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No. 32267

THE PRESIDENCY

No. 617

27 May 2009

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

No. 14 of 2009: National Environmental Laws Amendment Act, 2009.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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.
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(English text signed by the President.)
(Assented to 25 May 2009.)

ACT

To amend the—

- **Atmospheric Pollution Prevention Act, 1965, so as to adjust the penalties provided for in the said Act;**
 - **Environment Conservation Act, 1989, so as to adjust the penalties provided for in the said Act; and to remove the need to publish directions in the *Gazette*;**
 - **National Environmental Management Act, 1998, so as to delete certain definitions; to provide for the establishment of fora or advisory committees; to make provision for increased powers of the courts; to remove the requirement that Environmental Management Inspectors must carry notices of designation with them; to extend the scope of routine inspections to the search of vehicles; and to regulate the jurisdiction of magistrate's courts in instances where the maximum fines have been increased;**
 - **National Environmental Management: Protected Areas Act, 2003, so as to provide for increased measures of control over escaped animals; and to adjust the penalties provided for in the said Act;**
 - **National Environmental Management: Biodiversity Act, 2004, so as to provide for general surveillance monitoring; to provide further considerations for a biodiversity management plan; to provide that an environment impact assessment must be obtained when genetically modified organisms are involved; to introduce notification requirements in the discovery phase of a bioprospecting project; to take into consideration knowledge of specific individuals when issuing specific bioprospecting permits; to allow the Director-General or a trustee to manage the Bioprospecting Fund; to allow for the renewal or amendment of a permit; to amend the regulations to allow for hunting; and to effect certain textual alterations;**
 - **National Environmental Management: Air Quality Act, 2004, so as to provide for a processing fee to review a licence; and to include directors or senior managers in a juristic person for the criteria for a fit and proper person;**
- and to provide for matters connected therewith.**

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

Substitution of section 46 of Act 45 of 1965, as substituted by section 20 of Act 17 of 1973

1. The following section is hereby substituted for section 46 of the Atmospheric Pollution Prevention Act, 1965:

“Penalties

46. Any person convicted of an offence under this Act shall be liable, in the case of a first conviction, to a fine not exceeding [five hundred] five million rand or imprisonment for a period not exceeding [six months] five years, and in the case of a second or subsequent conviction to a fine not exceeding [two thousand] 10 million rand or imprisonment for a period not exceeding [one year] 10 years.”.

Amendment of section 29 of Act 73 of 1989, as amended by section 18 of Act of 79 of 1992 and by Proclamation No. 29 of 1995

2. Section 29 of the Environment Conservation Act, 1989, is hereby amended by the substitution for subsections (4), (5) and (6) of the following subsections, respectively:

“(4) Any person who contravenes a provision of section 20(1), 20[(6)](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 be guilty of an offence and liable on conviction to a fine not exceeding [R100 000] R5 million or to imprisonment for a period not exceeding [10] 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.

(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 [R2 000] R500 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(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 [R250] R1 000 per day or to imprisonment for a period not exceeding [20 days] 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.”.

Amendment of section 32 of Act 73 of 1989

3. Section 32 of the Environment Conservation Act, 1989, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) issue a regulation **[or a direction]** in terms of the provisions of this Act;”.

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004, section 60 of Act 39 of 2004 and section 1 of National Environment Laws Amendment Act, 2008, and section 1 of National Environmental Management Amendment Act, 2008

4. Section 1 of the National Environmental Management Act, 1998, is hereby amended by—

- (a) the deletion of the definition of “Committee”; and
- (b) the deletion of the definition of “Forum”.

Repeal of Parts 1 and 2 of Chapter 2 of Act 107 of 1998

5. Parts 1 and 2 of Chapter 2 of the National Environmental Management Act, 1998, are hereby repealed.

Insertion of section 3A in Act 107 of 1998

6. The following section is hereby inserted in Chapter 2 of the National Environmental Management Act, 1998, after section 3: 5

“Establishment of fora or advisory committees

3A. The Minister may by notice in the *Gazette*—

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| <ul style="list-style-type: none"> (a) establish any forum or advisory committee; (b) determine its composition and functions; and (c) determine, in consultation with the Minister of Finance, the basis and extent of the remuneration and payment of expenses of any member of such forum or committee.”. | 10 |
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Amendment of section 11 of Act 107 of 1998

7. Section 11 of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (5) for paragraph (b) of the following paragraph: 15

