

**NOTICE 50 OF 2003****DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, MP, hereby publishes the draft National Environmental Management Amendment Bill, which provides for the national and provincial supervision of environmental management functions, the delegation of powers by the Minister, the MEC's for environmental affairs and municipalities, the designation of environmental management inspectors by the Director-General or the provincial HOD and judicial matters of compliance and enforcement. More details are set out in the explanatory memorandum and the attached Bill .

Written comments and inputs are invited from interested parties and the general public, which must be submitted to:

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**THE CLOSING DATE FOR COMMENTS IS THE 28 FEBRUARY 2003**

**NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL, 2003****EXPLANATORY MEMORANDUM**

The National Environmental Management Act, 1998 (NEMA) provides for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote co-operative governance and procedures for co-ordinating environmental functions exercised by organs of state .

This amendment to the Act seeks to :

- Provide for national and provincial supervision of environmental management functions ;
- Provide for the delegation of powers by the Minister, the MEC's for environmental affairs and municipalities;
- Provide for the designation of environmental management inspectors by the Director-General or the provincial HOD ;
- Provide for judicial matters of compliance and enforcement;

The insertion of a new Chapter 9A provides for the administration and enforcement of specific environmental Acts.

Part I deals with the national supervision of provincial environmental management functions as well as the provincial supervision of municipal environmental functions. This provides for the Minister to intervene where a provincial organ of state cannot or does not fulfill an obligation in terms of environmental legislation. The same power is accorded to the MEC where the obligations of a municipality are in question .

Part 2 provides for delegations of powers and duties by the Minister, the MEC's for environmental affairs or municipalities. It sets out the manner of delegation as well as powers and duties that may not be delegated.

The enforcement of specific environmental management Acts is governed by Part 3 of the Act and provides for the designation of environmental management inspectors by the Director General or the provincial Head of Department. The powers and responsibilities of the environmental management inspectors are set out in detail in later sections.

Judicial matters relating to compliance and enforcement are set out in Part 4. These include offences relating to environmental management inspectors, the cancellation of permits and the forfeiture of items. It also empowers an environmental management inspector to issue an infringement notice if he/she has reason to believe that an offence under environmental legislation, has been committed.

Part 5 deals with miscellaneous matters such as the manner in which the Minister, MEC or municipality must consult with any person or organ of state, the validity of regulations, notices or other legal documents issued in terms of environmental legislation and the limitation of liability in the case of performance or non-performance of a power, function or duty.

***NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL***

The insertion of a new Chapter 9A provides for the administration and enforcement of specific environmental Acts and enables the Director General or the provincial HOD to designate environmental management inspectors to implement this function. The powers of these inspectors include the power to arrest, to enter and search premises, land, waters and other places and to seize certain articles that are suspected of being used in an offence. The NEMA Amendment Bill also provides for national supervision of provincial environmental management functions and the provincial supervision of municipal environmental functions. The delegation of powers and duties by the Minister, the MEC's for environmental affairs or municipalities, in terms of specific environmental Acts, is also covered by the Bill. Judicial matters, such as offences relating to environmental management inspectors, the cancellation of permits and the forfeiture of items and the issuing of infringement notices are dealt with in certain provisions. Finally, miscellaneous issues such as the manner of consultation and the validity of legal instruments are set out.

## ARRANGEMENT OF SECTIONS

### Section

1. Amendment of section 1 of Act 107 of 1998
2. Amendment of section 31 of Act 107 of 1998
3. Amendment of section 31 of Act 107 of 1998
4. Insertion of Chapter 9A in Act 107 of 1998 including:

#### *S47A – Application of this Chapter*

##### *Part 1: National and provincial supervision :*

##### *S47B – National supervision of provincial environmental management functions*

##### *S47C – provincial supervision of municipal environmental management functions*

##### *Part 2: Delegations:*

##### *S47D -Delegation of powers and duties by Minister*

##### *S47E – Delegation of powers and duties by MEC's for environmental affairs*

##### *S47F – Delegation of powers and duties by municipalities*

##### *Part 3: Enforcement of specific environmental management Acts:*

##### *S47G – Designation of environmental management inspectors by the Director-General*

##### *S47H - Designation of environmental management inspectors by provincial authorities*

##### *S47I – Prescribed standards*

##### *S47J - Identity cards*

##### *S47K – Responsibilities*

##### *S47L – General powers*

##### *S47M – Powers to enter and search premises, land, waters or other places*

##### *S47N – Powers to stop, enter and search vehicles, vessels and aircraft*

##### *S47O – Powers to seize*

*S47P – Powers to arrest*

*Part 4: Judicial Matters :*

*S47Q – Offences relating to environmental management inspectors*

*S47R – Award of part of fine recovered to informant*

*S47S – Cancellation of permits and forfeiture of items*

*S47T – Treatment of seized live specimens*

*S47U – Security for release of vehicles, vessels or aircraft*

*S47V – Liability for loss, damage or deterioration of items in custody*

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*S47W – Disposal of forfeited items*

