# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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**THE PRESIDENCY**

No. 842 14 July 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

**No. 8 of 2004: National Environmental Management Amendment Act, 2004.**




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Act No. 8, 2004 NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT ACT, 2004

**GENERAL EXPLANATORY NOTE:**

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

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

*(English text signed by the President.)*
*(Assented to 9 July 2004.)*

# ACT

**To amend the National Environmental Management Act, 1998, so as to insert certain definitions and substitute others; to make further provision regarding environmental authorisations; to make certain textual alterations; to provide for the registration of associations of environmental assessment practitioners; and to provide for incidental matters.**

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

**Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002**

**1.** Section 1 of the National Environmental Management Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by—

*(a)* the insertion after the definition of "Agenda 21" of the following definition:

"'**assessment**', when used in Chapter 5, means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to decision-making;";

*(b)* the insertion after the definition of "best practicable environmental option" of the following definition:

"'**commence**', when used in Chapter 5, means the start of any physical activity on the site in furtherance of a listed activity;";

*(c)* the insertion after the definition of "community" of the following definition:

"'**competent authority**', in respect of a listed activity or specified activity, means the organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, with granting or refusing an environmental authorisation in respect of that activity;";

*(d)* the insertion after the definition of "environment" of the following definitions:

"'**environmental assessment practitioner**', when used in Chapter 5, means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management plans or any other appropriate environmental instruments introduced through regulations;
'**environmental authorisation**', when used in Chapter 5, means the authorisation by a competent authority of a listed activity in terms of this Act;";

*(e)* the insertion after the definition of "environmental management plan" of the following definition:

"'**evaluation**', when used in Chapter 5, means the process of ascertaining the relative importance or significance of information, in the light of people's values, preferences and judgements, in order to make a decision;";

*(f)* the insertion after the definition of "international environmental instrument" of the following definitions:

"'**listed activity**', when used in Chapter 5, means an activity identified in terms of section 24(2)*(a)* and *(d)*;";

'**listed area**', when used in Chapter 5, means a geographical area identified in terms of section 24(2)*(b)* and *(c)*;";

*(g)* the substitution for the definition of "MEC" of the following definition:

"'**MEC**' means the Member of the Executive Council to whom the Premier has assigned **[the performance in the province of the functions entrusted to a MEC by or under such a provision]** responsibility for environmental affairs;";

*(h)* the insertion after the definition of "regulation" of the following definitions:

"'**review**', when used in Chapter 5, means the process of determining whether an assessment has been carried out correctly or whether the resulting information is adequate in order to make a decision;

'**specific environmental management Act**' means an Act of Parliament that regulates a specific aspect of the environment, as defined in this Act, and includes any regulations or other subordinate legislation made in terms of such an Act;

'**specified activity**', when used in Chapter 5, means an activity as specified within a listed geographical area in terms of section 24(2)*(b)* and *(c)*;".

**Substitution of section 24 of Act 107 of 1998**

**2.** The following section is hereby substituted for section 24 of the principal Act:

**"Environmental authorisations**

**24.** (1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential impact on the environment of listed activities must be considered, investigated, assessed and reported on to the competent authority charged by this Act with granting the relevant environmental authorisation.

(2) The Minister, and every MEC with the concurrence of the Minister, may identify—

*(a)* activities which may not commence without environmental authorisation from the competent authority;

*(b)* geographical areas based on environmental attributes in which specified activities may not commence without environmental authorisation from the competent authority;

*(c)* geographical areas based on environmental attributes in which specified activities may be excluded from authorisation by the competent authority;

*(d)* individual or generic existing activities which may have a detrimental effect on the environment and in respect of which an application for an environmental authorisation must be made to the competent authority:

Provided that where an activity falls under the jurisdiction of another Minister or MEC, a decision in respect of paragraphs *(a)* to *(d)* must be taken after consultation with such other Minister or MEC.

(3) The Minister, and every MEC with the concurrence of the Minister, may compile information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority.

