (iv) require clarification.
- (3) The National Council of Provinces may reject regulations tabled before the National Council of Provinces in terms of subsection (1) within 14 days after the date on which the regulations were so tabled, and should the National Council of Provinces reject any regulation, the rejection must be referred to the National Assembly for consideration.
- (4) The National Assembly may, not later than the twentieth sitting day of the National Assembly after the date on which the regulations were tabled and after considering any rejection of a regulation by the National Council of Provinces, reject those regulations.
- (5) If the National Assembly or the National Council of Provinces rejects any regulations, it must state its reasons.

71. Rejected regulations

- (1) The Minister must, within 30 days after being informed in writing that the National Assembly has rejected any regulations, repeal or amend those regulations so as to address the matters raised by the National Assembly.
- (2) Any regulations rejected by the National Assembly remain in force until repealed or amended.

Part 3

Powers relating to catchment management agencies

The Minister has the responsibility to manage and authorise the use of the nation's water resources. This means that the Minister fulfils the functions of a catchment management agency in a water management area for which no catchment management agency is established, or where such an agency has been established but is not functional. The Minister may dispense with certain requirements of this Act for as long as is necessary to deal with an urgent situation or an emergency.

72. Powers and duties of catchment management agencies vest in Minister in certain circumstances

- (1) In areas for which a catchment management agency is not established or, if established, is not functional, all powers and duties of a catchment management agency, including those powers and duties described in sections 79 and 80 and in Schedule 3, vest in the Minister.
- (2) In areas for which a catchment management agency is established, those powers and duties described in Schedule 3 which have not been assigned by the Minister to the catchment management agency, vest in the Minister.

73. Assignment of powers and duties to catchment management agencies

- (1) The Minister may, after consultation with the catchment management agency concerned, by notice in the *Gazette*, assign to that catchment management agency -
 - (a) a power or duty of a responsible authority; and
 - (b) any power or duty listed in Schedule 3.
- (2) In assigning any power or duty under subsection (1), the Minister may -
 - (a) limit the area within which an assigned power may be exercised or duty may be performed; and
 - (b) attach conditions to that assignment.
- (3) Before assigning a power or duty to a catchment management agency under subsection (1), the Minister must consider -
 - (a) the capacity of the catchment management agency to exercise the power or perform the duty; and
 - (b) the desirability of assigning that power or duty.
- (4) The Minister must promote the management of water resources at the catchment management level by assigning powers and duties to catchment management agencies when it is desirable to do so.

74. Directives to water management institutions

- (1) The Minister may give a directive to a water management institution in relation to the exercise of any of the institution's powers or the performance of any of the institution's duties, including any power or duty assigned or delegated to that institution.
- (2) The Minister must give a water management institution not less than 14 days' notice of the Minister's intention to give a directive under subsection (1) if it relates to any assigned power or duty, and must allow the institution an opportunity to comment.
- (3) Every directive, or a summary thereof, given to a water management institution by the Minister and which relates to an assigned power or duty -
 - (a) must be published by the Minister in the *Gazette*; and
 - (b) must be included in the annual report of the institution.

- (4) A failure to comply with subsection (3) does not affect the validity of the directive.
- (5) A water management institution must give effect to a directive given to it by the Minister under subsection (1).

Part 4

Powers of Director-General

75. Delegation of powers by Director-General

The Director-General may, for the purposes of this Act, in writing and subject to conditions, delegate a power, including a power granted or delegated to the Director-General under this Act, to -

- (a) an official of the Department by name;
- (b) the holder of an office in the Department; or
- (c) a water management institution.

76. Appointment of persons on contract

- (1) The Director-General may, when necessary, appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).
- (2) Appointments made under subsection (1) must be limited to persons to perform duties at sites where the Department -
 - (a) is engaged in actual construction or investigatory work; or
 - (b) is associated with specific projects relating to actual construction or investigatory work.
- (3) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees.
- (4) Such employees shall be remunerated from money appropriated for that purpose by Parliament.

CHAPTER 7

CATCHMENT MANAGEMENT AGENCIES

This Chapter provides for the progressive establishment by the Minister of catchment management agencies. The purpose of establishing these agencies is to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy established in terms of Chapter 2. Whilst the ultimate aim is to establish catchment management agencies for all water management areas, the Minister acts as the catchment management agency where one has not been established. Where the necessary capacity does not exist to establish a catchment management agency, an advisory committee may be appointed under Chapter 9 to develop the necessary capacity as a first step towards establishing an agency.

Part 1

Establishment and powers of catchment management agencies

Under Part 1 a catchment management agency may be established for a specific water management area, after public consultation, on the initiative of the community and stakeholders concerned. In the absence of such a proposal the Minister may establish a catchment management agency on the Minister's own initiative. The provisions of Schedule 4, on institutional and management planning, apply to a catchment management agency.

77. Proposal for establishment of catchment management agency

- (1) A proposal to establish a catchment management agency must contain at least -
- (a) a proposed name and a description of the proposed water management area of the agency;
 - (b) a description of the significant water resources in the proposed water management area, and information about the existing protection, use, development, conservation, management and control of those resources;
 - (c) the proposed functions of the catchment management agency, including functions to be assigned and delegated to it;
 - (d) how the proposed catchment management agency will be funded;
 - (e) the feasibility of the proposed catchment management agency in respect of technical, financial and administrative matters; and
 - (f) an indication whether there has been consultation in developing the proposal and the results of the consultation.

- (2) The Director-General may assist a person to develop such a proposal.

78. Procedure for establishment of catchment management agencies

- (1) The Minister may, subject to section 6 (1) (c), on his or her own initiative or after receiving a proposal containing the information required in terms of section 77 (1), by notice in the Gazette -

- (a) establish a catchment management agency, give it a name and identify and determine its water management area; or
- (b) amend the name or water management area of an established catchment management agency.

- (2) The Minister may -

- (a) require a person who has submitted a proposal contemplated in subsection (1), to provide the Minister with information additional to that required by section 77 (1); and
- (b) instruct the Director-General to conduct an investigation regarding -
 - (i) the establishment of a catchment management agency; or
 - (ii) a proposal submitted in terms of subsection (1).

- (3) Before the establishment of a catchment management agency the Minister must -

- (a) publish a notice in the *Gazette* -
 - (i) setting out the proposed establishment of the catchment management agency, the proposed name and the proposed water management area; and
 - (ii) inviting written comments to be submitted on the proposal specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a) (ii).

- (4) If the Minister wants to amend the name of a catchment management agency or the water management area of a catchment management agency, the procedure set out in subsection (3) must be followed with any necessary changes: Provided that where an

amendment does not affect the rights of any person the procedure set out in subsection (3) need not be followed.

79. General powers and duties of catchment management agencies

(1) A catchment management agency is a body corporate, and has the powers of a natural person of full capacity, except those powers which -

- (a) by nature can only attach to natural persons; or
- (b) are inconsistent with this Act.

(2) Schedule 4 applies to a catchment management agency, its governing board and committees and the members of the board and committees.

(3) A catchment management agency may perform -

- (a) any of its functions; or
- (b) any function which is reasonably incidental to any of its functions,

outside its water management area, if this does not -

- (i) limit its capacity to perform its functions in its water management area; or
- (ii) detrimentally affect another water management institution.

(4) In performing its functions a catchment management agency must -

- (a) be mindful of the constitutional imperative to redress the results of past racial and gender discrimination and to achieve equitable access for all to the water resources under its control;
- (b) strive towards achieving cooperation and consensus in managing the water resources under its control; and
- (c) act prudently in financial matters.

80. Initial functions of catchment management agencies

Subject to Chapter 2 and section 79, upon the establishment of a catchment management agency, the initial functions of a catchment management agency are -

- (a) to investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its water management area;

- (b) to develop a catchment management strategy;
- (c) to co-ordinate the related activities of water users and of the water management institutions within its water management area;
- (d) to promote the co-ordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act, 1997 (Act No. 108 of 1997); and
- (e) to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.

Part 2

Governing board of catchment management agencies

Part 2 describes the appointment of members of the governing board of a catchment management agency. The board of a catchment management agency will be constituted in such a way that interests of the various stakeholders are represented or reflected in a balanced manner, and the necessary expertise to operate effectively is provided. Members of the governing board can be elected or nominated by the different water user groups for appointment by the Minister, and the Minister may of his or her own accord appoint further members. The Minister may also remove board members for good reason.

81. Appointment of governing board of catchment management agency

- (1) The members of a governing board of a catchment management agency must be appointed by the Minister who, in making such appointment, must do so with the object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups.
- (2) Notwithstanding subsections (3) to (9) the Minister must, from time to time, determine the extent to which relevant local governments should be represented on the governing board of each catchment management agency.
- (3) Before appointing members to the governing board, the Minister must establish an advisory committee contemplated in Chapter 9, to recommend to the Minister -
 - (a) which organs of state and bodies representing different sectors and other interests within the water management area of the catchment management agency should be represented or reflected on the governing board; and
 - (b) the number of persons which each of them should be invited to nominate.
- (4) The committee must consult with the relevant organs of state and interest groups before making its recommendations.

- (5) After receiving the committee's recommendations, the Minister must decide which organs of state and bodies will be invited to nominate representatives for appointment to the governing board, and the number of representatives each may nominate.
- (6) The Minister's decision must be communicated to the organs of state and bodies concerned and the Minister must take the necessary steps to obtain nominations from them by a date specified by the Minister.
- (7) The Minister must appoint the persons nominated by the organs of state and the bodies concerned in accordance with the invitation, unless -
 - (a) any such person is not a fit and proper person to serve on the governing board; or
 - (b) any such organ of state or body has not followed its own internal procedures in making the nomination.
- (8) If the Minister does not appoint a nominee, the Minister must -
 - (a) inform the organ of state or body concerned and state the reasons for not appointing that nominee; and
 - (b) invite a further nomination from that organ of state or body.
- (9) If one or more nominations are still outstanding on the date specified under subsection (6), the Minister may appoint members of the board and fill any vacancy later.
- (10) After appointing members to the board the Minister may appoint additional members selected by the Minister in order to -
 - (a) represent or reflect the interests identified by the advisory committee;
 - (b) achieve sufficient gender representation;
 - (c) achieve sufficient demographic representation;
 - (d) achieve representation of the Department;
 - (e) achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to water; and
 - (f) obtain the expertise necessary for the efficient exercise of the board's, powers and performance of its duties.
- (11) A member must be appointed for a specified term of office.

- (12) The Minister may extend the term of office of a member.
- (13) If the term of office of a member expires before the first meeting of a new board takes place, the existing member remains in office until that first meeting takes place.
- (14) A member nominated for appointment to the board by an organ of state or body is accountable to that organ of state or body.

82. Chairperson, deputy chairperson, chief executive officer and committees of catchment management agency

- (1) The Minister must convene the first meeting of the governing board of a catchment management agency, which must be chaired by an official of the Department or a member of the committee.
- (2) At the first meeting of the governing board, the members may recommend one of them for appointment as chairperson and another as deputy chairperson.
- (3) The Minister must -
 - (a) with due regard to any recommendation made by the governing board at its first meeting, appoint one of the members as chairperson; and
 - (b) appoint any other member as deputy chairperson.
- (4) The chief executive officer provided for in Schedule 4 may be a member of the governing board, but may not be its chairperson or deputy chairperson.
- (5) A catchment management agency may establish committees, including an executive committee and consultative bodies, to perform any of its functions within a particular area or generally or to advise it, and must determine how they must function.

83. Removal of members from governing board

- (1) The Minister may remove a member from a governing board, or remove the chairperson or deputy chairperson from office, if -
 - (a) there is good reason for doing so;
 - (b) the person concerned has had an opportunity of making representations to the Minister; and
 - (c) the Minister has consulted with the governing board.
- (2) The Minister must remove a member nominated by an organ of state or body from a governing board if that organ of state or body requests the Minister to do so.

- (3) If a person ceases for any reason to be a member of a governing board before that person's term of office expires, the Minister may, for the remainder of the term of office -
- (a) if that person was nominated by any organ of state or body, appoint another person nominated by that organ or body; or
 - (b) if that person was selected by the Minister, appoint another person.

Part 3

Operation of catchment management agencies

Part 3 deals with the functions and operation of catchment management agencies. Initial functions, dealt with in Part 2, include the investigation of and advice on water resources, the co-ordination of the related activities of other water management institutions within its water management area, the development of a catchment management strategy and the promotion of community participation in water resource management within its water management area. Additional powers and duties described in Schedule 3 may be assigned or delegated to agencies such as to establish water use rules and management systems, to direct users to terminate illegal uses of water, and to temporarily limit the use of water during periods of shortage.

A catchment management agency may be financed by the state from water use charges made in its water management area or from any other source.

84. Funding of catchment management agencies

- (1) A catchment management agency may raise any funds required by it for the purpose of exercising any of its powers and carrying out any of its duties in terms of this Act.
- (2) A catchment management agency must be funded by -
- (a) money appropriated by Parliament;
 - (b) water use charges; and
 - (c) money obtained from any other lawful source for the purpose of exercising its powers and carrying out its duties in terms of this Act.

85. Documents relating to litigation

A catchment management agency must provide the Director-General with copies of all pleadings, affidavits and other documents in the possession of the catchment management agency relating to any proceedings instituted against that catchment management agency.

86. Delegation of powers by catchment management agency

- (1) Subject to subsections (2) and (3), a catchment management agency may delegate any power to -
 - (a) a member of its governing board;
 - (b) an employee of any water management institution (including itself), by name, or to the holder of an office in that institution; or
 - (c) any committee established by the catchment management agency which consists only of members of the governing board or employees of the catchment management agency; and
 - (d) any other person or body only with the written consent of the Minister.
- (2) A catchment management agency may not delegate -
 - (a) the power of delegation; or
 - (b) any power to make water use charges.
- (3) A catchment management agency may only delegate a power to authorise the use of water, if this power is delegated to a committee consisting of three or more members of its governing board.

Part 4

Intervention, disestablishment or change of water management areas of catchment management agencies

Part 4 enables the Minister to disestablish a catchment management agency or make changes to its water management area, for reasons which include the need to reorganise water management institutions for more effective water resource management. An agency may also be disestablished if it does not operate effectively.

87. Intervention by Minister

- (1) If a catchment management agency -
 - (a) is in financial difficulties or is being otherwise mismanaged;
 - (b) has acted unfairly or in a discriminatory or inequitable way towards any person within its water management area;

- (c) has failed to comply with any directive given by the Minister under this Act;
- (d) has obstructed the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act;
- (e) is unable to exercise its powers or perform its duties effectively due to dissension among the members of the board or water users within its water management area;
- (f) has failed to comply with this Act; or
- (g) has become redundant or ineffective,

the Minister may -

- (i) direct the catchment management agency to take any action specified by the Minister; and
- (ii) withhold any financial assistance which might otherwise be available to the catchment management agency, until the catchment management agency has complied with such directive.

(2) A directive contemplated in subsection (1) (i) must state -

- (a) the nature of the deficiency;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which those steps must be taken.

(3) If the catchment management agency fails to remedy the situation within the given period, the Minister may -

- (a) after having given that catchment management agency a reasonable opportunity to be heard; and
- (b) after having afforded the catchment management agency a hearing on any submissions received,

take over the relevant power or duty of the catchment management agency.

(4) If the Minister takes over a power or duty of a catchment management agency -

- (a) the Minister may do anything which the catchment management agency might otherwise be empowered or required to do by or under this Act, to the exclusion of the catchment management agency;

- (b) the board of the catchment management agency may not, while the Minister is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;
- (c) an employee or a contractor of the catchment management agency must comply with a directive given by the Minister;
- (d) as soon as the Minister is satisfied that the catchment management agency is once more able to exercise its powers or perform its duties effectively, the Minister must cease exercising any such powers and performing any such duties; and
- (e) the Minister may recover from the catchment management agency all reasonable costs incurred, including any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister, or any person under the control of the Minister.

88. Disestablishment of catchment management agency

- (1) The Minister may, by notice in the *Gazette*, disestablish a catchment management agency if it is desirable -
 - (a) for purposes of reorganising water management institutions in that area in the interests of effective water resource management;
 - (b) because the catchment management agency cannot or does not operate effectively;
or
 - (c) because there is no longer a need for the catchment management agency.
- (2) Before disestablishing a catchment management agency the Minister must -
 - (a) publish a notice in the *Gazette* -
 - (i) stating the intention to disestablish the catchment management agency and the reasons therefor; and
 - (ii) inviting written comments on the proposed disestablishment and giving a specified address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the specified date.

89. Transfer of assets and liabilities after change of water management area or disestablishment

- (1) If the Minister changes the water management area of a catchment management agency under section 78 or disestablishes a catchment management agency under section 88, the Minister may direct the catchment management agency to transfer some or all of its assets and liabilities to another water management institution.
- (2) A catchment management agency must do everything in its power to give effect to a directive under subsection (1).
- (3) In issuing a directive under subsection (1) the Minister must consider -
 - (a) the interests of creditors and users of water; and
 - (b) any financial contributions directly or indirectly made by the users of water resources towards the infrastructure of the catchment management agency.
- (4) Where a catchment management agency is disestablished and its assets and liabilities are not transferred to another water management institution its assets and liabilities vest in the Minister and the Minister must wind up its affairs and assume the powers and duties of the catchment management agency for the period of winding up.
- (5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets in terms of this section.

90. Regulations on catchment management agencies

- (1) Subject to subsection (2), the Minister may make regulations -
 - (a) prescribing a maximum and a minimum number of members of a governing board;
 - (b) requiring the establishment of consultative forums and determining their composition and functions;
 - (c) determining, in consultation with the Minister of Finance, the basis and extent of remuneration and payment of expenses of members of governing boards and committees; and
 - (d) on any other matter which is necessary or desirable for the efficient functioning of catchment management agencies and their governing boards and committees.
- (2) In making regulations, the Minister must take into account all relevant considerations, including the need to -

- (a) achieve adequate representation of and consultation with organs of state, bodies representing different sectors and other interests within the areas of jurisdiction of catchment management agencies; and
- (b) secure the efficient and cost effective functioning of catchment management agencies and their management structures.

CHAPTER 8

WATER USER ASSOCIATIONS

This Chapter deals with the establishment, powers and disestablishment of water user associations. Although water user associations are water management institutions their primary purpose, unlike catchment management agencies, is not water management. They operate at a restricted localised level, and are in effect co-operative associations of individual water users who wish to undertake water related activities for their mutual benefit. A water user association may exercise management powers and duties only if and to the extent these have been assigned or delegated to it. The Minister establishes and disestablishes water user associations according to procedures set out in the Chapter. A water user association for a particular purpose would usually be established following a proposal to the Minister by an interested person, but such an association may also be established on the Minister's initiative. The functions of a water user association depend on its approved constitution, which can be expected to conform to a large extent to the model constitution in Schedule 5. This Schedule also makes detailed provisions for the management and operation of water user associations. Although water user associations must operate within the framework of national policy and standards, particularly the national water resource strategy, the Minister may exercise control over them by giving them directives or by temporarily taking over their functions under particular circumstances.

Existing irrigation boards, subterranean water control boards and water boards established for stock watering purposes will continue in operation until they are restructured as water user associations.

91. Proposal for establishment of water user association

- (1) A proposal to establish a water user association must contain at least -
 - (a) the reasons for making the proposal;
 - (b) a proposed name and area of operation for the association;
 - (c) the proposed activities of the association;
 - (d) a description of any existing or proposed waterwork within the proposed area of operation which is relevant to the proposed activities of the association;

- (e) a description of the water use licences or any other authorisations which the proposed members hold or intend applying for;
 - (f) the proposed constitution of the association, together with an explanation for any provisions which differ from those of the model constitution contained in Schedule 5;
 - (g) a list of the proposed members or categories of members of the association; and
 - (h) an indication whether there has been consultation in developing the proposal and the results of the consultation.
- (2) The Director-General may assist a person to develop such a proposal.

92. Procedure for establishment of water user association

- (1) The Minister may on his or her own initiative or after receiving a proposal containing the information required in terms of section 91 (1), by notice in the *Gazette* -
- (a) establish a water user association, give it a name, determine its area of operation and approve its constitution subject to section 93 (2); or
 - (b) amend the name, area of operation or approve an amendment to the constitution of an established water user association.
- (2) The Minister may -
- (a) require a person who has submitted a proposal in terms of subsection (1) to provide the Minister with additional information to that required by section 91 (1); and
 - (b) instruct the Director-General to conduct an investigation regarding -
 - (i) the establishment of a water user association; or
 - (ii) a proposal submitted in terms of subsection (1).
- (3) Before the establishment of a water user association the Minister must -
- (a) publish a notice in the *Gazette* -
 - (i) setting out the proposed establishment of the water user association, the proposed name and the proposed area of operation; and
 - (ii) inviting written comments to be submitted on the proposals, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider any comments received on or before the date specified in paragraph (a) (ii).
- (4) The Minister need not fulfil all the requirements of subsection (3), if there has been sufficient consultation on a proposal submitted in terms of section 91.
- (5) The Minister may -
- (a) recover the cost of complying with subsection (3) from the water user association once it has been established; or
 - (b) require the person proposing the establishment of the water user association to pay the costs in advance.

93. Constitution of water user association

- (1) Schedule 5 contains a model constitution which may be used as a basis for drawing up and proposing a constitution for a proposed water user association.
- (2) The constitution of a water user association must contain at least -
- (a) details of the principal and ancillary functions of the association;
 - (b) the procedures and requirements for admitting new members to the association;
 - (c) the voting powers of members;
 - (d) procedures for terminating membership;
 - (e) procedures for electing the management committee of the association;
 - (f) procedural requirements for appointment of employees of the association;
 - (g) procedural requirements for obtaining loans; and
 - (h) the financial obligations of members towards the association.
- (3) A constitution must also incorporate such other provisions as the Minister may reasonably require and must be adopted by the members of the association and approved by the Minister before it can exercise any powers or perform any duties.
- (4) A constitution adopted by a water user association is binding on all its members.

94. Powers of water user association

- (1) A water user association is a body corporate and has the powers of a natural person of full capacity, except those powers which -
 - (a) by nature can only attach to natural persons; or
 - (b) are inconsistent with this Act.
- (2) Schedule 4 (excluding item 4 (3) of Part 1 of that Schedule) applies to a water user association as if -
 - (a) the water user association were an institution; and
 - (b) a member of the management committee were a director,

within the meaning of that Schedule, except to the extent that the Minister may otherwise direct.

95. Directives to water user association

- (1) The Minister may, after consulting with a water user association, direct that a person be admitted as a member of the association on such conditions as are fair and equitable.
- (2) A water user association must comply with a directive given under subsection (1).
- (3) If a water user association -
 - (a) is in financial difficulties or is being otherwise mismanaged;
 - (b) has acted unfairly or in a discriminatory or inequitable way towards any member of the association;
 - (c) has failed to admit persons to membership unfairly or on discriminatory grounds;
 - (d) has failed to comply with any directive given by the Minister under this Act;
 - (e) has obstructed the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act;
 - (f) is unable to exercise its powers or perform its duties effectively due to dissension among the management committee or its members;
 - (g) has failed to comply with its constitution or this Act; or

(h) has become redundant or ineffective,

the Minister may -

- (i) direct the association to take any action specified by the Minister;
- (ii) withhold any financial assistance which might otherwise be available to the water user association until the association has complied with such directive; or
- (iii) by notice addressed to the association and the member concerned, terminate the office of that member of the management committee and arrange for the resulting vacancy on the management committee to be filled.

(4) A directive contemplated in subsection (3) (i) must state -

- (a) the nature of the deficiency;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which those steps must be taken.

(5) If the water user association fails to remedy the situation within the given period, the Minister may -

- (a) after having given that association a reasonable opportunity to be heard; and
- (b) after having afforded the association a hearing on any submissions received,

take over the relevant function of the association, or appoint a suitable person to take over the power or duty.

(6) If the Minister, or a person appointed by the Minister, takes over a power or duty of a water user association -

- (a) the Minister or the appointee may do anything which the association might otherwise be empowered or required to do in terms of its constitution or by or under this Act, to the exclusion of the association;
- (b) the management committee of the association may not, while the Minister or the appointee is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;
- (c) an employee or a contractor of the association must comply with a directive given by the Minister or the appointee;

- (d) as soon as the Minister is satisfied that the association is once more able to exercise its powers and perform its duties effectively, the Minister or the appointee, as the case may be, must cease exercising such powers and performing such duties; and
- (e) the Minister may recover from the association all reasonable costs incurred by the Minister or the appointee, including -
 - (i) the reasonable fees or disbursements of the appointee; and
 - (ii) any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister or the appointee or any person under their control.

96. Disestablishment of water user association

- (1) The Minister may, by notice in the *Gazette*, disestablish an association -
 - (a) in circumstances provided for in the constitution of the association;
 - (b) if the functions of the association are, by agreement with another water management institution, to be combined with, or taken over by that water management institution;
 - (c) if it is in the best interests of the association or its members;
 - (d) if an investigation of its affairs or financial position reveals that disestablishment is appropriate;
 - (e) if the Minister has taken over a power or duty of the association as a result of dissensions among the management committee or its members; or
 - (f) if the association is no longer active or effective.
- (2) Before disestablishing a water user association the Minister must -
 - (a) publish a notice in the *Gazette* -
 - (i) stating the intention to disestablish the water user association;
 - (ii) setting out the reasons for disestablishing the water user association; and
 - (iii) inviting written comments on the proposal, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

- (c) consider all comments received on or before the specified date.

97. Winding up affairs of disestablished water user association

- (1) When a water user association is disestablished, its affairs must be wound up -
- (a) as provided for in its constitution; or
 - (b) by a person appointed by the Minister in accordance with directives given by the Minister if the constitution does not provide for winding up.
- (2) The costs of winding up a water user association are a cost against the estate of the association.
- (3) Creditors of a water user association must be paid according to the order of preference established by the Insolvency Act, 1936 (Act No. 24 of 1936).
- (4) If the affairs of a water user association are wound up, the Minister may direct that an amount equivalent to any financial contributions with interest made to the association from public funds be reimbursed, before assets are distributed among the members of the association.
- (5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets under subsection (4).

98. Transitional provisions for certain existing organisations

- (1) This section applies to -
- (a) any irrigation board or subterranean water control board established by or deemed to be an irrigation board in terms of any law in force immediately before the commencement of this Act;
 - (b) the Kalahari West Water Board, established by Government Notice No. 143 of 13 August 1982;
 - (c) the Karos-Geelkoppan Water Board, established by Government Notice No. 145 of 7 October 1983; and
 - (d) the Kalahari East Water Board, established by Government Notice No. 2233 of 4 November 1988,

each of which is a board for the purposes of this section.

- (2) A board continues to exist until it is declared to be a water user association in terms of subsection (6) or until it is disestablished in terms of the law by or under which it was

established, which law must, for the purpose of such disestablishment, be regarded as not having been repealed by this Act.

- (3) Subject to subsection (4) -
- (a) the name, area of operation, management, property, rights, liabilities, obligations, powers and duties of a board remain the same as immediately before the commencement of this Act;
 - (b) this section does not affect the continuity, status, operation or effect of any act or omission of a board, or of any bylaw made by a board, before the commencement of this Act;
 - (c) any person holding office with a board when this Act commences continues in office for the term of that person's appointment; and
 - (d) if a position becomes vacant prior to the declaration of the board as a water user association, the board may fill the vacancy according to the procedures laid down by or under the law which applied to that board immediately before the commencement of this Act.
- (4) Within six months of the commencement of this Act, a board must prepare and submit to the Minister a proposal, prepared according to section 91, to transform the board into a water user association.
- (5) The Minister may accept the proposal contemplated in subsection (4), with or without amendments, or reject it.
- (6) If the Minister accepts the proposal, the Minister must by notice in the *Gazette* -
- (a) declare the board to be a water user association;
 - (b) give it a name;
 - (c) determine its area of operation; and
 - (d) approve its constitution.
- (7) Upon the publication of a notice under subsection (6), every property, right and liability of the board becomes a property, right and liability of the relevant water user association.

CHAPTER 9

ADVISORY COMMITTEES

This Chapter empowers the Minister to establish advisory committees. Each advisory committee will be established for a particular purpose, and it is therefore possible for a variety of advisory committees to be established with different purposes and functions. Although primarily advisory in nature, such committees may exercise powers which are delegated to them. The Minister may amend the functions of an advisory committee, or disestablish it. Certain existing advisory committees will continue to function as though they were advisory committees established under this Act.

99. Establishment of advisory committees

- (1) The Minister may -
 - (a) establish an advisory committee;
 - (b) give it a name or change its name;
 - (c) determine its purpose and functions or effect amendments thereto;
 - (d) make appointments to the committee, including the chairperson and deputy chairperson;
 - (e) remove persons from the committee; and
 - (f) disestablish an advisory committee.
- (2) Officials of the Department may be members of an advisory committee.
- (3) A member of a committee may be remunerated as directed by the Minister, with the concurrence of the Minister of Finance.
- (4) An act performed in good faith by a committee is valid, despite any failure to comply with a formal procedural requirement.
- (5) The Department may supply administrative support services to a committee.
- (6) An official of the Department who is not a member of the committee, if so directed by the Director-General, may attend a meeting of a committee, but may not vote at the meeting.
- (7) The Minister in appointing a member of a committee, must consider -
 - (a) the powers and duties of the committee;

- (b) the need for the committee to represent various relevant interests; and
- (c) the expertise necessary for the committee to exercise its powers and perform its duties effectively.