*S47X – Spot fines*

*Part 5: Miscellaneous*

*S47Y – Consultation*

*S47Z – Extension of time periods*

*S47AA – Regulations, legal documents and steps valid under certain circumstances*

*S47BB – Delivery of documents*

5. Substitution of S49 of Act 107 of 1998
6. Substitution of schedule 3 to Act 107 of 1998-
7. Substitution of long title of Act 107 of 1998
8. Short title and commencement

**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.

**NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL, 2002****BILL**

**To amend the National Environmental Management Act, 1998, to provide for the administration and enforcement of certain national environment management legislation; and to provide for incidental matters.**

**Amendment of section 1 of Act 107 of 1998**

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

- (a) the insertion after the definition of "Agenda 21" of the following definition :  
      "'aircraft' means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft:";
- (b) the insertion after the definition of "community" of the following definition :  
      <sup>66</sup> "'environmental management inspector' means a person designated as an environmental management inspector in terms of section 47G or 47H:";
- (c) the insertion after the definition of "Constitution" of the following definition:  
      "'delegation' in relation to a duty, includes an instruction to perform the duty:";
- (d) the insertion after the definition of "regulation" of the following definition:  
      "'specific environmental management Act' means -

- (a) the National Environmental Management: Biodiversity Act 2003 (Act No.... of 2003);
- (b) the National Environmental Management: Protected Areas Act 2003 (Act No .... of 2003); and
- (c) the National Environmental Management: Coastal Zone Act 2003 (Act No ..... of 2003),  
and includes any regulations or other subordinate legislation made in  
terms of any of these Acts;"; and

- (e) the insertion after the definition of "this Act" of the following definition:  
"'vessel' means any waterborne craft of any kind, whether self-propelled or not,  
but does not include any moored floating structure that is not used as a means of  
transporting anything by water."

#### **Amendment of section 31 of Act 107 of 1998**

- 2. Section 32 of the principal Act is hereby amended by –
  - (a) the substitution for subsection (1) of the following subsection:  
"(1) Access to environmental information held by the State is governed  
by the Access to Information Act....."; and
  - (b) the deletion of subsections (2) and (3).

#### **Amendment of section 32 of Act 107 of 1998**

- 3. Section 32 of the principal Act is hereby amended by –
  - (a) the substitution in subsection (I) for the words preceding paragraph (a) of the following words:  
"(1) Any person or group of persons may seek appropriate relief in respect of  
any breach or threatened breach of any provision of this ~~Act or a specific~~  
environmental management Act including a principle contained in Chapter 1 of  
this Act or in a specific environmental management Act or any other statutory  
provision concerned with the protection of the environment or the use of natural  
resources -";



- (b) the substitution for subsection (2) of the following subsection:
- "(2) A court may decide not to award costs against a person who, or group of persons which, fails to secure the relief sought in respect of any breach or threatened breach of any provision of this Act or a specific environmental management Act including a principle of this Act or a specific environmental management Act or any other statutory provision concerned with the protection of the environment or the use of natural resources, if the court is of the opinion that the person or group of persons acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought"; and
- (c) the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- "(3) Where a person or group of persons secures the relief sought in respect of any breach or threatened breach of any provision of this Act or a specific environmental management Act or any other statutory provision concerned with the protection of the environment, a court may on application –

**Insertion of Chapter 9A in Act 107 of 1998**

4. The following chapter is hereby inserted in the principal Act after Chapter 9:-

**"CHAPTER 9A**

**ADMINISTRATION AND ENFORCEMENT OF SPECIFIC  
ENVIRONMENTAL MANAGEMENT ACTS**

**Application of this Chapter**

- 47A.** (1) This Chapter applies to the administration and enforcement of all specific environmental management Acts

(2) In this Chapter, unless inconsistent with the context, any word or expression to which a meaning has been assigned in a specific environmental management Act, has in relation to the administration or enforcement of that Act, the meaning assigned to it in that Act.