(4) Procedures for the investigation, assessment and communication of the potential impact of activities must ensure, as a minimum, with respect to every application for an environmental authorisation—

*(a)* investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;

*(b)* investigation of the potential impact of the activity and its alternatives on the environment and assessment of the significance of that potential impact;

*(c)* investigation of mitigation measures to keep adverse impacts to a minimum, as well as the option of not implementing the activity;

*(d)* public information and participation which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in such information and participation procedures;

*(e)* reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;

*(f)* investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation;

*(g)* coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;

*(h)* that the findings and recommendations flowing from such investigation, the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to the proposed policy, programme, plan or project; and

*(i)* that environmental attributes identified in the compilation of information and maps as contemplated in subsection (3) are considered.

(5) The Minister, and every MEC with the concurrence of the Minister, may make regulations consistent with subsection (4)—

*(a)* laying down the procedure to be followed in applying for, the issuing of and monitoring compliance with environmental authorisations;

*(b)* laying down the procedure to be followed and the institutional arrangements in respect of—

(i) the efficient administration and processing of environmental authorisations;

(ii) fair decision-making and conflict management in the consideration and processing of applications for environmental authorisations;

(iii) the preparation and evaluation of environmental impact assessments, strategic environmental assessments, environmental management plans and any other relevant environmental management instruments that may be developed in time;

(iv) applications to the competent authority by any person to be exempted from the provisions of any regulation in respect of a specific activity;

(v) appeals against decisions of competent authorities;

*(c)* prescribing fees to be paid for—

(i) the consideration and processing of applications for environmental authorisations;

(ii) the review of documents, processes and procedures by specialists on behalf of the competent authority;

*(d)* requiring the provision of financial or other security to cover the risks to the State and the environment of non-compliance with conditions attached to environmental authorisations;

*(e)* specifying that environmental impact assessments, or other specified tasks performed in connection with an application for an environmental authorisation, may only be performed by an environmental assessment practitioner registered in accordance with the prescribed procedures;

*(f)* requiring that competent authorities maintain a registry of applications for, and records of decisions in respect of, environmental authorisations;

*(g)* specifying that a contravention of a specified regulation is an offence and prescribing penalties for the contravention of that regulation;

*(h)* prescribing minimum criteria for the report content for each type of report and for each process that is contemplated in terms of the regulations in order to ensure a consistent quality and to facilitate efficient evaluation of reports;

*(i)* prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in, the review process;

*(j)* prescribing any other matter necessary for dealing with making and evaluating applications for environmental authorisations.

(6) An MEC may make regulations in terms of subsection (5) only in respect of listed activities or areas in respect of which the MEC is the competent authority.

(7) Compliance with the procedure laid down by the Minister or an MEC in terms of subsection (4) does not remove the need to obtain an authorisation, other than an environmental authorisation, for that activity from any organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity.

(8) Authorisations or permits obtained under any other law for an activity listed or specified in terms of this Act does not absolve the applicant from obtaining authorisation under this Act and any such other authorisations or permits may only be considered by the competent authority if they are in compliance with subsection (4)*(d)*.

(9) Only the Minister may make regulations in accordance with subsection (5) stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential impacts for the purpose of complying with subsection (1) where the activity will affect—

*(a)* more than one province or traverse international boundaries; or

*(b)* compliance with obligations resting on the Republic under customary international law or a convention.".

**Insertion of sections 24A to 24I in Act 107 of 1998**

**3.** The following sections are hereby inserted in the principal Act after section 24:

"**Procedure for listing activity or area**

**24A.** Before identifying any activity or area in terms of section 24(2), the Minister or MEC, as the case may be, must publish a notice in the relevant *Gazette*—

*(a)* specifying, through description, a map or any other appropriate manner, the activity or area that it is proposing to list;

*(b)* inviting interested parties to submit written comments on the proposed listing within a period specified in the notice.

**Procedure for delisting of activities or areas**

**24B.** (1) The Minister may delist an activity or area identified by the Minister in terms of section 24(2).

(2) An MEC may, with the concurrence of the Minister, delist an activity or area identified by the MEC in terms of section 24(2).

(3) The Minister or MEC, as the case may be, must comply with section 24A, read with the changes required by the context, before delisting an activity or area in terms of this section.

**Procedure for identifying the competent authority**

**24C.** (1) When listing activities in terms of section 24(2) the Minister, or the MEC with the concurrence of the Minister, must identify the competent authority responsible for granting environmental authorisations in respect of those activities.