100. Regulations regarding advisory committees

The Minister may by regulation establish terms of reference and any other rules concerning the membership, powers and duties and operation of a committee.

101. Transitional provisions relating to advisory committees

- (1) The National Water Advisory Council established by section 3A of the Water Act, 1956 (Act No. 54 of 1956), the Advisory Committee on Safety of Dams established by section 9C (5) (a) (i) of the Water Act, 1956, and any advisory committee established under section 68 (1) of the Water Act, 1956, must be regarded as being an advisory committee contemplated in this Act.
- (2) Subject to the Minister's powers under section 99 -
 - (a) the name, powers and duties of a committee or body referred to in subsection (1) remain the same as they were immediately before the commencement of this Act;
 - (b) any provision of the Water Act, 1956, or a regulation or notice issued under that Act regulating any matter contemplated in section 99, continues to apply as if it were a regulation made under section 100; and
 - (c) any person holding office in a committee or body referred to in subsection (1) immediately before the commencement of this Act continues in office until the expiration of that person's term of appointment or until the committee or body is disestablished, whichever happens sooner.

CHAPTER 10

INTERNATIONAL WATER MANAGEMENT

Under this Chapter the Minister may establish bodies to implement international agreements in respect of the management and development of water resources shared with neighbouring countries, and on regional cooperation over water resources. The governance, powers and duties of these bodies are determined by the Minister in accordance with the relevant international agreement, but they may also be given additional functions, and they may perform their functions outside the Republic. Certain existing international bodies are deemed to be bodies established under this Act.

102. Establishment of bodies to implement international agreements

The Minister may, in consultation with the Cabinet, by notice in the *Gazette*, establish a body to implement any international agreement entered into by the South African Government and a foreign government relating to -

- (a) investigating, managing, monitoring and protecting water resources;
- (b) regional cooperation on water resources;
- (c) acquiring, constructing, altering, operating or maintaining a waterwork; or
- (d) the allocation, use and supply of water.

103. Governance and functions of bodies

(1) A notice contemplated in section 102 must, with due regard to the relevant international agreement, give details of -

- (a) the governance of the body;
- (b) the functions of the body;
- (c) the financing of the body;
- (d) mechanisms for controlling and supervising the affairs of the body;
- (e) which items of Schedule 4, if any, apply to the body;
- (f) the disestablishment of the body and the winding-up of the body's affairs; and
- (g) any other matter necessary to give effect to the agreement.

(2) If the Minister is satisfied that it will not prejudice the capacity of a body to perform the functions for which it was established, the Minister may direct a body established under section 102 to perform additional functions which may include, but are not limited to, providing water management institutions with -

- (a) management services;
- (b) financial services;
- (c) training; and
- (d) other support services.

- (3) The body may perform its functions outside the Republic.

104. Powers of bodies

A body established under section 102 is a body corporate and has the powers of a natural person of full capacity, except those powers which -

- (a) by their nature can attach only to natural persons; or
- (b) are excluded by or are inconsistent with this Act or the relevant international agreement.

105. Bodies must manage different functions as separate units

- (1) If given additional functions under section 103 (2), a body must manage each of its functions separately, and must account for them separately.
- (2) A body must apply accounting practices consistent with generally accepted accounting practices.

106. Reports on performance of functions

- (1) Unless the international agreement provides otherwise, a body must report on the performance of its functions within three months after the end of its financial year.
- (2) The report must -
 - (a) be accompanied by the body's audited financial statements for that financial year; and
 - (b) be submitted to the Minister and such other party as may be required by the international agreement.
- (3) The report must contain sufficient information to allow the Minister to assess the performance of the body in respect of all its functions against the objectives set out in the relevant agreement.
- (4) The Director-General must send a copy of the report to the Secretary to Parliament.

107. Investigation of affairs or financial position of bodies

- (1) The Minister may, with the consent of the other parties to the agreement, or if the agreement so provides, appoint a person to investigate the affairs or financial position of a body and that person may for this purpose attend any meeting of the body.

(2) A body must, subject to subsection (1), on request, provide the Minister's appointee with such -

- (a) information on the affairs and financial position of the body;
- (b) access to all books, accounts, documents and assets of the body; and
- (c) information and data on water resources,

as may be required by the Minister or the Minister's appointee.

(3) The Minister may recover from the body concerned the reasonable fees and disbursements of any person appointed under subsection (1).

108. Transitional provisions relating to existing bodies

The Trans-Caledon Tunnel Authority established by Government Notice No. 2631 of 12 December 1986, the Komati Basin Water Authority established by an agreement dated 13 March 1992 with the Kingdom of Swaziland and the Vioolsdrift Noordoewer Joint Irrigation Authority established by an agreement dated 14 September 1992 with the Government of Namibia, must be regarded as being bodies contemplated in this Chapter until disestablished by the Minister by notice in the *Gazette*.

CHAPTER 11

GOVERNMENT WATER WORKS

This Chapter gives the Minister the power to establish and operate government waterworks in the public interest out of funds allocated by Parliament or from other sources. Examples of such waterworks include water storage dams, water transfer schemes and flood attenuation works. The Minister must satisfy certain procedural requirements before constructing a government waterwork, including a duty to obtain an environmental impact assessment and invite public comment, except for emergency, temporary or insignificant waterworks. Water from a government waterwork may be made available for allocation to water users and charges fixed for this water. Water in a government waterwork may also be made available for recreational purposes, subject to controls determined by the Minister and regulations made by the Minister. Existing government waterworks are subject to this Chapter.

109. Acquisition, construction, alteration, repair, operation and control of government waterworks

The Minister may acquire, construct, alter, repair, operate or control government waterworks in order to protect, use, develop, conserve, manage and control the nation's water resources in the public interest.

110. Consultation and environmental impact assessment

- (1) Before constructing a waterwork, the Minister must -
 - (a) prepare an environmental impact assessment relating to the proposed waterwork which must, where the Minister considers it appropriate, comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989);
 - (b) publish a notice in the *Gazette* -
 - (i) setting out the proposal to construct the waterwork;
 - (ii) containing a summary of the environmental impact assessment; and
 - (iii) inviting written comments to be submitted, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (c) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (d) consider -
 - (i) all comments received on or before the date specified in paragraph (b) (iii); and
 - (ii) the environmental impact assessment.
- (2) Subsection (1) does not apply -
 - (a) to a waterwork which is constructed in emergency circumstances;
 - (b) to a temporary waterwork in operation for a period of less than five years; or
 - (c) if the waterwork is a minor one.
- (3) Within two years after the completion of any waterwork contemplated in subsection (2) (a), the Minister must decide either -
 - (a) to demolish the waterwork; or
 - (b) after complying with subsection (1) to the appropriate extent, to retain the waterwork.

111. Financing of government waterworks

The Minister may finance the acquisition, construction, alteration, repair, operation and control of government waterworks from funds appropriated by Parliament or obtained from any other source.

112. Water from government waterworks

- (1) The Minister may make water from a government waterwork available for allocation in accordance with Chapter 4.
- (2) The Minister may in accordance with Chapter 5 fix a charge for water allocated from a government waterwork.

113. Access to and use of government waterworks for recreational purposes

- (1) The water of a government waterwork and the surrounding state-owned land may be made available for recreational purposes, either generally or for a specific purpose, on the conditions and to the persons determined by the Minister.
- (2) The Minister may -
 - (a) control or prohibit access to any government waterwork; and
 - (b) subject to this Act, make reasonable charges for -
 - (i) the use of;
 - (ii) entry into; and
 - (iii) the use of any water surface or land associated with,any government waterwork for recreational purposes.
- (3) Nothing done under this section exempts any person from complying with other provisions of this Act and with any other applicable law.

114. Government waterworks constructed before commencement of Act

This Act also applies to government waterworks constructed before the commencement of this Act.

115. Disposal of government waterworks

- (1) The Minister may transfer, sell or otherwise dispose of any government waterworks to any person.

- (2) No government waterwork referred to in subsection (1) may be transferred, sold or disposed of without the approval of the national executive, if its value exceeds an amount specified from time to time by the Minister in concurrence with the Minister of Finance.
- (3) Where a government waterwork is disposed of or transferred to a water management institution, the Minister of Finance may direct that no transfer duty, other tax or duty is payable.

116. Regulations regarding government waterworks

- (1) The Minister may, with regard to a government waterwork, make regulations providing for -
 - (a) the management of and control over government waterworks and surrounding state-owned land;
 - (b) the use of the water of a government waterwork and the surrounding state-owned land; and
 - (c) charges for -
 - (i) entrance to;
 - (ii) use of facilities at; and
 - (iii) the private development of,a government waterwork.
- (2) In making the regulations, the Minister must take into account all relevant considerations, including -
 - (a) the safety and protection of government waterworks;
 - (b) the need for control of the use of government waterworks;
 - (c) the safety and security of persons using government waterworks for recreational purposes; and
 - (d) the cost of protecting and controlling government waterworks and the recovery of these costs.

CHAPTER 12

SAFETY OF DAMS

This Chapter contains measures aimed at improving the safety of new and existing dams with a safety risk so as to reduce the potential for harm to the public, damage to property or to resource quality. To reduce the risk of a dam failure, control measures require an owner to comply with certain directives and regulations, such as to submit a report on the safety of a dam, to repair or alter a dam, or to appoint an approved professional person to undertake these tasks. These measures are in addition to the owners' common law responsibility to ensure the safety of their dams. An approved professional person has a statutory duty of care towards the State and the general public and must fulfil, amongst other things, defined responsibilities when acting under this Chapter. Not all dams are subject to regulation under this Chapter, and the Minister may exempt certain persons from its requirements. Only dams of a defined size, dams which have been declared to be dams with a safety risk, or dams falling into a prescribed category are affected. All dams with a safety risk must be registered. Compliance with any directive or regulation under this Chapter does not exempt an owner from complying with any other provision of this Act, such as the requirement for a licence or other authorisation for water use in respect of the dam.

117. Definitions

In this Chapter -

- (a) "approved professional person" means a person registered in terms of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), and approved by the Minister after consultation with the Engineering Council of South Africa (established by section 2 of that Act);
- (b) "dam" includes any existing or proposed structure which is capable of containing, storing or impounding water (including temporary impoundment or storage), whether that water contains any substance or not;
- (c) "dam with a safety risk" means any dam -
 - (i) which can contain, store or dam more than 50 000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the nonoverspill crest level or the general top level of the dam wall;
 - (ii) belonging to a category of dams declared under section 118 (2) to be dams with a safety risk; or
 - (iii) declared under section 118 (3) (a) to be a dam with a safety risk;

- (d) "owner of a dam" or "owner of a dam with a safety risk" includes the person in control of that dam; and
- (e) "task" includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk.

118. Control measures for dam with safety risk

- (1) The owner of a dam must -
 - (a) within the period specified, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents and test results requested by the Minister; or
 - (b) give any person authorised by the Minister access to that dam, to enable the Minister to determine whether -
 - (i) that dam is a dam with a safety risk;
 - (ii) that dam should be declared to be a dam with a safety risk;
 - (iii) a directive should be issued for specific repairs or alterations to that dam; or
 - (iv) the owner has complied with any provisions of this Act applicable to that dam.
- (2) The Minister may by notice in the *Gazette* declare a category of dams to be dams with a safety risk.
- (3) The Minister may -
 - (a) by written notice to the owner of a dam, declare that dam to be a dam with a safety risk;
 - (b) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Minister, a report by an approved professional person regarding the safety of that dam; or
 - (c) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Minister, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.
- (4) If the owner of the dam fails to comply with the directive contemplated in subsection (3) (c) within the period specified, the Minister may undertake the repairs or alterations and recover the costs from the owner.

- (5) Before issuing a directive, the Minister must -
 - (a) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and
 - (b) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.

119. Responsibilities of approved professional persons

- (1) When carrying out a task in terms of this Chapter, an approved professional person also has a duty of care towards the State and the general public.
- (2) An approved professional person appointed to carry out a task on a dam must -
 - (a) ensure that the task is carried out according to acceptable dam engineering practices;
 - (b) keep the prescribed records;
 - (c) compile the prescribed reports; and
 - (d) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.
- (3) An approved professional person appointed to carry out a dam safety evaluation must -
 - (a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and
 - (b) compile a report on the matters contemplated in paragraph (a) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

120. Registration of dam with safety risk

- (1) The owner of a dam with a safety risk must register that dam.
- (2) An application for registration must be made within 120 days -
 - (a) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;
 - (b) after the date on which an already completed dam is declared to be a dam with a safety risk; or

- (c) after publication of a notice declaring a category of dams to be dams with a safety risk,

as the case may be.

- (3) A successor-in-title to an owner of a dam with a safety risk must promptly inform the Director-General of the succession, for the substitution of the name of the owner.

121. Factors to be considered in declaring dam or category of dams with safety risk

In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider -

- (a) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams;
- (b) the extent of potential loss or harm involved;
- (c) the cost of any prescribed measures and whether they are reasonably achievable;
- (d) the socio-economic impact if such a dam fails; and
- (e) in the case of a particular dam, also -
 - (i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;
 - (ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and
 - (iii) the manner in which the water is contained, stored or impounded in that dam.

122. Exemptions

- (1) The Minister may exempt owners of dams belonging to certain categories, by notice in the *Gazette*, from compliance with any provision of this Chapter or any regulation made under this Chapter, on conditions determined by the Minister.
- (2) The Minister may in writing exempt an owner of a dam belonging to a certain category from compliance with any provision of this Chapter on conditions determined by the Minister.
- (3) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.

- (4) Before deciding on an exemption, the Minister must consider -
- (a) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;
 - (b) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;
 - (c) the supervision involved in the dam or category of dams;
 - (d) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water in, inspection or abandonment of the dam or category of dams and the effectiveness of these measures;
 - (e) the knowledge and expertise of the persons involved in any task relating to the dam or category of dams;
 - (f) the costs relating to the dam or category of dams;
 - (g) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams; and
 - (h) whether the dam or category of dams are permitted in terms of a licence or any other authorisation issued by or under any other Act.

123. Regulations regarding dam safety

- (1) The Minister may make regulations -
- (a) for the establishment of a register of approved professional persons for dealing with dams with a safety risk -
 - (i) providing for -
 - (aa) different classes of approved professional persons;
 - (bb) the tasks or category of tasks which each class of approved professional persons may perform; and
 - (cc) the conditions under which each class of approved professional persons may perform any task or category of tasks;
 - (ii) concerning the requirements for admission to each class;
 - (iii) setting out, in respect of each class, the procedure for -

NATIONAL WATER ACT 36 OF 1998

- (aa) approval;
- (bb) withdrawal of an approval; and
- (cc) suspension of an approval; and
- (iv) providing for a processing fee for an approval;
- (b) regulating the approval of a person as an approved professional person for a specific task -
 - (i) setting out the procedure for approval;
 - (ii) setting out the procedure for cancelling an approval;
 - (iii) requiring that the approved person be assisted in the task by another person or a group of persons with specific experience and qualifications; and
 - (iv) providing for a processing fee for an approval;
- (c) in respect of dams with a safety risk -
 - (i) classifying such dams into categories;
 - (ii) requiring the owner of a dam of a specific category to appoint an approved professional person to -
 - (aa) design that dam or any repair, alteration or abandonment of the dam;
 - (bb) ensure that a task is carried out according to the applicable design, drawings and specifications; and
 - (cc) carry out dam safety evaluations on the dam;
 - (iii) requiring that licences be issued by the Minister before any task relating to a specific category of dams may commence, and the conditions, requirements and procedure to obtain any specific licence;
 - (iv) laying down licence conditions and requirements that must be met when carrying out a task on a specific category of dams;
 - (v) requiring an approved professional person, appointed for a dam of a specific category, to keep records of information and drawings, and to compile reports;
 - (vi) requiring -

- (aa) an owner of a dam belonging to a specific category of dams; and
- (bb) an approved professional person appointed for a specific task for a specific dam,

to submit information, drawings, reports and manuals;

(vii) determining the duties of -

- (aa) an owner of a dam belonging to a specific category of dams; and
- (bb) an approved professional person appointed for a specific task for a specific dam;

- (d) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and manner prescribed;
- (e) requiring the registration of a specific dam with a safety risk, and setting out the procedure and the processing fee payable for registration; and
- (f) specifying time periods that must be complied with.

(2) In making regulations under subsection (1) (a), the Minister must consider -

- (a) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and
- (b) the qualifications and experience needed to provide the expertise for a particular category of tasks.

(3) Before making regulations under subsection (1), the Minister must consult the Engineering Council of South Africa, established by section 2 of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), and any other appropriate statutory professional bodies.

CHAPTER 13

ACCESS TO AND RIGHTS OVER LAND

Part 1

Entry and inspection

Part 1 of this Chapter allows authorised persons to enter and inspect property for a number of purposes associated with implementing this Act. The rights of property owners are protected

in that only authorised persons may enter and inspect property; authorised persons must carry a certificate of authorisation and must produce that certificate on request; in certain circumstances notice of entry must be given and the consent of the person owning or occupying the property must be obtained before entry; and in certain circumstances a warrant must be obtained prior to entry.

124. Appointment of authorised persons

- (1) The Minister or a water management institution may, in writing, appoint any suitable person as an authorised person to perform the functions contemplated in section 125 (1), (2) and (3).
- (2) An authorised person must be provided with a certificate of appointment signed by or on behalf of the Minister or a water management institution in which the nature of the authorised person's functions is described.

125. Powers and duties of authorised persons

- (1) An authorised person may, at any reasonable time and without prior notice, enter or cross a property with the necessary persons, vehicles, equipment and material in order to carry out routine inspections of the use of water under any authorisation.
- (2) An authorised person may enter a property with the necessary persons, vehicles, equipment and material -
 - (a) after giving reasonable notice to the owner or occupier of the property, which notice must state the purpose of the proposed entry; and
 - (b) after obtaining the consent of the owner or occupier of that property,

in order to -

- (i) clean, repair, maintain, remove or demolish any government waterwork operated by any water management institution;
- (ii) undertake any work necessary for cleaning, clearing, stabilising and repairing the water resource and protecting the resource quality;
- (iii) establish the suitability of any water resource or site for constructing a waterwork;
- (iv) undertake any work necessary to comply with an obligation imposed on any person under this Act, where that person has failed to fulfil that obligation;
- (v) erect any structure and to install and operate any equipment on a temporary basis for monitoring and gathering information on water resources; or

- (vi) bring heavy equipment on to a property or occupy a property for any length of time.
- (3) An authorised person may, at any reasonable time and without prior notice, on the authority of a warrant, enter a property with the necessary persons, vehicles, equipment and material, and perform any action necessary to -
 - (a) investigate whether this Act, any condition attached to any authorised water use by or under this Act or any notice or directive is being contravened;
 - (b) investigate whether any information supplied in connection with the use of water is accurate; or
 - (c) carry out any of the activities referred to in subsection (2) where the consent of the owner or occupier of that property has been withheld.
- (4) A warrant referred to in subsection (3) must be issued by a judge or a magistrate who has jurisdiction in the area where the property in question is situated, and must only be issued if it appears from information obtained on oath that -
 - (a) there are reasonable grounds for believing that this Act, any condition attached to any authorised water use by or under this Act or any notice or directive, is being contravened;
 - (b) there are reasonable grounds for believing that any information supplied in connection with the use of water is inaccurate; or
 - (c) it is necessary to carry out an activity mentioned in subsection (2) and access to that property has been denied.
- (5) If a warrant is likely to be issued if applied for but the delay involved in obtaining a warrant is likely to defeat the object of an inspection in terms of subsection (3) (a) or (b), an authorised person may enter a property without a warrant.
- (6) An authorised person entering property in terms of this section must, at the request of any person on that property, identify himself or herself and present a certificate of appointment contemplated in section 124 (2).
- (7) Notwithstanding any provision of this section an authorised person may not, under any circumstances, enter a dwelling without the consent of the occupier or without a warrant authorising entry.

Part 2

Servitudes

Part 2 deals with servitudes. A servitude is a right that a person has over property belonging to another person. This Part allows a person who is authorised to use water under the Act to claim a servitude over another person's land where this is necessary to make that water use effective. For example it might be necessary to lead water over another person's land to take it from the source to the authorised water user's land, and a servitude would be necessary to do this. A servitude cannot be claimed unless the claimant is authorised to use water, and if the authorisation is withdrawn or otherwise terminated, the servitude will lapse. Servitudes are acquired by agreement between the authorised water user and the relevant land owner, either according to existing procedures laid down in the Deeds Registries Act or by way of an agreement which is made an order of court. Procedural details regarding the acquisition of servitudes and their registration are not set out in this Part but are contained in Schedule 2.

126. Definitions

In this Chapter -

- (a) "servitude of abutment" means the right to occupy, by means of a waterwork, the bed or banks of a stream or adjacent land belonging to another;
- (b) "servitude of aqueduct" means the right to occupy land belonging to another by means of a waterwork for abstracting or leading water; and
- (c) "servitude of submersion" means the right to occupy land belonging to another by submerging it under water.

127. Acquisition of servitudes

(1) A person who is authorised under this Act to use water may -

- (a) claim a servitude of -
 - (i) abutment;
 - (ii) aqueduct; or
 - (iii) submersion; or
- (b) obtain an amendment to any existing servitude of abutment, aqueduct or submersion,

to the extent that this is necessary to give effect to that authorisation.

- (2) The servitude claimed under subsection (1) (a) may be -
- (a) a personal servitude in favour of the claimant; or
 - (b) a praedial servitude in favour of the claimant in the claimant's capacity as owner of property on which the claimant may use the water.
- (3) A servitude under this Chapter may also be claimed in respect of an existing waterwork.
- (4) A person who intends to claim a servitude under this section must follow the procedure set out in Schedule 2.

128. Rights and duties of servitude holders and landowners

- (1) A holder of a servitude contemplated in this Chapter has a reasonable right of access to the land which is subject to the servitude for the purpose of constructing, altering, replacing, inspecting, maintaining, repairing or operating the relevant waterwork, or for any other purpose necessary for the effective enjoyment of that servitude.
- (2) The holder of a servitude contemplated in this Chapter may, in a reasonable manner and subject to any other applicable law -
- (a) take from the land subject to the servitude, any material or substance reasonably required for constructing, altering, replacing, maintaining or repairing any waterwork or part of a waterwork in respect of which the servitude has been acquired;
 - (b) remove and use vegetation or any other obstacle which is on the land subject to the servitude and which is detrimental to the reasonable enjoyment of the servitude;
 - (c) deposit on the land subject to the servitude any material or substance excavated or removed from the waterwork in the reasonable exercise of the servitude;
 - (d) occupy, during the period of construction of the waterwork in respect of which the servitude has been acquired, as much of the land subject to the servitude as may reasonably be required for -
 - (i) constructing camps or roads;
 - (ii) constructing houses, reservoirs or other buildings or structures; or
 - (iii) installing machinery or equipment,necessary for the construction of the waterwork;
 - (e) occupy, for the duration of the servitude, as much of the land subject to the servitude as is reasonably required for -

- (i) accommodating people;
- (ii) workshops; or
- (iii) storage purposes,

to the extent that this is necessary for the control, operation and maintenance of the relevant waterwork.

- (3) A holder of a servitude contemplated in this Chapter must, when requested in writing by the owner of the land subject to the servitude, at the holder's cost -
 - (a) maintain the servitude area;
 - (b) repair and maintain waterworks relating to the servitude; and
 - (c) repair and maintain access roads associated with the servitude.
- (4) If the holder of a servitude fails to carry out the requested work, the owner of the land may arrange for the necessary work to be done and may recover any reasonable cost incurred from the servitude holder.
- (5) On termination of a servitude, the holder of the servitude must rehabilitate the land subject to the servitude to the extent that this is reasonably possible.

129. Procedure for acquisition and amendment of servitudes

- (1) A servitude contemplated in this Chapter may be acquired or an amendment or cancellation of a servitude obtained by -
 - (a) executing and registering an applicable deed in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937); or
 - (b) by means of an order of a High Court.
- (2) A person claiming a servitude or an amendment of a servitude under this Chapter may, on reasonable notice to the landowner -
 - (a) enter;
 - (b) make any investigation; and
 - (c) undertake any operation,

on the land which will be subject to the servitude, where this is reasonable in the circumstances and necessary for determining the nature and extent of the servitude and for complying with item 3 of Schedule 2.

- (3) A person acting under subsection (2) must -
- (a) cause as little damage as possible to the land; and
 - (b) where any damage is caused -
 - (i) repair the damage where possible; or
 - (ii) pay compensation to the landowner in an agreed amount or an amount determined by a competent court.
- (4) An owner of the land against which a servitude contemplated in this Chapter is claimed, may claim to share in the use of any proposed waterwork relating to the servitude if -
- (a) the owner of the land is authorised to use water from a specific water resource;
 - (b) the use of the waterwork is compatible with the authorised water use; and
 - (c) the owner of the land agrees to be responsible for a proportionate share of the cost of constructing, repairing and maintaining the waterwork.
- (5) A claim to share in the use of a waterwork under subsection (4) must be dealt with -
- (a) in the agreement between the parties; or
 - (b) in a High Court order contemplated in section 130.

130. Powers of High Court in respect of claim for servitude

On hearing a claim for a servitude or for an amendment to a servitude in terms of this Chapter, a High Court may -

- (a) award the claim with or without modifications, on such terms as it considers just;
- (b) award compensation or refuse to award compensation;
- (c) determine whether a proportionate amount of compensation should be paid to the holder of a right of lease, mortgage, usufruct or similar right over the property, and order that such compensation be paid; or
- (d) dismiss the claim.

131. Compensation payable for granting of servitudes

- (1) In determining just and equitable compensation a High Court must take into account all relevant factors including, in addition to the matters contemplated in section 25 of the Constitution -

- (a) the nature of the servitude or amendment, including the nature and function of the waterwork relating to the servitude or amendment;
 - (b) whether any existing waterwork will be used to give effect to the servitude;
 - (c) the probable duration of the servitude;
 - (d) the extent of the deprivation of use of the land likely to be suffered as a result of the servitude or amendment;
 - (e) the rental value of the land affected by the servitude or amendment;
 - (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the servitude or amendment;
 - (g) the extent to which the land can reasonably be rehabilitated on termination of the servitude;
 - (h) any advantage that the landowner, or other person with a compensatable interest in the land subject to the servitude, is likely to derive as a result of the servitude or amendment; and
 - (i) the public interest served by the waterwork relating to the servitude or amendment.
- (2) A High Court may determine the time and manner of payment of the compensation.

132. Noting of servitude and amendment by endorsement against title deed

- (1) The acquisition, amendment or cancellation of a servitude by virtue of an order of the High Court takes effect when the order is noted in terms of the Deeds Registries Act, 1937, (Act No. 47 of 1937).
- (2) Nothing in this section prevents a person from electing to register the acquisition, amendment or cancellation of a servitude in accordance with the Deeds Registries Act, 1937 (Act No. 47 of 1937).

133. Cancellation of servitude

An owner of land subject to a servitude of abutment, aqueduct or submersion may -

- (a) if the relevant authorisation associated with the servitude is terminated;
- (b) if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of three years; or

- (c) for any other lawful reason,

apply to a High Court for the cancellation of that servitude.

134. Joint waterwork involving servitude

Subject to Chapter 4, two or more persons who are authorised to use water may agree to -

- (a) construct a joint waterwork; and
- (b) create a servitude associated with that waterwork,

to give effect to their authorised water use.

Part 3

Waterworks and personal servitudes

Part 3 deals with ownership and restoration relating to waterworks placed on the land of another, and creates an exception to the general common law rule that personal servitudes are not transferable from the holder to another person. It allows transfers of personal servitudes that are held by the State and water management institutions.

135. Ownership of waterworks on land belonging to another

- (1) A water management institution (including the State) -
 - (a) retains ownership of a waterwork placed in good faith on land belonging to another;
 - (b) may remove such a waterwork from the land; and
 - (c) may transfer the rights held in respect of improvement on such land to another person or authority.
- (2) When a waterwork is removed under subsection (1) (b), the owner of the property -
 - (a) may require the Minister or the water management institution concerned to restore, as far as possible, any physical damage to the land caused by the removal; and
 - (b) has no other claim against the Minister or the water management institution concerned.
- (3) The rights of the State or a water management institution in respect of improvements on property not owned by the State or the institution may be transferred to another person or authority.

136. Transfer of personal servitudes

- (1) Despite any law to the contrary, a personal servitude, whether registered or not, held by the Minister or a water management institution may be transferred -
 - (a) from the Minister to a water management institution; or
 - (b) from a water management institution to the Minister or to another water management institution.
- (2) The relevant Registrar of Deeds must register a notarially executed deed of cession to transfer a registered personal servitude in terms of subsection (1).