***Part 1: National and provincial supervision***

**National supervision of provincial environmental management functions**

**47B.** (1) When any provincial organ of state cannot or does not fulfill an obligation in terms of a specific environmental management Act, the Minister may in terms of section 100 of the Constitution intervene by taking any appropriate steps to ensure fulfilment of that obligation including--

- (a) issuing a directive to the organ of state in question, describing the extent of the failure to fulfil the obligation and stating any steps required to meet the obligation; and
- (b) assuming responsibility for the relevant obligation to the extent necessary -
  - (i) to maintain essential national standards or meet established minimum standards for the rendering of a service;
  - (ii) to protect the Republic's environment.

(2) If the Minister intervenes in terms of subsection (1) (b), the National Biodiversity Institute must review the intervention regularly and make any appropriate recommendations to the Minister.

**Provincial supervision of municipal environmental management functions**

**47C.** (1) When a municipality cannot or does not fulfill an obligation in terms of a specific environmental management Act, the MEC for environmental affairs in the province concerned may in terms of section 139 (1) of the Constitution intervene by taking any appropriate steps to ensure fulfilment of that obligation including -

- (a) issuing a directive to the municipality in question, describing the extent of the failure to fulfil the obligation and stating any steps required to meet the obligation; and
- (b) assuming responsibility for the relevant obligation to the extent necessary -
  - (i) to maintain essential national standards or to meet established minimum standards for the rendering of a service;
  - (ii) to protect the province's environment.

## **Part 2: Delegations**

### **Delegation of powers and duties by Minister**

**47D.** (1) The Minister may delegate any power or duty assigned to the Minister in terms of a specific environmental management Act to -

- (a) the Director-General;
- (b) the management authority of a national protected areas;
- (c) the MEC for environmental affairs in the province concerned, by agreement with the MEC; or
- (d) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1) -

- (a) is subject to any limitations, conditions and directions the Minister may impose;
- (b) must be in writing;
- (c) may include the power to sub-delegate; and
- (d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister must give notice in the *Government Gazette* of any delegation of a power to an MEC or an organ of state.

(4) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(5) The Minister may --

- (a) not delegate a power or duty vested in the Minister in terms of a specific environmental management Act-
  - (i) to make regulations;
  - (ii) to publish notices in the *Government Gazette*;
  - (iii) to appoint a member of a board or committee; or
  - (iv) to expropriate private land; and
- (b) at any time withdraw delegation.

#### **Delegation of powers and duties by MECs for environmental affairs**

**47E.** (1) The MEC for environmental affairs in a province may delegate any power or duty assigned to the MEC in terms of a specific environmental management Act to -

- (a) the head of that MEC's department;
- (b) the management authority of a provincial protected area;
- (c) municipality, by agreement with the municipality; or
- (d) any provincial organ of state, by agreement with that organ of state or statutory functionary.

(2) A delegation in terms of subsection (1) -

- (a) is subject to any limitations, conditions and directions the MEC may impose;
- (b) must be in writing;
- (c) may include the power to sub-delegate; and
- (d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The MEC may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

- (4) The MEC may -
- (a) not delegate a power or duty vested in the MEC in terms of a specific environmental management Act -
    - (i) to make regulations;
    - (ii) to publish notices in the *provincial Gazette*;
    - (iii) to appoint a member of a board or committee; or
    - (iv) to expropriate private land; and
  - (b) at any time withdraw a delegation.

#### **Delegation of powers and duties by municipalities**

**47F.** A municipality may in accordance with the Local Government: Municipal Systems Act 2000 (Act No. 32 of 2000) delegate any power or duty assigned to the municipality in terms of a specific environmental management Act.

#### ***Part 3: Enforcement of specific environmental management Acts***

#### **Designation of environmental management inspectors by Director-General**

- 47G.** (1) The Director-General may -
- (a) designate as an environmental management inspector, any staff member of-
    - (i) the Department; or
    - (ii) any other organ of state; and
  - (b) at any time withdraw an designation made in terms of paragraph (a).
- (2) An designation in terms of subsection (1) (a) (ii) may only be made by agreement between the Director-General and the relevant organ of state.
- (3) A person may be designated as an environmental management

inspector for the enforcement of-

- (a) all the specific environmental management Acts ;
- (b) a specific environmental management Act; or
- (c) specific provisions of a specific environmental management Act.