(2) The Minister must be identified as the competent authority in terms of subsection (1) if the activity—

*(a)* has implications for national environmental policy or international environmental commitments or relations;

*(b)* will take place within an area identified in terms of section 24(2)*(b)* or *(c)* as a result of the obligations resting on the Republic in terms of any international environmental instrument, other than any area falling within the sea-shore, a conservancy, a protected natural environment, a proclaimed private nature reserve, a natural heritage site, or the buffer zone or transitional area of a biosphere reserve or a world heritage site;

*(c)* will affect more than one province or traverse international boundaries;

*(d)* is undertaken, or 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; or

*(e)* will take place within a national proclaimed protected area or other conservation area under control of a national authority.

(3) The Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities—

*(a)* contemplated in subsection (2) may be dealt with by the MEC;

*(b)* in respect of which the MEC is identified as the competent authority may be dealt with by the Minister.

**Publication of list**

**24D.** The Minister or MEC, as the case may be, must publish in the relevant *Gazette* a notice listing activities and areas identified in terms of section 24(2) and listing the competent authorities identified in terms of section 24C and the date on which the list is to come into effect.

**Minimum conditions attached to environmental authorisations**

**24E.** Every environmental authorisation must as a minimum ensure that—

*(a)* adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity;

*(b)* the property, site or area is specified; and

*(c)* provision is made for the transfer of rights and obligations when there is a change of ownership in the property.

**Offences relating to commencement or continuation of listed activity**

**24F.** (1) Notwithstanding the provisions of any other Act, no person may commence an activity listed in terms of section 24(2)*(a)* or *(b)* unless the competent authority has granted an environmental authorisation for the activity, and no person may continue an existing activity listed in terms of section 24(2)*(d)* if an application for an environmental authorisation is refused.

(2) It is an offence for any person to contravene subsection (1) or the conditions applicable to any environmental authorisation granted for a listed activity.

(3) It is a defence to a charge in terms of subsection (2) to show that the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment.

(4) A person convicted of an offence in terms of subsection (2) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

**Rectification of unlawful commencement or continuation of listed activity**

**24G.** (1) On application by a person who has committed an offence in terms of section 24F(2) the Minister or MEC, as the case may be, may direct the applicant to—

*(a)* compile a report containing—

(i) an assessment of the nature, extent, duration and significance of the impacts of the activity on the environment, including the cumulative effects;

(ii) a description of mitigation measures undertaken or to be undertaken in respect of the impacts of the activity on the environment;

(iii) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;

(iv) an environmental management plan; and

*(b)* provide such other information or undertake such further studies as the Minister or MEC may deem necessary.

(2) Upon the payment by the person of an administration fine not exceeding R1 million as determined by the competent authority, the Minister or MEC concerned must consider the report contemplated in subsection (1) and thereafter may—

*(a)* direct the person to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and subject to such conditions as the Minister or MEC may deem necessary; or

*(b)* issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.

(3) A person who fails to comply with a directive contemplated in subsection (2)*(a)* or who contravenes or fails to comply with a condition contemplated in subsection (2)*(b)* is guilty of an offence and liable on conviction to a penalty contemplated in section 24F(4).

**Registration authorities**

**24H.** (1) An association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in such manner as the Minister may prescribe.

(2) The application must contain—

*(a)* the constitution of the association;

*(b)* a list of the members of the association;

*(c)* a description of the criteria and process to be used to register environmental assessment practitioners;

*(d)* a list of the qualifications of the members of the association responsible for the assessment of applicants for registration;

*(e)* a code of conduct regulating the ethical and professional conduct of members of the association; and

*(f)* any other prescribed requirements.

(3) After considering an application, and any other additional information that the Minister may require, the Minister may—

*(a)* by notice in the *Gazette*, appoint the association as a registration authority; or

*(b)* in writing addressed to the association, refuse the application, giving reasons for such refusal.

(4) The Minister may, for good cause and in writing addressed to the association, terminate the appointment of an association as a registration authority.

(5) The Minister must maintain a register of all associations appointed as registration authorities in terms of this section.

**Appointment of external specialist to review assessment**

**24I.** The Minister or MEC may appoint an external specialist reviewer, and may recover costs from the applicant, in instances where—

*(a)* the technical knowledge required to review any aspect of an assessment is not readily available within the competent authority;

*(b)* a high level of objectivity is required which is not apparent in the documents submitted, in order to ascertain whether the information contained in such documents is adequate for decision-making or whether it requires amendment.".

