

ENVIRONMENTAL

PROGRESS IN THE
TRANSITION OF
THE REGULATION OF
MINING OPERATIONS
ENVIRONMENTAL
MANAGEMENT

PROGRESS IN THE TRANSITION OF THE REGULATION OF MINING OPERATIONS ENVIRONMENTAL MANAGEMENT

The end of 2014 was filled with public statements, legislative amendments and proposed legislation published for comment; signalling and accelerating the progress of the transition of the regulation of the environmental management of mining operations from the Mineral and Petroleum Resources Development Act, No 107 2002 (MPRDA) to the National Environmental Management Act, 1998 (NEMA).

FURTHER STEPS TO ONE ENVIRONMENTAL SYSTEM FOR MINES

The Departments of Mineral Resources (DMR), Water Affairs and Sanitation (DWAS) and Environmental Affairs (DEA) released a statement on 6 December 2014 confirming that the Government would commence the rollout of the much anticipated One Environmental System on 8 December 2014. This System will result in far greater integration of environmental regulation needed for mining.

It was confirmed that under the system, the:

- Minister of Mineral Resources will be responsible for issuing environmental authorisations (EAs) and waste management licences (WMLs);
- Minister of Environmental Affairs will be the appeal authority for EAs and WMLs issued by the Minister of Mineral Resources;
- Ministers have agreed to fixed timeframes for processing and issuing EAs, WMLs, water use licences (WULs) and other environmental consents within their respective competencies. The Ministers have committed to synchronising the processes, to ensure all environmental consents are issued within a 300 day period; and
- Minister of Mineral Resources will be authorised to appoint Environmental Mineral Resource Inspectors, who will have the same power as Environmental Management Inspectors under NEMA to enforce environmental legislation at mines.

2014 EIA REGULATIONS

The 2014 EIA Regulations took effect on 8 December 2014 and repealed and replaced the Environmental Impact Assessment Regulations published on 1 August 2010 (2010 EIA Regulations).

These Regulations include a number of provisions to provide for the transition of the environmental regulation of mining from the MPRDA to NEMA and the introduction of the One Environmental System:

- the inclusion of mineral activities under the 2014 Listing Notices requiring mineral right holders to obtain EAs for, inter alia, the commencement and decommissioning of these activities. There are however still pending draft regulations under NEMA pertaining to financial provision for the environmental impacts of mining which provision is also referred to in the requirements for applications for EAs in NEMA and a gap remains;
- pending applications under the MPRDA and its Regulations (MPRDA Regulations) when the 2014 EIA Regulations came into force fully will, despite the repeal of the MPRDA Regulations, be dealt with as if the MPRDA Regulations have not been repealed. The MPRDA Regulations have not been repealed (and are not likely to be, as they deal with several issues beyond environmental regulation). However Legislature's intention appears to be that pending applications for EMP approval must be processed under the MPRDA. 'Applications' includes an amendment to an EMP;
- shorter prescriptive timeframes for the EA application process, to ensure EAs are issued within the timeframes in the One Environmental System;
- requirements to ensure issuing of EAs and other environmental consents required for activities are co-ordinated; and
- substantive requirements for audits of compliance with EAs and EMPs.

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Separate Regulations have also been published on 8 December 2014 under NEMA regulating appeal and exemption procedures. The new Exemption Regulations prescribe more onerous and time consuming procedural requirement for applications for exemptions from the provisions of the 2014 EIA Regulations.

MORE ONEROUS PROPOSED FINANCIAL PROVISION REQUIREMENTS

Under the One Environmental System the requirements for financial provision for the environmental impacts of mining operations is to be regulated by NEMA and no longer the MPRDA. Draft Financial Provision and Closure Regulations were published for public comment in October 2014. These are more detailed and onerous than the current regulations are.

Failure to comply with these Regulations would result in a fine of R10 million under NEMA.

Despite their title, the Draft Financial Provision and Closure Regulations propose provisions wider than just financial provision and deal with care and maintenance of mining operations and "deemed closure of mines", which is not currently regulated under the MPRDA. A mine can be deemed to be under closure by the Department of Mineral Resources in specified (and far reaching) circumstances.

Under the proposed Regulations, mineral rights holders will have to apply to the Minister of Mineral Resources to be placed under care and maintenance, which may not exceed a specified period.

Financial Provision requirements

The Draft Financial Provision and Closure Regulations have more onerous and detailed provisions regarding financial provisions; rehabilitation and the required reports than those previously in the MPRDA.

For mining and prospecting rights the methods of acceptable payment have been limited. The wording of the trust deed and financial guarantee is prescribed in the Draft Financial Provision and Closure Regulations.

Environmental risks assessments and annual rehabilitation plans would be required, with prescribed contents, and must be audited annually.

Rehabilitation and cost closure liability would need to be reviewed annually after reviewing specified reports by a specialist team (which must include a mining engineer, a surveyor, and an environmental assessment practitioner) and audited by an independent auditor. Only one extension is allowed for submission of the review and audit for a prescribed period.

Specified time periods are also included for an increase of the financial provision. If the holder is unable to cover any shortfall, the Minister can agree to enter a payment agreement (that must be less than five years).

Under the proposed transitional provisions:

- existing financial provision must be regarded as having been approved;
- a holder that operates under an approved financial provision must review and align it with the Draft Financial Provision and Closure Regulations; and
- a holder must within 15 months after the coming into effect of the Draft Regulations assess and adjust the financial provisions in accordance with the procedure contained in these Regulations and submit a revised sum to the Minister for approval. If the holder fails to comply with this requirement, the existing financial provision will lapse after 45 days after the expiry of the 15 month period.

PROPOSED REGULATION OF RESIDUE STOCKPILES AND DEPOSITS

There are only a few provisions in the MPRDA Regulations dealing with the management of residue stockpiles and deposits.

Proposed Regulations regarding the Planning and Management of Residue Stockpiles and Residue Deposits from a Prospecting, Mining, Exploration or Production Operation were published for public comment on 14 November 2014 (Draft Residue Stockpile and Deposits Regulations). They have detailed provisions on the management of residue stockpiles and deposits including:

- assessment of their impacts;
- analysis of the risks relating to their management;
- their characterisation and classification to identify any potential risks to health, safety and the environment;
- site selection and designs;
- duties of mining rights holders regarding construction and operation; designs; water monitoring; preventative or remedial environmental measures; dust pollution and erosion; rehabilitation; maintenance and repair; monitoring and reporting; decommissioning, closure and post closure management.

It is unclear when these Regulations will be enacted into law.

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