

THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002 AND THE ENVIRONMENT

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SUMMARY

The provisions aimed at the management and protection of the environment contained in the Minerals and Petroleum Resources Development Act are discussed in this article. A combination of “command-and-control” and “management planning” regulatory techniques are employed in the Act, creating relatively stringent environmental management and protection obligations throughout the life-cycle of reconnaissance, prospecting and mining operations.

1 INTRODUCTION

As part of the reform of the mineral law system by government, the Mineral and Petroleum Resources Development Act 28 of 2002 came into operation on 1 May 2004.¹

The Minerals and Petroleum Resources Development Act (“the Act”) contains several provisions aimed at the management and protection of the environment. The word “environment” bears the same meaning in the Act as the definition of the “environment” set out in the National Environmental Management Act 107 of 1998² (“the National Environmental Management

¹ R25 in GG 262634 of 2004-05-01.

² Under s 1 of the National Environmental Management Act the “environment” is defined as: “the surroundings within which humans exist and that are made up of – (i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and (iv) the physical, chemical, aesthetic and cultural properties and conditions of the

Act”). One of the objectives of the Minerals and Petroleum Resources Development Act is to give effect to the environmental rights³ enshrined in the Constitution. The Act seeks to ensure that South Africa’s mineral resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development.

The Minerals and Petroleum Resources Development Act prohibits the conduct of any reconnaissance, prospecting and mining operations in relation to minerals, or the commencement of any work incidental to those activities, without, among other things, an approved environmental management programme or approved environmental management plan (as the case may be).⁴ The environmental management in relation to petroleum is similar to those provisions regarding minerals and will be not be discussed in this article.

An “environmental management plan”⁵ is defined as a plan to manage and rehabilitate environmental impacts arising from reconnaissance, prospecting, or mining operations conducted under the authority of a reconnaissance permission, prospecting right, or mining permit, as the case may be. An “environmental management programme” is defined to mean an environmental management programme that has been approved by the Minister in accordance with the requirements of the Minerals and Petroleum Resources Development Act.⁶ In contrast to an environmental management plan, an environmental management programme is required in order to conduct prospecting or mining operations under the authority of a mining right.⁷

2 ENVIRONMENTAL MANAGEMENT PRINCIPLES

The principles set out in section 2 of the National Environmental Management Act:⁸

foregoing that influence human health and well-being”. This definition is a wide one. In keeping with s 24 of the Constitution, its distinctive feature is the central role accorded to human health and well-being.

³ S 24 of the Constitution of the Republic of South Africa Act 108 of 1996 (“the Constitution”). In terms of s 3(3) of the Mineral and Petroleum Resources Development Act the Minister must ensure the sustainable development of South Africa’s mineral and petroleum resources within the framework of the national environmental policy, norms and standards while, at the same time, promoting economic and social development. The duty is to some extent imposed upon the Minister in order to give effect to the objective contained in S 2(h).

⁴ S 5(4)(a).

⁵ See definition of “environmental management plan” in s 1.

⁶ See definition of “environmental management programme” in s 1.

⁷ S 39(1) read together with s 22 and Items 3(3)-(4) to Schedule II.

⁸ The principles included in s 2 of the National Environmental Management Act include the following: Environmental management must be integrated, environmental justice must be pursued, equitable access to environmental resources to meet basic human needs must be pursued; responsibility for the environmental health and safety consequences of a policy

- (a) apply to all prospecting and mining operations and to any matter relating to such operations; and
- (b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of the Minerals and Petroleum Resources Development Act.⁹

Any prospecting or mining operation must be conducted in accordance with the generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.¹⁰ “Sustainable development”¹¹ means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that the nation’s mineral resources development serves present and future generations.¹² Section 2 of the National Environmental Management Act gives further expression to the term “sustainable

programme exists throughout its life cycle; participation of all interested and affected parties in environmental governance must be promoted; decisions must take into account the interests, needs and values of all interested and affected parties; community well-being and empowerment must be promoted; the social, economic and environmental impacts of activities must be considered; the right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected; decisions must be taken in an open and transparent manner and access to information must be provided in accordance with the law; there must be inter-governmental co-ordination and harmonisation of policies; actual or potential conflicts of interest between organs of State should be resolved through conflict resolution procedures; global and international responsibilities relating to the environment must be discharged in the national interest; the environment is held in public trust for the people; the “polluter pays” principle must be followed; the vital role of women and youth in environmental management and development must be recognised; and sensitive, vulnerable, highly dynamic or stressed eco-systems must be granted special attention in management and planning procedures.