“(b) on application by any organ of state, or on his or her own initiative with the agreement of the relevant Minister where it concerns a national department, **[and after consultation with the Committee,]** amend Schedules 1 and 2.”. 20

Amendment of section 13 of Act 107 of 1998

8. Section 13 of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Minister may, **after consultation with the Committee,** make regulations for the purpose of giving effect to **[subsections]** subsection (1)(b) and (c).” 25

Amendment of section 15 of Act 107 of 1998

9. Section 15 of the National Environmental Management Act, 1998, is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection: 30
 - “(1) Every environmental implementation plan and every environmental management plan must be submitted **[to the Committee by a date to be set by the Minister]** for approval to the Minister or MEC, as the case may be.”;
- (b) the deletion of subsections (2), (3) and (4); and 35
- (c) the deletion in subsection (6) of paragraphs (b) and (c).

Amendment of section 16 of Act 107 of 1998

10. Section 16 of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) Every organ of state must exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the environmental implementation plan or the environmental management plan prepared, submitted and adopted by that organ of state in accordance with this Chapter: Provided that any substantial deviation from an environmental management plan or environmental implementation plan must be reported forthwith to the Director-General **[and the Committee]**. 40 45

(b) Every organ of state must report annually within four months of the end of its financial year on the implementation of its adopted environmental management plan or environmental implementation plan to the Director-General **[and the Committee]**. 50

(c) The Minister may, **after consultation with the Committee,** recommend to any organ of state which has not submitted and adopted an environmental

implementation plan or environmental management plan, that it comply with a specified provision of an adopted environmental implementation plan or submitted environmental management plan.”.

Amendment of section 22 of Act 107 of 1998

11. Section 22 of the National Environmental Management Act, 1998, is hereby amended by the deletion in subsection (2) of paragraph (a) and (b). 5

Amendment of section 28 of Act 107 of 1998

12. Section 28 of the National Environmental Management Act, 1998, is hereby amended by—

- (a) the insertion after subsection (1) of the following subsection: 10
 “(1A) Subsection (1) also applies to a significant pollution or degradation that—
 (a) occurred before the commencement of this Act;
 (b) arises or is likely to arise at a different time from the actual activity that caused the contamination; or
 (c) arises through an act or activity of a person that results in a change to pre-existing contamination.” 15
- (b) the substitution for subsection (7) of the following subsection:
 “(7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General or provincial head of department responsible for environmental affairs may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.”; 20
- (c) the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
 “Subject to subsection (9), the Director-General or provincial head of department may recover [**all costs incurred as a result of it acting**] costs for reasonable remedial measures to be undertaken under subsection (7), before such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—”; 25
- (d) the addition of the following subsections:
 “(14) No person may—
 (a) unlawfully and intentionally or negligently commit any act or omission which causes significant or is likely to cause significant pollution or degradation of the environment; 35
 (b) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect the environment in a significant manner; or
 (c) refuse to comply with a directive issued under this section. 40
 (15) Any person who contravenes or fails to comply with subsection (14) is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.”. 50

Amendment of section 30 of Act 107 of 1998

13. Section 30 of the National Environmental Management Act, 1998, is hereby amended by the addition of the following subsection: 45

- “(11) A person who contravenes or fails to comply with subsection (3), (4), (5) or (6) is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year, or to both such a fine and such imprisonment.”. 50

Amendment of section 31 of Act 107 of 1998

14. Section 31 of the National Environmental Management Act, 1998, is hereby amended by the deletion of subsections (1), (2) and (3).

Amendment of heading to Part 2 of chapter 7 of Act 107 of 1998

15. The following heading is hereby substituted for the heading to Part 2 of chapter 7 of the National Environmental Management Act, 1998: 5

“Part 2: Application and enforcement of Act and any specific environmental management [Acts] Act”.

Amendment of section 31A of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 10

16. Section 31A of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) This Part applies to the enforcement of this Act and **[the] any specific environmental management [Acts] Act**.”.

Amendment of section 31F of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 15

17. Section 31F of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) When exercising any powers or performing any duties in terms of this Act or a specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card **[and the notice issued to the inspector in terms of section 31D(3)] referred to in subsection (1)**.”. 20

Amendment of section 31H of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003 25

18. Section 31H of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (g) for the following paragraph:

“(g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection.”. 30

Amendment of section 31K of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

19. Section 31K of the National Environmental Management Act, 1998, is hereby amended by— 35

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“An environmental management inspector, within his or her mandate in terms of section 31D, and subject to subsection (2), may[,] at any reasonable time[,] conduct routine inspections and, without a warrant, enter and inspect any building, land or premises or search, including but not limited to, any vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purposes of ascertaining compliance with—”; 40

(b) the substitution for subsection (5) of the following subsection:

“(5) While carrying out a routine inspection, an environmental management inspector may seize anything in or on any, including but not limited to, business or residential premises, [or] land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.”; and 50

(c) the substitution for subsection (7) of the following subsection:

“(7) An environmental management inspector may exercise on such [business or residential premises or land] building, land, premises, vehicle, vessel, aircraft, pack-animals, container, bag, box, item and the like any of the powers mentioned in section 31H.”