CHAPTER 14

MONITORING, ASSESSMENT AND INFORMATION

Monitoring, recording, assessing and disseminating information on water resources is critically important for achieving the objects of the Act. Part 1 of this Chapter places a duty on the Minister, as soon as it is practicable to do so, to establish national monitoring systems. The purpose of the systems will be to facilitate the continued and co-ordinated monitoring of various aspects of water resources by collecting relevant information and data, through established procedures and mechanisms, from a variety of sources including organs of state, water management institutions and water users.

Part 1

National monitoring systems

137. Establishment of national monitoring systems

- (1) The Minister must establish national monitoring systems on water resources as soon as reasonably practicable.
- (2) The systems must provide for the collection of appropriate data and information necessary to assess, among other matters -
 - (a) the quantity of water in the various water resources;
 - (b) the quality of water resources;
 - (c) the use of water resources;
 - (d) the rehabilitation of water resources;

- (e) compliance with resource quality objectives;
- (f) the health of aquatic ecosystems; and
- (g) atmospheric conditions which may influence water resources.

138. Establishment of mechanisms to co-ordinate monitoring of water resources

The Minister must, after consultation with relevant -

- (a) organs of state;
- (b) water management institutions; and
- (c) existing and potential users of water,

establish mechanisms and procedures to coordinate the monitoring of water resources.

Part 2

National information systems on water resources

Part 2 requires the Minister, as soon as it is practicable to do so, to establish national information systems, each covering a different aspect of water resources, such as a national register of water use authorisations, or an information system on the quantity and quality of all water resources. The Minister may require any person to provide the Department with information prescribed by the Minister in regulations. In addition to its use by the Department and water management institutions, and subject to any limitations imposed by law, information in the national systems should be generally accessible for use by water users and the general public.

139. Establishment of national information systems

- (1) The Minister must, as soon as reasonably practicable, establish national information systems regarding water resources.
- (2) The information systems may include, among others -
 - (a) a hydrological information system;
 - (b) a water resource quality information system;
 - (c) a groundwater information system; and
 - (d) a register of water use authorisations.

140. Objectives of national information systems

The objectives of national information systems are -

- (a) to store and provide data and information for the protection, sustainable use and management of water resources;
- (b) to provide information for the development and implementation of the national water resource strategy; and
- (c) to provide information to water management institutions, water users and the public -
 - (i) for research and development;
 - (ii) for planning and environment impact assessments;
 - (iii) for public safety and disaster management; and
 - (iv) on the status of water resources.

141. Provision of information

The Minister may require in writing that any person must, within a reasonable given time or on a regular basis, provide the Department with any data, information, documents, samples or materials reasonably required for -

- (a) the purposes of any national monitoring network or national information system; or
- (b) the management and protection of water resources.

142. Access to information

Information contained in any national information system established in terms of this Chapter must be made available by the Minister, subject to any limitations imposed by law, and the payment of a reasonable charge determined by the Minister.

143. Regulations for monitoring, assessment and information

The Minister may make regulations prescribing -

- (a) guidelines, procedures, standards and methods for monitoring; and
- (b) the nature, type, time period and format of data to be submitted in terms of this Chapter.

Part 3

Information on floodlines, floods and droughts

Part 3 requires certain information relating to floods, droughts and potential risks to be made available to the public. Township layout plans must indicate a specific floodline. Water management institutions must use the most appropriate means to inform the public about anticipated floods, droughts or risks posed by water quality, the failure of any dam or any other waterworks or any other related matter. The Minister may establish early warning systems to anticipate such events.

144. Floodlines on plans for establishment of townships

For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years.

145. Duty to make information available to public

- (1) A water management institution must, at its own expense, make information at its disposal available to the public in an appropriate manner, in respect of -
 - (a) a flood which has occurred or which is likely to occur;
 - (b) a drought which has occurred or which is likely to occur;
 - (c) a waterwork which might fail or has failed, if the failure might endanger life or property;
 - (d) any risk posed by any dam;
 - (e) levels likely to be reached by floodwaters from time to time;
 - (f) any risk posed by the quality of any water to life, health or property; and
 - (g) any matter connected with water or water resources, which the public needs to know.
- (2) The Minister may, where reasonably practicable, establish an early warning system in relation to the events contemplated in subsection (1).

CHAPTER 15

APPEALS AND DISPUTE RESOLUTION

This Chapter establishes the Water Tribunal to hear appeals against certain decisions made by a responsible authority, catchment management agency or water management institution under this Act. The Tribunal is an independent body, whose members are appointed through an independent selection process, and which may conduct hearings throughout the Republic. A person may appeal to a High Court against a decision of the Tribunal on a question of law. This Chapter also provides for disputes to be resolved by mediation, if so directed by the Minister.

146. Establishment of Water Tribunal

- (1) The Water Tribunal is hereby established.
- (2) The Tribunal is an independent body which -
 - (a) has jurisdiction in all the provinces of the Republic; and
 - (b) may conduct hearings anywhere in the Republic.
- (3) The Tribunal consists of a chairperson, a deputy chairperson and as many additional members as the Minister considers necessary.
- (4) Members of the Tribunal must have knowledge in law, engineering, water resource management or related fields of knowledge.
- (5) The chairperson, the deputy chairperson, and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution and the Water Research Commission established by section 2 of the Water Research Act, 1971 (Act No. 34 of 1971), in accordance with item 3 of Schedule 6.

[Sub-s. (5) substituted by s. 3 of Act 45/99]

- (6) The chairperson and the deputy chairperson may be appointed in a fulltime or part-time capacity while the additional members must be appointed in a part-time capacity.
- (7) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Tribunal in consultation with the Minister of Finance.
- (8) The Minister may, after consultation with the Judicial Service Commission or the Water Research Commission referred to in subsection (5), as the case may be, and

after giving the member an opportunity to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.

[Sub-s. (8) substituted by s. 3 of Act 45/99]

147. Operation of Water Tribunal

- (1) Subject to section 146 (4), after having considered the necessary field of knowledge for the purposes of hearing a particular matter, the chairperson may nominate one or more members of the Water Tribunal to hear a matter and a decision by such member or members constitutes a decision by the Tribunal.
- (2) Administrative support for the Tribunal must be provided by officials of the Department designated by the Director-General, subject to the laws pertaining to the secondment of officers in the Public Service.
- (3) The expenditure of the Tribunal must be defrayed out of money appropriated by Parliament for that purpose or from any other source.
- (4) Neither the Tribunal, the chairperson, the deputy chairperson nor any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.

148. Appeals to Water Tribunal

- (1) There is an appeal to the Water Tribunal -
 - (a) against a directive issued by a catchment management agency under section 19 (3) or 20 (4) (d), by the recipient thereof;
 - (b) against a claim by a catchment management agency for the recovery of costs under section 19 (5) or 20 (7) by the person affected thereby;
 - (c) against the apportionment by a catchment management agency of a liability for costs under section 19 (8) or 20 (9), by a person affected thereby;
 - (d) against a decision of a water management institution on the temporary transfer of a water use authorisation under section 25 (1), by a person affected thereby;
 - (e) against a decision of a responsible authority on the verification of a water use under section 35 by a person affected thereby;
 - (f) subject to section 41(6), against a decision of a responsible authority on an application for a licence under section 41, or on any other application to which section 41 applies,

NATIONAL WATER ACT 36 OF 1998

by the applicant or by any other person who has timeously lodged a written objection against the application;

[Para. (f) substituted by s. 4 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

- (g) against a preliminary allocation schedule published by a responsible authority under section 46 (1), by any interested person;
- (h) subject to section 41(6), against the amendment of a condition of a licence by a responsible authority on review under section 49(2), by any person affected thereby;

[Para. (h) substituted by s. 4 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

- (i) against a decision of a responsible authority on an adjudication of claims made under section 51 (1), by any person affected thereby;
- (j) against a directive issued by a responsible authority under section 53 (1), by the recipient thereof;
- (k) against a claim by a water management institution for the recovery of costs under section 53 (2) (a), by the person against whom the claim is made;
- (l) against a decision by a responsible authority on the suspension, withdrawal or reinstatement of an entitlement under section 54, or on the surrender of a licence under section 55, by the person entitled to use water or by the licensee; and
- (m) against a declaration made by, directive given by or costs claimed by the Minister in respect of a dam with a safety risk under section 118 (3) or (4).

(2) An appeal under subsection (1) -

- (a) does not suspend a directive given under section 19 (3), 20 (4) (d) or 53 (1); and
- (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Minister directs otherwise.

(3) An appeal must be commenced within 30 days after -

- (a) publication of the decision in the *Gazette*;
- (b) notice of the decision is sent to the appellant; or
- (c) reasons for the decision are given,

whichever occurs last.

(4) The procedure for lodging, hearing and deciding -

- (a) an appeal under subsection (1); and
- (b) an application for the determination of compensation under section 22,

is contained in Part 2 of Schedule 6.

(5) The chairperson may make rules which -

- (a) govern the procedure of the Tribunal, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Tribunal;
- (b) may provide for application or appeal fees payable by a claimant or appellant; and
- (c) must be approved and published in the *Gazette* by the Minister.

149. Appeals from decisions of Water Tribunal

(1) A party to a matter in which the Water Tribunal -

- (a) has given a decision on appeal under section 148, may, on a question of law, appeal to a High Court against that decision; or
- (b) has determined the liability for compensation or the amount of compensation under section 22 (9), may, on a question of law, appeal to a High Court against that determination.

(2) The appeal must be noted in writing within 21 days of the date of the decision of the Tribunal.

(3) The notice of appeal must -

- (a) set out every question of law in respect of which the appeal is lodged;
- (b) set out the grounds for the appeal;
- (c) be lodged with the relevant High Court and with the Water Tribunal; and
- (d) be served on every party to the matter.

(4) The appeal must be prosecuted as if it were an appeal from a Magistrate's Court to a High Court.

150. Mediation

- (1) The Minister may at any time and in respect of any dispute between any persons relating to any matter contemplated in this Act, at the request of a person involved or on the Minister's own initiative, direct that the persons concerned attempt to settle their dispute through a process of mediation and negotiation.
- (2) A directive under subsection (1) must specify the time when and the place where such process must start.
- (3) Unless the persons concerned have informed the Minister at least seven days before the date specified in terms of subsection (2) that they have appointed a mediator, the Minister must appoint a mediator.
- (4) Notwithstanding subsection (3), the parties may at any time during the course of mediation or negotiation proceedings, by agreement between them, appoint another person to act as mediator.
- (5) A person appointed by the Minister in terms of subsection (3) must either be an official of the Department or an independent mediator.
- (6) Where the Minister or the Department is a party to the dispute, the mediator may not be an official of the Department.
- (7) The contents of all discussions which took place and of all submissions made as part of a mediation process under this section are privileged in law, and may not be received in evidence by any court of law, unless the parties agree otherwise.
- (8) The fees and expenses of a mediator must be paid by -
 - (a) the Department, if the Minister has appointed the mediator; or
 - (b) the parties, if they have appointed the mediator.

CHAPTER 16

OFFENCES AND REMEDIES

In common with other Acts of Parliament which aim to make non-compliance a criminal offence, this Chapter lists the acts and omissions which are offences under this Act, with the associated penalties. It also gives the courts and water management institutions certain powers associated with prosecutions for these offences, such as the power to remove the cause of a stream flow reduction.

151. Offences

- (1) No person may -
- (a) use water otherwise than as permitted under this Act;
 - (b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act;
 - (c) fail to comply with any condition attached to a permitted water use under this Act;
 - (d) fail to comply with a directive issued under section 19, 20, 53 or 118;
 - (e) unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;
 - (f) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;
 - (g) fail to register an existing lawful water use when required by a responsible authority to do so;
 - (h) intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any of that person's duties in terms of this Act;
 - (i) unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;
 - (j) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;
 - (k) fail to register a dam with a safety risk;
 - (l) fail to comply with a temporary restriction on the use of water in terms of item 6 of Schedule 3; or
 - (m) commit contempt of the Water Tribunal.
- (2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

152. Enquiry in respect of compensation for harm, loss or damage suffered

Where any person is convicted of an offence under this Act and -

- (a) another person has suffered harm or loss as a result of the act or omission constituting the offence; or
- (b) damage has been caused to a water resource,

the Court may, in the same proceedings -

- (i) at the written request of the person who suffered the harm or loss; or
- (ii) at the written request of the Minister in respect of the damage caused to a water resource; and
- (iii) in the presence of the convicted person,

enquire without pleadings into the harm, loss or damage and determine the extent thereof.

153. Award of damages

After making a determination in terms of section 152, the Court may -

- (a) award damages for the loss or harm suffered by the person referred to in section 152 against the accused;
- (b) order the accused to pay for the cost of any remedial measures implemented or to be implemented; and
- (c) order that the remedial measures to be implemented, be undertaken either by the accused or the relevant water management institution.

154. Offences in relation to employer and employee relationships

Whenever an act or omission by an employee or agent -

- (a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of the employer or principal, as the case may be, the employer or principal, as the case may be, is, in addition to the employee or agent, liable to conviction for that offence; or
- (b) would constitute an offence by the employer or principal, as the case may be, in terms of this Act, that employee or agent will in addition to that employer or principal be liable to conviction for that offence.

155. Interdict or other order by High Court

A High Court may, on application by the Minister or the water management institution concerned, grant an interdict or any other appropriate order against any person who has contravened any provision of this Act, including an order to discontinue any activity constituting the contravention and to remedy the adverse effects of the contravention.

CHAPTER 17

GENERAL AND TRANSITIONAL PROVISIONS

This Chapter contains a number of unrelated provisions which, being of general importance to the Act as a whole, are less suited to other Chapters. They relate, among other things, to the binding of all organs of state, to delegations, to the amendment and substitution of legal instruments, to the limitation of liability, and to the authorisation and service of documents. The Chapter refers to the list, in Schedule 7, of laws or parts of laws which are repealed by this Act and which will no longer have effect. However, any act performed under a repealed law remains valid if not inconsistent with this Act and until overridden by this Act. Regulations made under repealed laws also remain valid if not inconsistent with this Act and until repealed by the Minister. This Chapter also provides for overriding any provision in a prior law which exempts a person from payment of a charge or limiting payment to a fixed charge for water use.

Part 1

Liability

156. State bound

This Act binds all organs of state.

157. Limitation of liability

Neither the State nor any other person is liable for any damage or loss caused by -

- (a) the exercise of any power or the performance of any duty in terms of this Act; or
- (b) the failure to exercise any power, or perform any duty in terms of this Act,

unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

158. Amendment or substitution of instruments

- (1) For the purposes of this section, "instrument" includes any regulation, strategy, licence, directive or notice made, determined, issued or given in terms of this Act.

- (2) If the proposed amendment or substitution of an instrument -
- (a) is not likely to alter the rights and obligations of any person materially;
 - (b) corrects any clerical mistake, unintentional error or omission in an instrument;
 - (c) corrects any figure miscalculated in an instrument; or
 - (d) corrects any misdescription of any person, thing or property,

the amendment or substitution may be made without following the procedure required for establishing or giving effect to the instrument.

159. Effect of delegation

Where a power is conferred on a person to delegate the exercise of a power then, unless the contrary intention appears -

- (a) such a delegation does not prevent the exercise of that power, or the performance of that duty by the person who made the delegation;
- (b) such a delegation may be made subject to such conditions or limitations as the person making that delegation may specify; and
- (c) a power so delegated, when exercised or performed by the delegatee, must be regarded as having been exercised or performed by the person making the delegation.

Part 2

Powers and authorisations

160. Documents deemed to be properly authorised and issued

- (1) A notice, directive or other document issued in terms of this Act in good faith by any water management institution and purporting to have been signed by the chairperson, secretary or chief executive officer of the institution must be regarded as having been properly authorised and issued in terms of a valid decision, until evidence to the contrary is adduced.
- (2) Any document issued in terms of this Act without authority may be ratified subsequently.

161. Documents and steps valid under certain circumstances

- (1) A notice, directive or other document issued in good faith in terms of this Act, but which does not comply with this Act, is valid if the non-compliance is not material and does not prejudice any person.

- (2) The failure to take any steps required in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure -
- (a) is not material;
 - (b) has subsequently been rectified; and
 - (c) does not prejudice any person.
- (3) A failure in good faith to consult with or send notice to any relevant person or body as required by this Act does not invalidate any act of or process for which such consultation is a prerequisite.

162. Service of documents

- (1) Any notice, directive or other document in terms of this Act, must be served -
- (a) if it is to be served on a natural person -
 - (i) by hand delivery to that person;
 - (ii) by hand delivery to a responsible individual at that person's business or residential address;
 - (iii) by sending it by registered mail to that person's business or residential address;
or
 - (iv) where that person's business and residential address is unknown, despite reasonable enquiry,

by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address; or

- (b) if it is intended for a juristic person -
 - (i) by hand delivery to a responsible individual at the registered address or principal place of business of that juristic person;
 - (ii) by sending it by facsimile to the registered address or principal place of business of that juristic person;
 - (iii) by sending it by registered mail to the registered address or principal place of business of that juristic person;
 - (iv) by conspicuously attaching it to the main entrance of the registered address or the principal place of business of that juristic person; or

- (v) by hand delivery to any member of that juristic person's board of directors or governing body.
- (2) Any notice, directive or other document served according to subsection (1) is considered to have come to the notice of the person, unless the contrary is proved.

163. Repeal of laws, and savings

- (1) The laws set out in Schedule 7 are hereby repealed to the extent set out in the third column of that Schedule.

(Commencement dates of sub-s. (1): 1 October 1998 and 1 October 1999 – See Schedule 7)

- (2) This Act overrides any provision in a prior law exempting a person from payment of a charge, or limiting payment to a fixed charge for water use.
- (3) Anything done under a law repealed by this Act remains valid -
 - (a) to the extent that it is not inconsistent with this Act; and
 - (b) until anything done under this Act overrides it.
- (4) Any regulation made under a law repealed by this Act remains in force and is considered to have been made under this Act -
 - (a) to the extent that it is not inconsistent with this Act; and
 - (b) until it is repealed by the Minister under this Act.

163A. Amendments to this Act

- (1)
 - (a) Any proposed amendments to this Act that may have the effect of amending the provisions of the Agreement, must be subject to concurrence between the Minister, the Minister responsible for mineral resources and the Minister responsible for environmental affairs; and
 - (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.
- (2) Agreement for the purpose of subsection (1) means the Agreement reached between the Minister, the Minister responsible for mineral resources and the Minister responsible

for environmental affairs titled *One Environmental System* for the country with respect to mining, which entails:

- (a) that all environment related aspects would be regulated through one environmental system which is the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that all environmental provisions would be repealed from the Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002);
- (b) that the Minister responsible for environmental affairs sets the regulatory framework and norms and standards, and that the Minister responsible for mineral resources will implement the provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and the subordinate legislation as far as it relates to prospecting, exploration, mining or operations;
- (c) that the Minister responsible for mineral resources will issue environmental authorisations in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) for prospecting, exploration, mining or operations, and that the Minister responsible for environmental affairs will be the appeal authority for these authorisations; and
- (d) that the Minister, the Minister responsible for mineral resources and the Minister responsible for environmental affairs agree on fixed time-frames for the consideration and issuing of the authorisations in their respective legislation and also agreed to align the time frames and processes.

[S. 163A inserted by s. 5 of Act 27/2014 w.e.f. the same date as the National Environmental Laws Amendment Act, 2014 - 2 September 2014]

164. Short title and commencement

This is the National Water Act, 1998, which takes effect on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

PERMISSIBLE USE OF WATER

(Sections 4 (1) and 22 (1) (a) (i) and Item 2 of Schedule 3)

- (1) A person may, subject to this Act -
 - (a) take water for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access;
 - (b) take water for use on land owned or occupied by that person, for -

- (i) reasonable domestic use;
- (ii) small gardening not for commercial purposes; and
- (iii) the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land,

from any water resource which is situated on or forms a boundary of that land, if the use is not excessive in relation to the capacity of the water resource and the needs of other users;

- (c) store and use runoff water from a roof;
- (d) in emergency situations, take water from any water resource for human consumption or fire-fighting;
- (e) for recreational purposes -
 - (i) use the water or the water surface of a water resource to which that person has lawful access; or
 - (ii) portage any boat or canoe on any land adjacent to a watercourse in order to continue boating on that watercourse; and
- (f) discharge -
 - (i) waste or water containing waste; or
 - (ii) runoff water, including stormwater from any residential, recreational, commercial or industrial site,

into a canal, sea outfall or other conduit controlled by another person authorised to undertake the purification, treatment or disposal of waste or water containing waste, subject to the approval of the person controlling the canal, sea outfall or other conduit.

- (2) An entitlement under this Schedule does not override any other law, ordinance, bylaw or regulation, and is subject to any limitation or prohibition thereunder.

SCHEDULE 2

PROCEDURAL MATTERS REGARDING SERVITUDES

(Sections 127 (4) and 129 (2))

1. A person who intends to claim a servitude or an amendment of a servitude under the Act must give the owner of the land which will be subject to the servitude written notice of his or her claim.

2. Where a claimant is not the owner of the land in favour of which the servitude is claimed, the claimant must give the owner written notice of the claimant's claim.
3. The notice must include details of at least the following, where relevant:
 - (a) the entitlement of the claimant to the use of the water;
 - (b) a description of the land which will be subject to the servitude;
 - (c) whether the servitude claimed is a personal or a praedial servitude;
 - (d) in the case of a personal servitude, the name, identity number or registration number (if applicable) of the person in whose favour the servitude is claimed;
 - (e) in the case of a praedial servitude, a description of the land in favour of which the servitude is claimed;
 - (f) the likely impact of the servitude on the land or its use;
 - (g) in the case of a servitude of aqueduct, the route along which the water is to be led over the land which will be subject to the servitude and other affected land;
 - (h) in the case of a servitude of submersion, where the water will be stored and the area that will be submerged;
 - (i) the nature and locality of any proposed waterwork, including any road or other structure, which will reduce the loss and inconvenience to the owner or occupier of the land which will be subject to the servitude, as a result of the servitude;
 - (j) how and when maintenance of the proposed waterwork is likely to be carried out;
 - (k) the nature, quantity and situation of any materials required from the land which will be subject to the servitude for the purpose of constructing any proposed waterwork;
 - (l) the land reasonably required during the construction period for -
 - (i) construction camps;
 - (ii) accommodating people;
 - (iii) workshops; or
 - (iv) storage purposes;

- (m) the extent and location of any land reasonably required for construction, operating and maintaining a proposed waterwork on the land which will be subject to the servitude; and
 - (n) the compensation offered.
4. A plan depicting the location of the proposed waterworks on the land which will be subject to the servitude must be attached to the notice.
5. When a person gives a notice of a claim for a servitude or for an amendment of a servitude, that person must also send, by registered post, a copy of the notice to -
- (a) the lessee of the land;
 - (b) the national, provincial or local government authority responsible for controlling, maintaining or repairing a road across which the claimant intends constructing a waterwork in terms of the servitude or amendment; and
 - (c) every person who, from a perusal of -
 - (i) the title deeds of the land;
 - (ii) the records of the Registrar of Mining Titles; or
 - (iii) the records of any other government office which records prospecting or mining rights,
- appears to have any interest in the land which may be negatively affected by the servitude, if the whereabouts of the person can be readily ascertained.
6. A notice under item 1 or 2 may be amended as a result of -
- (a) the claimant exercising his or her rights under section 128 of the Act; or
 - (b) objections to the notice by the owner of the land subject to the servitude or the owner of the land in favour of which the servitude is claimed.
7. An amended notice must be dealt with in the same way as the original notice.
8. A claimant may, not earlier than 14 days and not later than 90 days after the notices required in terms of this Schedule have been given, apply to the High Court for the award of a servitude claimed in terms of the procedure set out in this Schedule and the High Court may make such order as it deems fit.

SCHEDULE 3

POWERS WHICH MAY BE EXERCISED AND DUTIES TO BE PERFORMED BY CATCHMENT MANAGEMENT AGENCIES ON ASSIGNMENT OR DELEGATION

(Sections 72, 73 and 151 (1) (l))

1. General.

Subject to Chapter 2 and sections 72 and 73 of this Act a catchment management agency may exercise any of the powers or perform any of the duties set out in this Schedule and any other powers or duties necessary or desirable in order to ensure compliance with the Act, to the extent that such powers and duties have been assigned or delegated to it, and within the constraints of the assignment or delegation.

2. Power to manage, monitor, conserve and protect water resources and to implement catchment management strategies.

A catchment management agency may -

- (a) manage and monitor permitted water use within its water management area;
- (b) conserve and protect the water resources and resource quality within its water management area;
- (c) subject to the provisions of the Act, develop and operate a waterwork in furtherance of its catchment management strategy;
- (d) do anything necessary to implement catchment management strategies within its water management area; and
- (e) by notice to a person taking water, and after having given that person a reasonable opportunity to be heard, limit the taking of water in terms of Schedule 1.

3. Catchment management agencies may make rules to regulate water use.

- (1) A catchment management agency may make rules to regulate water use.
- (2) The rules made under subitem (1) may relate, amongst other things, to -
 - (a) the times when;
 - (b) the places where;
 - (c) the manner in which; and

- (d) the waterwork through which,
water may be used.
- (3) A water user must adhere to any such rules which apply to that user.
- (4) A rule made under subitem (1) prevails over a conflicting distribution condition contained in any authorisation.
- (5) Before making rules a catchment management agency must -
- (a) publish a notice in the *Gazette* -
 - (i) setting out the proposed rules;
 - (ii) inviting written comments to be submitted on the proposed rules, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate;
 - (c) consider all comments received on or before the date specified in paragraph (a) (ii); and
 - (d) consider all applicable conditions for provision of services and bylaws made under the Water Services Act, 1997 (Act No. 108 of 1997), by water services institutions having jurisdiction in the area in question.
- (6) After complying with subitem (5), a catchment management agency must -
- (a) finalise the rules; and
 - (b) make it known, in an appropriate manner, that the rules have been finalised and where they may be read; or
 - (c) deliver or send a copy of the rules to each water user to whom the rules apply.
- 4. Catchment management agencies may require establishment of management systems.**
- (1) A catchment management agency may require in writing that a water user -
- (a) install a recording or monitoring device to monitor storing, abstraction and use of water;

- (b) establish links with any monitoring or management system to monitor storing, abstraction and use of water; and
 - (c) keep records on the storing, abstraction and use of water and submit the records to the catchment management agency.
- (2) If the water user fails to comply with a requirement of subitem (1) (a) or (b), a catchment management agency may undertake the installation or establishment of such links and recover any reasonable cost from that water user.

5. Catchment management agencies may require alterations to waterworks.

- (1) A catchment management agency may, by written notice to the owner or person in control of a waterwork, require that person to collect and submit particular information within a period specified to enable the catchment management agency to determine whether that waterwork is constructed, maintained and operated in accordance with the Act.
- (2) A catchment management agency may direct the owner or person in control of a waterwork at the owner's own cost and within a specified period, to -
- (a) undertake specific alterations to the waterwork;
 - (b) install a specific device; or
 - (c) demolish, remove or alter the waterwork or render the waterwork inoperable in a manner specified in the directive.
- (3) A catchment agency may only issue such a directive if it is reasonably necessary in order to -
- (i) protect authorised uses of other persons;
 - (ii) facilitate monitoring and inspection of the water use; or
 - (iii) protect public safety, property or the resource quality.
- (4) If the owner fails to comply with a directive, the catchment management agency may -
- (a) undertake the alterations;
 - (b) install the device; or
 - (c) demolish, remove or alter the waterwork or render the waterwork inoperable,
- and recover any reasonable costs from the person to whom the directive was issued.

6. Catchment management agencies may temporarily control, limit or prohibit use of water during periods of water shortage.

- (1) If a catchment management agency on reasonable grounds believes that a water shortage exists or is about to occur within an area it may, despite anything to the contrary in any authorisation, by notice in the *Gazette* or by written notice to each of the water users in the area who are likely to be affected -
 - (i) limit or prohibit the use of water;
 - (ii) require any person to release stored water under that person's control;
 - (iii) prohibit the use of any waterwork; and
 - (iv) require specified water conservation measures to be taken.
- (2) A notice contemplated in subitem (1) must -
 - (a) specify the geographical area or water resource to which the notice relates;
 - (b) set out the reason for the notice; and
 - (c) specify the Commencement date of the measures.
- (3) In exercising the powers under subitem (1), the catchment management agency must -
 - (a) give preference to the maintenance of the Reserve;
 - (b) treat all water users on a basis that is fair and reasonable; and
 - (c) consider -
 - (i) the actual extent of the water shortage;
 - (ii) the likely effects of the shortage on the water users;
 - (iii) the strategic importance of any water use; and
 - (iv) any water rationing or water use limitations by a water services institution having jurisdiction in the area in question under the Water Services Act, 1997 (Act No. 108 of 1997).
- (4) If the owner or person in control of a waterwork contravenes a notice issued under subitem (1), the catchment management agency may -

- (a) modify, or require the owner of the waterwork to modify the waterwork so that it cannot be used to take more water than that allowed for in the notice; or
 - (b) remove the waterwork or require the owner to remove the waterwork if the notice contains a prohibition on the use of that waterwork.
- (5) A catchment management agency may recover from the owner any reasonable costs incurred by it in acting under subitem (4).

