



ASSOCIATION OF CEMENTITIOUS MATERIAL PRODUCERS

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL

**Parliament Portfolio Committee
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Parliament
Cape Town**

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INTRODUCTION: Who is the ACMP?

The ACMP acts as an umbrella body for six South African clinker and cementitious material producer companies, specifically guiding and representing their interests in the fields of

- environmental stewardship,
- health and safety practices, and
- community and stakeholder interaction

All members produce cement in **compliance SABS standards**

The ACMP's member companies include:



- ❖ AfriSam: www.afrisam.com
- ❖ Lafarge South Africa: www.lafarge.com
- ❖ NPC-CIMPOR: www.cimpor.com
- ❖ Pretoria Portland Cement Company Ltd: www.ppc.com
- ❖ Cemlock(Gauteng) Pty Ltd
- ❖ I.D.M. Cement (Pty) Ltd: www.vibro.co.za

1. To amendment of certain definitions

- Provides clarity and removes any ambiguity in the Act
- However, the amendments to the EIP may require an additional definition
 - (dealt with later)

2. To adjust the timeframes for the preparation of environmental implementation plans and environmental management plans

Timeframe

Publish within 5 years of promulgation and at least every 5 years thereafter

The last EIP/EMPs were published in mid 2010; review is too late. Example of impacts:

- Chapter 3 of the National Environmental Management Act requires EIP/EMP to include an air quality management plan.
- Each municipality must include in its integrated development plan contemplated in Chapter 5 of the Municipal Systems Act, an air quality management plan in terms of the Air Quality Act, etc.

Recommendation:

Prepare within two years and not 5 years of publication of the National Environmental Management Laws Amendment Act

- Period since the last publication may render the current EIP/EMP irrelevant in many instances.

Responsible Department:

Department to prepare and not Province

Recommendation:

Provincial Government's Director General approve the EIP as the Provincial Accounting Officer for the entire provincial government

- Ensure compliance to the EIP by all Departments.
- This Person should also, as is the case with the Occupational Health and Safety Act, be accountable for non compliance to commitments made in the EIP. This is particularly important as the State will now be criminally liable for non compliance based on the amendments included in the NEMLA and clarity in terms of accountability is important.

3. To provide for the process and procedure for submitting environment outlook reports

Minister/MEC to publish within four years and at intervals of not more than four years thereafter.

- Role of report to enhance the environmental management regime in South Africa.
- There is no obligation on the metropolitan and district municipalities
- There is no reference to the current State of Environmental reports being published by the different spheres of Government

Recommendation

1. The obligation be extended to Metropolitan and District Municipalities local government
 - concurrent environmental function in terms of the Constitution (Schedule 4 and 5)
 - land use planning, air quality management, environmental management tools as reflected in Chapter 5 of NEMA, etc.
2. The report should be integrated with the EIP and EMP reports to ensure alignment of both content and timeframe.
3. The integrated report should also include the monitoring of compliance to previously published EIP/EMP commitments
4. Outlook report improve alignment between the different processes as the preparation of additional reports places a burden on stakeholders to comment. There are examples of many reports and strategies presently being published. Examples include:
 - National strategy on sustainable development
 - National climate change strategy
 - State of Environment Reports published by different spheres of Government,
 - Environmental management framework (EMF)
 - Integrated development plans
 - Integrated waste management plans
 - Air quality report in terms of the Air quality Act/Air quality Framework
 - Etc

4. To empower the Minister or MEC to develop norms or standards for listed activities and non-listed activities

Application:

- Both listed and non listed activities.

Recommendation:

Advise what criteria would be used to inform requirements to develop norms and standards for *non listed* activities

The inclusion in 24F: “(f) any applicable norm or standard developed in terms of section 24(10)” is appreciated and we trust that implementation thereof will be prioritized.

Recommendation:

- Allow the adoption of a resource: waste protocol to facilitate the outcomes of
 - innovation; or
 - cleaner production, or
 - implementation of the hierarchy of waste principles.
- This may also require a focus on sectoral approaches particularly in industry.

5. To empower the Minister to restrict or prohibit development in specified geographical areas

The amendment is welcomed.

Recommendation:

Focus on both sensitive and degraded environments.

- **Environmentally sensitive environment:** ensures the protection of the specified geographical areas,
- **Degraded environment :** it would promote remediation as well as human health by discouraging housing developments in and around the degraded specified geographical area.

Recommendation

Reference be made to adopt EMFs, SEAs, declared air quality priority areas, etc to inform this element.

6. To empower the Minister to take a decision in place of the MEC under certain circumstances

24c: It is appreciated that the amendment would promote efficient decision making within the stipulated timeframes.

- It is not clear why delayed decision making by the relevant competent Authorities cannot be managed administratively by the national Department to facilitate decision making by the relevant competent Authorities. A web based database of applications **not** finalised within timeframes could be easily set up by the national Department and progress/support monitored accordingly
- The new provision does not provide clarity on timeframe for the Minister to take a decision.