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Amendment of section 31N of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

20. Section 31N of the National Environmental Management Act, 1998, is hereby amended by the deletion in subsection (2) of paragraph (c).

Amendment of section 31Q of Act 107 of 1998, as inserted by Act 46 of 2003

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21. Section 31Q of the National Environmental Management Act, 1998, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Subsection (1) does not apply to information that pertains to—

- (a) environmental quality or the state of the environment;
- (b) any risks posed to the environment, public safety and the health and well-being of people; or
- (c) compliance with or contraventions of any environmental legislation by any person.”

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Amendment of section 34 of Act 107 of 1998

22. Section 34 of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

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“(3) Whenever a person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order—

- (a) the award of damages or compensation or a fine equal to the amount so assessed; or
- (b) that such remedial measures as the court may determine must be undertaken by the convicted person.”

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Amendment of section 34D of Act 107 of 1998, as inserted by section 7 of Act 46 of 2003.

23. Section 34D of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The court convicting a person of an offence in terms of this Act or any of the specific environmental Acts may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of, or in connection with, the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.”

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Insertion of section 34H in Act 107 of 1998

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24. The following section is hereby inserted in the National Environmental Management Act, 1998, after section 34G:

“Jurisdiction

34H. Notwithstanding anything to the contrary in any other law, a magistrate’s court shall have jurisdiction to impose any penalty prescribed by this Act or any specific Environmental Management Acts.”

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Amendment of Schedule 3 to Act 107 of 1998, as amended by section 8 of Act 8 of 2004

25. Part (a) and Part (b) of the Schedule to this Act are hereby substituted for Part (a) and Part (b) of Schedule 3 to the National Environmental Management Act, 1998.

Amendment of section 82 of Act 57 of 2003

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26. Section 82 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended by the substitution for subsection (3) of the following subsection:

“(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.”.

Amendment of section 88 of Act 57 of 2003

27. Section 88 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(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 [on] 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.”.

Amendment of section 89 of Act 57 of 2003

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28. Section 89 of the National Environmental Management: Protected Areas Act, 2003, is hereby amended by—

(a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), [or] (3) or (3A), 48(1), [or] 49A(5)(b), 50(5) or 55(2)(fA).”;

(b) the substitution for subsection (2) of the following subsection:
“(2) A person convicted of an offence in terms of subsection (1) is liable, [on] 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.”; and

(c) the addition of the following subsections:
“(3) Contravention of or failure to comply with any provision of a regulation made under section 86 or 87 is an offence.
“(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.”.

Amendment of section 1 of Act 10 of 2004

29. Section 30 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion of the following definitions after the definition of “Board”:

“**commercialisation**”, in relation to indigenous biological resources, includes the following activities: 5

- (a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;
- (b) obtaining or transferring any intellectual property rights or other rights;
- (c) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; or 10

the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours and extracts; 15

“**commercialisation phase of bioprospecting**” means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is sufficiently established to begin the process of commercialisation;” 20

by the insertion of the following definition after the definition of “**Director-General**”:

“**discovery phase of bioprospecting**” means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is not sufficiently clear or known to begin the process of commercialisation;” 25

Amendment of section 11 of Act 10 of 2004

30. Section 11 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 30

“must monitor and report regularly to the Minister on the environmental impacts of [any] all categories of genetically modified organism [that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture], post commercial release, based on research that identifies and evaluates risk;” 35

Amendment of section 33 of Act 10 of 2004

31. Section 33 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by— 40

- (a) the substitution for subsection (3) of the following subsection:
 - “(3) A notice in terms of subsection (1)(a) or (2)(a) must assign a name to the national botanical garden, and Schedule 1 must be amended accordingly.”
- (b) the substitution for subsection (4) of the following subsection: 45
 - “(4) All notices in terms of sections (1), (2) and (3) must be included in Schedule 1 to this Act, which will contain the name and definition of the land in question, of all proclaimed national botanical gardens.”