SCHEDULE 4

MANAGEMENT AND PLANNING OF WATER MANAGEMENT INSTITUTIONS

(Sections 79 (2) and 82 (4))

Part 1

Governing board

1. Governing board.

- (1) The board -
- (a) is responsible for the management of the affairs of the water management institution; and
 - (b) may exercise the powers of the institution.
- (2) Without limiting subitem (1), it is the role of the board -
- (a) to decide the strategies and policies to be followed by the institution; and
 - (b) to ensure that the institution exercises its powers or performs its duties in a proper, efficient, economical and sustainable manner.
- (3) The board must carry out its functions as efficiently as possible, consistent with prudent commercial practice.
- (4) In the absence of the chairperson, the deputy chairperson performs all the functions of the chairperson.

2. Terms and conditions of appointment.

- (1) A board member holds office for a term -

- (a) specified in the constitution, if the institution has a constitution; or
 - (b) determined by the Minister, if the institution has no constitution.
- (2) The institution may pay a board member from the revenues of the institution an amount of remuneration, determined by the board from time to time, in accordance with any directive from the Minister.

3. Chief executive officer.

- (1) The board may appoint a suitably qualified person as chief executive officer of the institution.
- (2) The chief executive officer of the institution holds office on the terms and conditions determined by the board.
- (3) The board may remove the chief executive officer of the institution from office.
- (4) The Minister may, for good reasons and after consultation with the board, direct the board to remove the chief executive officer from office.
- (5) The board must comply with a directive given by the Minister under subparagraph (4).
- (6) The functions to be performed by the chief executive officer in terms of this Schedule may also be performed by the chairperson or any other officer designated by the chairperson.
- (7) The board must, in consultation with the Minister of Public Service and Administration, determine the salary of its chief executive officer, subject to the approval of the Minister.

4. Vacancies, resignations and removal from office.

- (1) The position of a board member becomes vacant if the member -
 - (a) has been declared to be of unsound mind by a competent authority;
 - (b) is declared insolvent;
 - (c) resigns;
 - (d) is convicted of any offence involving dishonesty;
 - (e) is absent without prior consent of the chairperson from two consecutive meetings of the board; or
 - (f) fails to make any disclosure required to be made in terms of item 7.

- (2) An ordinary member or the deputy chairperson may resign in writing addressed to the chairperson.
- (3) The chairperson may resign in writing addressed to the Minister.

5. Validity of decisions.

- (1) An act or decision of the board is not invalid merely because of -
 - (a) a defect or irregularity in, or in connection with, the appointment of a board member;
or
 - (b) a vacancy in the membership of the board, including a vacancy resulting from the failure to appoint an original board member.
- (2) Anything done by or in relation to a person purporting to act as chairperson or as a board member is not invalid merely because -
 - (a) the occasion for the person to act had not arisen or had ceased;
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect.

Part 2

Board members

6. Duties of board members.

- (1) A board member must at all times act honestly in performing the functions of his or her office.
- (2) A board member must at all times exercise a reasonable degree of care and diligence in performing a member's functions, and in furtherance of this duty without limiting its scope, must -
 - (a) take reasonable steps to inform himself or herself about the institution, its business and activities and the circumstances in which it operates;
 - (b) take reasonable steps, through the processes of the board, to obtain sufficient information and advice about all matters to be decided by the board to enable him or her to make conscientious and informed decisions; and
 - (c) exercise an active discretion with respect to all matters to be decided by the board.

(3) A board member need not give continuous attention to the affairs of the board, but is required to exercise reasonable diligence in relation to -

(a) the business of; and

(b) preparation for and attendance at meetings of,

the board and any committee to which the board member is appointed.

(4) In determining the degree of care and diligence required to be exercised by a board member, regard must be had to the skills, knowledge or insight possessed by that member, and to the degree of risk involved in any particular circumstances.

(5) A board member, or former board member, must not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to prejudice the institution.

(6) This item must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body of a corporate body, and it does not prevent any criminal or civil proceedings being instituted in respect of such a liability.

7. Disclosure of interest.

(1) If a board member has a direct or indirect pecuniary or other interest in any matter in which the institution is concerned, which could conflict with the proper performance of his or her duties in relation to that matter, he or she must disclose that interest as soon as practicable after the relevant facts come to his or her knowledge.

(2) If the board member is present at a meeting of the board at which the matter is to be considered, the board member must disclose the nature of his or her interest to the meeting immediately before the matter is considered.

(3) If the board member is aware that the matter is to be considered at a meeting of the board at which he or she does not intend to be present, he or she must disclose the nature of his or her interest to the chairperson before the meeting is held.

(4) A board member who has made a disclosure under this paragraph must not -

(a) be present during any deliberation; or

(b) take part in any decision,

of the board in relation to the matter in question.

- (5) Any disclosure made under this paragraph must be noted in the minutes of the relevant meeting of the board.

8. Recovery of improper profits.

If a person contravenes item 7, the institution, or the Minister in the name of the institution, may recover from the person as a debt due to the institution, through a competent court, either or both of the following -

- (a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the institution has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

Part 3

Proceedings of the board

9. Convening meetings.

- (1) The board must meet at least twice in each year.
- (2) Meetings must be held at the times and, subject to subitem (4), the places determined by the board.
- (3) The chairperson may convene a meeting at any time and must do so when requested by one third of the board members.
- (4) The chairperson may, from time to time, determine that a meeting be held by telephone, closed circuit television or other means of communication.

10. Notices of meeting.

- (1) Except as provided in subitem (3), the chairperson or the chief executive officer must give at least seven days' written notice to board members of any meeting convened at the request of one third of the board members.
- (2) A notice given in terms of subitem (1) must -
 - (a) specify the date and time of the meeting; and
 - (b) state the general nature of the business of the meeting; and either
 - (c) state the place of the meeting; or

- (d) specify the means of communication by which the meeting will be held.
- (3) The chief executive officer or chairperson must give notice of a meeting -
 - (a) in writing; and
 - (b) not less than seven days in advance except in cases of emergency or where every board member agrees to accept short notice.
- (4) If notice of a meeting is given the board must, if requested by a board member, allow that member to participate in the meeting in the manner contemplated in item 16.
- (5) The proceedings of, or resolutions passed at a meeting of, a board are not invalid merely because -
 - (a) the chief executive officer omitted to send a notice to a board member; or
 - (b) a member did not receive a notice of the meeting.

11. Quorum.

- (1) No business may be conducted at a meeting unless a quorum of members is present.
- (2) A quorum is a majority of the members for the time being.
- (3) If a quorum is not present within 30 minutes after the time appointed for a meeting, the person presiding at the meeting may adjourn the meeting to the same time and place, seven days after the adjournment.
- (4) If a quorum is not present at an adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting is automatically cancelled.

12. Adjournment.

- (1) The person presiding at a meeting at which a quorum is present -
 - (a) may adjourn the meeting with the meeting's consent; and
 - (b) must adjourn the meeting if the meeting so directs.
- (2) An adjourned meeting must be held at the time and place agreed to by the meeting before it is adjourned.
- (3) Only unfinished business of an initial meeting can be conducted at an adjourned meeting.

13. Person presiding at meetings.

- (1) Subject to item 7 (4) -
 - (a) the chairperson must preside at all meetings of the board at which the chairperson is present; and
 - (b) in the absence of the chairperson, the deputy chairperson must preside at a meeting of the board.
- (2) If neither the chairperson nor the deputy chairperson is present, the meeting must appoint a board member present at the meeting to preside.

14. Voting.

- (1) A question arising at a meeting must be determined by a majority of votes of board members present and voting.
- (2) If voting on a question is equal, the person presiding has a casting vote as well as a deliberative vote.

15. Minutes.

- (1) The chief executive officer must ensure that complete and accurate minutes of each meeting are kept.
- (2) Draft minutes of each meeting must -
 - (a) be presented to the next meeting of the board for amendment, if necessary, and adoption; and
 - (b) be entered in a durable, bound volume of minutes.
- (3) The person presiding at the next meeting must sign and date an affirmation to the effect that any minutes of the previous meeting have been adopted by the meeting.

16. Participation in meetings.

- (1) The board may, by resolution, permit board members to participate in a particular meeting by telephone, closed circuit television or other means of communication.
- (2) A board member who participates in a meeting under permission given under subitem (1) must be regarded as being present at the meeting.

17. Resolutions without meetings.

- (1) If all the board members for the time being (other than a board member who is absent from South Africa at the time) sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last member signs the document.
- (2) For the purpose of subitem (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more board members, must be taken to be one document.
- (3) A document referred to in this item may be in the form of a telex or facsimile.

18. Execution of documents.

- (1) Subject to subitem (2), a document is duly executed by the board if it is executed on behalf of the board by any two board members.
- (2) The board may, either generally or in a particular case or class of cases, by resolution authorise the chief executive officer to execute documents on behalf of the board.

19. Appointment of committees.

- (1) The board may, from time to time -
 - (a) appoint such temporary or standing committees as it sees fit from among its members;
 - (b) appoint persons other than board members to a committee;
 - (c) remove any person appointed to a committee from such committee; and
 - (d) determine the terms of reference of any committee,

which may include -

- (i) full decision making powers on particular matters; or
 - (ii) a requirement to refer decisions back to the board for ratification.
- (2) Items 7, 11, 12, 14, 15, 16, 17, 18 (1) and 20 apply to a committee as if it were the board.
- (3) Part 2 also applies to any member of a committee who is not a board member.

- (4) A committee must report to the board at the times and in the manner determined by the board.

20. Power to regulate proceedings.

Subject to this Part, the board may regulate its own proceedings.

Part 4

Institutional planning

21. Business plans.

- (1) The board must prepare business plans.
- (2) The first business plan must be for a period of not less than three years and must begin when the first financial year starts, which must be not more than six months after the board is established.
- (3) Each subsequent business plan must be updated annually.
- (4) The board may review and revise a business plan at any time, and must do so when so directed by the Minister.

22. General matters to be included in business plans.

Each business plan must be in the form determined by the Minister and -

- (a) must set out the objectives of the institution;
- (b) must outline the overall strategies and policies that the institution is to follow to achieve the objectives;
- (c) must include a statement of the services which the institution expects to provide and the standards expected to be achieved in providing those services;
- (d) must include the financial and performance indicators and targets considered by the board to be appropriate;
- (e) may include any other information which the board considers appropriate; and
- (f) must include any other information determined by the Minister.

23. Financial matters to be included in business plans.

Each business plan -

- (a) must include a financial target;
- (b) must outline the overall financial strategies for the institution including the setting of charges, borrowing, investment and purchasing and disposal strategies;
- (c) must include a forecast of the revenue and expenditure of the institution, including a forecast of capital expenditure and borrowings;
- (d) must provide for capacity building amongst its board members and officials;
- (e) may include any other financial information which the board considers appropriate; and
- (f) must include any other financial information determined by the Minister.

24. Matters to be considered in setting financial targets.

In preparing or revising a financial target, the board must have regard to -

- (a) the need to maintain the institution's financial viability;
- (b) the need to maintain a reasonable level of reserves, especially to provide for -
 - (i) corrective action to redress the results of past racial and gender discrimination in the use of water resources;
 - (ii) any estimated future demand for the services of the institution; and
 - (iii) any need to improve the accessibility of, and performance standards for, the services provided by the institution; and
- (c) other matters determined by the Minister.

25. Business plans to be given to Minister.

- (1) When the board prepares or revises a business plan, it must immediately make a copy of the plan available to the Minister.
- (2) The Minister may -
 - (a) within 60 days after receiving a copy of a prepared plan; or
 - (b) within 30 days after receiving a copy of a revised plan,

make comments on the plan to the board.

- (3) The board must consult in good faith with the Minister following communication to it of the Minister's comments and must make any changes to the plan that are agreed upon by the Minister and the board.
- (4) The Minister may, from time to time, direct the board to include in, or omit from, a business plan, any matter, including a financial matter.
- (5) Before giving a directive under this item, the Minister must consult with the board as to the matters to be included in the directive.
- (6) The board must comply with a directive given under this item.

26. Board to notify Minister of significant events.

If matters arise that might prevent, or materially affect, achievement of the objectives of the institution in terms of the business plan or financial targets contained in the business plan, the board must immediately notify the Minister of the existence of such matters.

27. Institution must act in accordance with business plan.

The institution must act only in accordance with its business plan, as it exists from time to time, unless the Minister has directed otherwise.

28. Minister may require information.

- (1) The Minister may direct the board to give him or her specific information.
- (2) The board must comply with such directive.

Part 5: Monitoring and intervention

29. Provision of information by an institution.

- (1) An institution must provide the Minister or any person authorised by the Minister with -
 - (a) the information which the Minister requires on the affairs and financial position of the institution; and
 - (b) access to such books, accounts, documents and assets of the institution as the Minister may require.
- (2) The Minister may appoint a person to investigate the affairs or financial position of an institution and recover the reasonable fees and disbursements of that person from that institution.

- (3) A board member and an employee of a board have the same duties towards the Minister or a person authorised by the Minister as an institution has in subitem (1), except to the extent that the board member or employee can show that he or she is unable to comply.

30. Taking possession of books, records and assets.

The Minister or a person authorised by the Minister may enter into the premises of any institution and take possession of any book, record or asset of the institution where this is necessary in order to obtain any information to which the Minister is entitled in terms of this Part or for the purposes of any investigation that the Minister is entitled to conduct in terms of this Part.

31. Offence.

Any institution, board member or employee of the board who does not comply with items 28 to 30 or obstructs a person appointed under item 29 (2) is guilty of an offence and liable on conviction to a sentence contemplated in section 151 of the Act.

Part 6

Records and reporting

32. Financial records and accountability.

- (1) The financial year of an institution is for a 12month period determined by the board.
- (2) The board must ensure that the chief executive officer of the institution keeps -
- (a) proper records and accounts of the activities, transactions and affairs of the institution and of the board; and
 - (b) any other records or accounts that are necessary to explain sufficiently the financial operations and financial position of the institution.
- (3) The board and the chief executive officer of the institution must each do all things necessary to -
- (a) ensure that all money payable to the institution is properly collected;
 - (b) ensure that all money spent by the institution is properly spent and properly authorised;
 - (c) ensure that there is adequate control over all assets acquired for the purposes of the institution, or managed or controlled by it;

- (d) ensure that all liabilities incurred on behalf of the institution are properly authorised;
- (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate financial control system.

33. Annual report.

- (1) An institution must, in respect of each financial year, prepare an annual report containing -
 - (a) a report of its operations during the financial year;
 - (b) financial statements for the financial year; and
 - (c) a copy of each directive given to it during that year by the Minister.
- (2) The institution must submit the report to the Minister not later than six months after the end of the financial year in question.
- (3) The report of operations referred to in subitem (1) (a) must be prepared in a form and contain information determined by the Minister.
- (4) The financial statements referred to in subitem (1) (b) must be consistent with generally accepted accounting practices and must contain the information and be prepared in the manner and form determined by the Minister.
- (5) Such financial statements must -
 - (a) fairly present the results of the financial transactions of the institution during the financial year to which they relate and the financial position of the institution as at the end of the year; and
 - (b) be audited by a chartered accountant appointed by the board.
- (6) The institution must publish its annual report and make copies available at the offices of the institution for inspection and purchase by the public.
- (7) The institution must -
 - (a) if it is a catchment management agency, table its annual report in Parliament; or
 - (b) if it is a water user association, send a copy of its annual report to the Secretary to Parliament.

SCHEDULE 5

MODEL CONSTITUTION OF WATER USER ASSOCIATION

(Sections 91 (1) (f), 93 (1) and 94 (2))

1. Name of Association.

The name of the Association is [specify the name] (hereinafter referred to as “the Association”).

2. Application of the National Water Act of 1998 to the constitution.

This constitution is subject to Chapter 8 of the National Water Act of 1998 (hereafter referred to as the Act) and Schedule 4 to the Act.

3. Objects of the Association.

The objects of the Association are - [briefly described the objects]

4. Principal functions of the Association.

The principal functions to be performed by the Association in its area of operation are -

[Note: The following are options. Others may be proposed. Choose and number your options]

- * To prevent water from any water resource being wasted.
- * To protect water resources.
- * To prevent any unlawful water use.
- * To remove or arrange to remove any obstruction unlawfully placed in a watercourse.
- * To prevent any unlawful act likely to reduce the quality of water in any water resource.
- * To exercise general supervision over water resources.
- * To regulate the flow of any watercourse by -
 - clearing its channel;
 - reducing the risk of damage to the land in the event of floods;
 - changing a watercourse back to its previous course where it has been altered through natural causes.
- * To investigate and record -
 - the quantity of water at different levels of flow in a watercourse;
 - the times when; and
 - the places where water may be used by any person entitled to use water from a water resource.
- * To construct, purchase or otherwise acquire, control, operate and maintain waterworks considered to be necessary for
 - draining land; and
 - supplying water to land for irrigation or other purposes.
- * To supervise and regulate the distribution and use of water from a water resource according to the relevant water use entitlements, by erecting and maintaining devices for -

- measuring and dividing; or
- controlling the diversion of the flow of water.

5. Ancillary functions of Associations.

(1) The Association may perform functions other than its principal functions only if it is not likely -

(a) to limit the Association's capacity to perform its principal functions; and

(b) to be to the financial prejudice of itself or its members.

(2) Other functions of the Association may include -

[Note: The following are options. Others may be proposed. Choose and number your options]

- * Providing management services, training and other support services to -
 - (a) water services institutions; and
 - (b) rural communities.
- * Providing catchment management services to or on behalf of responsible authorities.

6. Founding members.

(1) The founding members of the Association are the members whose names appear in Annexure 1 of this constitution and who have been authorised by the proposed participants to act on their behalf in establishing the Association.

(2) The founding members will, for purposes of arranging the first election of members of the Management Committee, be considered to be the Management Committee of the Association with powers and duties limited to arranging the election in accordance with this constitution.

7. Membership of the Association.

(1) The first members of the Association are the persons who, during the consultation process, indicated their willingness to become members of the Association and whose names appear in Annexure 2 of this constitution.

(2) Application for new membership of the Association must be addressed to the Management Committee which must, at a meeting of the Committee, consider an application and approve it unless there is good reason to refuse it.

(3) An association must allow a person to become a member of the Association if directed by the Minister to do so.

(4) A member may only resign as a member of the Association with the approval of the Management Committee, which may not unreasonably withhold its approval. [Note:

A reason for accepting a resignation would be, for example, if the resignation would detrimentally affect the Association's ability to meet its financial commitments in respect of infrastructure provided to serve the member concerned]

8. Register of members.

All members must communicate their addresses from time to time to the person acting as secretary of the Association, who must keep a register of the names of members and of their addresses.

9. Rights of members.

- (1) Membership of the Association does not give any member a right to any of the moneys, property or assets of the Association, but only gives members the privileges of membership, subject to such charges and reasonable restrictions as are imposed by the Management Committee from time to time.
- (2) A member whose application for membership has been approved is bound by the constitution and rules of the Association which are then in force or as they are subsequently amended.

10. Liability of members.

The liability of members is limited to the amount of unpaid charges and interest thereon owing by them to the Association.

11. Qualification of candidates for membership of Management Committee.

Any member of the Association is, subject to disqualifications contemplated in Schedule 4 to the Act, eligible for election as a member of the Management Committee. If the Association's area of operation is divided into subareas, a member will only be eligible for election as a member of the Management Committee for the subarea in which that member resides.

12. Nomination of and voting for members of Management Committee.

Any person whose name is on the voters list of the Association may nominate candidates for election as members of the Management Committee and may vote at an election of members of the Committee. A person whose name appears on a voters list prepared for a subarea of the Association's area of operation, will be entitled to nominate candidates and to vote only in elections for that subarea.

13. Membership of Management Committee.

[Note: The following are options. Others may be proposed. Choose and number your options]

Option (a)

- (1) The Management Committee of the Association will consist of [specify the number] members.

Option (b)

[Note: This option is additional to option (a) and applies where the area of operation of the Association is divided into sub-areas]

The area of operation of the Association will be divided into subareas as described in Annexure 3 to this constitution. Each area will be represented on the Management Committee on the basis set out in that Annexure.

- (2) Membership of the Management Committee will be determined by an election process in which all members whose names are on the Association's voters list may participate.

Option (a)

- (3) Members will, subject to the disqualifications contemplated in Schedule 4, be elected for a fixed term of [specify period] years.

Option (b)

[Applies to election process only]

Members will, subject to the disqualifications contemplated in Schedule 4, be elected for a fixed term of [specify period] years. The first election will take place as follows -

- (i) one third of the members elected who stand highest on the poll will hold office for a period of [specify period] years;
- (ii) one third of the members elected who stand next highest on the poll will hold office for a period of [specify period] years; and
- (iii) the remaining members elected will hold office for a period of [specify period] years.

If, in any case -

- (a) no poll is required because the nominations received were not greater than the number of members to be elected; or
- (b) two or more candidates have received an equal number of votes,

the respective periods of office of the members will be determined by lot under supervision of the returning officer.

- (4) If a vacancy occurs on the Management Committee, the vacancy must be filled according to this item, provided that the member must be elected for a period equal to the remainder of the period for which the member who has vacated the office would otherwise have continued in office.
- (5) At least 30 days' notice of an election must be given to all members of the Association.

14. Appointment of chairperson and deputy chairperson.

[Note: The following are options. Others may be proposed. Choose and number your options]

Option (a)

- (1) After the election of the Management Committee the members of that Committee must elect a chairperson and deputy chairperson of the Association from amongst their members. The Management Committee may appoint any person to chair the proceedings for that purpose.

Option (b)

- (1) After the election of the Management Committee the members of the Association must elect a chairperson and a deputy chairperson of the Association from amongst the elected members of the Management Committee. The members of the Association may appoint any person to chair the proceedings for that purpose.
- (2) The chairperson and deputy chairperson hold office for a period of 12 months from the date of their election and may be re-elected.
- (3) When the period of office of a chairperson or deputy chairperson expires, that person will, provided that he or she remains a member of the Association, remain in office until the next meeting of the Management Committee.
- (4) A new chairperson and deputy chairperson of the Management Committee will be elected annually. Should any of these offices be vacated before the term expires, the office must be filled immediately according to the procedure set out in this item.

15. Voter's list.

- (1) The founding members of the Association must select a person to prepare a voters list for the first election of members of the Management Committee. The voters' list must show -
 - (a) the names of all members included in Annexure 2 to this constitution and, where appropriate, the name of a member's accredited representative;

(b) particulars of each member's entitlement to water use; and

(c) the number of votes a member is entitled to.

(2) If the Association's area of operation is divided into subareas, the voters' list must also be divided into subareas and the particulars referred to in subitem (1) must be shown under the respective subareas.

(3) The number of votes will be determined on the following basis -

[Note: The following are options. Others may be proposed. Choose and number your options]

Option (a)

One vote per entitlement to water use.

Option (b)

A pro rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all of the entitlements registered with the Association. In this calculation all fractions must be rounded off to the next higher figure.

Option (c)

A pro rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all the entitlements registered with the Association. In this calculation -

(i) all fractions must be rounded off to the next higher figure; and

(ii) no member will be awarded more than 10 votes.

Option (d)

One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member's entitlement.

Option (e)

One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member's entitlement, provided that no member will be awarded more than 10 votes.

(4) If the entitlement to use water is not in the name of a natural person, the holder must nominate an accredited representative whose name must appear on the voters' list and who may exercise the vote.

- (5) If the entitlement is in the name of two or more persons they must designate one of their numbers to represent them and that person's name must appear on the voters' list and he or she may exercise the vote.
- (6) The voters' list must annually be revised by the Management Committee and also whenever there is an amendment to the Association's area of operation.

16. Appointment of employees.

[Note: The appointment of a Chief Executive Officer for the Association is dealt with in Schedule 4 to the Act]

- (1) The Management Committee may employ such persons as it considers necessary to perform the Association's functions under this constitution.
- (2) The appointment of employees or any change in their conditions of service must be approved by resolution of the Management Committee.
- (3) All employees of the Association will remain in office despite any change in the composition and membership of the Management Committee.

17. Raising of loans.

- (1) The Management Committee may raise by way of loans, including bank overdrafts, any funds required by it for the purpose of carrying out any of its functions under this constitution or the Act.
- (2) Whenever the Management Committee proposes to raise a loan, it must give notice in writing of its intention, setting out details of the proposal. The notice must be given to every member of the Association not less than 21 days before the date of the meeting of the Committee at which the proposal will be considered.
- (3) No loan may be raised without a resolution of the Management Committee passed at a meeting at which not less than two thirds of the members of the Committee are present.

18. Charges and the recovery of charges.

- (1) For the purpose of defraying any expenditure that the Management Committee has lawfully incurred or may lawfully incur in carrying out its functions and duties it may annually assess charges on members according to the pricing strategy for water use set by the Minister.
- (2) The Management Committee may recover the charges assessed from either -
 - (a) the owners of the land concerned; or

- (b) any person to whom water is supplied on the land.
- (3) Whenever the Management Committee has assessed a charge, the Committee must prepare an assessment roll setting forth -
 - (a) the name of each member liable to pay charges;
 - (b) a description of the piece of land, which may be a specially delineated area, in respect of which the charge is assessed;
 - (c) the quantity of water or abstraction time period to which the member is entitled;
 - (d) the amount of the charge assessed;
 - (e) the date or dates on which payment is due and the amount due on each date; and
 - (f) the rate of interest payable on non-payment and the effective date of interest.
- (4) A copy of the assessment roll must lie open for inspection in the office of the Association at all reasonable times by any member of the Association.

19. Annual Report.

[Note: The following are options. Others may be proposed. Choose and number your options]

Option (a)

The procedure as set out in Schedule 4 to the Act applies.

[Note: This option is only recommended for use by well-established irrigation boards with a large membership and which are transformed into water user associations after promulgation of the Act]

Option (b)

The Management Committee must, within three months after the end of the Association's financial year, convene a general meeting of members and must at the meeting -

- (i) table an audited financial statement of the Association's accounts for the preceding financial year, including full particulars of any remuneration paid by the Association to members of the Management Committee and employees of the Association; and
- (ii) give an account to the members of its activities during the year.

20. Winding up.

[Note: The following are options. Others may be proposed. Choose and number your options]

Option (a)

(1) The Association may be dissolved by a resolution passed at a special general meeting held for that purpose, provided that -

- (i) the resolution is passed by a majority of two thirds of the members present and entitled to vote at the meeting; and
- (ii) the resolution is confirmed at a further special general meeting held not less than four weeks after the preceding special general meeting by a majority vote of members entitled to vote thereon.

(2) A meeting passing a resolution referred to in subitem (1) (i) of this constitution may also pass resolutions by a majority vote for -

- (a) the appointment of a liquidator; and
- (b) the disposal of surplus funds and assets of the Association after winding up and after the payment of all debts and obligations of the Association, provided that any surplus assets may only be transferred to an Association or institution with objects similar to those of the Association, or to the Minister.

Option (b)

The affairs of the Association will be wound up by a person appointed by the Minister in accordance with any directives given by the Minister, and subject to section 97 of the Act.

**LIST OF FOUNDING MEMBERS
ANNEXURE 1**

(In alphabetical order)

**LIST OF MEMBERS
ANNEXURE 2**

(In alphabetical order)

**DESCRIPTION OF SUBAREAS AND REPRESENTATION IN MANAGEMENT
COMMITTEE
ANNEXURE 3**

SCHEDULE 6

WATER TRIBUNAL

(Section 148 (4))

Part 1

Water Tribunal members

1. Terms of office of members.

- (1) A member of the Water Tribunal is appointed for a period of office determined by the Minister, which may not exceed four years.
- (2) A member may be reappointed.

2. Disqualification of members.

No person may hold office as a member of the Water Tribunal -

- (a) if that person is an unrehabilitated insolvent; or
- (b) if that person has been convicted of any offence involving dishonesty or has been sentenced to imprisonment without the option of a fine. A disqualification under this subitem ends three years after the sentence has been served.

3. Nominations for appointment to Water Tribunal.

- (1) Whenever necessary, the Minister must -
 - (a) publish a notice in the *Gazette* calling for nominations for appointment to the Water Tribunal; and
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which he or she considers to be appropriate.