⁹ S 37(1). See too the decision of the Constitutional Court in *Minister of Public Works v Kyalami Ridge Environmental Association* 2001 3 SA 1151 (CC) 1167 where it commented on the principles set out in s 2 of the National Environmental Management Act and at par 36 stated that:

“Seen in the context of the ... Act as a whole the principles are directed to the formulation of environmental policies by the relevant organs of state ... The section does not make provision for rights and obligations; instead it sets out principles expressed at times in abstract rather than concrete terms.”

¹⁰ S 37(2).

¹¹ Reference is also made to the term “sustainable development” in s 24 of the Constitution. S 24(b)(iii) of the Constitution provides that everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that, among other things, secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

¹² S 37(2). See further definition of “sustainable development” in s 1. The concept of serving “present and future generations” is also termed “inter-generational equity”. The concept gained formal expression in the World Commission on Environment and Development’s report (also referred to as the Bruntland Report) published in 1987. The concept was also endorsed at the June 1992 UN Conference on Environment and Development held in Rio de Janeiro, Brazil. The concept is also expressly referred to in s 24(b) of the Constitution.

development".¹³

3 INTEGRATED ENVIRONMENTAL MANAGEMENT

The holder of a reconnaissance permission, prospecting right, retention permit, mining right or mining permit must do the following:

- (a) at all times give effect to the general objectives of integrated environmental management as set out in Chapter 5 of the National Environmental Management Act 107 of 1998;¹⁴
- (b) consider, investigate, assess and communicate the impact of the holder's prospecting or mining operations on the environment;¹⁵
- (c) manage all environmental impacts in accordance with an environmental management plan or approved environmental management programme, as the case may be, as an integral part of the reconnaissance, prospecting or mining operations (unless the Minister directs otherwise);¹⁶ and
- (d) as far as it is reasonably practicable, rehabilitate the environment that is

¹³ S 2 of the National Environmental Management Act provides that the term "sustainable development" requires the consideration of all relevant factors including the following: disturbance of eco-systems and loss of biological diversity are avoided or are minimised and remedied; pollution and degradation of the environment are avoided or minimised or remedied; disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided or minimised and remedied; waste is avoided or minimised or re-used and recycled where possible or otherwise disposed of in a responsible manner; the use and exploitation of non-renewable natural resources is responsible and equitable; the development, use and exploitation of renewable resources and the eco-systems of which they are part do not exceed the level beyond which their integrity is jeopardised; a risk-averse and cautious approach is applied which takes into account the limits of current knowledge about the consequences of decisions and actions; and negative impacts on the environment and on people's environmental rights are anticipated and prevented or minimised and remedied.

¹⁴ S 38(1)(a). S 23 of the National Environmental Management Act provides that the general objectives of integrated environmental management are to – (a) promote the integration of the principles of environmental management set out in s 2 into the making of all decisions which may have a significant effect on the environment; (b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in s 2; (c) ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them; (d) ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment; (e) ensure the consideration of environmental attributes in management and decision-making which may have a significant effect on the environment; and (f) identify and employ the modes of environmental management best suited to ensuring that a particular activity is pursued in accordance with the principles of environmental management set out in s 2.

¹⁵ S 38(1)(b). As contemplated in s 24(7)(c) of the National Environmental Management Act. See too the decision of the Supreme Court of Appeal in *Director, Mineral Development, Gauteng Region and Another v Save the Vaal Environment* 1999 2 SA 709 (SCA) 719D.