Recommendation:

In the interest of **co-operative governance** the Department consider appropriate intervention of decision making by the relevant Authority in the first instance as the proposed amendment is reflected as follows:

“ 24C(6) Before taking a decision contemplated in subsection (4), the Minister must consult with the MEC concerned”

The only **trigger** referred to for decision making to be transferred to the Minister is by the Applicant.

Recommendation:

The national Department

1. Establish an **oversight role** to avoid delays in decision making in the first instance
2. Confirm an **internal trigger** for the Minister to have applications transferred or co-operatively finalised by the relevant competent Authority Monitor delayed applications and also include this as a
3. Establish a national **EIA register** on the status of all applications :
 - should be accessible through the DEAs website
 - delayed applications flagged.

7. To provide legal clarity on the applicability of section 24G to the unlawful commencement of a waste management activity under the NEMWA, 2008

The clarity provided is noted.

Recommendation:

- A provision be included to clarify when a substance assumes waste status to prevent illegal commencement/undertaking of a waste activity.
 - The definition of waste is clear but it is important to allow for a waste: resource protocol (matrix) to direct interpretation as well as international harmonization supporting sustainable development
 - ✓ cleaner production principles
 - ✓ emerging technologies
 - ✓ Sectoral approach

An example of a provision that could be considered for inclusion under section 44(1) of NEMA could be as follows:

44(1) The Minister may make regulations regarding

(a) a waste protocol that confirms when a substance assumes waste status and/or an end of waste status for materials, objects or substances that have an imminent beneficial use supporting the principles of the hierarchy of waste principles and/or sustainable development

This approach has been implemented by various countries internationally.

Note:

The Waste Act only allows for substances to cease as a waste if it undergoes recover, reuse or recycle processes. It is important that the NEMA be amended to allow for innovative approaches, emerging technologies, cleaner production and resource recovery through EIA, norms and standards, etc.

8. To increase the section 24G administrative fines and to exclude payment of section 24G administrative fines for certain persons

- The alignment of fines up to R5 million is noted, and
- The recognition of emergency response situation is appreciated.

9. To provide for no exemptions from the requirements to obtain an environmental authorisation

It is not clear why the blanket inclusion as the outcome of 24(4) (a) would result in the matters being considered listed and hence 24(4) (a) would apply to both section 24(2) (a) *and* section 24(2) (b).

Recommendation:

✓ Exemptions should be allowed in some instances.

For example, some provisions of 24(4) (a) may already have been complied to based on environmental management tools such as policies, EMFs, norms and standards, etc.

✓ The competent Authority be allowed some discretion with regards to exemptions from *some* provisions listed under 23(4) (a).

10. To adjust the provisions relating to the duty of care and remediation of environmental damage

The need for strong urgent action to protect the environment is highly appreciated.

- However, there may be instances where a directive to cease an activity may have unintentional consequences resulting in further environmental degradation.

Recommendation

To retain, under certain circumstances, the ability to investigate, evaluate and assess the impact of specific activities and report thereon prior to ceasing the activity as per discretion of the Authority.

11.To provide for textual amendments to the provisions on the powers of environmental management inspectors

Extending the powers to transport is appreciated.

Recommendation

The powers should be more generic to ensure that the EMIs are able to take action against those driving vehicles in cases such as:

- Monitoring vehicle exhaust emissions to manage ambient air quality-transport has been identified a major source of pollution and GHG emitter;
- Transporting waste in heavy duty vehicles that do not comply with responsible safety precautions. It is a common occurrence to witness debris falling off such vehicles resulting in environmental pollution and at times consequential health and safety impacts

12. To insert a provision to regulate products having a detrimental effect on the environment

It is appreciated that the amendment of s44 requires consultation with the Minister responsible for Trade and Industry.

Recommendation

The provision has to be harmonized with international practice. There is currently some conflict.

Example: GBFS (granulated blast furnace slag) is classified as a product internationally and sold accordingly while some quarters in South Africa views it as a waste in terms of the current Waste Act.

This has major trade implications:

- Competiveness in South Africa
- Contribute negatively to carbon leakage in terms of our national climate change strategy.

13. To add provisions regarding the delivery of documents

Section 47D: The inclusion of the use of alternate technologies would contribute positively to dealing with the matter urgently.

- However, due to complying with strict timeframes for a response, it may be inappropriate to regard as having come to the notice of the responsible person.

Recommendation

Electronic communications be supported with telephonic confirmation as it is possible that the responsible person may be out of office or engaged elsewhere and the Administration Officer receiving the notice may not appreciate the urgency of the matter at hand

14. To provide that the Act binds the State without any exception

It is noted that s48 the Act would be binding on the State and *will be* criminally liable.

- Environmental management spans across various departments and it is noted that the EIP responsibility has shifted from the Province to the Environment Department. In the case of local government, clarity is also required between the Municipal and District Municipal Accountable Officer. The amendment must specify who the accounting Officers are to inform job descriptions

Recommendation

The amendment must specify who the accounting Officer is to inform obligations and job descriptions.

- Ensure that any enforcement action taken is addressed to the correct Person
Example: direction be taken from the Occupational Health and Safety Act by confirming who the Accounting Officer would be to ensure that any enforcement action taken is addressed to the correct Person..



Thank you!