**Designation of environmental management inspectors by provincial authorities**

**47H.** (1) The head of a provincial department responsible for environmental management in the province may –

- (a) designate as an environmental management inspector, any staff member of-
  - (i) that department;
  - (ii) any other provincial organ of state; or
  - (iii) any municipality in the province; and
- (b) at any time withdraw any designation made in terms of paragraph (a).

(2) A designation in terms of subsection (1)(a)(ii) or (iii) may only be made by agreement between the head of that provincial department and the relevant provincial organ of state or municipality.

(3) A person may be designated as an environmental management inspector for the enforcement of-

- (a) all the specific environmental management Acts;
- (b) a specific environmental management Act; or
- (c) specific provisions of a specific environmental management Act.

**Prescribed standards**

**47I.** A person may be designated as an environmental management inspector only if, that person complies with the prescribed criteria.

**Identity cards**

**47J.** (1) A prescribed identity card must be issued to each person designated as an environmental management inspector .

(2) When exercising any powers or carrying out any duties in terms of an specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card and proof of identity.

**Responsibilities**

**47K.** (1) An environmental management inspector, within his or her mandate in terms of section 47G (3) or 47H (3) -

- (a) must monitor and enforce compliance with a specific environmental management Act;
- (b) may investigate any act or omission which on reasonable suspicion may constitute -
  - (i) an offence in terms of a specific environmental management Act;  
or
  - (ii) a breach of a provision of a specific environmental management Act; or
  - (iii) a condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act; and
- (c) has for the purposes of paragraphs (a) and (b) -
  - (i) all the powers assigned to an environmental management inspector in terms of this Act; and
  - (ii) all other powers vested by legislation in a member of the South African Police Service.

(2) An environmental management inspector -

- (a) must exercise the powers referred to in subsection (1) -

- (i) in accordance with any instructions issued by the Director-General or the head of the provincial department who made the designation, as may be appropriate; and
- (ii) subject to any limitations and procedures that may be prescribed; and
- (b) may be accompanied by an interpreter or any other person whose assistance may be reasonably required.

#### **General powers**

- 47L.** (1) An environmental management inspector, within his or her mandate in terms of section 47G (3) or 47H (3), may
- (a) require a person to disclose information, either orally or in writing, and either alone or in the presence of a witness, about any act or omission which, on reasonable suspicion, may constitute –
    - (i) an offence in terms of a specific environmental management Act;
    - (ii) a breach of a provision of a specific environmental management Act; or
    - (iii) a breach of a condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act;
  - (b) require that any disclosure in terms of paragraph (a) be made under oath or affirmation;
  - (c) inspect, or question a person about, any document, book or record or any written or electronic information –
    - (i) which may be relevant for the purpose of paragraph (a); or
    - (ii) to which a specific environmental management Act relates;
  - (d) copy, or make extracts from, any document, book or record, or any written or electronic information, referred to in paragraph (c), or remove such document, book, record or written or electronic information to make copies or extracts;



- (e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information, referred to in paragraph (c) for inspection;
- (f) inspect, question a person about, and if necessary remove, any specimen, article, substance or other item which on reasonable suspicion may have been used in -
  - (i) committing an offence in terms of a specific environmental management Act;
  - (ii) breaching a provision of a specific environmental management Act; or
  - (iii) breaching a condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act;
- (g) record information by any method, including by taking photographs or making videos;
- (h) demand the name, address and identification number of any person who -
  - (i) is reasonably suspected of having committed an offence in terms of a specific environmental management Act;
  - (ii) is reasonably believed to be able to give evidence relating to an offence in terms of a specific environmental management Act; or
  - (iii) is reasonably suspected of having evidence that an offence in terms of a specific environmental management Act has been committed;
- (i) instruct a person who -
  - (i) commits an act in contravention of a provision of a specific environmental management Act or of condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act, to cease committing that act immediately or within a specified period; or
  - (ii) fails to perform an act required by a provision of a specific environmental management Act, or by a condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act, to perform that act immediately

or within a specified period ;

- (j) dig or bore into the soil;
- (k) take samples;
- (l) remove any waste or other matter deposited or discharged in contravention of a specific environmental management Act or a condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act; or
- (m) carry out any other duty that may be prescribed in terms of a specific environmental management Act.

(2) An environmental management inspector must -

- (a) provide a receipt for -
  - (i) any document, book, record or written or electronic information removed in terms of subsection (1) (d); or
  - (ii) any specimen, article, substance or other item removed in terms of subsection (1) (f); and
- (b) return anything removed within a reasonable period.