¹⁶ S 38(1)(c).

affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principles of sustainable development.¹⁷

Failure to comply with the duty mentioned in (c) above constitutes an offence.¹⁸

4 PENDING APPLICATIONS

Any environmental management programme submitted for approval under the Minerals Act 50 of 1991, which had not been approved when the Mineral and Petroleum Resources Development Act took effect, must be regarded as having been lodged in terms of the Mineral and Petroleum Resources Development Act.¹⁹ If the environmental management programme does not meet with the requirements of the Act, the Regional Manager (in whose region the land to which the environmental management programme relates is situated) must direct the holder concerned to submit the outstanding information.²⁰

5 ENVIRONMENTAL LIABILITY

The holder of a reconnaissance permission, prospecting right, retention permit, mining right or mining permit is responsible for any environmental damage, pollution or ecological degradation which may occur as a result of the holder's reconnaissance, prospecting or mining operations inside and outside the boundaries of the area to which such right, permit or permission relates.²¹

Notwithstanding the relevant provisions of the Companies Act 61 of 1973 or the Close Corporations Act 69 of 1984, the directors of a company or members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company or close corporation which they represent or represented.²²

¹⁷ S 38(1)(d).

¹⁸ S 98(a)(iii).

¹⁹ Item 3(3) of Schedule II.

²⁰ Item 3(4) of Schedule II.

²¹ S 38(1). See the provisions of s 19 and s 151 of the National Water Act 36 of 1998 ("the National Water Act") which contain similar "polluter-pays principle" provisions and impose additional liabilities on the holder of a reconnaissance permission, prospecting right, retention permit, mining right or mining permit. See too the provisions of s 28 of the National Environmental Management Act which contain similar "polluter-pays" principle provisions.

²² S 38(2). This section seems to suggest that directors of a company and members of a close corporation will be held strictly liable (or liable on a no-fault basis) for environmental harm caused by the company or close corporation concerned. Notwithstanding the common law presumption against strict liability and the fact that the language of this section (*ie* the reference to "inadvertent" or "advertent" conduct) is not explicit in that it

6 ENVIRONMENTAL MANAGEMENT PLAN

Any person who applies for a reconnaissance permission, prospecting right or mining permit must submit an environmental management plan as prescribed.²³

An applicant who prepares an environmental management plan has to

- (a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;
- (b) investigate, assess and evaluate the impact of the proposed prospecting or mining operations on the environment and any national estate referred to in section 3(2) of the National Heritage Resources Act 25 of 1999,²⁴ (with the exception of the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act);²⁵ and
- (c) describe the manner in which the applicant intends to (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation, (ii) contain or remedy the cause of pollution or degradation and migration of pollutants, and (iii) comply with any prescribed waste standard or management standards or practices.²⁶

When considering an environmental management plan, the Minister must consult with any State department which administers any law²⁷ relating to

does not expressly refer to “strict liability”, it is considered likely that the courts will give effect to the intention of the legislature should the need for statutory interpretation arise. This is because of the stringent environmental requirements imposed by the Act, coupled with the potential risk of extensive damage to human health and the environment posed by mining activities. A curious feature of this sub-section is the reference to “unacceptable” environmental damage. Sub-section 1 refers to “any” environmental damage. In contrast, a different threshold of environmental damage seems to be envisaged in this sub-section.

²³ S 39(2). The form and content of an environmental management plan have been stipulated in Regulation 52(b) promulgated under the Mineral and Petroleum Resources Development Act.

²⁴ The “national estate” in s 3(2) of the National Heritage Act 25 of 1999 includes: Archaeological and palaeontological sites; places, buildings, structures and equipment of cultural significance; historical settlements and townscapes; a place or object, which is important in demonstrating a high degree of creative or technical achievement at a particular period; and graves and burial grounds.

²⁵ These exclusions include: objects of scientific or technological interest; and books, records, film or other documents (that are not public records).

²⁶ S 39(3) read together with s 39(7).

²⁷ Examples of environmentally-related legislation that also govern prospecting and mining operations include: the Atmospheric Pollution Prevention Act 45 of 1965; the Conservation of Agricultural Resources Act 43 of 1983; the Environment Conservation Act 73 of 1989; the Explosives Act 26 of 1956; the Fencing Act 31 of 1963; the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947; the Health Act 63 of 1977; the Hazardous Substances Act 15 of 1973; the Mine, Health and Safety Act 29 of 1996; the National Building Regulations and Building Standards Act 103

matters affecting the environment.²⁸ The Minister is also obliged to request the head of a department being consulted, in writing, to submit the comments of that department within 60 days from the date of the request.²⁹

An applicant for a prospecting right or mining permit is obliged, prior to ministerial approval of the environmental management plan, to make the required financial provision for the rehabilitation or management of negative environmental impacts.³⁰ “Financial provision”³¹ in this context entails the insurance, bank guarantee, trust fund or cash that applicants for or holders of a right or permit must provide guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the reconnaissance, prospecting areas³² or mining areas,³³ as the case may be.

