



ASSOCIATION OF CEMENTITIOUS MATERIAL PRODUCERS

15th July 2012

**Portfolio Committee on Water and Environmental
Committee Section
Parliament of RSA,
PO Box 15,
Cape Town
8000**

Attention: Ms Tyhileka Madubela

Per -mail: tmadubela@parliament.gov.za

ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL; 4th MAY 2012

Dear Ms Tyhileka Madubela

The Association of Cementitious Material Producers (ACMP) welcomes and supports the purpose of the NEMA amendments to provide improved coherence and legislative clarity to the NEMA, 1998 (Act 107 of 1998), NEMBA, 2004 (Act 10 of 2004), NEMAQA, 2004 (Act 39 of 2004), NEMPA, 2003(Act 57 of 2003 and NEM Laws Amendment Act, 2008(Act 44 2008).

The ACMP would thus appreciate it if you consider the following comments on behalf of the ACMP members:

1. Amendment of certain definitions

Amendments to clarify reference to the relevant “Minister” is appropriate as it provides clarity and removes any ambiguity in the Act

In addition to providing legal clarity on the applicability of section 24G to the unlawful commencement of a waste management activity under the National Environmental Management: Waste Act, 2008, it is recommended that 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 matrix to direct interpretation. The matrix could also assist in clarifying when a substance assumes waste status and/or ceases to be waste during the industrial process. This is particularly important because increasingly cleaner production principles as well as

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emerging technologies are by being embraced by Industry resulting in ambiguity in interpretation when a substance should be considered waste vs a resource.

Hence, applicability of section 24G to any unlawful commencement of a waste management activity under the National Environmental Management: Waste Act, 2008 will be comprehensively understood by all stakeholders.

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.

It is to be noted that 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.

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

In addition to the adjustment of timeframes it is to be noted that the responsibility has shifted from the Provincial Government to a single Provincial Department. Hence comment for both timeframe and responsible Department would be addressed as follows:

a) Timeframe

It is noted that timeframe has been adjusted as follows:

- EIP/EMP: prepare an environmental implementation plan within ~~[one year]~~ five years from publishing of National Environmental Management Laws Amendment Act
- and ~~[at least every four]~~ at intervals of not more than five years thereafter.”

In light of the fact that the last EIP/EMPs were published in mid 2010, we are of the view that preparing an updated environmental implementation plan after five years of publication of the National Environmental Management Laws Amendment Act is a rather lengthy period. The delay in publication has various consequences. For example, there may be consequential delay in the finalization of air quality management plans as per requirements of Section 15 of the Air Quality Act (Act 39 of 2004) which states the following:

s15. (1) Each national department or province responsible for preparing an environmental implementation plan or environmental management plan in terms of Chapter 3 of the National Environmental Management Act must include in that plan an air quality management plan.

(2) 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.

It is recommended that the Authorities prepare an environmental implementation/management plan within two years and not 5 years of publication of the National Environmental Management Laws Amendment Act as the period since the last publication may render the current EIP/EMP irrelevant in many instances.

b) Responsible Department: Department to prepare and not Province (Amendment of section 11 of Act 107 of 1998, as amended by section 7 of Act 14 of 2009).

It is recommended that the amendment include that the Provincial Government's Director General approve the EIP as the Provincial Accounting Officer for the entire provincial government to 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

16A. (1) The Minister/MEC must publish a provincial environment outlook report within four years of the coming into operation of the National Environmental Laws Amendment Act, 2012, prepare and publish a national environment outlook report for the Republic and at intervals of not more than four years thereafter.

(2) An MEC must—

(a) Prepare and publish a provincial environment outlook report which must contain the information determined by the Minister in terms of subsection (4);

It is noted that the:

- Minister and MEC must prepare this report while 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
- There is no clarification of how this report would enhance the environmental management regime in South Africa.

It is recommended that:

- The obligation be extended to Metropolitan and District Municipalities local government due to their concurrent environmental function in terms of the Constitution (Schedule 4 and 5) as well as in terms of land use planning, air quality management, environmental management tools as reflected in Chapter 5 of NEMA, etc.

- The report should be integrated with the EIP and EMP reports to ensure alignment of both content and timeframe.
- The integrated report should also include the monitoring of compliance to previously published EIP/EMP commitments

It is further recommended that the 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

“(I) develop or adopt norms or standards for activities, sectors, geographical areas, listed activities, **[or]** for any part of an activity, sector, geographical area or listed activity, or for a combination of those activities, **[contemplated in terms of subsection (2)(d)]** sectors, geographical areas and listed activities.”.

It is noted that norms and standards would apply to both listed and non listed activities. It is not clear why *non listed activities* require inclusion and what criteria would be used to inform requirements to develop norms and standards for non listed activities

Section 24 however previously failed to allow for usage of instruments such as norms and standards that do not fall within the scope of the definition of “norms and standards” as provided for in section 23(1) Chapter 5 of NEMA.

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.

An example is the adoption of a 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 and it is recommended that it should focus on both sensitive and degraded environments.

In the case of environmentally sensitive environment it would ensure the protection of the specified geographical areas, while in the case of degraded environment it would promote remediation as well as human health by discouraging housing developments in and around the degraded specified geographical area. It is recommended that a reference be made to adopt EMFs, SEAs, declared air quality priority areas, etc to inform this element. Gauteng has identified buffer zones as part of their environmental decision making tool to inform EIAs and IDPs.

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.

However, the new provision does not provide clarity on timeframe for the Minister to take a decision.

It is recommended that 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”

Thus, 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 only trigger referred to for decision making to be transferred to the Minister is by the Applicant.

It is recommended that the Department monitor delayed applications and also include this as a trigger for the Minister to have applications transferred or co-operatively finalised by the relevant competent Authority. An EIA register on the status of all applications should be accessible through the DEAs website and delayed applications flagged. It is recommended that the national Department establish an oversight role to avoid delays in decision making in the first instance.

7. To provide legal clarity on the applicability of section 24G to the unlawful commencement of a waste management activity under the National Environmental Management: Waste Act, 2008;

The clarity provided is noted

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). Exemptions should be allowed in some instances. For example, some provisions of 24(4) (a) may already have been complied to base on environmental management tools such as policies, EMFs, norms and standards, etc.

It is recommended that 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, we would like to caution that there may be instances where a directive to cease an activity may have unintentional consequences resulting in further environmental degradation. Hence, it is recommended 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. However, the powers should be more generic to ensure that the EMI's 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 which results 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. However, the provision has to be harmonized with ACMP comments: Environmental management laws amendment bill; 4th May 2012

international practice. There is currently some conflict. An example to illustrate this could be GBFS (granulated blast furnace slag) which 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 implications for competitiveness in South Africa and can also 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 to dealing with the matter urgently.

It is appreciated that notices etc could be electronically issued. 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. It is recommended that 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.

This is an important development and it is important that 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. 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.

The ACMP remains committed to supporting the NEMA amendments to provide improved coherence and legislative clarity to environmental management in South Africa.

Please feel free to contact this office should you require any clarification. We would also like to thank you for including the ACMP in your database as a stakeholder and we remain committed to all future consultation processes with regards to law reform processes impacting on our members.

Yours Faithfully
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