(3) An environmental management inspector may -

- (a) in the case of a specimen of a threatened or protected species or alien species being imported into the Republic, at the port of entry, request the person responsible for the import or that person's agent, to produce the original copies of the import permit, together with such other documentation as may be required; and
- (b) in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit, request the person responsible for the export or re-export or that person's agent, to produce the original copy of the export or re-export, permit together with such other documentation as may be required.

**Powers to enter and search premises land waters or other places**

**47M.** (1) An environmental management inspector, within his or her mandate in terms of section 47G (3) or 47H (3) may, subject to subsection (2) of this section, enter and search any premises, land, waters or other place on reasonable suspicion -

- (a) that an offence in terms of a specific environmental management Act has been or is being committed on, in or in respect of such premises, land, waters or other place;
- (b) that a provision of a specific environmental management Act or a condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act has been or is being breach on, in or in respect of such premises, land, waters or other place; or
- (b) that a thing which may serve as evidence of such offence or breach is kept on or in such premises, land, waters or other place.

(2) An environmental management inspector may in terms of subsection (1) enter and search any premises, land, waters or other place without a warrant but only if -

- (a) the person in control of the premises, land, waters or other place consents to the entry and search; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or search.

(3) An environmental management inspector may -

- (a) exercise on such premises, land, waters or other place any of the powers mentioned in sections 47L, 47N, 47O and 47P; or
- (b) be accompanied by assistants, vehicles, vessels, materials, equipment or things that are necessary for the purpose of-
  - (i) gaining entry to or carrying out the search on such premises, land, waters or other place; or

- (ii) exercising any of the powers referred to in paragraph (a).

**"Powers to stop enter and search vehicles vessels and aircraft**

**47N** (1) An environmental management inspector, within his or her mandate in terms of section 47G (3) or 47H (3) may without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal -

- (a) is being or has been used, or contains or conveys a thing which is being or has been used to commit -

(i) an offence in terms of a specific environmental management Act;

or

(ii) a breach of a provision of a specific environmental management Act or a condition of a permit, authorisation or other instrument issued in terms of a specific environmental management Act; or

- (b) contains or conveys a thing which may serve as evidence of such offence or breach.

(2) An environmental management inspector may for the purpose of implementing subsection (1), at any time and without a warrant -

- (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or

- (b) if necessary, force the driver or pilot to stop or land.

(3) An environmental management inspector may -

- (a) exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in sections 47L, 47O and 47P; or

- (b) be accompanied by assistants, materials, equipment or things that are necessary for the purpose of -

(i) gaining entry to or carrying out the search on or in such vehicle, vessel or aircraft; or

(ii) exercising any of the powers referred to in paragraph (a).

**Powers to seize**

470. (1) An environmental management inspector, within his or her mandate in terms of section 47G (3) or 47H (3), may seize without a warrant -

- (a) any item in respect of which, on reasonable suspicion, an offence in terms of a specific environmental management Act has been or is being committed;
- (b) any vehicle, vessel, aircraft, tool, weapon, animal or other thing which on reasonable suspicion, has been or is being used in the commission of an offence in terms of a specific environmental management Act; or
- (c) any thing which, on reasonable grounds, may be used as evidence in the prosecution of any person for an offence in terms of a specific environmental management Act.

(2) Where any vehicle, vessel, aircraft, or animal is seized in terms of subsection (1) (b), the person in control of the vehicle, vessel, aircraft or animal must take it to the place designated by the environmental management inspector.

(3) The vehicle vessel, aircraft or animal must be kept at the designated place pending the any criminal proceedings in terms of a specific environmental management Act.

(4) If the person in control of the vehicle, vessel, aircraft or animal refuses to take the vehicle, vessel, aircraft or animal to the designed place the environmental management inspector may do so.

(5) In order to safeguard a vehicle, vessel or aircraft that that has been seized, the environmental management inspector may immobilise it by removing a part.

(6) An item seized in terms of this section, including a part of a vehicle, vessel or aircraft referred to in subsection (5), must be kept in such a way that it is secured against damage.

#### **Power to arrest**

**47P** (1) An environmental management inspector, within his or her mandate in terms of section 47G (3) or 47H (3), may arrest any person who on reasonable grounds is suspected to have committed an offence in terms of a specific environmental management Act.

(2) When arresting a person for an alleged offence in terms of a specific environmental management Act, an environmental management inspector-

- (a) may only use force if the arrest is resisted, and then only to the extent that is reasonably necessary in the circumstances; and  
must respect the constitutional rights of the person arrested.