If the holder of a prospecting right, mining right or mining permit fails to rehabilitate or manage, or is unable to undertake such rehabilitation or to manage any negative impact on the environment, the Minister may, upon written notice to such holder, use all or part of the financial provision to rehabilitate or manage the negative environmental impact in question.³⁴ The holder of a prospecting right or mining permit must annually assess his or her environmental liability and increase his or her financial provision to the satisfaction of the Minister.³⁵ If the Minister is not satisfied with the assessment and financial provision, the Minister may appoint an independent assessor to conduct the assessment and determine the financial provision.³⁶

of 1977; the National Road Traffic Act 93 of 1996; the National Nuclear Regulator Act 47 of 1999; the National Veld Fire and Forest Act 101 of 1998; the National Nuclear Energy Act 46 of 1999; the Occupational Health and Safety Act 85 of 1993; and the Water Services Act 108 of 1997.

²⁸ S 40(1). This accords with the co-operative governance requirements contained in s 40 and s 41 of the Constitution. In the national sphere of government, the Departments of Water Affairs and Forestry and Environmental Affairs and Tourism are the primary State departments that administer laws relating to matters affecting the environment.

²⁹ S 40(2).

³⁰ S 41(1).

³¹ Definition of “financial provision” in s 1.

³² In terms of s 1 a “prospecting area” means the area of land which is the subject of any prospecting right.

³³ In terms of s 1 a “mining area” means in relation to a mining right or a mining permit, the area for which that right or permit is granted. In relation to any environmental, health, social and labour matter and any latent or other impact on such matter, a mining area includes: Any adjacent or non-adjacent surface of land on which the extraction of any mineral has not been authorised in terms of the Mineral and Petroleum Resources Development Act but upon which related or incidental operations are being undertaken. Such land includes any area connected to such an area by means of any road, railway line, power line, pipeline, cable way or conveyor belt and any surface of land on which such road, railway line, power line, pipeline or cable way is located; as well as all buildings, structures, machinery, mine dumps or objects situated on or in that area which are used for the purpose of mining on the land in question.

³⁴ S 41(2).

³⁵ S 41(3).

³⁶ S 41(4).

The requirement to maintain and retain the financial provision remains in force until the Minister issues a closure certificate to such holder.³⁷ The Minister may, however, retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent or residual environmental impacts.³⁸

The Minister may not approve the environmental management plan prior to considering the following:

- (a) any recommendation by the Regional Mining Development and Environmental Committee;³⁹ and
- (b) the comments of any State department charged with the administration of any law which relates to matters affecting the environment.⁴⁰

After such consideration, the Minister must, within 120 days from the date of lodging of the environmental management plan, approve that plan, if:

- (a) it complies with the requirements for an environmental management plan;
- (b) the applicant has made the prescribed financial provision for the rehabilitation or management of negative environmental impacts; and
- (c) the applicant has the capacity, or has provided for the capacity, to rehabilitate and manage negative impacts on the environment.⁴¹

The Minister may call for additional information from the applicant⁴² and may direct that the environmental management plan in question be adjusted in such way as the Minister may require.⁴³

The Minister may at any time after approving an environmental management plan and after consultation with the holder of the reconnaissance permission, prospecting right, or mining permit concerned, approve an amended environmental management plan⁴⁴ on the same conditions as outlined above.⁴⁵

³⁷ S 41(5) read together with s 43.

³⁸ S 41(5).

³⁹ S 39(4)(b)(i). The Regional Mining Development and Environmental Committee is a committee established by the Minerals and Mining Development Board (definition of "Regional Mining Development and Environmental Committee" in s 1 read with s 64(1)).

⁴⁰ S 39(4)(b)(ii).

⁴¹ S 39(4)(a).

⁴² S 39(5).

⁴³ S 39(5).

⁴⁴ S 39(6)(a).

⁴⁵ S 39(4)(a) and (b) read with s 39(6)(b).