Amendment of section 34 of Act 10 of 2004

32. Section 34 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister may, by notice in the *Gazette* amend Schedule 1 in order to—”. 5

Insertion of section 36A in Act 10 of 2004

33. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 36:

“Winding up or dissolution of Institute

36A(1) The Institute may not be wound up or dissolved except by or in 10
terms of an Act of Parliament.

(2) Upon its winding-up or dissolution the South African Biodiversity Institute must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to an equivalent Schedule 3A Public Entity which has the same objectives as the South African Biodiversity Institute and which itself is exempt from income tax in terms 15
of section 10 (1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962).”.

Amendment of section 45 of Act 10 of 2004

34. Section 45 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by— 20

- (a) the deletion of the word “and” at the end of paragraph (b);
- (b) the deletion in paragraph (c) of subparagraph (v), (vi) and (vii);
- (c) the insertion of the word “and” at the end of paragraph (c); and
- (d) the addition of the following paragraph:

“(d) take into consideration— 25

- (i) any plans issued in terms of Chapter 3 of the National Environmental Management Act;
- (ii) any municipal integrated development plan; and
- (iii) any other plans prepared in terms of national or provincial 30
legislation that is affected.”.

Amendment of section 57 of Act 10 of 2004

35. Section 57 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the addition of the following subsection:

“(4)(a) The Minister may, by notice in the *Gazette*, exempt a person from a restriction contemplated in subsection (1).” and 35

(b) Before granting an exemption in terms of paragraph (a), the Minister must follow a consultative process in accordance with sections 99 and 100.”.

Substitution of section 58 of Act 10 of 2004

36. The following section is hereby substituted for section 58 of the National Environmental Management: Biodiversity Act, 2004: 40

“Amendment of notices

58. The Minister may by notice in the *Gazette* amend or repeal any notice published in terms of section [55] 56(1), [or] 56(2) or 57(4).”.

Amendment of section 78 of Act 10 of 2004

37. Section 78 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the Minister has reason to believe that the release of a genetically modified organism into the environment under a permit applied for in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), may pose a threat to any indigenous species or the environment, no permit for such release may be issued in terms of that Act unless an environmental impact assessment has been conducted in accordance with Chapter 5 of the National Environmental Management Act as if such release were a listed activity contemplated in that Chapter.”.

Amendment of section 81 of Act 10 of 2004

38. Section 81 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) engage in the commercialisation phase of bioprospecting involving any indigenous biological resources; or”.

Insertion of section 81A in Act 10 of 2004

39. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 81:

“**Notification requirements**”

81A. (1) No person may, without first notifying the Minister, engage in the discovery phase of bioprospecting involving any indigenous biological resources.

(2) A notice referred to in subsection (1) must be in such form and must contain such other particulars as may be prescribed.

(3) A person involved in the discovery phase of bioprospecting must sign a prescribed commitment to comply with the requirements at the commercialisation phase of bioprospecting.”.

Amendment of section 82 of Act 10 of 2004

40. Section 82 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

“an indigenous community or a specific individual—”.

Amendment of section 85 of Act 10 of 2004

41. Section 85 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) must manage the Fund in the prescribed manner or may appoint a trustee in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988), to administer the fund on the Director-General’s behalf in the prescribed manner and under such terms as the Director-General may consider necessary; and”.

Amendment of section 86 of Act 10 of 2004

42. Section 86 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister may by notice in the *Gazette*—
- (a) declare that this Chapter does not apply to indigenous resources specified in the notice or to an activity relating to such indigenous biological resources; **[and] or**
 - (b) declare that this Chapter does not apply to certain categories of research involving indigenous biological resources or commercial exploitation of indigenous biological resources; and
 - (c) amend or withdraw a notice referred to in **[paragraph] paragraphs (a) and (b).**”.

Amendment of section 92 of Act 10 of 2004 10

43. Section 92 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

- “If the carrying out of an activity mentioned in section **[90] 87** is also regulated in terms of other law, the authority empowered under that other law to authorize that activity and the issuing authority empowered under this Act to issue permits in respect of that activity may—”.

Insertion of section 93A in Act 10 of 2004

44. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 93: 20

“Renewal and amendment of permits

93A. (1) A permit holder may, before the expiry date of a permit, apply to an issuing authority for the renewal or amendment of such permit.

(2) An application for the renewal or amendment of a permit must be in the form, contain such information and be accompanied by such processing fees as may be prescribed. 25

(3) In considering an application to renew or amend a permit, the issuing authority must have regard to the same matters which it was required to consider when deciding on the initial application for that permit.