[Sub-item (1) substituted by s. 4 of Act 45/99]

- (2) A notice in terms of subitem (1) must set out, in general terms, at least -
 - (a) the activities of the Tribunal;
 - (b) the time commitments reasonably expected from members of the Tribunal;

- (c) the term of office for which appointments will be considered;
 - (d) the criteria for disqualification as a member;
 - (e) the requirements with which a nomination must comply;
 - (f) the date by which nominations must be submitted, which may not be earlier than 30 days after publication of the notice; and
 - (g) the address to which nominations must be sent.
- (3) Every nomination of a person for appointment to the Tribunal must be signed by a proposer and a seconder, neither of whom may be the nominee, and must contain the nominee's signed acceptance.
- (4) Each of the Judicial Service Commission and the Water Research Commission -
- (a) must consider all valid nominations received before the date contemplated in subitem (2) (f);
 - (b) may prepare a short list of nominees;
 - (c) may interview all short-listed nominees; and
 - (d) must, subject to subitem (6), make recommendations to the Minister on the appointment of members of the Tribunal.

[Sub-item (4) substituted by s. 4 of Act 45/99]

- (5) In recommending a nominee for appointment each of the Judicial Service Commission and the Water Research Commission must consider -
- (a) the criteria set out in section 146 (4) of the Act;
 - (b) the reputation and integrity of the nominee; and
 - (c) any conflict of interests which the nominee may have.

[Sub-item (5) substituted by s. 4 of Act 45/99]

- (6)
- (a) The Judicial Service Commission must recommend at least two persons qualified in law for appointment as chairperson of the Tribunal.

- (b) The Water Research Commission must recommend persons qualified in water resource management or engineering or with knowledge in related fields, for appointment as deputy chairperson and additional members of the Tribunal.
- (c) The Judicial Service Commission or the Water Research Commission, as the case may be, must recommend a candidate two candidates for appointment for every vacancy, including that of chairperson or deputy chairperson, where necessary.

[Sub-item (6) substituted by s. 4 of Act 45/99]

- (7) The Department must pay all costs -
 - (a) relating to the publication of notices in terms of subitem (1); and
 - (b) incurred by the Judicial Service Commission and the Water Research Commission in the performance of their tasks.

[Sub-item (7) substituted by s. 4 of Act 45/99]

4. Termination of office of members.

- (1) A member of the Water Tribunal ceases to hold office -
 - (a) from the effective date of the member's resignation;
 - (b) if the member is absent without leave from the chairperson on two consecutive sittings of the Tribunal at which the member's presence is required. Leave may be granted retrospectively if the absence of the member was due to unforeseen circumstances;
 - (c) if the member has become disqualified in terms of item 2;
 - (d) if the member has been declared to be of unsound mind by a competent authority; or
 - (e) if the member's appointment has been terminated in terms of section 146 of the Act.
- (2) A member who is not the chairperson must notify the chairperson of his or her resignation. The chairperson must notify the Minister of his or her own resignation and the resignation of any other member.

Part 2

Lodging and hearing of appeals and applications

5. Lodging of appeals and applications.

- (1) An appeal to the Water Tribunal under section 148 (1) and an application for determination of compensation must be commenced by serving a copy of a written notice of appeal or application on the relevant responsible authority or catchment management agency and lodging the original with the Tribunal.
- (2) The Tribunal may, for good reason, condone the late lodging of an appeal or application.
- (3) A responsible authority or a catchment management agency against whose decision or offer an appeal or application is lodged must within a reasonable time -
 - (a) send to the Tribunal all documents relating to the matter, together with the reasons for its decision; and
 - (b) allow the appellant or applicant and every party opposing the appeal or application to make copies of the documents and reasons.

6. Hearing of appeals or applications by Water Tribunal.

- (1) An appeal or application before the Water Tribunal must be heard by one or more members, as the chairperson may determine.
- (2) A party to an appeal or application may be represented by a person of that party's choice.
- (3) Appeals and applications to the Tribunal take the form of a rehearing. The Tribunal may receive evidence, and must give the appellant or applicant and every party opposing the appeal or application an opportunity to present their case.
- (4) The Tribunal must keep minutes containing a summary of the proceedings of every hearing.

7. Subpoenas and evidence.

- (1) The Water Tribunal may -
 - (a) subpoena for questioning any person who may be able to give information relevant to the issues; and
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the issues, to appear before the Tribunal and to produce that book, document or object.
- (2) A subpoena must be signed by a Tribunal member and must -
 - (a) specifically require the person named in it to appear before the Tribunal;

- (b) state the date, time and place at which the person must appear; and
 - (c) sufficiently identify any book, document or object to be produced by that person.
- (3) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies to the questioning of any person and to the production of any book, document or object in terms of this item.
- (4) The party at whose request a subpoena was issued must pay witness fees, travel and subsistence allowances to a person subpoenaed to appear before the Tribunal, at the applicable High Court scale.
- (5) The Tribunal may administer an oath or accept an affirmation from any person called or subpoenaed to give evidence.

8. Contempt of the Water Tribunal.

- (1) A person commits contempt of the Water Tribunal -
- (a) if, after having been subpoenaed to appear before the Tribunal, the person without good cause does not attend;
 - (b) if the person, without good cause, fails to produce any book, document or object specified in a subpoena;
 - (c) if, after having appeared in response to a subpoena, the person fails to remain in attendance until excused by the Tribunal;
 - (d) by refusing to take the oath or to make an affirmation as a witness when the Tribunal so requires;
 - (e) by refusing to answer any question fully and to the best of that person's knowledge and belief, but subject to item 7 (3);
 - (f) if during the proceedings, the person behaves improperly; or
 - (g) if the person prejudices or improperly influences the proceedings of the Tribunal.
- (2) The Water Tribunal may refer any contempt to a High Court. A High Court may make an appropriate order.

9. Decisions of the Water Tribunal.

- (1) The Water Tribunal must give its decision in writing. A majority decision of members hearing a matter (if the matter is heard by more than two members) constitutes a decision of the Tribunal.

NATIONAL WATER ACT 36 OF 1998

- (2) The Tribunal must, at the request of any party and within a reasonable time, give written reasons for its decision on any matter.

[Schedule 6 amended by s. 4 of Act 45/99]

SCHEDULE 7

ACTS REPEALED

(Section 163 (1))

Number and year of Act	Short title	Extent of repeal
Act No. 32 of 1914	Hartebeestpoort Irrigation Scheme (Crocodile River) Act, 1914	The whole
Act No. 40 of 1916	Mapochs Gronden Water and Commonage Act, 1916	The whole
Act No. 23 of 1918	Hartebeestpoort Irrigation Scheme (Acquisition of Land) Act, 1918	The whole
Act No. 11 of 1919	Riparian Land (Erven and Commonages) Act, 1919	The whole
Act No. 13 of 1919	The Bedford Additional Water Supply (Private) Act, 1919	The whole
Act No. 14 of 1919	Rand Mines Power Supply Company Water Supply (Private) Act, 1919	The whole
Act No. 24 of 1921	Durban Waterworks Consolidation (Private) Act, 1921	The whole
Act No. 14 of 1923	Mapochs Gronden Water and Commonage Act Amendment Act, 1923	The whole
Act No. 14 of 1925	Ebenezer (Van Rhynsdorp) Exchange of Land Act, 1925	The whole
Act No. 15 of 1925	Sundays River Settlements Administration Act, 1925	The whole
Act No. 4 of 1926	Brandvlei Land and Irrigation Works Act, 1926	The whole
Act No. 16 of 1926	Winterton Irrigation Settlement (Local Board of Management) Act, 1926	The whole
Act No. 15 of 1929	Pretoria Waterworks (Private) Act, 1929	The whole
Act No. 18 of 1929	Rand Mines Power Supply Company Additional Water Supply (Private) Act, 1929	The whole
Act No. 21 of 1929	Irrigation Loans Adjustment Act, 1929	The whole
Act No. 41 of 1930	Irrigation Districts Adjustment Act, 1930	The whole
Act No. 10 of 1932	MaricoBosveld Irrigation Scheme Act, 1932	The whole

NATIONAL WATER ACT 36 OF 1998

Act No. 13 of 1932	Mafeking Waterworks (Private) Act, 1932	The whole
Act No. 20 of 1933	Franschoek Water (Private) Act, 1933	The whole
Act No. 11 of 1934	Irrigation Districts Adjustment (Amendment) Act, 1934	The whole
Act No. 38 of 1934	Vaal River Development Scheme Act, 1934	The whole
Act No. 38 of 1935	Kopjes Irrigation Settlement Act, 1935	The whole
Act No. 39 of 1935	Vyfhoek Management Act, 1935	The whole
Act No. 1 of 1936	Vyfhoek Management Amendment Act 1936	The whole
Act No. 4 of 1937	Vaal River Development Scheme (Amendment) Act, 1937	The whole
Act No. 16 of 1937	Uitenhage (Groendal) Water (Private) Act, 1937	The whole
Act No. 19 of 1937	Mapochs Gronden Amendment Act, 1937	The whole
Act No. 20 of 1937	The Durban Waterworks (Private) Act, 1937	The whole
Act No. 15 of 1939	Cannon Island Settlement Management Act, 1939	The whole
Act No. 10 of 1943	Oliphants River Irrigation Works Act, 1943	The whole
Act No. 18 of 1944	Vaal River Development Scheme (Amendment) Act, 1944	The whole
Act No. 21 of 1944	Irrigation Districts Adjustment Act, 1944	The whole
Act No. 11 of 1945	The Durban Waterworks (Private) Act Amendment (Private) Act, 1945	The whole
Act No. 23 of 1945	Saldanha Bay Water Supply Act, 1945	The whole
Act No. 37 of 1946	N'Jelele Irrigation District Adjustment Act, 1946	The whole
Act No. 23 of 1947	Klipdrift Settlement Act, 1947	The whole
Act No. 24 of 1947	Skanskop Settlement Act, 1947	The whole
Act No. 37 of 1947	Vyfhoek Management Amendment Act, 1947	The whole
Act No. 5 of 1948	The Durban Waterworks (Private) Act Further Amendment (Private) Act, 1948	The whole
Act No. 21 of 1948	Vaal River Development Scheme Amendment Act, 1948	The whole
Act No. 22 of 1948	Hartebeestpoort Irrigation Scheme (Crocodile River) Amendment Act, 1948	The whole
Act No. 31 of 1948	Buffelspoort Irrigation Scheme Act, 1948	The whole
Act No. 7 of 1949	Irrigation Commission Repeal Act, 1949	The whole
Act No. 24 of 1949	Bospoort Irrigation Scheme Act, 1949	The whole
Act No. 34 of 1949	Irrigation Amendment Act, 1949	The whole

NATIONAL WATER ACT 36 OF 1998

Act No. 17 of 1950	Rand Water Board Statutes (Private) Act, 1950	The whole
Act No. 23 of 1950	Olifantsnek Irrigation District Adjustment Act, 1950	The whole
Act No. 24 of 1950	Breede River Conservation District Adjustment Act, 1950	The whole
Act No. 18 of 1951	Kopjes Irrigation Settlement Amendment Act, 1951	The whole
Act No. 43 of 1951	Saldanha Bay Water Supply Amendment Act, 1951	The whole
Act No. 6 of 1952	Southern Suburbs of Cape Town Water Supply Act Amendment (Private) Act, 1952	The whole
Act No. 7 of 1952	The Durban Waterworks Additional Borrowing Powers (Private) Act, 1952	The whole
Act No. 2 of 1953	Lichtenburg Waterworks (Private) Act, 1953	The whole
Act No. 37 of 1954	Mooi River District Adjustment Act, 1954	The whole
Act No. 42 of 1954	Mapochsgronde Irrigation Scheme Act, 1954	The whole
Act No. 31 of 1956	Irrigation Districts Adjustment Act, 1956	The whole
Act No. 54 of 1956	Water Act, 1956	The whole (*Sections 1, 9, 9B, 10, 12B, 15, 16, 20, 21, 32A, 32B, 32C, 32D, 32E, 32J, 56 (3), 56 (5), 62, 63, 66, 88, 89 (1) (j), 90, 91, 92, 165, 166 and 179A)
Act No. 45 of 1957	Hartebeestpoort Irrigation Scheme (Crocodile River) Amendment Act, 1957	The whole
Act No. 75 of 1957	Water Amendment Act, 1957	The whole
Act No. 36 of 1960	Durban Waterworks (Private) Act, 1960	The whole
Act No. 59 of 1960	Marico Bosveld Irrigation Scheme Amendment Act, 1960	The whole
Act No. 1 of 1961	Vyfhoek Management Amendment Act, 1961	The whole
*Act No. 56 of 1961	Water Amendment Act, 1961	The whole
Act No. 1 of 1962	Cannon Island Settlement Management Amendment Act, 1962	The whole
Act No. 50 of 1963	Klipdrift Settlement Amendment Act, 1963	The whole

NATIONAL WATER ACT 36 OF 1998

*Act No. 63 of 1963	Water Amendment Act, 1963	The whole
Act No. 75 of 1963	Northern Vyfhoek Settlement Adjustment Act, 1963	The whole
Act No. 29 of 1964	Rand Water Board Statutes (Private) Act, 1964	The whole
Act No. 35 of 1964	Kopjes Irrigation Settlement Adjustment Act, 1964	The whole
Act No. 36 of 1964	Olifants River (Oudtshoorn) Act, 1964	The whole
Act No. 28 of 1965	Great Fish River Irrigation District Adjustment Amendment Act, 1965	The whole
*Act No. 71 of 1965	Water Amendment Act, 1965	The whole
*Act No. 11 of 1966	Water Amendment Act, 1966	The whole
Act No. 53 of 1966	Roodepoort and Weltevreden Agricultural Settlements Adjustments Act, 1966	The whole
Act No. 71 of 1967	Vaal River Development Scheme Amendment Act, 1967	The whole
Act No. 73 of 1967	Mafeking Waterworks (Private) Amendment Act, 1967	The whole
*Act No. 79 of 1967	Water Amendment Act, 1967	The whole
Act No. 34 of 1968	Waterval River (Lydenburg) Act, 1968	The whole
Act No. 53 of 1969	Rand Water Board Statutes (Private) Act Amendment Act, 1969	The whole
*Act No. 77 of 1969	Water Amendment Act, 1969	The whole
Act No. 78 of 1969	Orange River Development Project Act, 1969	The whole
Act No. 68 of 1970	Van Wyksvlei Settlement Regulation Act, 1970	The whole
*Act No. 36 of 1971	Water Amendment Act, 1971	The whole
Act No. 31 of 1972	Rand Water Board Statutes (Private) Act Amendment Act, 1972	The whole
*Act No. 45 of 1972	Water Amendment Act, 1972	The whole
*Act No. 42 of 1975	Water Amendment Act, 1975	The whole
*Act No. 27 of 1976	Water Amendment Act, 1976	The whole
Act No. 105 of 1977	Vaal River Development Scheme Amendment Act, 1977	The whole
*Act No. 108 of 1977	Water Amendment Act, 1977	The whole
Act No. 34 of 1978	Irrigation Districts Adjustment Amendment Act, 1978	The whole
*Act No. 73 of 1978	Water Amendment Act, 1978	The whole
*Act No. 51 of 1979	Water Amendment Act, 1979	The whole
*Act No. 92 of 1980	Water Amendment Act, 1980	The whole

NATIONAL WATER ACT 36 OF 1998

Act No. 8 of 1982	Rand Water Board Statutes (Private) Amendment Act, 1982	The whole
Act No. 11 of 1982	Vaal River Development Scheme Amendment Act, 1982	The whole
*Act No. 96 of 1984	Water Amendment Act, 1984	The whole
*Act No. 122 of 1984	Forest Act, 1984	Sections 7, 8 and 9
Act No. 110 of 1986	Water Amendment Act, 1986	The whole
*Act No. 68 of 1987	Water Amendment Act, 1987	The whole
Act No. 37 of 1988	Water Amendment Act, 1988	The whole
*Act No. 38 of 1988	Water Act (Bophuthatswana), 1988	The whole
Act No. 40 of 1988	Rand Water Board Statutes (Private) Act Amendment Act, 1988	The whole
Act No. 36 of 1990	Rand Water Board Statutes (Private) Act Amendment Act, 1990	The whole
*Act No. 68 of 1990	Water Amendment Act, 1990	The whole
*Act No. 16 of 1991	Water Amendment Act, 1991	The whole
*Act No. 92 of 1993	Water Amendment Act, 1993	The whole
Act No. 32 of 1994	Water Laws Rationalisation and Amendment Act, 1994	The whole
*Act No. 51 of 1995	Water Amendment Act, 1995	The whole
Act No. 58 of 1997	Water Amendment Act, 1997	The whole

(Commencement dates of Schedule 7: 1 October 1998 and 1 October 1999)

[**Note:** * Repealed with effect from 1 October, 1999]

ENVIRONMENT CONSERVATION ACT

ENVIRONMENT CONSERVATION ACT 73 OF 1989

(English text signed by the State President)

[Assented To: 1 June 1989]

[Commencement Date: 9 June 1989]

as amended by:

Environment Conservation Amendment Act 98 of 1991
Environment Conservation Amendment Act 79 of 1992
Environment Conservation Second Amendment Act 115 of 1992
Environment Conservation Amendment Act 94 of 1993
Environment Conservation Second Amendment Act 189 of 1993
Constitution of the Republic of South Africa 200 of 1993
Environment Conservation Amendment Act 52 of 1994
Proclamation No. R.29 of 1995
Proclamation No. R.43 of 1996
National Environmental Management Act 107 of 1998
National Heritage Resources Act 25 of 1999
Environment Conservation Amendment Act 50 of 2003
[with effect from 3 January 2006 – Proc. 68 / GG 28346 / 20051220]
National Environmental Management: Protected Areas Act 57 of 2003
National Environment Laws Amendment Act 44 of 2008
[with effect from 11 September 2009 - GN 902 / GG 32563 / 20090911]
National Environmental Management: Waste Act 59 of 2008
[with effect from 1 July 2009 – Proc. 34 / GG 32189 / 20090430]
National Environment Laws Amendment Act 14 of 2009
[with effect from 18 September 2009 – Proc. 65 / GG 32580 / 20090918]

NOTE:

The Act has been amended by s. 4 of Proclamation R.43 of 8 August, 1996, by the substitution for the expression “Administrator”, wherever it occurs, of the expression “competent authority”.

ACT

To provide for the effective protection and controlled utilization of the environment and for matters incidental thereto.

ARRANGEMENT OF SECTIONS

1. Definitions

PART I

POLICY FOR ENVIRONMENTAL CONSERVATION

2.
3.

PART II

**COUNCIL FOR THE ENVIRONMENT, COMMITTEE FOR ENVIRONMENTAL
CO-ORDINATION AND BOARD OF INVESTIGATION**

4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
- 14A.....
- 14B.....
- 14C.....
15.

PART III

PROTECTION OF NATURAL ENVIRONMENT

16.
17.
18.

PART IV

CONTROL OF ENVIRONMENTAL POLLUTION

19.

ENVIRONMENT CONSERVATION ACT

19A.....

20.

PART V

**CONTROL OF ACTIVITIES WHICH MAY HAVE DETRIMENTAL EFFECT ON
THE ENVIRONMENT**

21. Identification of activities which will probably have detrimental effect on environment

22. Prohibition of undertaking of identified activities

23. Limited development areas

PART VI

REGULATIONS

24.

24A.

24B.

24C.

25. Regulations regarding noise, vibration and shock

26. Regulations regarding environmental impact reports

27. Regulations regarding limited development areas

27A.

28. General regulatory powers

28A. Exemption to persons, local authorities and government institutions from application of certain provisions

PART VII

OFFENCES, PENALTIES AND FORFEITURE

29. Offences and penalties

30. Forfeiture

PART VIII

GENERAL PROVISIONS

31. Powers of Minister and competent authority in case of default by local authority

31A. Powers of Minister, competent authority, local authority or government institution where environment is damaged, endangered or detrimentally affected

32. Publication for comment

33. Delegation

ENVIRONMENT CONSERVATION ACT

34. Compensation for loss
 35. Appeal to Minister or competent authority
 36. Review by court
 37. Restriction of liability
 38.
 39.
 40. State bound
 41. Application of Act
 - 41A. Right to enter upon land
 42. Repeal of laws, and savings
 43. Amendment of Section 1 of Act 88 of 1967, as substituted by section 1 of Act 73 of 1975 and amended by section 1 of Act 104 of 1977, section 1 of Act 51 of 1981, section 1 of Act 87 of 1983 and section 1 of Act 92 of 1985.
 44. Amendment of section 4 of Act 88 of 1967, as substituted by section 3 of Act 51 of 1981.
 45. Amendment of section 6 of Act 88 of 1967, as substituted by section 4 of Act 51 of 1981.
 46. Short title
- Schedule

1. Definitions

In this Act, unless the context indicates otherwise -

“administrative body” means a Minister, competent authority, local authority, government institution or a person who makes a decision in terms of the provisions of this Act;

“Administrator”

[Definition of “Administrator” inserted by Proc. R.29/95 and deleted by Proc. R.43/96]

“chief executive officer” means the officer in charge of the relevant local authority or government institution;

“committee” means the Committee for Environmental Co-ordination established by section 12;

[Definition of “committee” substituted by s. 1 of Act 94/93]

“competent authority” in so far as a provision of this Act is applied in or with reference to a particular province, means the competent authority to whom the administration of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) been assigned in that province;

[Definition of “competent authority” inserted by Proc. R.43/96]

ENVIRONMENT CONSERVATION ACT

“**council**” means the Council for the Environment established by section 4;

“**define**” includes a description by means of a map on which sufficient information is indicated to identify an area;

[Definition of “define” inserted by s. 1 of Act 79/92]

“**Department**” means the Department of Environmental Affairs and Tourism;

[Definition of “Department” substituted by s. 1 of Act 52/94]

“**Director-General**” means the Director-General: Environmental Affairs and Tourism;

[Definition of “Director-General” substituted by s. 1 of Act 52/94]

“**disposal site**”

[Definition of “disposal site” repealed by s. 80 of Act 59/2008]

“**ecological process**” means the process relating to the interaction between plants, animals and humans and the elements in their environment;

“**ecosystem**” means any self-sustaining and self-regulating community of organisms and the interaction between such organisms with one another and with their environment;

“**environment**” means the aggregate of surrounding objects, conditions and influences that influence the life and habits of man or any other organism or collection of organisms;

“**environmental impact report**” means a report referred to in section 22(2) or 23(3);

[Definition of “environmental impact report” substituted by s. 1 of Act 79/92]

“**government institution**” means any institution, body, company or close corporation recognized by the Minister by notice in the *Gazette*;

[Definition of “government institution” substituted by s. 1 of Act 79/92]

“**limited development area**” means an area declared as a limited development area in terms of section 23(1);

“**litter**” means any object or matter discarded or left behind by the person in whose possession or control it was;

[Definition of “litter” substituted by s. 1 of Act 79/92]

ENVIRONMENT CONSERVATION ACT

“local authority”, in so far as a provision of this Act is applied in or with reference to a particular province, means a local government body or a transitional council, as the case may be, contemplated in section 1(1) of the Local Government Transition Act, 1993 Act No. 209 of 1993);

[Definition of “local authority” substituted by s. 1 of Act 98/91 and Proc. R29/95]

“management advisory committee” means a committee established under section 17(1);

“Minister” means the Minister of Environmental Affairs and Tourism;

[Definition of “Minister” substituted by s. 1 of Act 52/94]

“Minister of State Expenditure” -

(a) in so far as the administration of a provision of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993, been assigned to a competent authority within the jurisdiction of the government of a province and the provision is applied in or with reference to the province concerned, means the member of the Executive Council of that province responsible for the budget in the province; or

(b) in so far as the administration of a provision of this Act has been so assigned, means the Minister of Finance;

[Definition of “Minister of State Expenditure” inserted by Proc. R29/95]

“Official Gazette” means the Provincial *Gazette* of a province;

[Definition of “Official Gazette” inserted by Proc. R29/95]

“prescribe” means prescribe by regulation or notice in the *Gazette*;

[Definition of “prescribe” substituted by s. 1 of Act 79/92]

“protected natural environment” means an area declared as a protected natural environment under section 16(1);

“province” means a province established in terms of section 124 of the Constitution of the Republic of South Africa, 1993;

[Definition of “province” inserted by Proc. R29/95]

“provincial administration” means the provincial administration established for a province by the Public Service Act, 1994 (Proclamation No. 103 of 1994).

[Definition of “provincial administration” inserted by Proc. R29/95]

ENVIRONMENT CONSERVATION ACT

“**regulation**” means a regulation made under this Act;

[Definition of “regulation” inserted by s. 1 of Act 79/92]

“**special nature reserve**” means an area declared as a special nature reserve under section 18;

“**this Act**” includes the regulations and any notice issued under the Act;

[Definition of “this Act” substituted by s. 1 of Act 79/92]

“**waste**”

[Definition of “waste” substituted by s. 1 of Act 79/92 and repealed by s. 80 of Act 59/2008]

PART I

POLICY FOR ENVIRONMENTAL CONSERVATION

2.

[S. 2 amended by s. 2 of Act 79/92, s. 1 of Act 189/93 and s. 2 of Act 52/94 and repealed by s. 50 of Act 107/98]

3.

[S. 3 amended by s. 3 of Act 79/92, s. 2 of Act 189/93 and Proc. R.43/96 and repealed by s. 50 of Act 107/98]

PART II

**COUNCIL FOR THE ENVIRONMENT, COMMITTEE FOR ENVIRONMENTAL
CO-ORDINATION AND BOARD OF INVESTIGATION**

[Heading substituted by s. 2 of Act 94/93]

4.

[S. 4 repealed by s. 50 of Act 107/98]

5.

[S. 5 repealed by s. 50 of Act 107/98]

ENVIRONMENT CONSERVATION ACT

6.

[S. 6 amended by s. 4 of Act 79/92 and repealed by s. 50 of Act 107/98]

7.

[S. 7 repealed by s. 50 of Act 107/98]

8.

[S. 8 repealed by s. 50 of Act 107/98]

9.

[S. 9 repealed by s. 50 of Act 107/98]

10.

[S. 10 amended by Proc. R29/95 and repealed by s. 50 of Act 107/98]

11.

[S. 11 repealed by s. 50 of Act 107/98]

12.

[S. 12 substituted by s. 3 of Act 94/93 and repealed by s. 50 of Act 107/98]

13.

[S. 13 amended by s. 5 of Act 79/92, substituted by s. 4 of Act 94/93 and Proc. R29/95 and repealed by s. 50 of Act 107/98]

14.

[S. 14 amended by s. 6 of Act 79/92, substituted by s. 5 of Act 94/93, amended by s. 3 of Act 52/94 and Proc. R29/95 and repealed by s. 50 of Act 107/98]

14A......

[S. 14A inserted by s. 6 of Act 94/93 and repealed by s. 50 of Act 107/98]

14B......

[S. 14B inserted by s. 6 of Act 94/93 and repealed by s. 50 of Act 107/98]

ENVIRONMENT CONSERVATION ACT

14C.....

[S. 14C inserted by s. 6 of Act 94/93 and repealed by s. 50 of Act 107/98]

15.

[S. 15 amended by Proc. R29/95 and repealed by s. 50 of Act 107/98]

PART III

PROTECTION OF NATURAL ENVIRONMENT

16.

S. 16 amended by s. 1 of Act 115/92 and Proc. R29/95 and repealed by s. 90 of Act 57/2003]

17.

[S. 17 amended by Proc. R29/95 and repealed by s. 90 of Act 57/2003]

18.

[S. 18 amended by s. 7 of Act 79/92, s. 7 of Act 94/93 and Proc. R.43/96 and repealed by s. 90 of Act 57/2003]

PART IV

CONTROL OF ENVIRONMENTAL POLLUTION

19.

[S. 19 repealed by s. 80 of Act 59/2008]

19A.....

[S. 19A inserted by s. 8 of Act 79/92 and repealed by s. 80 of Act 59/2008]

20.

[S. 20 amended by s. 9 of Act 79/92 and substituted by s. 1 of Act 50/2003 with effect from 3 January 2006 and repealed by s. 80 of Act 59/2008]

PART V

**CONTROL OF ACTIVITIES WHICH MAY HAVE DETRIMENTAL EFFECT ON
THE ENVIRONMENT**

21. Identification of activities which will probably have detrimental effect on environment

- (1) The Minister may by notice in the *Gazette* identify those activities which in his opinion may have a substantial detrimental effect on the environment, whether in general or in respect of certain areas.
- (2) Activities which are identified in terms of subsection (1) may include any activity in any of the following categories, but are not limited thereto:
 - (a) Land use and transformation;
 - (b) water use and disposal;
 - (c) resource removal, including natural living resources;
 - (d) resource renewal;
 - (e) agricultural processes;
 - (f) industrial processes;
 - (g) transportation;
 - (h) energy generation and distribution;
 - (i) waste and sewage disposal;
 - (j) chemical treatment;
 - (k) recreation.
- (3) The Minister identifies an activity in terms of subsection (1) after consultation with -
 - (a) the Minister of each department of State responsible for the execution, approval or control of such activity;
 - (b) the Minister of State Expenditure; and
 - (c) the competent authority of the province concerned.

