

REPUBLIC OF SOUTH AFRICA

**NATIONAL ENVIRONMENTAL
MANAGEMENT:
AIR QUALITY AMENDMENT BILL**

*(As amended by the Select Committee on Land and Environmental Affairs
(National Council of Provinces)
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 27D—2013]

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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.

BILL

To amend the National Environmental Management: Air Quality Act, 2004, so as to substitute certain sections; to provide for the establishment of the National Air Quality Advisory Committee; to provide for the consequences of unlawful commencement of a listed activity; to provide for monitoring, evaluation and reporting on the implementation of an approved pollution prevention plan; to empower the MEC or Minister to take a decision in the place of the licensing authority under certain circumstances; to provide for the Minister as licensing authorities in situations where the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission licence, where the applications are trans-boundary, where the air activity forms part of national priority project, where the activity is also related to the environmental impact and waste management activities authorised by the Minister, where the air activity relates to a prospecting, mining, exploration or production activity; to delete cross references to the Environmental Conservation Act, 1989; to clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission licence; to create an offence for non-compliance with controlled fuels standards; to provide for the development of regulations on climate change matters and the procedure and criteria for administrative fines; to delete certain obsolete provisions; and to provide for matters connected therewith.”.

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

Amendment of section 1 of Act 39 of 2004

1. Section 1 of the National Environmental Management: Air Quality Act, 2004 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “Atmospheric Pollution Prevention Act”, of the following definition:

“ **‘commissioning’** means the commencement of a listed activity;”;

(b) by the substitution for the definition of “Department” of the following definition: 10

“ **‘Department’** means the Department [**of Environmental Affairs and Tourism**] responsible for environmental affairs;”;

- (c) by the deletion of the definition of “Environment Conservation Act”; and
- (d) by the substitution for the definition of “licensing authority” of the following definition:
- “**licensing authority**’ means an authority referred to in section 36(1), (2), [(3) or] 3A, (4) or (5) responsible for implementing the licensing system set out in Chapter 5;”;
- (e) by the substitution for the definition of “Minister” of the following definition:
- “**Minister**’ means the Minister [of Environmental Affairs and Tourism] responsible for environmental affairs.”.

Amendment of section 13 of Act 39 of 2004 10

2. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The Minister [may] must, by notice in the *Gazette*, establish [a] the National Air Quality Advisory Committee [as a subcommittee of the National Environmental Advisory Forum, established in terms of the National Environmental Management Act, to advise the Minister on the implementation of this Act] in terms of this Act.”.
- (b) by the substitution in subsection (2) for paragraph (d) of the paragraph:
- “(d) may [determine] prescribe any other matter relating to the Committee.”;
- (c) by the addition of the following subsection:
- “(3) The object of the Committee is to advise the Minister on any air quality related matter as the Minister may determine from time to time.”.

Insertion of section 22A of Act 39 of 2004

3. The following section is hereby inserted in the principal Act after section 22: 25

“Consequences of unlawful conduct of listed activity resulting in atmospheric emission

22A. (1) Section 24G of the National Environmental Management Act, 1998, as amended, applies to the commencement, without an environmental authorisation, of a listed activity or the activity specified in item 2 in Listing Notice 1 and items 5 and 26 in Listing Notice 2, relating to air quality in terms of Chapter 5 of the National Environmental Management Act, 1998. 30

(2) Subsections (4) to (10) are applicable to the operating, without a provisional registration or registration certificate, of a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965, at any time prior to the commencement of this Act. 35

(3) Subsections (4) to (10) are applicable to the conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, of an activity listed in terms of section 21 of this Act which results in atmospheric emission. 40

(4) On application by a person who conducted an activity contemplated in subsection (2) or (3), the licensing authority may direct the applicant to—

- (a) immediately cease the activity pending a decision on the application submitted in terms of this section; 45
- (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;
- (c) remedy any adverse effect of the activity on the environment, including the ambient air, and human health;
- (d) cease, modify or control any act, activity, process or omission causing atmospheric emission; 50
- (e) eliminate any source of atmospheric emission;
- (f) compile a report containing—
- (i) a description of the need and desirability of the activity;
- (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity, 55

