



INFORMATION ALERT:

COMMENCEMENT OF THE NATIONAL ENVIRONMENT LAWS AMENDMENT ACT 14 OF 2009

The State President has, through GN 65 of 18 September 2009, determined that the majority of the provisions of the National Environment Laws Amendment Act 14 of 2009 came into operation on **18 September 2009**.

There are many amendments to existing environmental legislation which are brought about by the National Environment Laws Amendment Act 14 of 2009. The following are certain of the key implications that arise from the provisions of the Amendment Act which came into operation:

- The penalties for offences under the **Atmospheric Pollution Prevention Act 45 of 1965** have been substantially increased. Fines of up to R5 million or five years imprisonment may be imposed on conviction of a first offence and subsequent convictions have potential sanctions of a fine of up to R10 million or 10 years imprisonment.
- Similarly, the fines that may be imposed for contraventions of certain sections of the **Environment Conservation Act 73 of 1989** have generally been substantially increased. Fines of up to R5 million or 5 years imprisonment may be imposed on conviction and, in the case of a subsequent conviction, fines not exceeding R10 million or imprisonment for a period not exceeding 10 years may be imposed (or in both instances, both such fine and such imprisonment). These penalties may be in addition to the other possible penalties stated in the Act. Other amendments of the criminal sanctions contained in the Act are also introduced for offences where no other penalty is expressly provided, with conviction of such an offence opening up liability to a fine not exceeding R500 000 (apart from the potential for imprisonment). The possible fines and periods of imprisonment for conviction of so-called continuing offences are also substantially increased.
- A number of amendments are introduced to the **National Environmental Management Act 107 of 1989** (NEMA), most importantly:

Ø Section 28 of NEMA has been amended to specifically stipulate that the general environmental "duty of care" and remediation provisions stated in section 28(1) of NEMA also applies to significant pollution or degradation that occurred before the commencement of NEMA, that arises or is likely to arise at a different time from the actual activity that caused the contamination, or that arises through an act or activity of a person that results in a change to pre-existing contamination.

Ø Certain amendments are also effected to section 28(7) and 28(8) of NEMA but, most crucially, new sub-sections 28(14) and 28(15) have been included. These new sub-sections create far-reaching general criminal sanctions in the context of acts or omissions which cause, or are likely to cause, significant pollution or degradation of the environment or which detrimentally affect, or are likely to affect, the environment in a significant manner. This general criminal sanction also applies in the context of a refusal to comply with a directive issued under section 28 of NEMA. A contravention of the relevant provisions exposes a person on conviction to a fine not exceeding R1 million or imprisonment for a period not exceeding 1 year (or both such

fine and such imprisonment).

Ø Section 30 of NEMA, dealing with control of emergency incidents, has been amended through the addition of a criminal sanction for a failure to comply with the reporting requirements and obligations to address the incident, as contained in sub-sections 30(3), (4), (5) or (6) of NEMA. A person convicted of such an offence is liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year (or both such fine and such imprisonment).

Ø Section 31 of NEMA, dealing with access to environmental information and protection of whistle blowers, has been amended through the deletion of sub-sections 31(1), (2) and (3) (essentially the provisions of the Act which entitled access to information in terms of NEMA).

Ø The provisions of NEMA relating to environmental management inspectors have been amended in certain respects.

Ø The provisions of section 34(3) of NEMA, dealing with criminal proceedings, have been amended.

Ø Section 34H has been added to NEMA to stipulate that a magistrates court shall have jurisdiction to impose any penalty prescribed by NEMA or any "specific environmental management Acts".

Ø The so-called "Schedule 3 offences" under NEMA have been substantially revised and extended to include a far greater number of environmental offences under other legislation that now also fall within the ambit of Schedule 3 and section 34 of NEMA in so far as potential consequences are concerned (including potentially the provisions dealing with directors', agents' and employees' liability).

- Amendments are effected to the **National Environment Management Biodiversity Act 10 of 2004** (although, in terms of GN 65 of 18 September 2009, certain of the provisions of the National Environment Laws Amendment Act 14 of 2009 which deal with the NEM: Biodiversity Act 10 of 2004 did not come into operation on 18 September 2009).
- The **National Environmental Management: Air Quality Act 39 of 2004** is also amended to *inter alia* specify that a person convicted of an offence referred to in section 51 of that Act is liable to a fine not exceeding R5 million or imprisonment for a period not exceeding 5 years, and in the case of a subsequent conviction, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years (or, in both such instances, both a fine and such imprisonment). Furthermore, the amendments of this Act stipulate that a magistrates court shall have jurisdiction to impose any penalty prescribed by the Act.