7 ENVIRONMENTAL MANAGEMENT PROGRAMME

Every person who has applied for a mining right⁴⁶ under the Minerals and Petroleum Resources Development Act is required to conduct an environmental impact assessment and submit an environmental management programme as prescribed within 180 days of the date on which that person is notified by the Regional Manager to do so.⁴⁷

An applicant who prepares an environmental management programme must do the following:

- (a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;
- (b) investigate, assess and evaluate the impact of his or her proposed prospecting or mining operations on (i) the environment; (ii) the socio-economic conditions of any person who might be directly affected by the prospecting or mining operation; and (iii) any national estate referred to in section 3(2) of the National Heritage Resources Act 25 of 1999,⁴⁸ with the exception of the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act;⁴⁹
- (c) develop an environmental awareness plan describing the manner in which the applicant intends to inform his or her employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or the degradation of the environment; and
- (d) describe the manner in which he or she intends to (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation; (ii) contain or remedy the cause of pollution or degradation and migration of pollutants; and (iii) comply with any prescribed waste standard or management standards or practices.⁵⁰

When considering an environmental management programme, the Minister is obliged to consult with any State department that administers any law⁵¹ relating to matters affecting the environment.⁵² The Minister must request

⁴⁶ S 39(1) read with s 22.

⁴⁷ S 39(1). The form and content of a environmental management programme have been stipulated in Regulation 51 promulgated under the Mineral and Petroleum Resources Development Act.

⁴⁸ See fn 24 above.

⁴⁹ See fn 25 above.

⁵⁰ S 39(3).

⁵¹ See fn 27 above.

⁵² S 40(1). See fn 28 above.

the head of a department being consulted, in writing, to submit the comments of that department within 60 days from the date of the request.⁵³

An applicant for a mining right is obliged, prior to ministerial approval of the environmental management programme, to make the prescribed financial provision for the rehabilitation or management of negative environmental impacts.⁵⁴ “Financial provision” in this context means the insurance cover, bank guarantee, trust fund or cash that an applicant for or holder of a mining right must provide in order to guarantee the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the relevant mining area.⁵⁵

If the holder of a mining right fails to rehabilitate or manage, or is unable to undertake such rehabilitation or to manage any negative impact on the environment, the Minister may, upon written notice to such holder, use all or part of the financial provision to rehabilitate or manage the negative environmental impact in question.⁵⁶ The holder of a mining right must annually assess the holder’s environmental liability and increase the financial provision to the Minister’s satisfaction.⁵⁷ If the Minister is not satisfied with the assessment and financial provision, the Minister may appoint an independent assessor to conduct the assessment and determine the financial provision.⁵⁸ The requirement to maintain and retain the financial provision remains in force until the Minister issues a closure certificate to such holder.⁵⁹ The Minister may, however, retain such portion of the financial provision as may be required to rehabilitate the closed mining operation in respect of latent or residual environmental impacts.⁶⁰

The Minister may not approve the environmental management programme unless the Minister has considered the following:

- (a) any recommendation by the Regional Mining Development and Environmental Committee; and
- (b) the comments of any State department charged with the administration of any law which relates to matters affecting the environment.⁶¹

After such consideration, the Minister must, within 120 days from the date

⁵³ S 40(1).

⁵⁴ S 41(1).

⁵⁵ Definition of “financial provision” in s 1. See too definition of “mining area” in fn 32 above.

⁵⁶ S 41(2).

⁵⁷ S 41(3).

⁵⁸ S 41(4).

⁵⁹ S 41(5).

⁶⁰ S 41(5).

⁶¹ S 39(4)(b).

of the lodging of the environmental management programme, approve that programme if: (a) It complies with the requirements an environmental management programme; (b) the applicant has made the required financial provision for the rehabilitation or management of negative environmental impacts; and (c) the applicant has demonstrated the capacity, or has provided for the capacity, to rehabilitate and manage negative impacts on the environment.⁶²

The Minister may call for additional information from the applicant⁶³ and may direct that the environmental management programme in question be adjusted in such a way as the Minister may require.⁶⁴

The Minister may at any time after he or she has approved an environmental management programme and after consultation with the holder of the mining right concerned, approve an amended environmental management programme⁶⁵ on the same conditions as outlined above.⁶⁶

8 MANAGEMENT OF RESIDUE STOCKPILES AND RESIDUE DEPOSITS

Residue stockpiles and residue deposits must be managed in the prescribed manner on any site demarcated for that purpose in the environmental management plan or environmental management programme.⁶⁷ A “residue deposit” means any “residue stockpile” remaining at the termination, cancellation or expiry of a prospecting right, mining right or mining permit.⁶⁸ A “residue stockpile” is defined to mean any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of by the holder of a mining right or mining permit.⁶⁹ Failure to comply with this duty to manage residue stockpiles and deposits constitutes an offence.⁷⁰

The Minerals and Petroleum Resources Development Act prohibits the depositing, either temporarily or permanently, of any residue stockpile or

⁶² S 39(4)(a).