- including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
- (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment, including the ambient air, and human health of the activity;
 - (iv) 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;
 - (v) an environmental management programme; or
- (g) provide such other information or undertake such further studies as the licensing authority may deem necessary.
- (5) The licensing authority must consider any reports or information submitted in terms of subsection (4) and thereafter may—
- (a) refuse to issue an atmospheric emission licence;
 - (b) issue an atmospheric emission licence to such person to conduct the activity subject to such conditions as the licensing authority may deem necessary, which atmospheric emission licence shall only take effect from the date on which it has been issued; or
 - (c) direct the applicant to provide further information or take further steps prior to making a decision in terms of paragraphs (a) or (b).
- (6) The licensing authority may as part of the decision contemplated in subsection (5), direct a person to—
- (a) rehabilitate the environment within such time and subject to such conditions as the licensing authority may deem necessary;
 - (b) prevent or eliminate any source of atmospheric emission from the activity within such time and subject to such conditions as the licensing authority may deem necessary; or
 - (c) take any other steps necessary under the circumstances.
- (7) A person contemplated in subsection (4) must pay an administrative fine, which may not exceed R5 million and which must be determined by the licensing authority, before the licensing authority may act in terms of subsection 5(a) or (b).
- (8) In considering a decision contemplated in subsection (5)(a) or (b), the licensing authority may take into account whether or not the applicant complied with any directive issued in terms of subsections (4) or (5)(c).
- (9) The submission of an application in terms of subsection (4) or the issuing of an atmospheric emission licence in terms of subsection 5(b) or the payment of the administrative fine in terms of subsection (7) shall—
- (a) in no way derogate from the environmental management inspector's or the South African Police Services' authority to investigate any transgression of this Act; or
 - (b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; and
 - (c) not indemnify the applicant from liability in terms of section 51(1)(a) for having contravened section 22.
- (10) If, at any stage after the submission of an application in terms of subsection (4), it comes to the attention of the licensing authority, that the applicant is under criminal investigation for the contravention of or failure to comply with section 22, the licensing authority may defer a decision to issue an atmospheric emission licence until such time that the investigation is concluded and—
- (a) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure;
 - (b) the applicant concerned is acquitted or found not guilty after prosecution in respect of such contravention or failure has been instituted; or

- (c) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.”.

Amendment of section 29 of Act 39 of 2004

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4. Section 29 of the principal Act is hereby amended by the addition of the following subsection:

“(4) A notice contemplated in subsection (1)(b) or (2) must contain a requirement that the person indicated in the notice monitors, evaluates and reports on the implementation of the pollution prevention plan that has been approved in terms of subsection (1) or (2).”.

Amendment of section 36 of Act 39 of 2004

5. Section 36 of the principal Act is hereby amended—

(a) by the deletion of subsection (3);

(b) by the insertion of the following subsections after subsection (3):

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“(3A) (a) In accordance with sections 125(2)(b) and 156(1)(b) of the Constitution whenever a licensing authority fails to take a decision on an application for an atmospheric emission licence within the time period set out in section 40(3) or (3A) of this Act, the person that applied for an atmospheric emission licence may apply to the Minister or MEC, as the case may be, to take the decision.

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(b) The person contemplated in paragraph (a) must notify the licensing authority in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.

(c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the licensing authority in order to enable the Minister or MEC, as the case may be, to take a decision.

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(d) Before taking a decision as contemplated in paragraph (a), the Minister or MEC must request the licensing authority to provide him or her with a report within a specified time period on the status and causes of delay in the application.

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(e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactory response or cooperation is received from the licensing authority within the specified time period the Minister or MEC, as the case may be, must, where appropriate—

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(i) inform the person that applied for an atmospheric emission licence in the event that the licensing authority has complied with the relevant prescripts;

(ii) assist the licensing authority in accordance with sections 125(3) and 155(7) of the Constitution to fulfil its obligations under this Act; or

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(iii) direct the licensing authority to take the decision and such other steps as the Minister or MEC, as the case may be, may deem necessary, within a specified time period.

(f) In the event that the licensing authority fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in paragraph (e)(iii), the Minister or MEC, as the case may be, must take the decision within a reasonable period of time.

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(g) The Minister or MEC, as the case may be, must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament or Provincial Legislature, as the case may be, setting out the details regarding the exercise of the power referred to in this section during the previous financial year.

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(3B) The MEC or Minister, as the case may be, must make a decision on the application contemplated in subsection (3A)(a), within a reasonable period of time from the date of receipt of the application.

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(3C) In the event that the MEC fails to make a decision on the application, within a reasonable period of time, as contemplated in subsection (3B), the applicant may submit the application to the Minister for a decision in terms of subsection (3A)(a).