(4) A issuing authority may for good reason amend or substitute any condition attached to a permit and any new information at the time of the renewal application.”.

Amendment of section 97 of Act 10 of 2004

45. Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by— 35

- (a) the substitution in subsection (1)(b) for subparagraph (iv) of the following subparagraph:
 - “(iv) the facilitation of the implementation and enforcement of an international agreement regulating international trade in specimens **[of listed threatened or protected species]** of species to which the agreement applies and which is binding on the Republic.”;
- (b) the deletion in subsection (1)(b) of the word “or” at the end of subparagraph (vii);
- (c) the insertion in subsection (1)(b) of the word “or” at the end of subparagraph (viii); 45
- (d) the addition to subsection (1)(b) of the following subparagraph:
 - “(ix) the hunting industry;”;
- (e) the substitution in subsection (1)(e) for subparagraph (ii) of the following subparagraph: 50

- “(ii) the form and content of, and requirements and criteria for, notification requirements referred to in section 81A and benefit-sharing agreements and material transfer agreements.”; and
- (f) the substitution in subsection (1)(f) for subparagraph (i) of the following subparagraph: 5
- “(i) the conditions subject to which issuing authorities may issue, renew or amend permits in terms of this Act;”.

Amendment of section 98 of Act 10 of 2004

46. Section 98 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs, respectively: 10

- “(a) imprisonment for a period not exceeding five years;
- (b) **[an appropriate fine]** a fine not exceeding five million rand, 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; or”.
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Amendment of section 102 of Act 10 of 2004

47. Section 102 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by—

- (a) the substitution for subsections (1) and (2) of the following subsections, 20 respectively:
- “(1) A person convicted of an offence in terms of section 101 is liable to a fine not exceeding R10 million, or an imprisonment for a period not exceeding **[five]** ten years, or to both such a fine and such imprisonment.
- (2) **[A fine in terms of subsection (1) may not exceed—** 25
- (a) **an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); or**
- (b) **if** If a person is convicted of an offence involving a specimen of a listed threatened or protected species, **[an amount]** a fine may be determined, either in terms of [paragraph (a)] subsection (1) or [which is] equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.”; and 30
- (b) the addition of the following subsection:
- “(3) Notwithstanding anything to the contrary in any other law, a magistrate’s court shall have jurisdiction to impose any penalty prescribed by this Act.”.
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Amendment of section 45 of Act 39 of 2004

48. Section 45 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 40

- “(1) A licensing authority must review a provincial atmospheric emission licence or an atmospheric emission licence at intervals specified in the licence, or when circumstances demand that a review is necessary, on payment of the prescribed processing fee. 45
- (2) The licensing authority must inform the licence holder and the relevant provincial air quality officer, in writing, of any proposed review, **[and]** the reason for such review and the cost of the prescribed processing fee.”.

Amendment of section 49 of Act 39 of 2004

49. Section 49 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) that person has been a director or senior manager who is or was a director or manager of a company, a juristic person or firm to whom paragraph (a) or (b) applies; and” 5

Amendment of section 52 of Act 39 of 2004

50. Section 52 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by—

(a) the substitution for subsections (1) and (2) of the following subsections, 10 respectively:

“(1) A person convicted of an offence referred to in section 51 is liable to a fine not exceeding five million rand, or to imprisonment for a period not exceeding **[ten]** 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. 15

(2) A fine contemplated in subsection (1)[—

(a) **may not exceed an amount prescribed in terms of legislation regulating maximum fines for criminal offences; and** 20

(b)] must be determined with due consideration of—

[(i)](a) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;

[(ii)](b) the monetary or other benefits which accrued to the convicted person through the commission of the offence; 25 and

[(iii)](c) the extent of the convicted person’s contribution to the overall pollution load of the area under normal working conditions.”; and

(b) the addition of the following subsection: 30

“(3) Notwithstanding anything to the contrary in any other law, a magistrate’s court shall have jurisdiction to impose any penalty prescribed by this Act.”.