⁶³ S 39(5).

⁶⁴ S 39(5).

⁶⁵ S 39(6)(a).

⁶⁶ S 39(4)(a) and (b) read together with s 39(6)(b).

⁶⁷ S 42(1).

⁶⁸ Definition of “residue deposit” in s 1.

⁶⁹ Definition of “residue stockpile” in s 1.

⁷⁰ S 98(a)(iv).

residue deposit on any site other than a demarcated site.⁷¹ Failure to comply with this duty constitutes an offence.⁷²

9 CLOSURE CERTIFICATE

The holder of a prospecting right, retention permit, mining permit or mining right remains responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Minister has issued a closure certificate to the holder concerned.⁷³

On written application in the prescribed manner by the holder of a prospecting right, mining permit or mining right, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management plan or the environmental management programme, and any prescribed closure plan, to a person with such qualifications as may be prescribed.⁷⁴

The holder of a prospecting right, retention permit, mining permit or mining right or the person identified as such, as the case may be, must apply for a closure certificate upon: (a) the lapsing, abandonment or cancellation of the right or permit in question; (b) cessation of the prospecting or mining operation; (c) the relinquishment of any portion of the prospecting of the land to which a right, permit or permission relates; or (d) completion of the prescribed closing plan to which a right, permit or permission relates.⁷⁵

An application for a closure certificate must be made to the Regional Manager in whose region the land in question is situated.⁷⁶ The application must be made within 180 days of the lapsing, abandonment, cancellation, cessation, relinquishment or completion of the closing plan and must be accompanied by the prescribed environmental risk report.⁷⁷

No closure certificate may be issued unless the Chief Inspector and the Department of Water Affairs and Forestry have confirmed in writing that the provisions pertaining to health and safety and management of potential pollution to water resources have been addressed.⁷⁸

When the Minister issues a certificate, he or she must return such portion of the financial provision as the Minister may deem appropriate to the holder of

⁷¹ S 42(2).

⁷² S 98(a)(iv).

⁷³ S 43(1).

⁷⁴ S 43(2).

⁷⁵ S 43(3).

⁷⁶ S 43(4).

⁷⁷ S 43(4).

⁷⁸ S 43(5).

the prospecting right, retention permit, mining permit or mining right in question, but may retain any portion of such financial provision for latent and/or residual environmental impact which may become known in the future.⁷⁹

10 REMOVAL OF BUILDINGS, STRUCTURES AND OTHER OBJECTS

When a prospecting right, retention permit, mining right or mining permit lapses, is cancelled or is abandoned, or when any prospecting or mining operation comes to an end, the holder of any such right or permit may not demolish or remove any building, structure or object: (a) which may not be demolished or removed in terms of any other law; (b) which has been identified in writing by the Minister for purposes of this section; or (c) which is to be retained in terms of an agreement between the holder and the owner or occupier of the land, which agreement has been approved by the Minister in writing.⁸⁰ Failure to comply with this duty regarding the removal of buildings and structures constitutes an offence.⁸¹

The prohibition against removal of buildings and structures does not apply to *bona fide* mining equipment, which may be removed.⁸²

11 MINISTER'S POWER TO RECOVER COSTS IN EVENT OF URGENT REMEDIAL MEASURES

If any reconnaissance, prospecting or mining operations cause or result in ecological degradation, pollution or environmental damage which may be harmful to the health or well-being of anyone and requires urgent remedial measures, the Minister may direct the holder of the relevant right, permit or permission to: (a) investigate, evaluate, assess and report on the impact of any pollution or ecological degradation; (b) take such measures as may be specified in such directive; and (c) complete such measures before a date specified in the directive.⁸³

⁷⁹ S 43(6).