(3D) In the event that the MEC does not have capacity to exercise the power, or for any good reason is unable to do so or to do so within a reasonable period of time, the MEC may request, in writing, the Minister to exercise the power in terms of subsection (3A)(a).”; and

(c) by the addition of the following subsections:

“(5) Notwithstanding subsections (1) to (4), the Minister is the licensing authority and must perform the functions of the licensing authority if—

(a) a provincial organ of state, which has been delegated the power to perform the licensing authority function in terms of subsection (2) by the metropolitan or district municipality, applies for an atmospheric emission licence;

(b) the listed activity falls within the boundaries of more than one province;

(c) the listed activity forms part of a matter declared as a national priority in terms of a Cabinet decision and notice referred to in section 24C(2B) of the National Environmental Management Act, 1998, as amended by the National Environmental Management Laws Second Amendment Act, 2013;

(d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, or the Minister has been identified as the competent authority; or

(e) the listed activity relates to a prospecting, mining, exploration or production activity as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998.

(6) For the purposes of subsection (5)(d), the Minister, as the competent authority empowered under section 24C(2) of the National Environmental Management Act, 1998 and as the licensing authority empowered under section 43(1) of the National Environmental Management: Waste Act, 2008, may issue an integrated environmental authorisation for the activities listed under section 24(2) of the National Environmental Management Act, 1998 and section 19(1) of the National Environmental Management: Waste Act, 2008.

(7) An integrated environmental authorisation contemplated in subsection (6) may be issued only if—

(a) the relevant provisions of this Act, the National Environmental Management Act, 1998, and the National Environmental Management: Waste Act, 2008, have been complied with; and

(b) the integrated environmental authorisation specifies the provisions in terms of which it has been issued.

(8) The Minister and the licensing authority contemplated in subsections (1) to (4) may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister or the relevant licensing authority contemplated in subsections (1) to (4).”.

Amendment of section 38 of Act 39 of 2004

6. Section 38 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Section 24 of the National Environmental Management Act [and section 22 of the Environment Conservation Act apply] applies to all applications for atmospheric emission licences, which are subject to an

environmental impact assessment in terms of section 24 of the National Environmental Management Act, and both an applicant and the licensing authority must comply with **[those sections]** that section and any applicable notice issued or regulation made in relation to **[those sections]** that section.”;

- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) An applicant must, immediately after the submission of the application to the licensing authority, take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.”; and

- (c) by the insertion in subsection (3)(b) of the following subparagraph after subparagraph (ii):

“(iiA) indicating where a copy of the application can be obtained.”.

Amendment of section 39 of Act 39 of 2004

7. Section 39 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) section 24 of the National Environmental Management Act **[and section 22 of the Environment Conservation Act]** and any applicable **[notice issued]** environmental impact assessment done, the decision taken on the application of the environmental authorisation, and any applicable notice issued or regulation made pursuant to **[those sections]** that section;”.

Amendment of section 40 of Act 39 of 2004

8. Section 40 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) section 24 of the National Environmental Management Act **[and section 22 of the Environment Conservation Act]** and any applicable environmental impact assessment done, the decision taken on the application for the environmental authorisation, and any applicable notice issued or regulation made pursuant to **[those sections]** that section;”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) If **[an authorisation notice is issued]** the decision on the relevant application for an environmental authorisation has been made in terms of section 24 of the National Environmental Management Act **[or section 22 of the Environment Conservation Act in respect of an application]**, the licensing authority must decide the application within 60 days of the date on which the **[notice]** decision on the application for the environmental authorisation has been **[issued]** made.”; and

- (c) by the insertion after subsection (3) of the following subsection:

“(3A) Where the listed activity relates to a prospecting, mining, exploration or production activity contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998, the Minister, after consultation with the licensing authority contemplated in section 36(1) and (2) of this Act, must decide the application within the timeframes set out in the National Environmental Management Act, 1998.”.

Amendment of section 41 of Act 39 of 2004

9. Section 41 of the principal Act is hereby amended by the addition of the following subsection:

“(3) A provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of the listed activity, and may be extended for an additional one year on good cause shown to the licensing authority.”.

Amendment of section 49 of Act 39 of 2004

10. Section 49 of the principal Act 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] or**”.

Amendment of section 51 of Act 39 of 2004

11. Section 51 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) contravenes a provision of section 22, 25, 28 or 35(2);”.