**Amendment of section 43 of Act 107 of 1998**

**4.** The following section is hereby substituted for section 43 of the principal Act:

"**Appeals**

**43.** (1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.

(2) Any affected person may appeal to the relevant MEC against a decision taken by any person acting under a power delegated by the MEC under this Act or a specific environmental management Act.

(3) Any affected party may appeal to the Minister or MEC, as the case may be, against—

*(a)* any decision to issue or to refuse to issue an environmental authorisation or to grant an exemption in terms of Chapter 5;

*(b)* any provision or condition of an environmental authorisation or exemption issued or granted in terms of Chapter 5;

*(c)* any directive issued in terms of Chapter 5.

(4) An appeal under subsections (1) to (3) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

(5) The Minister or MEC, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.

(6) The Minister or MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate order, including an order that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(7) An appeal under this section does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or any directive, unless the Minister or MEC directs otherwise.".

**Amendment of section 47 of Act 107 of 1998**

**5.** Section 47 of the principal Act is hereby amended by the deletion of subsections (3), (4), (5) and (6).

### Amendment of section 50 of Act 107 of 1998

**6.** Section 50 of the principal Act is hereby amended by the addition after subsection (2) of the following subsections:

"(3) Any application made in terms of section 21, 22 or 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), that has been submitted but not finalised when those sections are repealed, must be finalised as if those sections had not been repealed.

(4) In order to ensure that the transition between the legal requirements of sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), and the requirements of this Act is efficient, the Minister may by notice in the *Gazette* list activities included in Government Notice R1182 of 5 September 1997 that will remain valid until such time as an MEC promulgates a list of activities for that province.".

### Transitional provision

**7.** For a period of six months after the date on which this Act comes into operation, the provisions of section 24G of the principal Act apply, with the necessary changes, in respect of any listed activity commenced or continued in contravention of a provision of the Environment Conservation Act, 1989 (Act No. 73 of 1989).

### Amendment of Schedule 3 to Act 107 of 1998

**8.** Schedule 3 to the principal Act is hereby amended by the substitution for Part *(a)* of the following Part:

**(Section 34)**

**Part *(a)*: National Legislation**

| No. and year of law | Short title | Relevant provisions |
|---|---|---|
| Act No. 36 of 1947 | Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 | Section 18(1)*(i)* in so far as it relates to contraventions of sections 7 and 7*bis* |
| Act No. 71 of 1962 | Animals Protection Act, 1962 | Sections 2(1) and 2A |
| Act No. 45 of 1965 | Atmospheric Pollution Prevention Act, 1965 | Section 9 |
| Act No. 63 of 1970 | Mountain Catchment Areas Act, 1970 | Section 14 in so far as it relates to contraventions of section 3 |
| Act No. 15 of 1973 | Hazardous Substances Act, 1973 | Section 19(1)*(a)* and *(b)* in so far as it relates to contraventions of sections 3 and 3A |
| Act No. 63 of 1977 | Health Act, 1977 | Section 27 |
| Act No. 73 of 1980 | Dumping at Sea Control Act, 1980 | Section 2(1)*(a)* and *(b)* |
| Act No. 6 of 1981 | Marine Pollution (Control and Civil Liability) Act, 1981 | Section 2(1) |
| Act No. 43 of 1983 | Conservation of Agricultural Resources Act, 1983 | Sections 6 and 7 |
| Act No. 2 of 1986 | Marine Pollution (Prevention of Pollution from Ships) Act, 1986 | Section 3A |
| Act No. 73 of 1989 | Environment Conservation Act, 1989 | Section 29(2)*(a)* and (4) |

| No. and year of law | Short title | Relevant provisions |
|---|---|---|
| Act No. 18 of 1998 | Marine Living Resources Act, 1998 | Section 58(1) in so far as it relates to contraventions of sections 43(2), 45 and 47, and section 58(2) in so far as it relates to contraventions of international conservation and management measures |
| Act No. 36 of 1998 | National Water Act, 1998 | Section 151*(i)* and *(j)*. |

## Short title and commencement

**9.** This Act is called the National Environmental Management Amendment Act, 2004, and commences on a date determined by the President by proclamation in the *Gazette*.