⁸⁰ S 44(1).

⁸¹ S 98(a)(v).

⁸² S 44(2).

⁸³ S 45(1). Similar powers are accorded to the Department of Water Affairs and Forestry under the provisions of s 19 and s 20 of the National Water Act. S 19 deals with pollution prevention and requires a person who owns, controls, occupies or uses the land to implement measures to prevent pollution of water resources. In the event that those measures are not implemented, the Department of Water Affairs and Forestry (as the responsible authority) may undertake whatever steps necessary to prevent the pollution or to remedy its effects. The Department may then recover all reasonable costs from the persons responsible for the pollution concerned. S 20 of the National Water Act deals

If the holder fails to comply with the directive, the Minister may take such measures as may be necessary to protect the health and well-being of any affected person or to remedy ecological degradation and to stop pollution of the environment.⁸⁴ Before implementing any measure, the Minister must afford the holder an opportunity to make representations.⁸⁵ In order to implement the protective measures, the Minister may, by way of an *ex parte* application, apply to the High Court for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures.⁸⁶ In addition to such application, the Minister may use funds appropriated for that purpose by Parliament to fully implement such measures.⁸⁷ The Minister may recover an amount equal to the funds necessary to fully implement the measures from the holder concerned.⁸⁸

12 MINISTER'S POWER TO REMEDY ENVIRONMENTAL DAMAGE

If the Minister directs that urgent remedial measures should be taken to prevent pollution or ecological degradation of the environment (or to rehabilitate dangerous occurrences), the Minister may, under certain circumstances, instruct the Regional Manager concerned to take the necessary measures to prevent further pollution or degradation, or to make the area safe.⁸⁹ The circumstances under which the Minister may issue such an instruction are those where the Minister establishes that the holder of the relevant reconnaissance permission, prospecting right, retention permit, mining right or mining permit, (or the holder's successor in title), is deceased or cannot be traced or in the case of a juristic person, where that juristic person has ceased to exist, has been liquidated or cannot be traced.⁹⁰

The measures to prevent further pollution or degradation, or to make the area safe must be funded from the financial provision made by the holder of the relevant reconnaissance permission, prospecting right, retention permit,

with pollution of water resources in consequence of "an emergency incident", for example an accident that causes spillage of toxic substances and results in the pollution of a water resource. The person responsible for the accident or incident or the substance involved in the accident is obliged to take the necessary steps to remedy the pollution. If there is a failure to act, the Department of Water Affairs and Forestry (as the responsible authority) may undertake the necessary measures to remedy the pollution and may recover the costs from the person responsible for the accident or incident.

⁸⁴ S 45(2)(a).

⁸⁵ S 45(2)(b).

⁸⁶ S 45(2)(c).

⁸⁷ S 45(2)(d).

⁸⁸ S 45(2)(e).

⁸⁹ S 46(1).

⁹⁰ S 46(1).

mining permit or mining right.⁹¹ Alternatively, if no such provision has been made or if it is inadequate, those measures must be funded from money appropriated by Parliament for that purpose.⁹²

Upon completion of the urgent remedial measures, the Regional Manager must apply to the registrar concerned to ensure that the title deed of the land in question is endorsed to the effect that such land had been remedied.⁹³ The registrar concerned is obliged, on receipt of an application for endorsement, to make any such endorsement he or she deems necessary in order to give effect to the fact that such remedial action has taken place on the land concerned.⁹⁴ No office fee or other charge is payable to the registrar in respect of that endorsement.⁹⁵

13 CONCLUSION

A combination of “command-and-control” and “management planning” regulatory techniques are employed in the Minerals and Petroleum Resources Development Act, creating relatively stringent⁹⁶ environmental management and protection obligations throughout the life-cycle of reconnaissance, prospecting and mining operations.⁹⁷

⁹¹ S 46(2).

⁹² S 46(2).

⁹³ S 46(3)(a).

⁹⁴ S 46(3)(b).

⁹⁵ S 46(3)(b).

⁹⁶ Particularly when compared to the requirements of the Minerals Act 50 of 1991 and other pre-existing mining legislation.

⁹⁷ As to the meaning of “prospecting operations” and “mining operations”, see the respective definitions thereof in s 1 of the Mineral and Petroleum Resources Development Act.