Amendment of section 53 of Act 39 of 2004

12. Section 53 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) any matter necessary to give effect to the Republic’s obligations in terms of an international agreement relating to air quality and climate change;”;

(b) by the insertion of the following paragraph after paragraph (a):

“(aA) information relating to energy that is required for compiling atmospheric emissions;”;

(c) by the insertion of the following paragraph after paragraph (l).

“(lA) the procedure and criteria to be followed in the determination of an administrative fine in terms of section 22A.”.

Repeal of section 62 of Act 39 of 2004

13. Section 62 of the principal Act is hereby repealed.

Repeal of section 63 of Act 39 of 2004

14. Section 63 of the principal Act is hereby repealed.

Repeal of Schedule 2 to Act 39 of 2004

15. Schedule 2 to the principal Act is hereby repealed.

Amendment of Table of Contents of Act 39 of 2004

16. The Table of Contents of the principal Act is hereby amended by the insertion after item 22 of the following item:

“22A. Consequences of unlawful conduct of listed activity resulting in atmospheric emission.”.

Short title and commencement

17. This Act is called the National Environmental Management: Air Quality Amendment Act, 2013, and takes effect on the date of publication in the Gazette as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996.”.

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL
ENVIRONMENTAL MANAGEMENT: AIR QUALITY AMENDMENT
BILL, 2013**

1. OBJECTS OF BILL

- 1.1 The objects of the Bill is to amend the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (the Act), so as to so as to substitute certain sections; to provide for the establishment of the National Air Quality Advisory Committee; to provide for the consequences of unlawful commencement of listed activity; to provide for monitoring, evaluation and reporting on the implementation of approved pollution prevention plan; to empower the MEC or Minister to take a decision in the place of the licensing authority under certain circumstances; to provide for the Minister as licensing authorities in situations where the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission licence, where the applications are trans-boundary, where the air activity forms part of national priority project, where the activity is also related to the environmental impact and waste management activities authorised by the Minister, where the air activity relates to a prospecting, mining, exploration or production activity; to delete cross references to the Environmental Conservation Act, 1989; to clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission licence; to create an offence for non-compliance with controlled fuels standards; to provide for the development of regulations on climate change matters and the procedure and criteria for administrative fines; to delete certain obsolete provisions.

2. BACKGROUND

- 2.1 The purpose of the Act was to replace the outdated Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965). The Act brings air quality management in line with the Constitution allocation of functions between the three spheres of government. In the main, the Act provides for a more effective regulatory regime, including the establishment of national norms and standards, a framework for air quality management planning and reporting regime and numerous regulatory instruments for the control of air pollution and compliance and enforcement.
- 2.2 The Act has been in operation since 2005. The National Department of Environmental Affairs and the provincial departments responsible for environmental affairs have identified certain provisions of the Act that have become obsolete.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 1: Amendment of section 1

Clause 1 seeks to correct the definitions for “Department” and “Minister”. A new definition on “commissioning” is inserted. The definition for “Environment Conservation Act” is deleted as due to the amendments, it will no longer be used in the Act. The definition of “licensing authority” is also revised as a result of amendments to section 36 of the Act.

3.2 Clause 2: Amendment of section 13

Clause 2 seeks to amend section 13 of the Act to provide for the establishment of the National Air Quality Advisory Committee. The clause also sets out the object of the Committee.

3.3 Clause 3: Insertion of section 22A

Clause 3 inserts section 22A to provide for the consequences of unlawful conducting of listed activities. This clause will address three scenarios, namely, to provide for those activities related to air quality that must be addressed through section 24G of NEMA, to allow those activities that were operated without the air quality licences under the Atmospheric Pollution Prevention Act, 1965 (APPA) to be addressed through section 22A, and those activities that have an EIA environmental authorisation but no air quality licence to be addressed through section 22A. The clause sets out the process and the information required for such an application. The clause also provides the licensing authority with various options when considering such an application. The clause also provides for the payment of administrative fine not exceeding five million rand before the processing of the application. Furthermore, the submission of such an application does not indemnify the person from criminal prosecution.

3.4 Clause 4: Amendment of section 29

Clause 4 seeks to provide for monitoring, evaluation and reporting requirements on the implementation of the approved pollution prevention plan.