[Subs. (3) substituted by s. 10 of Act 79/92]

22. Prohibition of undertaking of identified activities

- (1) No person shall undertake an activity identified in terms of section 21(1) or cause such an activity to be undertaken except by virtue of a written authorization issued by the Minister or by a competent authority or local authority or an officer, which competent authority, authority or officer shall be designated by the Minister by notice in the *Gazette*.
- (2) The authorization referred to in subsection (1) shall only be issued after consideration of reports concerning the impact of the proposed activity and of alternative proposed activities on the environment, which shall be compiled and submitted by such persons and in such manner as may be prescribed.
- (3) The Minister or the competent authority, or a local authority or officer referred to in subsection (1), may at his or its discretion refuse or grant the authorization for the proposed activity or an alternative proposed activity on such conditions, if any, as he or it may deem necessary.
- (4) If a condition imposed in terms of subsection (3) is not being complied with, the Minister, any competent authority or any local authority or officer may withdraw the authorization in respect of which such condition was imposed, after at least 30 days' written notice was given to the person concerned.

[S. 22 substituted by s. 11 of Act 79/92]

23. Limited development areas

- (1) A competent authority may by notice in the Official *Gazette* declare any area defined by him or her, as a limited development area.
- (2) No person shall undertake in a limited development area any development or activity prohibited by the competent authority by notice in the Official *Gazette* or cause such development or activity to be undertaken unless he or she has on application been authorized thereto by the competent authority, or by a local authority designated by the competent authority by notice in the Official *Gazette*, on the conditions contained in such authorization.
- (3) In considering an application for an authorization referred to in subsection (2) the competent authority or the designated local authority may request the person to submit a report as prescribed, concerning the influence of the proposed activity on the environment in the limited development area.
- (4) A limited development area shall not be declared unless the competent authority -
 - (a) has given notice in the Official *Gazette* and in not fewer than one English and one Afrikaans newspaper circulating in the area in question of his or her intention to declare such area as a limited development area;

ENVIRONMENT CONSERVATION ACT

- (b) has permitted not fewer than 60 days for the submission to the Director-General of the provincial administration concerned, of comment on the proposed declaration;
- (c) has considered all representations received in terms of such notice; and
- (d) has consulted each Minister charged with the administration of any law which in the opinion of the competent authority relates to a matter affecting the environment in that area.

[S. 23 amended by s. 12 of Act 79/92 and substituted by Proc. R29/95]

PART VI
REGULATIONS

24.

[S. 24 amended by s. 13 of Act 79/92 and s. 2 of Act 50/2003 and repealed by s. 80 of Act 59/2008]

24A......

[S. 24A inserted by s. 14 of Act 79/92, amended by Proc. R29/95 and repealed by s. 80 of Act 59/2008]

24B......

[S. 24B inserted by s. 3 of Act 50/2003 and repealed by s. 80 of Act 59/2008]

24C.

[S. 24C inserted by s. 3 of Act 50/2003 and repealed by s. 80 of Act 59/2008]

25. Regulations regarding noise, vibration and shock

The Minister may make regulations with regard to the control of noise, vibration and shock, concerning -

- (a) the definition of noise, vibration and shock;
- (b) the prevention, reduction or elimination of noise, vibration and shock;
- (c) the levels of noise, vibration and shock which shall not be exceeded, either in general or by specified apparatus or machinery or in specified instances or places;

ENVIRONMENT CONSERVATION ACT

- (d) the type of measuring instrument which can be used for the determination of the levels of noise, vibration and shock, and the utilization and calibration thereof;
- (e) the powers of provincial administrations and local authorities to control noise, vibration and shock; and
- (f) any other matter which he may deem necessary or expedient in connection with the effective control and combating of noise, vibration and shock.

26. Regulations regarding environmental impact reports

The Minister or a competent authority, as the case may be, may make regulations with regard to any activity identified in terms of section 21(1) or prohibited in terms of section 23(2), concerning -

- (a) the scope and content of environmental impact reports, which may include, but are not limited to -
 - (i) a description of the activity in question and of alternative activities;
 - (ii) the identification of the physical environment which may be affected by the activity in question and by the alternative activities;
 - (iii) an estimation of the nature and extent of the effect of the activity in question and of the alternative activities on the land, air, water, biota and other elements or features of the natural and man-made environments;
 - (iv) the identification of the economic and social interests which may be affected by the activity in question and by the alternative activities;
 - (v) an estimation of the nature and extent of the effect of the activity in question and the alternative activities on the social and economic interests;
 - (vi) a description of the design or management principles proposed for the reduction of adverse environmental effects; and
 - (vii) a concise summary of the finding of the environmental impact report;
- (b) the drafting and evaluation of environmental impact reports and of the effect of the activity in question and of the alternative activities on the environment; and
- (c) the procedure to be followed in the course of and after the performance of the activity in question or the alternative activities in order to substantiate the estimations of the environmental impact report and to provide for preventative or additional actions if deemed necessary or desirable.

[S. 26 amended by s. 15 of Act 79/92 and Proc. R29/95]

27. Regulations regarding limited development areas

The competent authority may make regulations with regard to limited development areas, concerning -

- (a) the imposition of restrictions on the nature and extent of development or activities in connection with development in such area;
- (b) the procedure to be followed for obtaining permission for development in such area; and
- (c) the repair of damage to the environment in such area by unauthorized development or activities.

[S. 27 amended by Proc. R29/95]

27A.....

[S. 27A inserted by s. 4 of Act 52/94 and repealed by s. 50 of Act 107/98]

28. General regulatory powers

Any regulation made under this Part -

- (a) may assign functions to any provincial administration or any local authority;
- (b) may relate to the qualifications, powers and duties of officers enforcing the provisions of this Act, including the power to seize any book, document, vehicle or other thing which such officer deems necessary in the execution of his functions;
- (c)

[Para. (c) deleted by s. 5 of Act 52/94]

- (d) may provide that an officer, local authority or government institution may by notice call upon a person contravening a provision of this Act to take certain steps or to cease certain activities within a specified period;
- (e) may provide that any person who contravenes, or who fails to comply with, any provision thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed, and, in the event of a continuing contravention, to a fine not exceeding R250 or to imprisonment for a period not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which such contravention continues;

ENVIRONMENT CONSERVATION ACT

- (f) may be made in respect of different regions or different matters which the Minister or a competent authority as the case may be may deem necessary or expedient;

[Para. (f) substituted by Proc. R29/95]

- (g) may relate to any matter which in terms of this Act shall or may be prescribed by regulation;

- (h) may in general relate to any matter which aims at furthering the objects of this Act;

- (i) which will entail the expenditure of State funds shall be made only with the concurrence of the Minister of State Expenditure.

- (ii)

[Sub-para. (ii) deleted by s. 16 of Act 79/92]

- (iii)

[Sub-para. (iii) substituted by s. 2 of Act 98/91 and deleted by s. 16 of Act 79/92]

28A.Exemption to persons, local authorities and government institutions from application of certain provisions

- (1) Any person, local authority or government institution may in writing apply to the Minister or a competent authority, as the case may be, with the furnishing of reasons, for exemption from the application of any provision of any regulation, notice or direction which has been promulgated or issued in terms of this Act.
- (2) In order to enable him to make a decision on an application in terms of subsection (1), the Minister or a competent authority, as the case may be, may call for further information from the applicant.
- (3) The Minister or a competent authority, as the case may be, may after considering an application -
 - (a) refuse to grant exemption;
 - (b) in writing grant exemption from compliance with any of or all the provisions of any regulation, notice or direction, subject to such conditions as he may deem fit.
- (4) If any condition referred to in subsection (3)(b) is not being complied with, the Minister may in writing withdraw the exemption concerned or at his discretion determine new conditions.

ENVIRONMENT CONSERVATION ACT

- (5) The Minister or a competent authority, as the case may be, may from time to time review any exemption granted or condition determined, and if he deems it necessary, withdraw such exemption or delete or amend such condition.

[S. 28A inserted by s. 17 of Act 79/92 and amended by Proc. R29/95]

PART VII

OFFENCES, PENALTIES AND FORFEITURE

29. Offences and penalties

(1) Any person -

- (a) who, having been duly summoned to appear at proceedings under section 15, fails without lawful excuse so to appear; or
- (b) who, having appeared as a witness at proceedings under section 15, refuses without lawful excuse to be sworn or to make affirmation or to produce any book, document or thing or to answer any question which he may be lawfully required to produce or answer,

shall be guilty of an offence.

(2) Any person -

- (a) referred to in section 16(3) who contravenes any provision of a direction issued under section 16(2) or fails to comply therewith; or
- (b) who contravenes a provision of section 18(6) or a condition of an exemption in terms of section 18(7),

shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

- (3) Any person who fails to comply with a direction in terms of section 31A(1) or (2), or prevents any person authorized in terms of section 41A to enter upon such land or hinders him or her in the execution of his or her powers, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months.

[Subs. (3) substituted by s. 18 of Act 79/92 and s. 80 of Act 59/2008]

- (4) Any person who contravenes a provision of section 20(1), 20(9), 22(1) or 23(2) or a direction issued under section 20(5) or fails to comply with a condition of a permit, permission, authorisation or direction issued or granted under the said provisions shall

ENVIRONMENT CONSERVATION ACT

be guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both such fine and such imprisonment, and in addition to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.

[Subs. (4) substituted by s. 80 of Act 59/2008, s. 2 of Act 44/2008 and s. 2 of Act 14/2009]

- (5) Any person convicted of an offence in terms of this Act for which no penalty is expressly provided, shall be liable to a fine not exceeding R500 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subs. (5) substituted by s. 2 of Act 14/2009]

- (6) Any person convicted of an offence in terms of this Act, and who after such conviction persists in the act or omission which constituted such offence, shall be guilty of a continuing offence and liable on conviction to a fine not exceeding R1 000 per day or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in respect of every day on which he or she so persists with such act or omission.

[Subs. (6) substituted by s. 2 of Act 14/2009]

- (7) In the event of a conviction in terms of this Act the court may order that any damage to the environment resulting from the offence be repaired by the person so convicted, to the satisfaction of the Minister, the competent authority concerned or the local authority concerned.
- (8) If within a period of 30 days after a conviction or such longer period as the court may determine at the time of the conviction, an order in terms of subsection (7) is not being complied with, the Minister, the competent authority concerned or local authority concerned may itself take the necessary steps to repair the damage and recover the cost thereof from the person so convicted.
- (9) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.

[S. 29 amended by Proc. R29/95]

30. Forfeiture

- (1) Notwithstanding anything to the contrary in any law contained, a court convicting any person of an offence under this Act may declare any vehicle or other thing by means whereof the offence concerned was committed or which was used in the commission of

ENVIRONMENT CONSERVATION ACT

such offence, or the rights of the convicted person to such vehicle or other thing, to be forfeited to the State.

- (2) A declaration of forfeiture under subsection (1) shall not affect the rights which any person other than the convicted person may have to the vehicle or other thing concerned, if it is proved that he did not know that the vehicle or other thing was used or would be used for the purpose of or in connection with the commission of the offence concerned or that he could not prevent such use.
- (3) The provisions of section 35(3) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall *mutatis mutandis* apply to any declaration of forfeiture under this section.

PART VIII

GENERAL PROVISIONS

31. Powers of Minister and competent authority in case of default by local authority

- (1) If in the opinion of the competent authority of the province in question, any local authority fails to perform any function assigned to it by or under this Act, that competent authority may, after affording that local authority an opportunity of making representations to him, in writing direct such local authority to perform such function within a period specified in the direction, and if that local authority fails to comply with such direction, the competent authority may perform such function as if he were that local authority and may authorize any person to take all steps required for that purpose.
- (2) Any expenditure incurred by the competent authority in the performance of any function by virtue of the provisions of subsection (1), may be recovered from the local authority concerned.
- (3) Whenever in the opinion of the Minister a local authority has failed to perform a function in terms of subsection (1), the Minister may request the competent authority in question to act in terms of subsection (1), and if the competent authority fails within 90 days after the date of such request to act accordingly, the Minister may do anything which the competent authority could have done, and the provisions of subsections (1) and (2) shall apply *mutatis mutandis* with reference to the Minister and anything done by him or under his authority.

31A. Powers of Minister, competent authority, local authority or government institution where environment is damaged, endangered or detrimentally affected

- (1) If, in the opinion of the Minister or the competent authority, local authority or government institution concerned, any person performs any activity or fails to perform any activity as a result of which the environment is or may be seriously damaged, endangered or

ENVIRONMENT CONSERVATION ACT

detrimentally affected, the Minister, competent authority, local authority or government institution, as the case may be, may in writing direct such person -

- (a) to cease such activity; or
- (b) to take such steps as the Minister, competent authority, local authority or government institution, as the case may be, may deem fit,

within a period specified in the direction, with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.

- (2) The Minister or the competent authority, local authority or government institution concerned may direct the person referred to in subsection (1) to perform any activity or function at the expense of such person with a view to rehabilitating any damage caused to the environment as a result of the activity or failure referred to in subsection (1), to the satisfaction of the Minister, competent authority, local authority or government institution, as the case may be.
- (3) If the person referred to in subsection (2) fails to perform the activity or function, the Minister, competent authority, local authority or government institution, depending on who or which issued the direction, may perform such activity or function as if he or it were that person and may authorize any person to take all steps required for that purpose.
- (4) Any expenditure incurred by the Minister, a competent authority, a local authority or a government institution in the performance of any function by virtue of the provisions of subsection (3), may be recovered from the person concerned.

[S. 31A inserted by s. 19 of Act 79/92]

32. Publication for comment

- (1) If the Minister, the Minister of Water Affairs, a competent authority or any local authority, as the case may be, intends to -

- (a) issue a regulation in terms of the provisions of this Act;

[Para. (a) substituted by s. 3 of Act 14/2009]

- (b) make a declaration or identification in terms of section 16(1), 18(1), 21(1) or 23(1); or
- (c) determine a policy in terms of section 2,

a draft notice shall first be published in the *Gazette* or the *Official Gazette* in question, as the case may be.

- (2) The draft notice referred to in subsection (1) shall include -

ENVIRONMENT CONSERVATION ACT

- (a) the text of the proposed regulation, direction, declaration, identification or determination of policy;
 - (b) a request that interested parties shall submit comments in connection with the proposed regulation, direction, declaration, identification or determination of policy within the period stated in the notice, which period shall not be fewer than 30 days after the date of publication of the notice;
 - (c) the address to which such comments shall be submitted.
- (3) If the Minister, competent authority or local authority concerned thereafter determines on any alteration of the draft notice published as aforesaid, it shall not be necessary to publish such alteration before finally issuing the notice.

33. Delegation

- (1) The Minister, the Minister of Water Affairs, a competent authority, a local authority or a government institution may on such conditions as he or it may deem fit delegate or assign any power or duty conferred upon or assigned to him or it by or under this Act, excluding any power referred to in sections 2, 16(2), 18(1), 18(4), 24, 25, 26, 27 and 28, to, respectively, any officer or employee of the Department, the Department of Water Affairs or the provincial administration or local authority or government institution concerned.
- (2) The Director-General may, on such conditions as he may deem fit, delegate or assign any power or duty conferred upon or assigned to him by or under this Act, to any officer or employee of the Department.

[S. 33 substituted by s. 20 of Act 79/92 and s. 3 of Act 189/93]

34. Compensation for loss

- (1) If in terms of the provisions of this Act limitations are placed on the purposes for which land may be used or on activities which may be undertaken on the land, the owner of, and the holder of a real right in, such land shall have a right to recover compensation from the Minister or competent authority concerned in respect of actual loss suffered by him consequent upon the application of such limitations.
- (2) The amount so recoverable shall be determined by agreement entered into between such owner or holder of the real right and the Minister or competent authority, as the case may be, with the concurrence of the Minister of State Expenditure.
- (3) In the absence of such agreement the amount so to be paid shall be determined by a court referred to in section 14 of the Expropriation Act, 1975 (Act No. 63 of 1975), and the provisions of that section and section 15 of that Act shall *mutatis mutandis* apply in determining such amount.

35. Appeal to Minister or competent authority

- (1) Any person who feels aggrieved at a decision referred to in section 20 in respect of which a power has been delegated to an officer or employee under section 33 may appeal against such decision to the Minister of Water Affairs in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.
- (2) Any person who feels aggrieved at a decision of an officer or employee enforcing a provision of this Act in respect of a protected natural environment may appeal against such decision to the competent authority concerned, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.
- (3) Subject to the provisions of subsections (1) and (2) any person who feels aggrieved at a decision of an officer or employee exercising any power delegated to him in terms of this Act or conferred upon him by regulation, may appeal against such decision to the Minister or the competent authority concerned, as the case may be, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.
- (4) The Minister, the Minister of Water Affairs or a competent authority, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision of the officer or employee or make such order as he may deem fit, including an order that the prescribed fee paid by the applicant or such part thereof as the Minister or competent authority concerned may determine be refunded to that person.

36. Review by court

- (1) Notwithstanding the provisions of section 35, any person whose interests are affected by a decision of an administrative body under this Act, may within 30 days after having become aware of such decision, request such body in writing to furnish reasons for the decision within 30 days after receiving the request.
- (2) Within 30 days after having been furnished with reasons in terms of subsection (1), or after the expiration of the period within which reasons had to be so furnished by the administrative body, the person in question may apply to a division of the Supreme Court having jurisdiction, to review the decision.

37. Restriction of liability

No person, including the State, shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this Act.

38.

[S. 38 repealed by s. 50 of Act 107/98]

ENVIRONMENT CONSERVATION ACT

39.

[S. 39 repealed by Proc. R29/95]

40. State bound

The provisions of this Act shall bind the State, including any provincial administration, except in so far as criminal liability is concerned.

41. Application of Act

(1) This Act shall also apply in respect of the Prince Edward Islands as defined in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

(2)

[Subs. (2) repealed by s. 60 of Act 25/99]

41A. Right to enter upon land

(1) Any person authorized thereto in writing by the Minister or a competent authority, as the case may be, may after reasonable notice to the owner or occupier of any land, at any reasonable time enter upon that land in order to investigate whether any action is necessary in order to give effect to the objects of this Act, or to determine whether the provisions of this Act or a regulation, notice, authorization, instruction or any direction promulgated, issued, granted or made thereunder or any condition imposed thereunder or contained in any authorization, instruction or direction has been complied with.

[Subs. (1) amended by Proc. R29/95]

(2) A person authorized under subsection (1) shall not exercise any power or perform any duty unless he is in possession of the authorization concerned.

(3) An authorized person shall produce his authorization at the request of any person having a material interest in the matter concerned.

[S. 41A inserted by s. 21 of Act 79/92]

42. Repeal of laws, and savings

(1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

(2) Anything done under any provision of a law repealed by subsection (1) and which could have been done under a provision of this Act shall be deemed to have been done under the latter provision.

ENVIRONMENT CONSERVATION ACT

43. Amendment of Section 1 of Act 88 of 1967, as substituted by section 1 of Act 73 of 1975 and amended by section 1 of Act 104 of 1977, section 1 of Act 51 of 1981, section 1 of Act 87 of 1983 and section 1 of Act 92 of 1985.

Section 1 of the Physical Planning Act, 1967, is hereby amended by the deletion of the definition of “nature area”.

44. Amendment of section 4 of Act 88 of 1967, as substituted by section 3 of Act 51 of 1981.

- (1) Section 4 of the Physical Planning Act, 1967, is hereby amended by the deletion of paragraph (b) of subsection (1).
- (2) At the commencement of this Act, land reserved as a nature area in terms of section 4 (1)(b) of the Physical Planning Act, 1967 (Act No. 88 of 1967), shall, notwithstanding the provisions of subsection (1), be deemed to be declared a protected natural environment in terms of section 16(1) of this Act.

[Subs. (2) substituted by s. 2 of Act 115/92]

45. Amendment of section 6 of Act 88 of 1967, as substituted by section 4 of Act 51 of 1981.

Section 6 of the Physical Planning Act, 1967, is hereby amended by the substitution for subparagraph (i) of paragraph (e) of subsection (2) of the following subparagraph:

“ (i) which has been reserved for the utilization of a particular natural resource.”

46. Short title

This Act shall be called the Environment Conservation Act, 1989.

Schedule

No. and year of law	Title	Extent of repeal
Act 100 of 1982	Environment Conservation Act, 1982	The whole
Act 45 of 1983	Environment Conservation Amendment Act, 1983	The whole
Act 61 of 1987	Environment Conservation Amendment Act, 1987	The whole

ENVIRONMENT CONSERVATION ACT NO. 73 OF 1989

GNR 625 OF 9 MAY 2003:

PLASTIC CARRIER BAGS AND PLASTIC FLAT BAGS REGULATIONS

ARRANGEMENT OF REGULATIONS

1. Definitions
2. Prohibition of certain plastic bags
3. Offences and penalties
4. Commencement date

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Environment Conservation Act, 1989 (Act No. 73 of 1989) shall bear the meaning so assigned to it in that Act and, unless the context indicates otherwise:

“**commercial distribution**” means making plastic bags directly or indirectly available for the packaging or the carrying of goods

“**plastic carrier bag**” means a bag, made of plastic film, with handles, with or without gussets, and which complies with paragraphs 4 and 5 of the Compulsory Specification;

“**plastic flat bag**” means a bag, made of plastic film, without handles, with or without gussets, and which complies with paragraphs 4 and 5 of the Compulsory Specification;

“**plastic film**” means a continuous, thin, non-woven membranous skin or layer of flexible material made of thermoplastic materials;

“**Compulsory Specification**” means the Compulsory Specification for Plastic Carrier Bags and Flat Bags published in terms of the Standards Act, 1993 (Act No. 29 of 1993);

“**trade**” means the sale of plastic carrier bags and plastic flat bags to any person, including, but not limited to, manufacturers, wholesalers and retailers of goods, for use within the Republic of South Africa.

2. Prohibition of certain plastic bags

The manufacture, trade and commercial distribution of domestically produced and imported plastic carrier bags and plastic flat bags, for use within the Republic of South Africa, other

PLASTIC CARRIER BAGS AND PLASTIC FLAT BAGS REGULATIONS

than those which comply with paragraphs 4 and 5 of the Compulsory Specification, is hereby prohibited.

3. Offences and penalties

- (1) Any person who contravenes regulation 2 shall be guilty of an offence and liable on conviction-
 - (a) to a fine; or
 - (b) to imprisonment for a period not exceeding 10 years; or
 - (c) to both such a fine and such imprisonment; and
 - (d) to a fine not exceeding three times the commercial value of anything in respect of which the offence was committed.
- (2) Any person convicted of an offence in terms of these regulations and, who after such conviction, persists in the act or omission which constituted such offence, shall be guilty of a continuing offence and be liable, on conviction, to a fine or to imprisonment for a period not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which such offence continues.

4. Commencement date

These regulations will come into effect on 09 May 2003.

ENVIRONMENT CONSERVATION ACT NO. 73 OF 1989

GNR 341 OF 28 MARCH 2008:

**REGULATIONS FOR THE PROHIBITION OF THE USE,
MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS AND
ASBESTOS CONTAINING MATERIALS**

ARRANGEMENT OF SECTIONS

1. Definitions
 2. Prohibitions
 3. Transitional Provisions
 4. Registration and Reporting
 5. Asbestos Phase-Out Plan
 6. Disposal of Asbestos or Asbestos Containing Material
 7. Packaging and Transport of Asbestos
 8. Offences
 9. Short Title
- ANNEXURE A

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates -

”**asbestos**” means any of the following minerals:

- (a) Amosite;
- (b) chrysotile;
- (c) crocidolite;
- (d) fibrous actinolite;
- (e) fibrous anthophyllite; and
- (f) fibrous tremolite, or any mixture containing any of these minerals;

”**asbestos containing material**” means any mixture, product, component or material to which asbestos has been added;

REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS
AND ASBESTOS CONTAINING MATERIALS

“Asbestos Phase-out Plan” means the plan referred to in regulation 5 of these regulations;

“Asbestos Regulations, 2001” means the regulations published under Government Notice R.155 in Government Gazette 23108 of 10 February 2002;

“asbestos waste” means any asbestos containing material that:

- (a) is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (b) the generator has no further use of, for the purposes of production or consumption;
and
- (c) must be disposed of;

“Identified product” means heat and arc resistant electrical insulation boards, acetylene gas cylinders, gaskets, seals and insulation materials which contain asbestos;

“SANS 10228” means the identification and classification of dangerous goods for transport, SANS 10228, published by the South African Bureau of Standard (SABS);

“SANS 10229” means the Transport of dangerous goods - Packaging and large packaging for road and rail transport, SANS 10229, published by the South African Bureau of Standards (SABS);

“the Act” means the Environment Conservation Act, 1989 (Act No. 73 of 1989), as amended.

2. Prohibitions

- (1) No person shall acquire, process, package or repackage asbestos; manufacture asbestos containing materials, or distribute asbestos or asbestos containing materials.
- (2) No person shall import asbestos or asbestos containing material into the Republic, or export asbestos or asbestos containing materials from the Republic.
- (3) No person shall import asbestos containing waste into the Republic.
- (4) The provisions of sub-regulation (2) and (3) shall not apply to a person -
 - (a) importing asbestos or asbestos containing material which is in transit from a State outside the Republic to another State outside of the Republic, unless further repackaging or processing of the asbestos or asbestos containing material is performed in the Republic; or
 - (b) importing asbestos which is solely for use in analysis or research and which is not intended to develop a new use for asbestos or asbestos containing material; or

REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS
AND ASBESTOS CONTAINING MATERIALS

- (c) importing asbestos or asbestos waste from a State, which is a member of the Southern African Development Community, for safe disposal at a disposal site for which a permit has been issued in terms of section 20 of the Environment Conservation Act, 1989;

provided that persons conducting the activities in paragraphs (a), (b) and (c) register the activity with the Minister as contemplated in regulation 4 of these regulations.

- (5) The provisions of sub-regulation (1) and (2) shall not apply to a person who, on the date of the commencement of these regulations, is lawfully importing an identified product or asbestos for use in the manufacture of an identified product, nor to any person manufacturing or distributing an identified product for local use, provided that the person conducting the activity registers the activity with the Minister as contemplated in regulation 4 and acts in accordance with an approved Asbestos Phase-out Plan as referred to in regulation 5 of these regulations.

3. Transitional Provisions

- (1) A person importing an identified product or asbestos for use in the manufacture of an identified product, or any person manufacturing or distributing an identified product for local use immediately prior to the date of commencement of these regulations and intends to continue with the activity, may carry on with that activity for a period of one year after the date of commencement of these regulations: provided that he or she has registered the activity with the Minister as contemplated in regulation 4 and follows the procedure as set out in regulation 5 of these regulations.
- (2) A person referred to in regulation 2(1), 2(2) and 2(3) who does not intend to continue with the activity in terms of regulation 2(4) and 2(5) must stop the activity. 120 days after the date of commencement of these regulations.

4. Registration and Reporting

- (1) A person who undertakes or intends to undertake an activity as contemplated in regulation 2(4) or 2(5) must within 120 days of the commencement of these regulations register the activity with the Minister on the form contained in Annexure A to these regulations.
- (2) After registration in terms of sub-regulation (1) the Minister will issue the applicant with a registration number.
- (3) The registered person must be display the registration number on all trading documentation.
- (4) If any of the information provided to the Minister in terms of this regulation changes, the Minister must be notified within 14 days after the date that the information provided changed.

REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS
AND ASBESTOS CONTAINING MATERIALS

- (5) A person referred to in sub-regulation (1) of regulation 4 above must, before 31 March of each and every year, submit an annual report from an external auditor commissioned at own expense to audit at least the following:
- (a) The correctness of the information supplied on the registration form;
 - (b) In the case of identified products, progress made in terms of the Asbestos Phase-out Plan provided in terms of these regulations;
 - (c) The person's compliance with the relevant legislation;
 - (d) In the case of the transport of asbestos, the amount of asbestos transported through the country; and
 - (e) In the case of a research project, how much asbestos or asbestos containing materials were used in the research project and the outcome of the research.

5. Asbestos Phase-Out Plan

- (1) A person contemplated in regulation 2 (5) must submit an Asbestos Phase-out Plan to the Minister for approval within one year of the commencement of these Regulations: Provided that a group of people importing, manufacturing or distributing the same or substantially similar identified products may submit a joint Asbestos Phase-out Plan for the purposes of complying with these Regulations.
- (2) An Asbestos Phase-out Plan must at least contain information on -
- (a) proposed alternatives to the use of asbestos or asbestos containing materials in the manufacture of the identified product;
 - (b) where such alternatives do not exist, reasons why such alternatives do not exist and the steps that will be taken to develop such alternatives; and
 - (c) the time periods within which the manufacturer intends replacing the use of asbestos with alternatives to asbestos or asbestos containing materials.
- (3) The Minister may require a person who has submitted an Asbestos Phase-out Plan to provide additional information and to submit a revised Asbestos Phase-out Plan within a time period indicated by the Minister or to furnish the Minister with a written review of the Asbestos Phase-out Plan by an independent expert within a time period indicated by the Minister.
- (4) The Minister may, on written application by a person who is required to submit an Asbestos Phase-out Plan, grant an extension in respect of the period within which the plan must be submitted, on good cause shown, with or without conditions attached to such an extension.

REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS
AND ASBESTOS CONTAINING MATERIALS

- (5) After considering any Asbestos Phase-out Plan that has been submitted in terms of these regulations, the Minister may accept such a plan and may set conditions for the implementation of such a plan or reject such a plan with reasons provided: Provided that where the date for the submission of an Asbestos Phase-out Plan, revised Asbestos Phase-out Plan or an independent review of the Asbestos Phase-out Plan has passed and such a plan has not been submitted, the Minister may exercise this power on the basis of other information at his disposal.

6. Disposal of Asbestos or Asbestos Containing Material

Any person who wishes to dispose of any asbestos or asbestos containing material in his or her possession must dispose of that asbestos or asbestos containing material in accordance with section 20 of the Act and regulation 20 of the Asbestos Regulations, 2001.

7. Packaging and Transport of Asbestos

A person who transports or packages asbestos must comply with the standards set for transport and packaging in SANS 10228 and SANS 10229.

8. Offences

- (1) Any person who contravenes any provision of these regulations shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment, and to a fine not exceeding three times the commercial value of anything in respect of which the offence was committed.
- (2) Any person convicted in terms of these Regulations who, after such conviction, persists in the act or omission, which constituted such offence, shall be guilty of a continuing offence and be liable on conviction to a fine not exceeding R250 or to imprisonment not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which such offence continues.

9. Short Title

These Regulations shall be called Regulations for the Prohibition of the Use, Manufacturing, Import and Export of Asbestos and Asbestos Containing Materials, 2007.

REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS
AND ASBESTOS CONTAINING MATERIALS

ANNEXURE A



APPLICATION FORM
APPLICATION FOR REGISTRATION IN TERMS OF REGULATION 4

Regulations for the Prohibition of the Use, Manufacturing, Import and Export of Asbestos
and Asbestos Containing Materials, 2007.

APPLICATION FORM

A. Applicant details:	
NAME OF APPLICANT:	
IDENTITY OR PASSPORT NO IN THE CASE OF AN INDIVIDUAL:	
REGISTRATION NUMBER IN THE CASE OF A SOUTH AFRICAN COMPANY OR CLOSE CORPORATION:	
COMPANY REGISTRATION IN CASE OF AN INTERNATIONAL COMPANY:	
TEL NO:	
FAX NO:	
E-MAIL:	
POSTAL ADDRESS:	PHYSICAL ADDRESS:
B. Type of registration applied for (tick off):	
Import, manufacture or distribution of an identified product	Import of asbestos or asbestos waste for the purpose safe disposal
Import, storage or use of asbestos or asbestos containing material for research purposes	Transport of asbestos or asbestos containing materials

PLEASE PROVIDE THE FOLLOWING INFORMATION THAT RELATES TO THE ACTIVITY
FOR WHICH REGISTRATION IS APPLIED FOR

C. Import, manufacture or distribute an identified product

- The nature of the business involved in.

REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS
AND ASBESTOS CONTAINING MATERIALS

- The address where the business is carried on.
- The quantity of identified products that is manufactured, stored or distributed.
- The quantity of identified products that is manufactured, stored, distributed, or imported/
exported for transit through South Africa.

D. Import, storage or use of asbestos or asbestos containing material for research purposes

- The name and domicile of the person responsible for the research to be conducted.
- The nature and purpose of the research.
- The quantity and type of asbestos or asbestos containing materials to be used in the research per annum.

E. Import of asbestos or asbestos waste for the purpose safe disposal

- The name and domicile address of the importer.
- The disposer.
- The quantity of asbestos or asbestos waste that is imported.
- The country from which it is imported.

REGULATIONS FOR THE PROHIBITION OF THE USE, MANUFACTURING, IMPORT AND EXPORT OF ASBESTOS
AND ASBESTOS CONTAINING MATERIALS

- The conditions and period of the contract under which the asbestos or asbestos waste is accepted.
- The type and composition of the asbestos or asbestos waste.
- The location of the disposal site where the asbestos is being disposed of and the permit number issue to the site.

F. Transport of asbestos or asbestos containing materials

- The name and domicile address of the transporter.
- The port of entrance and exit.
- The type and quantity of asbestos usually transported in an average month.
- The physical address where the identified product is stored during transit.

ENVIRONMENT CONSERVATION ACT NO. 73 OF 1989

GNR 149 OF 13 FEBRUARY 2009:

WASTE TYRE REGULATIONS, 2009

SCHEDULE

TABLE OF CONTENTS

PART 1

INTERPRETATION AND PURPOSE OF REGULATIONS

1. Definitions
2. Purpose of Regulations
3. Application of Regulations
4. General Prohibitions

PART 2

REUSE, RECYCLING AND RECOVERY OF WASTE TYRES

5. Reuse, recycling and recovery of waste tyres

PART 3

DUTIES OF TYRE PRODUCERS, TYRE DEALERS AND WASTE TYRE STOCKPILE OWNERS

6. Duties of tyre producers
7. Duties of tyre dealers
8. Duties of waste tyre stockpile owners

PART 4

INTEGRATED INDUSTRY WASTE TYRE MANAGEMENT PLANS

9. Contents of an integrated industry waste tyre management plan
10. Notification of integrated industry waste tyre management plans
11. Consideration of integrated industry waste tyre management plans
12. Review of integrated industry waste tyre management plans

PART 5
WASTE TYRE STOCKPILE ABATEMENT PLAN

13. Contents of a waste tyre stockpile abatement plan
14. Notification of a waste tyre stockpile abatement plan
15. Consideration of a waste tyre stockpile abatement plan

PART 6
STORAGE OF WASTE TYRES

16. Storage of waste tyres

PART 7
GENERAL

17. Offences and penalties
18. Transitional provisions
19. Short Title and Commencement

PART 1
INTERPRETATION AND PURPOSE OF REGULATIONS

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act bears that meaning, unless the context otherwise indicates-

“**the Act**” means the Environment Conservation Act, 1989 (Act No. 73 of 1989);

“**Minister**” means the Minister of Environmental Affairs and Tourism;

“**legacy waste tyro stockpile**” means a waste tyre stockpile that existed before the promulgation of these regulations;

“**load index**” means the international code imprinted on the side of a tyre that indicates the load, or weight, that the tyre can carry at its maximum design pressure;

“**part worn tyre**” means a used tyre that conforms to the Road Traffic Act and can be safely returned to its original intended use;

“**recovery**” means the controlled extraction of a material or the retrieval of energy from waste tyres;

WASTE TYRE REGULATIONS, 2009

“**recycle**” means the separation and processing of materials from waste tyres for further use as new products or resources;

“**retreadable casing**” means the structural part of a used tyre that may or may not have residual tread (sic) depth for further road use and when subjected to inspection of the structural soundness of the casing, can be reprocessed by vulcanising new tread to the casing and can then be safely returned to its original intended use;

“**re-use**” means the utilisation of waste tyres, in whole or in part, without changing the composition of the waste tyre;

“**temporary storage**” means the storage of waste tyres for a period not exceeding 2 years from date of promulgation;

“**tyre**” means a continuous pneumatic covering made of natural rubber or synthetic rubber or a combination of natural and synthetic rubber encircling a wheel, whether new, used or retreaded;

“**tyre dealer**” means any person or entity that distributes, or otherwise deals commercially in tyres;

“**tyre producer**” means any person or institution engaged in the commercial manufacture or import of tyres and retreadable casings, and the import of vehicles fitted with tyres for distribution in South Africa;

“**vehicle**” means any motorized or towed mode of transport or implement fitted with tyres;

“**waste tyre**” means a new, used, retreaded, or un-roadworthy tyre, not suitable to be retreaded, repaired, or sold as a part worn tyre and not fit for its original intended use;

“**waste tyre storage site**” means a facility that is used for the temporary storage of waste tyres;

“**waste tyre stockpile abatement plan**” means a plan, prepared by a person or entity who has a waste tyre stockpile, indicating the manner and timeframe in which the stockpile will be removed;

“**waste tyre processor**” means any person or entity that is engaged in the commercial re-use, recycling or recovery of waste tyres;

“**waste tyre stockpile**” means a site on which predominantly waste tyres have been stored continuously for a period greater than 2 years and which covers an area greater than 500m², and excludes waste disposal facility;

“**waste tyre stockpile owner**” means the owner or lawful possessor of the waste tyres and will have the meaning ascribed to it in common law.

2. Purpose of these Regulations

The purpose of these Regulations is to regulate the management of waste tyres by providing for the regulatory mechanisms.

3. Application of Regulations

These Regulations apply uniformly in all provinces of the Republic of South Africa.

4. General prohibitions

No person may-

- (a) manage waste tyres in a manner which does not comply with these Regulations;
- (b) recycle, recover or dispose of a waste tyre, or knowingly or negligently cause or permit a waste tyre to be recycled, recovered or disposed of, at any facility or on any site, unless the recycling, recovery or disposal of that waste tyre is authorised by law;
- (c) recover or dispose of a waste tyre in a manner that is likely to cause pollution of the environment or harm to health and well-being; or
- (d) dispose of a waste tyre at a waste disposal facility two years from the date of commencement of these regulations unless such a waste tyre has been cut into quarters, and no quartered waste tyres may be disposed 5 years from the date of promulgation of these regulations unless such waste tyres have been shredded, excluding in both instances bicycle tyres and tyres with an outside diameter above 1400mm and tyres used as engineering material.

PART 2

REUSE, RECYCLING AND RECOVERY OF WASTE TYRES REUSE, RECYCLING AND RECOVERY OF WASTE TYRES

5.

- (1) A tyre producer, when developing his/her integrated industry waste tyre management plan as contemplated in regulation 6(3) must make provision for the reusing or recycling of that waste tyre before recovering the energy potential or disposing of that waste tyre.
- (2) A waste tyre processor who undertakes an activity involving the reuse, recycling or recovery of a waste tyre must, before undertaking that activity, ensure that the reuse, recycling or recovery of the waste tyre is more sustainable than the disposal of such a waste tyre.

PART 3

DUTIES OF TYRE PRODUCERS, TYRE DEALERS AND WASTE TYRE STOCKPILE OWNERS

6. Duties of tyre producers

- (1) A tyre producer operating on the date of commencement of these regulations must register with the Minister within 30 days of the date of commencement of these Regulations and any tyre producer commencing business after these regulations must register with the Minister at least 30 days prior to commencing business providing the following information-
 - (a) the name and where applicable, the registered number of the natural or legal persona of the tyre producer;
 - (b) the registered address of the tyre producer;
 - (c) the physical address where the business of the tyre producer is conducted;
 - (d) contact details; and
 - (e) details of the person responsible for submitting the integrated industry waste tyre management plan as contemplated in subregulation (3).
- (2)
 - (a) After registration in terms of subregulation (1) the Minister will issue the applicant with a registration number; and
 - (b) The tyre producer must display the registration number on all trading documentation.
- (3) A tyre producer operating on the date of commencement of these regulations must either-
 - (a) prepare and submit to the Minister, an integrated industry waste tyre management plan, within 60 days of registering in terms of subregulation (1) for approval; or
 - (b) register with an existing integrated industry waste tyre management plan approved by the Minister; and
 - (c) comply with the integrated industry waste tyre management plan Immediately on receiving the Minister's approval, or comply within 60 days with an existing integrated industry waste tyre management plan approved by the Minister.

WASTE TYRE REGULATIONS, 2009

- (4) A tyre producer commencing business after the commencement of these regulations shall not begin operations without an integrated industry waste tyre management plan approved by the Minister or without providing written confirmation to the Minister of acceptance into an existing integrated industry waste tyre management plan approved by the Minister.
- (5) A tyre producer on whom an obligation is imposed in terms of subregulation (1), (2), (3) and (4) may not manufacture or import new, part worn, retreadable casings or vehicles fitted with tyres or distribute or sell new, part worn or retreaded tyres, unless measures have been taken to ensure that when those tyres become waste tyres they are dealt with in accordance with the provisions of the approved integrated industry waste tyre management plan to which the producer belongs.
- (6) A tyre producer must inform the Minister if they deregister from an integrated industry waste tyre management plan 120 days prior to deregistering,
- (7) A tyre producer may not manufacture, import new, part worn, retreadable casings or vehicles fitted with tyres or, distribute or sell new, part worn or retreaded tyres, unless they can demonstrate that they either-
 - (a) have an integrated industry waste tyre management plan approved by the Minister or;
 - (b) belong to an existing integrated industry waste tyre management plan approved by the Minister.

7. Duties of tyre dealers

- (1) A tyre dealer must classify any used tyre in his/her possession or control as either a part worn tyre or a retreadable casing and any tyre not falling into either of these categories must be classified as a waste tyre.
- (2) A tyre dealer must mutilate or cause all waste tyres with a load index of 121 or less in his/her possession or control, or must cause such waste tyres to be mutilated, which includes, but is not limited to-
 - (a) the cutting of the bead of a waste tyre in two places;
 - (b) punching a hole with a minimum diameter of 50mm in the sidewall; or
 - (c) making a cut of at least 100mm in the sidewall.
- (3) A tyre dealer must manage all waste tyres in his/her possession or control, or cause such waste tyres to be managed in accordance with the approved integrated industry waste tyre management plan of the producer.

8. Duties of waste tyre stockpile owners

- (1) Any person or entity who has a waste tyre stockpile on their premises or is the owner of a waste tyre stockpile(s) on the date of commencement of these regulations must register with the Minister within 30 days from the promulgation of these regulations, providing the following information-
 - (a) the name of the waste tyre stockpile owner;
 - (b) the registered address of the premises on which the waste tyre stockpile is located;
 - (c) the registered address of the owner of the waste tyre stockpile;
 - (d) the legal persona's registration number; and
 - (e) current permits in place for the waste tyre stockpile.
- (2)
 - (a) after registration in terms of subregulation (1) the Minister will issue the applicant with a registration number; and
 - (b) the waste tyre stockpile owner must display the registration number on all trading documentation.
- (3) A waste tyre stockpile owner must within 120 days of the date of commencement of these regulations submit to the Minister a waste tyre stockpile abatement plan for approval.
- (4) A waste tyre stockpile owner on whom an obligation is imposed in terms of subregulation (1) and (2) that is not permitted or licensed in terms of the relevant legislation shall not add to the stockpile after 120 days of the commencement of these regulations.

PART 4

INTEGRATED INDUSTRY WASTE TYRE MANAGEMENT PLANS

9. Contents of an integrated Industry waste tyre management plan

- (1) An integrated industry waste tyre management plan must at least-
 - (a) identify the parties to the plan;
 - (b) provide annual projection of the quantities and types of tyres that are manufactured or imported that will become waste tyres and will be managed through the integrated industry waste tyre management plan;

WASTE TYRE REGULATIONS, 2009

- (c) indicate how the waste hierarchy will be given effect in the integrated industry waste tyre management plan;
- (d) identify the manner in which waste tyre processors who will receive waste tyres through this plan will be identified;
- (e) identify the manner in which waste tyre transporters will be registered through the integrated industry waste tyre management plan and their duties;
- (f) identify the potential number of waste tyre storage sites that will be used by the integrated waste tyre management plan and the manner in which these sites will be registered with the plan;
- (g) identify the industry standards that will apply to waste tyre transporters, waste tyre storage sites and waste processors;
- (h) indicate how information on waste tyres collected and treated will be recorded;
- (j) identify the timeframes in which the different types of tyres will be managed noting that all tyres and sizes of tyres must be managed through an integrated industry waste tyre management plan within five years of date of approval of plan;
- (j) provide estimations of the costs of implementing the waste tyre management plan for the first five years and the manner in which the activities of the waste tyre management plan will be financed;
- (k) provide details of the manner in which the contribution of each member of the plan will be determined and how the contribution will be collected and distributed;
- (l) indicate how the integrated industry waste tyre management plan will raise national awareness regarding the management of waste tyres;
- (m) provide details on how the integrated industry waste tyre management plan will address issues of social responsibility in the industry;
- (n) provide details of the manner in which previously disadvantaged individuals will be integrated into the implementation of the integrated industrial waste tyre management plan;
- (o) indicate how job creation, training and development will be realised in the industry;
- (p) indicate the extent of auditing and reporting on the integrated industry waste tyre management plan envisaged;
- (q) provide measures to be implemented to give effect to best environmental practice in respect of waste tyre management;

- (r) indicate the measures to be put in place to address the stockpiles of waste tyres;
- (s) provide estimations of annual financial contribution which will be set aside to address the legacy waste tyre stockpile and the measures to be put in place to deal with the legacy waste tyre stockpiles; and
- (t) annually provide details of agreements reached in terms of any waste tyre stockpile abatement plans.

10. Notification of integrated industry waste tyres management plans

- (1) Any person producing an integrated industry waste tyre management plan in terms of regulation 6(3) must take appropriate steps to bring the contents of a proposed integrated industry waste tyre management plan to the attention of relevant organs of state, interested persons and the public and must call for comments to the plan.
- (2) Any comments submitted in respect of an integrated industry waste tyre management plan must be considered by the person responsible for preparing the plan, and a copy of all comments and responses must be submitted to the Minister, together with the plan.

11. Consideration of integrated industry waste tyre management plans

- (1) The Minister on receipt of an integrated industry waste tyre management plan-
 - (a) may require additional information to be furnished and a revised plan to be submitted within a timeframe indicated by the Minister;
 - (b) must publish the integrated industry waste tyre management plan in the *Government Gazette* for a period of 30 days for comment;
 - (c) must send comments received to the person responsible for producing the plan for consideration and incorporation where relevant; and
 - (d) must, after incorporation of any comments, review the revised integrated industry waste tyre management plan, approve it with or without conditions, or reject the integrated industry waste tyre management plan with reasons and with a timeframe for resubmission.
- (2) An integrated industry waste tyre management plan that has been rejected in terms of sub-regulation (1)(d) must be amended and resubmitted to the Minister within the timeframe indicated by the Minister.
- (3) An approval in terms of sub-regulation (1)(d) must at least specify the period for which (he approval is issued, which period may be extended by the Minister.

- (4) The Minister must give notice in the relevant Gazette of an approved integrated industry waste tyre management plan.
- (5) Any person producing an integrated industry waste tyre management plan in terms of regulation 6(3) must submit an annual audit report from an independent auditor commissioned at own expense to audit at least the following-
 - a) the compliance to the approved integrated industry waste tyre management plan;
 - b) the person's compliance with the relevant legislation;
 - c) record keeping and reporting as required by the integrated industry waste tyre management plan;
 - d) management of legacy stockpile; and
 - e) financial reports.

12. Review of integrated industry waste tyre management plans

- (1) An integrated industry waste tyre management plan must be revised and resubmitted for approval by the Minister at 5 year intervals or sooner if the Minister or the producer of the plan identifies that amendments are required.
- (2) The Minister must publish the revised integrated industry waste tyre management plan in the *Government Gazette* for a period of 30 days.
- (3) Once the integrated industry waste tyre management plan is approved it will be an offence not to comply with the revised plan.
- (4) The Minister may allow the integrated industry waste tyre management plan producers to be exempted from submitting a revised integrated industry waste tyre management plan if the Minister upon a request for exemption is satisfied that the plan continues to meet the objectives of the regulations and does not require amendments.

PART 5

WASTE TYRE STOCKPILE ABATEMENT PLAN

13. Contents of a waste tyre stockpile abatement plan

- (1) A waste tyre stockpile abatement plan must at least-
 - (a) provide the name and where applicable the registration number of the company, closed corporation or trust of the owner of the waste tyre stockpile(s);

- (b) provide the physical address of the location of the waste tyre stockpile(s);
- (c) provide the physical and postal address of the waste tyre stockpile owner;
- (d) provide an estimation of the number of waste tyres stored within the waste tyre stockpile(s) including the square area of the footprint of the stockpile;
- (e) the current fire prevention measures in place;
- (f) provide a plan of the stockpiles site(s), locating the waste tyre piles on site, indicating distances between the piles, height of the piles, distance to the fence line, access points, water points, the location of offices or buildings and providing any other information that is relevant to the waste tyre stockpile(s);
- (g) proposal and timeframe for eliminating the waste tyre stockpile(s);
- (h) identify the approved integrated industry waste tyre management plan(s) into which the tyres will be accepted or the waste tyre processor who will accept the waste tyres;
- (i) budget and funding sources for eliminating the waste tyre stockpile;
- (j) copies of agreements with integrated industry waste tyre management plans indicating their acceptance of the waste tyres and agreement of the financial arrangements made; and
- (k) measures that will be put in place to meet the storage requirements relevant to these regulations and the timeframes for implementation.

14. Notification of a waste tyre stockpile abatement plan

- (1) Any person producing a waste tyre stockpile abatement plan in terms of regulation 8(3) must take appropriate steps to bring the contents of a proposed waste tyre stockpile abatement plan to the attention of relevant organs of state, interested and affected parties and must call for comments to the plan.
- (2) Any comments submitted in respect of a waste tyre stockpile abatement plan must be considered by the person responsible for preparing the plan, and a copy of all comments and responses must be submitted to the Minister, together with the plan.

15. Consideration of a waste tyre stockpile abatement plan

- (1) The Minister on receipt of a waste tyre stockpile abatement plan-
 - (a) may require additional information to be furnished and a revised plan to be submitted within a timeframe indicated by the Minister; and

- (b) must, after incorporation of any comments, review the revised waste tyre stockpile abatement plan and approve it with or without conditions, or reject the waste tyre stockpile abatement plan with reasons and with a timeframe for resubmission.
- (2) A waste tyre stockpile abatement plan that has been rejected in terms of sub-regulation (1)(b) must be amended and resubmitted to the Minister within the timeframe indicated by the Minister.
- (3) An approval in terms of subregulation (1)(b) must at least specify the period for which the approval is issued, which period may be extended by the Minister.
- (4) Any person producing a waste tyre stockpile abatement plan in terms of regulation 8(3) must submit an annual audit report from an external auditor commissioned at own expense to audit compliance to the plan.
- (5) Once the waste tyre stockpile abatement plan has been approved it is an offence not to comply with the plan.

PART 6

STORAGE OF WASTE TYRES

16. Storage of waste tyres

- (1) The waste tyre storage area for a tyre dealer shall not exceed 500m².
- (2) Any waste tyre storage area must not exceed 30000m².
- (3) A waste tyre storage area plan must be developed by the tyre dealer, waste tyre processor and waste tyre storage site owner.
- (4) The waste tyre storage plan must be approved by the municipal fire department and must be available on site at all times.
- (5) The municipal fire department may exempt the waste tyre storage owner from the provisions in subregulation (6).
- (6) The site on which waste tyres are stored must meet as a minimum the following requirements-
 - (a) clearly visible signs with operating hours, contact details and site regulations must be posted near the entrance to the facility;
 - (b) a security attendant trained in fire prevention must be on site at all times;

WASTE TYRE REGULATIONS, 2009

- (c) the site manager must be on site at all times when the facility is open;
 - (d) no single pile of waste tyres may exceed a height of 3 metres, a length of 20 metres and a width of 10 metres;
 - (e) all interior firebreaks between piles of waste tyres must be at least five metres wide;
 - (f) the site must be flat and hard packed;
 - (g) the site must make provision for storm water management;
 - (h) the edges of the piles must be at least 8 metres from the perimeter fence, and any buildings, and the area between the piles and the fence and buildings must be clear of debris and vegetation:
 - (i) all firebreaks must be at least 8 metres wide; and
 - (j) waste tyre piles may not be located within 8 metres of a powerline.
- (7) Waste tyres must not be stored on wetlands, flood plains, ravines, canyons, on steeply graded surfaces or anywhere else where they may pose a significant environmental or fire risk.

PART 7

GENERAL

17. Offences and penalties

- (1) A person is guilty of an offence if that person contravenes or fails to comply with-
- (a) a provision of regulations 4, 6, 7, 8, 11(2) and (5), 12(1) and (2), 15(2), (4) and (5), 16(1), (2), (3), (4), (6) and (7); or
 - (b) an integrated industry waste tyre management plan; or
 - (c) a waste tyre stockpile abatement plan.
- (2) A person is liable on conviction of an offence in terms of subregulation (1) to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of anything in respect of which the offence was committed.
- (3) A person convicted of an offence in terms of these Regulations and who after such conviction persists in the act or omission which constituted such offence, shall be guilty

WASTE TYRE REGULATIONS, 2009

of a continuing contravention and be liable on conviction to a fine not exceeding R250 or to imprisonment for a period not exceeding 20 days or to both such fine and such imprisonment in respect of every day such offence continues.

18. Transitional arrangements

Any person who stored waste tyres on the date that these Regulations commenced must comply with the provisions of regulation 16 within one year after the date of commencement of these Regulations.

19. Short title and commencement

These Regulations shall be called the Waste Tyre Regulations, 2009 and take effect on a date determined by the Minister by notice in the *Gazette*.

COMMENCEMENT OF WASTE TYRE REGULATIONS, 2009

ENVIRONMENT CONSERVATION ACT NO. 73 OF 1989

GNR 520 OF 8 MAY 2009:

COMMENCEMENT OF WASTE TYRE REGULATIONS, 2009

I, Marthinus Christoffel Johannes van Schalkwyk, Minister of Environmental Affairs and Tourism, hereby give notice that the Waste Tyre Regulations 2009 published on 13 February 2009 under section 24B of the Environment Conservation Act, 1989 (Act No. 73 of 1989) shall come into effect on 30 June 2009.

(Signed)

MARTHINUS VAN SCHALKWYK

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

CRIMINAL PROCEDURE ACT 51 OF 1977

CHAPTER 2

SEARCH WARRANTS, ENTERING OF PREMISES, SEIZURE, FORFEITURE AND DISPOSAL OF PROPERTY CONNECTED WITH OFFENCES

19. Saving as to certain powers conferred by other laws

The provisions of this Chapter shall not derogate from any power conferred by any other law to enter any premises or to search any person, container or premises or to seize any matter, to declare any matter forfeited or to dispose of any matter.

20. State may seize certain articles

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article) -

- (a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere;
- (b) which may afford evidence of the commission or suspected commission of an offence whether within the Republic or elsewhere; or
- (c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

21. Article to be seized under search warrant

- (1) Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 shall be seized only by virtue of a search warrant issued -
 - (a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or
 - (b) by a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or upon or at any premises is required in evidence of such proceedings.

- (2) A search warrant issued under subsection (1) shall require a police official to seize the article in question and shall to that end authorize such police official to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.
- (3)
 - (a) A search warrant shall be executed by day, unless the person issuing the Warrant in writing authorizes the execution thereof by night.
 - (b) A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.
- (4) A police official executing a warrant under this section or section 25 shall, after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.

22. Circumstances in which article may be seized without search warrant

A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20 -

- (a) if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the article in question; or
- (b) if he on reasonable grounds believes -
 - (i) that a search warrant will be issued to him under paragraph (a) of section 21 (1) if he applies for such warrant; and
 - (ii) that the delay in obtaining such warrant would defeat the object of the search.

23. Search of arrested person and seizure of article

- (1) On the arrest of any person, the person making the arrest may -
 - (a) if he is a peace officer, search the person arrested and seize any article referred to in section 20 which is found in the possession of or in the custody or under the control of the person arrested, and where such peace officer is not a police official, he shall forthwith deliver any such article to a police official; or
 - (b) if he is not a peace officer, seize any article referred to in section 20 which is in the possession of or in the custody or under the control of the person arrested and shall forthwith deliver any such article to a police official.

- (2) On the arrest of any person, the person making the arrest may place in safe custody any object found on the person arrested and which may be used to cause bodily harm to himself or others.

24. Search of premises

Any person who is lawfully in charge or occupation of any premises and who reasonably suspects that stolen stock or produce, as defined in any law relating to the theft of stock or produce, is on or in the premises concerned, or that any article has been placed thereon or therein or is in the custody or possession of any person upon or in such premises in contravention of any law relating to intoxicating liquor, dependence-producing drugs, arms and ammunition or explosives, may at any time, if a police official is not readily available, enter such premises for the purpose of searching such premises and any person thereon or therein, and if any such stock, produce or article is found, he shall take possession thereof and forthwith deliver it to a police official.

25. Power of police to enter premises in connection with State security or any offence

- (1) If it appears to a magistrate or justice from information on oath that there are reasonable grounds for believing -
- (a) that the internal security of the Republic or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which is being held or is to be held in or upon any premises within his area of jurisdiction; or
 - (b) that an offence has been or is being or is likely to be committed or that preparations or arrangements for the commission of any offence are being or are likely to be made in or upon any premises within his area of jurisdiction,

he may issue a warrant authorizing a police official to enter the premises in question at any reasonable time for the purpose -

- (i) of carrying out such investigations and of taking such steps as such police official may consider necessary for the preservation of the internal security of the Republic or for the maintenance of law and order or for the prevention of any offence;
 - (ii) of searching the premises or any person in or upon the premises for any article referred to in section 20 which such police official on reasonable grounds suspects to be in or upon or at the premises or upon such person; and
 - (iii) of seizing any such article.
- (2) A warrant under subsection (1) may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

- (3) A police official may without warrant act under subparagraphs (i), (ii) and (iii) of subsection (1) if he on reasonable grounds believes -
- (a) that a warrant will be issued to him under paragraph (a) or (b) of subsection (1) if he applies for such warrant; and
 - (b) that the delay in obtaining such warrant would defeat the object thereof.