Short title and commencement

51. This Act is called the National Environment Laws Amendment Act, 2008, and 35 comes into effect on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

“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 7bis |
| 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] Sections 7(2)(a) to (d), 9(1)(a) to (c), 14A, 15(1)(a) and (b), 15(2), 17(4), 19(5), 20(11), 23(3), 24(2), 28(3), 29(4), 31(6) 32(2) 34 (4), 37(4), 40(4) and 41(2) |
| 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 <u>Agricultural Resources</u> 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] Sections 19(1) and 19A read with 29(3), 20(1) and (9) read with section 29(4), 29 (2)(a) [and (4)] , 31A and 41A read with 29(3) |
| 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(1)(i) and (j) |
| <u>Act No. 84 of 1998</u> | <u>National Forests Act</u> | Sections 4(8), 7(1), 10(1), 11(2)(b), 15(1)(a) and (b), 17(3) and (4), 20(3), 21(2), 21(5), 24(8), 63(1)(a), (d), (e) and (f), 63(2)(a) and (b), 63(3) to (5), 64(1) and (2) |
| <u>Act No. 101 of 1998</u> | <u>National Veld and Forest Fire Act</u> | Sections 10(2), 12(1), 12(2)(b), 12(14)(a), (4), 17(1), 18(1)(a), 18(2), 18(3)(b), 18(4), 18(4)(b), 25(2)(a) to (e), 25(5), (6) and (7) |

| No and year of law | Short title | Relevant provisions |
|----------------------------|---|---|
| <u>Act No. 107 of 1998</u> | <u>National Environment Management Act, 1998</u> | Sections 24F(1) and (2), 24G(3), 28(14), 30(11), 31N(1) and 34A (a), (b) and (c) |
| <u>Act No. 25 of 1999</u> | <u>National Heritage Resources Act</u> | Sections 27(18) and (22), (23)(b), 28(3), 29(10), 32(13), (15), (16), (17), (19) and (20) 33(1) and (2), 34(1), 35(3), (4), (6) and (7)(a) 36(3), 44(2) and (3), 50(5) and (12) and 51(8) |
| <u>Act No. 57 of 2003</u> | <u>National Environmental Management: Protected Areas Act</u> | Sections 45(1), 46(1), 47(2), 47(3), 48(1), 50(5), read with sections 89(1), 89(1) (b), (c) and (d) and 50A |
| <u>Act No. 10 of 2004</u> | <u>National Environmental Management: Biodiversity Act</u> | Sections 57(1) read with 101(1)(a), 65(1) read with 101(1)(a), 67(2) read with 101(1)(a), 71(1) read with 101(1)(a), 81(1) |
| <u>Act No. 39 of 2004</u> | <u>National Environmental Management: Air Quality Act</u> | Sections 51(10(a) to (h), 51(2) and (3) |

Part (b): Provincial Legislation

| No and year of law | Short title | Relevant provisions |
|--------------------------|--|--|
| Ordinance No. 8 of 1969 | Orange Free State Conservation | Section 40(1)(a) in so far as it relates to contraventions of sections 2(3), 14(2), 15(a), 16(a) and 33 |
| Ordinance No. 9 of 1969 | Orange Free State Townships | Section 40(1)(a)(ii) |
| Ordinance No. 15 of 1974 | Natal Nature Conservation | Section 55 in so far as it relates to section 37(1), to section 49 in respect of specially protected game and to section 51 in respect of specially protected game, section 109 in so far as it relates to section 101, to section 102 and to section 104, section 154 in so far as it relates to section 152, section 185 in so far as it relates to section 183, and section 208 in so far as it relates to section 194 and to section 200 |
| Ordinance No. 19 of 1974 | [Cape] Nature and Environmental Conservation <u>Ordinance</u> | Section 86(1) in so far as it relates to contraventions of sections [26,] 4[4] 1(1)(b)(ii) and (c) to (e), 52(a), 57(a), 58(b) and 62(1) |
| Ordinance No. 12 of 1983 | [Transvaal] <u>Gauteng</u> Nature Conservation | Sections 16A, 17 to 45, [42], 47, 48, 51, 52, 54, 66, 71 to 78, 79, 80, 81, 83, 84, 85, 87, 88 to 93, 95, 96 [and] 98, 99, 100 and 107 |
| Ordinance No. 15 of 1985 | Cape Land Use Planning | Section 46(1) in so far as it relates to sections 23(1) and 39(2) |
| Ordinance No. 15 of 1986 | Transvaal Town Planning and Townships | Sections 42, 93 and 115 |
| Act No. 29 of 1992 | KwaZulu Nature Conservation | Section 67 in so far as it relates to sections 59(1), 59(2), 60(1) and 62(1); section 86 in so far as it relates to sections 76, 77 and 82; and section 110 in so far as it relates to section 109 |
| Act No. 5 of 1998 | KwaZulu-Natal Planning and Development | Section 48". |