3.5 Clause 5: Amendment of section 36

Clause 5 seeks to add new subsections to section 36. The additions propose that in instances where the licensing authority fails to take a decision within the time period set out in the Act, an applicant may request the MEC to take the decision, and in the event that the MEC do not have the capacity or the MEC does not deal with the matter within the reasonable time the Minister may be requested to take the decision. When considering this subsections the Portfolio Committee for Water and Environmental Affairs was mindful of sections 125(2)(b) (Executive authority of provinces) and 156(1)(b) (powers and functions of municipalities) of the Constitution of the Republic of South Africa, 1996, which provides the Premier together with members of the Provincial Executive Council and the Municipal Councils, respectively, with the power to implement all national legislation within the functional areas listed in Schedules 4 or 5 of the Constitution, except where the Constitution or an Act of Parliament provides otherwise. This clause also extend the powers of the National Minister responsible for environmental affairs to be the licensing authority where the applicant for atmospheric emission licence is the provincial organ of state who has been delegated by the municipality the power to issue atmospheric emission licences, where the air activity falls under two provinces, whenever the air activity forms part of a national priority project approved by Cabinet, where the air activity is also related to the activities listed under the National Environmental Management Act, 1998 and National Environmental Management: Waste Act, 2008 authorised by the Minister, or where the air activity is related to a prospecting, mining, exploration or production activity in the area for which the right has been applied for. The amendment provide for the issuing of an integrated environmental authorisation for activities listed under the National Environmental Management Act, 1998, National Environmental Management: Waste Act, 2008 and the Act. This amendment further provides for the Minister and the relevant licensing authorities to enter into an agreement regarding certain activities that may be authorised either by the Minister or the relevant licensing authority.

3.6 Clause 6: Amendment of section 38

Clause 6 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA Regulations and notices in terms of this section have been repealed. clause will also require the applicant to indicate where a copy of the application for atmospheric emission licence can be obtained.

3.7 Clause 7: Amendment of section 39

Clause 7 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA Regulations and notices in terms of this section have been repealed.

3.8 Clause 8: Amendment of section 40

Clause 8 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA Regulations and notices in terms of this section have been repealed. Section 40 of the Act has further been amended to clarify the intention of this section. Where the air activity relates to a prospecting, mining, exploration and production activity in the area for which the right has been applied for, the Minister after consultation with the relevant licensing authority must decide the application within the timeframes set out in the National Environmental Management Act, 1998.

3.9 Clause 9: Amendment of section 41

Clause 9 seeks to provide for a period of validity of one year for provisional atmospheric emission licence from the date of commissioning, and may be extended for an additional one year on good cause shown to the licensing authority.

3.10 Clause 10: Amendment of section 49

Clause 10 seeks to clarify that the licensing authority must take into consideration either of the listed criteria when deciding an application for an atmospheric emission licence.

3.11 Clause 11: Amendment of section 51

In order to ensure compliance with the provisions of the Act, clause 11 inserts that not complying with section 28 of the Act is an offence.

3.12 Clauses 12: Amendment of section 53

This is a consequential amendment necessitated by the insertion of section 22A. Clause 12 seeks to provide the Minister with a legal mandate to develop regulations on the procedure and criteria to be followed in the determination of an administrative fine. The clause also empowers the Minister to develop regulations on climate change matters.

3.13 Clause 13: Repeal of sections 62

Section 62 deals with transitional provisions regarding listed activities. The national list of emission standards has been published. Clauses 13 seek to repeal sections 62 of the Act as it is no longer relevant.

3.14 Clause 14: Repeal of section 63

Section 63 deals with the transitional provisions regarding ambient air quality standards. These air quality standards have finally been published. Clause 14 seeks to repeal section 63 of the Act as it became obsolete.

3.15 Clause 15: Repeal of schedule 2

Schedule 2 sets out the transitional ambient air quality standards. In light of the fact that the Department seek to repeal section 63 of the Act, schedule 2 thus became obsolete.

4. FINANCIAL IMPLICATIONS FOR THE STATE

There would be no financial implications for the Department.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The amendments do not require new structures or capacity within the Department.

6. COMMUNICATION IMPLICATIONS

Appropriate communication measures will be implemented by the Government Communication and Information System.

7. PROVINCIAL IMPLICATIONS

Where the applicant for atmospheric emission licence is the provincial organ of state or where the listed activity falls under two provinces, the licensing authority will be the National Department of Environmental Affairs.

8. CONSTITUTIONAL IMPLICATIONS

None

9. PARLIAMENTARY PROCEDURE

9.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Part A or B of schedule 4 of the Constitution, to wit “environment” and “air pollution”, respectively.

9.2 State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.