26. Entering of premises for purposes of obtaining evidence

Where a police official in the investigation of an offence or alleged offence reasonably suspects that a person who may furnish information with reference to any such offence is on any premises, such police official may without warrant enter such premises for the purpose of interrogating such person and obtaining a statement from him: Provided that such police official shall not enter any private dwelling without the consent of the occupier thereof.

27. Resistance against entry or search

- (1) A police official who may lawfully search any person or any premises or who may enter any premises under section 26, may use such force as may be reasonably necessary to overcome any resistance against such search or against entry of the premises, including the breaking of any door or window of such premises: Provided that such police official shall first audibly demand admission to the premises and notify the purpose for which he seeks to enter such premises.
- (2) The proviso to subsection (1) shall not apply where the police official concerned is on reasonable grounds of the opinion that any article which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

28. Wrongful search an offence, and award of damages

- (1) A police official -
- (a) who acts contrary to the authority of a search warrant issued under section 21 or a warrant issued under section 25 (1); or
 - (b) who, without being authorized thereto under this Chapter -
 - (i) searches any person or container or premises or seizes or detains any article; or
 - (ii) performs any act contemplated in subparagraph (i), (ii) or (iii) of section 25 (1),

shall be guilty of an offence and liable on conviction to a fine not exceeding R600 or to imprisonment for a period not exceeding six months, and shall in addition be subject to an award under subsection (2).

- (2) Where any person falsely gives information on oath under section 21 (1) or 25 (1) and a search warrant or, as the case may be, a warrant is issued and executed on such information, and such person is in consequence of such false information convicted of perjury, the court convicting such person may, upon the application of any person who has suffered damage in consequence of the unlawful entry, search or seizure, as the case may be, or upon the application of the prosecutor acting on the instructions of that person, award compensation in respect of such damage, whereupon the provisions of section 300 shall *mutatis mutandis* apply with reference to such award.

29. Search to be conducted in decent and orderly manner

A search of any person or premises shall be conducted with strict regard to decency and order, and a woman shall be searched by a woman only, and if no female police official is available, the search shall be made by any woman designated for the purpose by a police official.

30. Disposal by police official of article after seizure

A police official who seizes any article referred to in section 20 or to whom any such article is under the provisions of this Chapter delivered -

- (a) may, if the article is perishable, with due regard to the interests of the persons concerned, dispose of the article in such manner as the circumstances may require; or
- (b) may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of such police official, such article was stolen, and shall warn such person to hold such article available for production at any resultant criminal proceedings, if required to do so; or
- (c) shall, if the article is not disposed of or delivered under the provisions of paragraph (a) or (b), give it a distinctive identification mark and retain it in police custody or make such other arrangements with regard to the custody thereof as the circumstances may require.

31. Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings

(1)

- (a) If no criminal proceedings are instituted in connection with any article referred to in section 30 (c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or,

if such person may not lawfully possess such article, to the person who may lawfully possess it.

(b) If no person may lawfully possess such article or if the police official charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

(2) The person who may lawfully possess the article in question shall be notified by registered post at his last-known address that he may take possession of the article and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the State.

32. Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid

(1) If criminal proceedings are instituted in connection with any article referred to in section 30 (c) and the accused admits his guilt in accordance with the provisions of section 57, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it, whereupon the provisions of section 31 (2) shall apply with reference to any such person.

(2) If no person may lawfully possess such article or if the police official charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

33. Article to be transferred to court for purposes of trial

(1) If criminal proceedings are instituted in connection with any article referred to in section 30 (c) and such article is required at the trial for the purposes of evidence or for the purposes of an order of court, the police official charged with the investigation shall, subject to the provisions of subsection (2) of this section, deliver such article to the clerk of the court where such criminal proceedings are instituted.

(2) If it is by reason of the nature, bulk or value of the article in question impracticable or undesirable that the article should be delivered to the clerk of the court in terms of subsection (1), the clerk of the court may require the police official in charge of the investigation to retain the article in police custody or in such other custody as may be determined in terms of section 30 (c).

(3)

(a) The clerk of the court shall place any article received under subsection (1) in safe custody, which may include the deposit of money in an official banking account if such money is not required at the trial for the purposes of evidence.

- (b) Where the trial in question is to be conducted in a court other than a court of which such clerk is the clerk of the court, such clerk of the court shall -
- (i) transfer any article received under subsection (1), other than money deposited in a banking account under paragraph (a) of this subsection, to the clerk of the court or, as the case may be, the registrar of the court in which the trial is to be conducted, and such clerk or registrar of the court shall place such article in safe custody;
 - (ii) in the case of any article retained in police custody or in some other custody in accordance with the provisions of subsection (2) or in the case of any money deposited in a banking account under paragraph (a) of this subsection, advise the clerk or registrar of such other court of the fact of such custody or such deposit, as the case may be.

34. Disposal of article after commencement of criminal proceedings

- (1) The judge or judicial officer presiding at criminal proceedings shall at the conclusion of such proceedings, but subject to the provisions of this Act or any other law under which any matter shall or may be forfeited, make an order that any article referred to in section 33 -
- (a) be returned to the person from whom it was seized, if such person may lawfully possess such article; or
 - (b) if such person is not entitled to the article or cannot lawfully possess the article, be returned to any other person entitled thereto, if such person may lawfully possess the article; or
 - (c) if no person is entitled to the article or if no person may lawfully possess the article or, if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the State.
- (2) The court may, for the purpose of any order under subsection (1), hear such additional evidence, whether by affidavit or orally, as it may deem fit.
- (3) If the judge or judicial officer concerned does not, at the conclusion of the relevant proceedings, make an order under subsection (1), such judge or judicial officer or, if he is not available, any other judge or judicial officer of the court in question, may at any time after the conclusion of the proceedings make any such order, and for that purpose hear such additional evidence, whether by affidavit or orally, as he may deem fit.
- (4) Any order made under subsection (1) or (3) may be suspended pending any appeal or review.

- (5) Where the court makes any order under paragraph (a) or (b) of subsection (1), the provisions of section 31 (2) shall *mutatis mutandis* apply with reference to the person in favour of whom such order is made.
- (6) If the circumstances so require or if the criminal proceedings in question cannot for any reason be disposed of, the judge or judicial officer concerned may make any order referred to in paragraph (a), (b) or (c) of subsection (1) at any stage of the proceedings.

35. Forfeiture of article to State

- (1) A court which convicts an accused of any offence may, without notice to any person, declare -
 - (a) any weapon, instrument or other article by means whereof the offence in question was committed or which was used in the commission of such offence; or
 - (b) if the conviction is in respect of an offence referred to in Part I of Schedule 1, any vehicle, container or other article which was used for the purpose of or in connection with the commission of the offence in question or for the conveyance or removal of the stolen property,

and which was seized under the provisions of this Act, forfeited to the State: Provided that such forfeiture shall not affect any right referred to in subparagraph (i) or (ii) of subsection (4) (a) if it is proved that person who claims such right did not know that such weapon, instrument, vehicle, container or other article was being used or would be used for the purpose of or in connection with the commission of the offence in question or, as the case may be, for the conveyance or removal of the stolen property in question, or that he could not prevent such use, and that he may lawfully possess such weapon, instrument, vehicle, container or other article, as the case may be.

- (2) A court which convicts an accused or which finds an accused not guilty of any offence, shall declare forfeited to the State any article seized under the provisions of this Act which is forged or counterfeit or which cannot lawfully be possessed by any person.
- (3) Any weapon, instrument, vehicle, container or other article declared forfeited under the provisions of subsection (1), shall be kept for a period of thirty days with effect from the date of declaration of forfeiture or, if an application is within that period received from any person for the determination of any right referred to in subparagraph (i) or (ii) of subsection (4) (a), until a final decision in respect of any such application has been given.
- (4)
 - (a) The court in question or, if the judge or judicial officer concerned is not available, any judge or judicial officer of the court in question, may at any time within a period of three years with effect from the date of declaration of forfeiture, upon the application

of any person, other than the accused, who claims that any right referred to in subparagraph (i) or (ii) of this paragraph is vested in him, inquire into and determine any such right, and if the court finds that the weapon, instrument, vehicle, container or other article in question -

- (i) is the property of any such person, the court shall set aside the declaration of forfeiture and direct that the weapon, instrument, vehicle, container or other article, as the case may be, be returned to such person, or, if the State has disposed of the weapon, instrument, vehicle, container or other article in question, direct that such person be compensated by the State to the extent to which the State has been enriched by such disposal;
 - (ii) was sold to the accused in pursuance of a contract under which he becomes the owner of such weapon, instrument, vehicle, container or other article, as the case may be, upon the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of such weapon, instrument, vehicle, container or other article upon default of payment of the stipulated price or any part thereof -
 - (aa) the court shall direct that the weapon, instrument, vehicle, container or other article in question be sold by public auction and that the said seller be paid out of the proceeds of the sale an amount equal to the value of his rights under the contract to the weapon, instrument, vehicle, container or other article, but not exceeding the proceeds of the sale; or
 - (bb) if the State has disposed of the weapon, instrument, vehicle, container or other article in question, the court shall direct that the said seller be likewise compensated.
- (b) If a determination by the court under paragraph (a) is adverse to the applicant, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.
- (c) When determining any rights under this subsection, the record of the criminal proceedings in which the declaration of forfeiture was made, shall form part of the relevant proceedings, and the court making the determination may hear such additional evidence, whether by affidavit or orally, as it may deem fit.

36. Disposal of article concerned in an offence committed outside Republic

- (1) Where an article is seized in connection with which -
- (a) an offence was committed or is on reasonable grounds suspected to have been committed in a country outside the Republic;

- (b) there are reasonable grounds for believing that it will afford evidence as to the commission in a country outside the Republic of any offence or that it was used for the purpose of or in connection with such commission of any offence,

the magistrate within whose area of jurisdiction the article was seized may, on application and if satisfied that such offence is punishable in such country by death or by imprisonment for a period of twelve months or more or by a fine of five hundred rand or more, order such article to be delivered to a member of a police force established in such country who may thereupon remove it from the Republic.

- (2) Whenever the article so removed from the Republic is returned to the magistrate, or whenever the magistrate refuses to order that the article be delivered as aforesaid, the article shall be returned to the person from whose possession it was taken, unless the magistrate is authorized or required by law to dispose of it otherwise.

CHAPTER 5

ARREST

39. Manner and effect of arrest

- (1) An arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body.
- (2) The person effecting an arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest or, in the case of an arrest effected by virtue of a warrant, upon demand of the person arrested hand him a copy of the warrant.
- (3) The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.

40. Arrest by peace officer without warrant

- (1) A peace officer may without warrant arrest any person -
 - (a) who commits or attempts to commit any offence in his presence;
 - (b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;
 - (c) who has escaped or who attempts to escape from lawful custody;

CRIMINAL PROCEDURE ACT 51 OF 1977

- (d) who has in his possession any implement of housebreaking or carbreaking as contemplated in section 82 of the General Law Third Amendment Act, 1993, and who is unable to account for such possession to the satisfaction of the peace officer;
- (e) who is found in possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing;
- (f) who is found at any place by night in circumstances which afford reasonable grounds for believing that such person has committed or is about to commit an offence;
- (g) who is reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law relating to the theft of stock or produce;
- (h) who is reasonably suspected of committing or of having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of dependence-producing drugs or the possession or disposal of arms or ammunition;
- (i) who is found in any gambling house or at any gambling table in contravention of any law relating to the prevention or suppression of gambling or games of chance;
- (j) who wilfully obstructs him in the execution of his duty;
- (k) who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has been concerned in any act committed outside the Republic which, if committed in the Republic, would have been punishable as an offence, and for which he is, under any law relating to extradition or fugitive offenders, liable to be arrested or detained in custody in the Republic;
- (l) who is reasonably suspected of being a prohibited immigrant in the Republic in contravention of any law regulating entry into or residence in the Republic;
- (m) who is reasonably suspected of being a deserter from the South African National Defence Force;
- (n) who is reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Act;
- (o) who is reasonably suspected of having failed to pay any fine or part thereof on the date fixed by order of court under this Act;
- (p) who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or any law relating to prisons;

- (q) who is reasonably suspected of having committed an act of domestic violence as contemplated in section (1) of the Domestic Violence Act, 1998, which constitutes an offence in respect of which violence is an element.
- (2) If a person may be arrested under any law without warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances.

41. Name and address of certain persons and power of arrest by peace officer without warrant

- (1) A peace officer may call upon any person -
 - (a) whom he has power to arrest;
 - (b) who is reasonably suspected of having committed or of having attempted to commit an offence;
 - (c) who, in the opinion of the peace officer, may be able to give evidence in regard to the commission or suspected commission of any offence,

to furnish such peace officer with his full name and address, and if such person fails to furnish his full name and address, the peace officer may forthwith and without warrant arrest him, or, if such person furnishes to the peace officer a name or address which the peace officer reasonably suspects to be false, the peace officer may arrest him without warrant and detain him for a period not exceeding twelve hours until such name or address has been verified.

- (2) Any person who, when called upon under the provisions of subsection (1) to furnish his name and address, fails to do so or furnishes a false or incorrect name and address, shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

42. Arrest by private person without warrant

- (1) Any private person may without warrant arrest any person -
 - (a) who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence referred to in Schedule 1;
 - (b) whom he reasonably believes to have committed any offence and to be escaping from and to be freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence;
 - (c) whom he is by any law authorized to arrest without warrant in respect of any offence specified in that law;

- (d) whom he sees engaged in an affray.
- (2) Any private person who may without warrant arrest any person under subsection (1) (a) may forthwith pursue that person, and any other private person to whom the purpose of the pursuit has been made known, may join and assist therein.
- (3) The owner, lawful occupier or person in charge of property on or in respect of which any person is found committing any offence, and any person authorized thereto by such owner, occupier or person in charge, may without warrant arrest the person so found.

43. Warrant of arrest may be issued by magistrate or justice

- (1) Any magistrate or justice may issue a warrant for the arrest of any person upon the written application of an attorney-general, a public prosecutor or a commissioned officer of police -
 - (a) which sets out the offence alleged to have been committed;
 - (b) which alleges that such offence was committed within the area of jurisdiction of such magistrate or, in the case of a justice, within the area of jurisdiction of the magistrate within whose district or area application is made to the justice for such warrant, or where such offence was not committed within such area of jurisdiction, which alleges that the person in respect of whom the application is made, is known or is on reasonable grounds suspected to be within such area of jurisdiction; and
 - (c) which states that from information taken upon oath there is a reasonable suspicion that the person in respect of whom the warrant is applied for has committed the alleged offence.
- (2) A warrant of arrest issued under this section shall direct that the person described in the warrant shall be arrested by a peace officer in respect of the offence set out in the warrant and that he be brought before a lower court in accordance with the provisions of section 50.
- (3) A warrant of arrest may be issued on any day and shall remain in force until it is cancelled by the person who issued it or, if such person is not available, by any person with like authority, or until it is executed.

44. Execution of warrants

A warrant of arrest issued under any provision of this Act may be executed by a peace officer, and the peace officer executing such warrant shall do so in accordance with the terms thereof.

45. Arrest on telegraphic authority

- (1) A telegraphic or similar written or printed communication from any magistrate, justice or peace officer stating that a warrant has been issued for the arrest of any person, shall be sufficient authority to any peace officer for the arrest and detention of that person.
- (2) The provisions of section 50 shall apply with reference to an arrest effected in accordance with subsection (1).

46. Non-liability for wrongful arrest

- (1) Any person who is authorized to arrest another under a warrant of arrest or a communication under section 45 and who in the reasonable belief that he is arresting such person arrests another, shall be exempt from liability in respect of such wrongful arrest.
- (2) Any person who is called upon to assist in making an arrest as contemplated in subsection (1) or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorized by the warrant of arrest or the communication, shall likewise be exempt from liability in respect of such assistance or detention.

47. Private persons to assist in arrest when called upon

- (1) Every male inhabitant of the Republic of an age not below sixteen and not exceeding sixty years shall, when called upon by any police official to do so, assist such police official -
 - (a) in arresting any person;
 - (b) in detaining any person so arrested.
- (2) Any person who, without sufficient cause, fails to assist a police official as provided in subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

48. Breaking open premises for purpose of arrest

Any person who may lawfully arrest another in respect of any offence and who knows or reasonably suspects such other person to be on any premises, may, if he first audibly demands entry into such premises and notifies the purpose for which he seeks entry and fails to gain entry, break open, enter and search such premises for the purpose of effecting the arrest.

49. Use of force in effecting arrest

- (1) For the purposes of this section -

- (a) 'arrestor' means any person authorised under this Act to arrest or to assist in arresting a suspect; and
 - (b) 'suspect' means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.
- (2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds-
- (a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;
 - (b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or
 - (c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

50. Procedure after arrest

- (1)
- (a) Any person who is arrested with or without warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant.
 - (b) A person who is in detention as contemplated in paragraph (a) shall, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.
 - (c) Subject to paragraph (d), if such an arrested person is not released by reason that -
 - (i) no charge is to be brought against him or her; or
 - (ii) bail is not granted to him or her in terms of section 59 or 59A,

he or she shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest.

(d) If the period of 48 hours expires -

- (i) outside ordinary court hours or on a day which is not an ordinary court day, the accused shall be brought before a lower court not later than the end of the first court day;
- (ii) or will expire at, or if the time at which such period is deemed to expire under subparagraph (i) or (iii) is or will be, a time when the arrested person cannot, because of his or her physical illness or other physical condition, be brought before a lower court, the court before which he or she would, but for the illness or other condition, have been brought, may on the application of the prosecutor, which, if not made before the expiration of the period of 48 hours, may be made at any time before, or on, the next succeeding court day, and in which the circumstances relating to the illness or other condition are set out, supported by a certificate of a medical practitioner, authorise that the arrested person be detained at a place specified by the court and for such period as the court may deem necessary so that he or she may recuperate and be brought before the court: Provided that the court may, on an application as aforesaid, authorise that the arrested person be further detained at a place specified by the court and for such period as the court may deem necessary; or
- (iii) at a time when the arrested person is outside the area of jurisdiction of the lower court to which he or she is being brought for the purposes of further detention and he or she is at such time in transit from a police station or other place of detention to such court, the said period shall be deemed to expire at the end of the court day next succeeding the day on which such arrested person is brought within the area of jurisdiction of such court.

(2) For purposes of this section -

- (a) "a court day" means a day on which the court in question normally sits as a court and "ordinary court day" has a corresponding meaning; and
- (b) "ordinary court hours" means the hours from 9:00 until 16:00 on a court day.

(3) Subject to the provisions of subsection (6), nothing in this section shall be construed as modifying the provisions of this Act or any other law whereby a person under detention may be released on bail or on warning or on a written notice to appear in court.

(4)

[Subs. (4) added by s. 37 of Act No. 122 of 1991 and deleted by s. 99 (1) of Act No. 75 of 2008.]

(5)

[Subs. (5) added by s. 37 of Act No. 122 of 1991 and deleted by s. 99 (1) of Act No. 75 of 2008.]

(6)

(a) At his or her first appearance in court a person contemplated in subsection (1) (a) who -

(i) was arrested for allegedly committing an offence shall, subject to this subsection and section 60 -

(aa) be informed by the court of the reason for his or her further detention; or

(bb) be charged and be entitled to apply to be released on bail,

and if the accused is not so charged or informed of the reason for his or her further detention, he or she shall be released; or

(ii) was not arrested in respect of an offence, shall be entitled to adjudication upon the cause for his or her arrest.

(b) An arrested person contemplated in paragraph (a) (i) is not entitled to be brought to court outside ordinary court hours.

(c) The bail application of a person who is charged with an offence referred to in Schedule 6 must be considered by a magistrate's court: Provided that the Director of Public Prosecutions concerned, or a prosecutor authorised thereto in writing by him or her may, if he or she deems it expedient or necessary for the administration of justice in a particular case, direct in writing that the application must be considered by a regional court.

(d) The lower court before which a person is brought in terms of this subsection, may postpone any bail proceedings or bail application to any date or court, for a period not exceeding seven days at a time, on the terms which the court may deem proper and which are not inconsistent with any provision of this Act, if -

(i) the court is of the opinion that it has insufficient information or evidence at its disposal to reach a decision on the bail application;

(ii) the prosecutor informs the court that the matter has been or is going to be referred to an attorney-general for the issuing of a written confirmation referred to in section 60 (11A);

- (iv) it appears to the court that it is necessary to provide the State with a reasonable opportunity to -
 - (aa) procure material evidence that may be lost if bail is granted; or
 - (bb) perform the functions referred to in section 37; or
- (v) it appears to the court that it is necessary in the interests of justice to do so.

51. Escaping and aiding escaping before incarceration, and penalties therefor

- (1) Any person who escapes or attempts to escape from custody after he has been lawfully arrested and before he has been lodged in any prison, police-cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section 48 of the Prisons Act, 1959 (Act 8 of 1959).
- (2) Any person who rescues or attempts to rescue from custody any person after he has been lawfully arrested and before he has been lodged in any prison, police-cell or lock-up, or who aids such person to escape or to attempt to escape from such custody, or who harbours or conceals or assists in harbouring or concealing any person who escapes from custody after he has been lawfully arrested and before he has been lodged in any prison, police-cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section 43 of the said Prisons Act, 1959.
- (3) Notwithstanding anything to the contrary in any law contained, a lower court shall have jurisdiction to try any offence under this section and to impose any penalty prescribed in respect thereof.

52. Saving of other powers of arrest

No provision of this Chapter relating to arrest shall be construed as removing or diminishing any authority expressly conferred by any other law to arrest, detain or put any restraint upon any person.

53. Saving of civil law rights and liability

Subject to the provisions of sections 46 and 331, no provision of this Chapter relating to arrest shall be construed as removing or diminishing any civil right or liability of any person in respect of a wrongful or malicious arrest.

CHAPTER 7

WRITTEN NOTICE TO APPEAR IN COURT

56. Written notice as method of securing attendance of accused in magistrate's court

- (1) If an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, such peace officer may, whether or not the accused is in custody, hand to the accused a written notice which shall -
 - (a) specify the name, the residential address and the occupation or status of the accused;
 - (b) call upon the accused to appear at a place and on a date and at a time specified in the written notice to answer a charge of having committed the offence in question;
 - (c) contain an endorsement in terms of section 57 that the accused may admit his guilt in respect of the offence in question and that he may pay a stipulated fine in respect thereof without appearing in court; and
 - (d) contain a certificate under the hand of the peace officer that he has handed the original of such written notice to the accused and that he has explained to the accused the import thereof.
- (2) If the accused is in custody, the effect of a written notice handed to him under subsection (1) shall be that he be released forthwith from custody.
- (3) The peace officer shall forthwith forward a duplicate original of the written notice to the clerk of the court which has jurisdiction.
- (4) The mere production to the court of the duplicate original referred to in subsection (2) shall be *prima facie* proof of the issue of the original thereof to the accused and that such original was handed to the accused.
- (5) The provisions of section 55 shall *mutatis mutandis* apply with reference to a written notice handed to an accused under subsection (1).

CHAPTER 8

ADMISSION OF GUILT FINE

57. Admission of guilt and payment of fine without appearance in court

- (1) Where -

- (a) a summons is issued against an accused under section 54 (in this section referred to as the summons) and the public prosecutor or the clerk of the court concerned on reasonable grounds believes that a magistrate's court, on convicting the accused of the offence in question, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, and such public prosecutor or clerk of the court endorses the summons to the effect that the accused may admit his guilt in respect of the offence in question and that he may pay a fine stipulated on the summons in respect of such offence without appearing in court; or
- (b) a written notice under section 56 (in this section referred to as the written notice) is handed to the accused and the endorsement in terms of paragraph (c) of subsection (1) of that section purports to have been made by a peace officer,

the accused may, without appearing in court, admit his guilt in respect of the offence in question by paying the fine stipulated (in this section referred to as the admission of guilt fine) either to the clerk of the magistrate's court which has jurisdiction or at any police station within the area of jurisdiction of that court or, if the summons or written notice in question is endorsed to the effect that the fine may be paid at a specified local authority, at such local authority.

(2)

- (a) The summons or the written notice may stipulate that the admission of guilt fine shall be paid before a date specified in the summons or written notice, as the case may be.
- (b) An admission of guilt fine may be accepted by the clerk of the court concerned notwithstanding that the date referred to in paragraph (a) or the date on which the accused should have appeared in court has expired.

(3)

- (a)
 - (i) Subject to the provisions of subparagraphs (ii) and (iii), an accused who intends to pay an admission of guilt fine in terms of subsection (1), shall surrender the summons or the written notice, as the case may be, at the time of the payment of the fine.
 - (ii) If the summons or written notice, as the case may be, is lost or is not available and the copy thereof known as the control document -
 - (aa) is not available at the place of payment referred to in subsection (1), the accused shall surrender a copy of the summons or written notice, as the case may be, at the time of the payment of the fine; or

- (bb) is available at the place of payment referred to in subsection (1), the admission of guilt fine may be accepted without the surrender of a copy of the summons or written notice, as the case may be.
- (iii) If an accused in respect of whom a warrant has been endorsed in terms of section 55 (2A) intends to pay the relevant admission of guilt fine, the clerk of the court may, after he has satisfied himself that the warrant is so endorsed, accept the admission of guilt fine without the surrender of the summons, written notice or copy thereof, as the case may be.
- (b) A copy referred to in paragraph (a) (ii) may be obtained by the accused at the magistrate's court, police station or local authority where the copy of the summons or written notice in question known as the control document is filed.
- (c) Notwithstanding the provisions of subsection (1), an accused referred to in paragraph (a) (iii) may pay the admission of guilt fine in question to the clerk of the court where he appears in consequence of such warrant, and if the said clerk of the court is not the clerk of the magistrate's court referred to in subsection (1), he shall transfer such admission of guilt fine to the latter clerk of the magistrate's court.
- (4) No provision of this section shall be construed as preventing a public prosecutor attached to the court concerned from reducing an admission of guilt fine on good cause shown.
- (5)
- (a) An admission of guilt fine stipulated in respect of a summons or a written notice shall be in accordance with a determination which the magistrate of the district or area in question may from time to time make in respect of any offence or, if the magistrate has not made such a determination, in accordance with an amount determined in respect of any particular summons or any particular written notice by either a public prosecutor attached to the court of such magistrate or a police official of or above the rank of non-commissioned officer attached to a police station within the magisterial district or area in question or, in the absence of such a police official at any such police station, by the senior police official then in charge at such police station.
- (b) An admission of guilt fine determined under paragraph (a) shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount determined by the Minister from time to time by notice in the *Gazette*, whichever is the lesser.
- (6) An admission of guilt fine paid at a police station or a local authority in terms of subsection (1) and the summons or, as the case may be, the written notice surrendered under subsection (3), shall, as soon as is expedient, be forwarded to the clerk of the magistrate's court which has jurisdiction, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such summons or, as the case may be, such

written notice and of any summons or written notice surrendered to the clerk of the court under subsection (3), in the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of subsection (7), be deemed to have been convicted and sentenced by the court in respect of the offence in question.

- (7) The judicial officer presiding at the court in question shall examine the documents and if it appears to him that a conviction or sentence under subsection (6) is not in accordance with justice or that any such sentence, except as provided in subsection (4), is not in accordance with a determination made by the magistrate under subsection (5) or, where the determination under that subsection has not been made by the magistrate, that the sentence is not adequate, such judicial officer may set aside the conviction and sentence and direct that the accused be prosecuted in the ordinary course, whereupon the accused may be summoned to answer such charge as the public prosecutor may deem fit to prefer: Provided that where the admission of guilt fine which has been paid exceeds the amount determined by the magistrate under subsection (5), the said judicial officer may, in lieu of setting aside the conviction and sentence in question, direct that the amount by which the said admission of guilt fine exceeds the said determination be refunded to the accused concerned.

57A. Admission of guilt and payment of fine after appearing in court

- (1) If an accused who is alleged to have committed an offence has appeared in court and is -

- (a) in custody awaiting trial on that charge and not on another more serious charge;
- (b) released on bail under section 59 or 60; or
- (c) released on warning under section 72,

the public prosecutor may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, hand to the accused a written notice, or cause such notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again.

- (2) Such notice shall contain -

- (a) the case number;
- (b) a certificate under the hand of the prosecutor or peace officer affirming that he or she handed or delivered, as the case may be, the original of such notice to the accused and that he or she explained to the accused the import thereof; and

- (c) the particulars and instructions contemplated in paragraphs (a) and (b) of section 56 (1).
- (3) The public prosecutor shall endorse the charge-sheet to the effect that a notice contemplated in this section has been issued and he or she or the peace officer, as the case may be, shall forthwith forward a duplicate original of the notice to the clerk of the court which has jurisdiction.
- (4) The provisions of sections 55, 56 (2) and (4) and 57 (2) to (7), inclusive, shall apply *mutatis mutandis* to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.