### **Part 4: Judicial matters**

#### **Offences relating to environmental management inspectors**

**47Q.** (1) A person is guilty of an offence if that person -

- (a) hinders or interferes with an environmental management inspector in the execution of that inspector's official duties;  
(b) falsely professes to be an environmental management inspector, or the interpreter or assistant of such an inspector;  
(c) furnishes false or misleading information when complying with a request of an environmental management inspector; or  
(c) fails to comply with a request of an environmental management inspector.

(2) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

**Award of part of fine recovered to informant**

**47R.** (1) A court which imposes a fine for an offence in terms of a specific environmental management Act, may order that a sum of not more than one-fourth of the fine, be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.

(2) A person in the service of an organ of state or engaged in the implementation of a specific environmental management Act is not entitled to such an award.

**Cancellation of permits and forfeiture of items**

**47S.** The court convicting a person of an offence involving a restricted activity may-

- (a) withdraw any permit or other authorisation issued in terms of a specific environmental management Act to that person, if the rights conferred by the permit or authorisation were abused by that person;
- (b) disqualify that person from obtaining a permit or other authorisation for a period not exceeding five years;
- (c) declare any specimen, container, vehicle, vessel, aircraft, document or other item that was used for the purpose of or in connection with the commission of the offence and was produced to the court, to be forfeited to the state, unless the court is satisfied that-
  - (i) the convicted person at the time of the commission of the offence was not the owner of the item; and
  - (ii) the owner was unable to prevent the use of the item by the convicted person; and
- (d) issue an order that all competent authorities authorised to issue permits be notified of any disqualification in terms of paragraph (b).

**Treatment of seized live specimens**

**47T.** Pending the institution of any criminal proceedings in terms of a specific environmental management Act or the resolution of such proceedings, a live specimen that has been seized in terms of this Act, must be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

**Security for release of vehicles vessels or aircraft**

**47U** (1) If a vehicle, vessel or aircraft is seized in terms of this Act for the purposes of criminal proceedings, the owner or agent of the owner may at any time apply to a court for the release of the vehicle, vessel or aircraft.

(2) A court may order the release of the vehicle, vessel or aircraft on the provision of security determined by the court.

(3) The amount of the security must at least be equal to the sum of -  
(a) the market value of the vehicle, vessel or aircraft;  
(b) the maximum fine that a court may impose for the alleged offence; and  
(c) costs and expenses incurred or reasonably foreseen to be incurred by the state in connection with prosecuting the offence and recoverable in terms of this Act.

(4) If the court is satisfied that there are circumstances which warrant a lesser amount of security, it may order the release of the vehicle, vessel or aircraft subject to the provision of security for such lesser amount.

**Liability for loss damage or deterioration of items in custody**

**47V.** (1) The state must take reasonable care to minimise any loss of damage to or deterioration in the condition of, any specimen, vehicle, vessel, aircraft, container, document or other item while in the custody of the state.



(2) The state is not liable for any loss of, damage to or deterioration in the condition of any specimen, vehicle, vessel, aircraft container, document or other item in the custody of the state, unless caused by the negligence of the state.

#### **Disposal of forfeited items**

**47W.** (1) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), apply, subject to such modifications as the context may require, to the disposal of any specimen, container, vehicle, vessel, aircraft, document or other item forfeited to the state in terms of section 47S.

(2) The Minister must ensure that any specimen forfeited to the state in terms of section 47S is -

- (a) repatriated to the country of export or origin as appropriate, at the expense of the person convicted for offence involving that specimen;
- (b) deposited in an appropriate institution, collection or museum, provided that -
  - (i) specimen is clearly marked as a seized specimen; and
  - (iii) the person convicted for the offence does not benefit or gain from such deposit; or
- (c) otherwise disposed of in an appropriate manner.

#### **Spot fines**

**47X** (1) The Minister may by regulation determine offences in terms of the specific environmental management Acts in respect of which alleged offenders may pay a prescribed spot fine instead of being tried by a court for the offence, provided that the maximum spot fine that may be prescribed for such an offence may not exceed R5000.

(2) An environmental management inspector who has reason to believe that a person has committed an offence determined in terms of subsection

(1) may, at or about the time that the alleged offence is believed to have been committed, issue an infringement notice to the alleged offender.

(3) An infringement notice must be in the prescribed format, and must state -

- (a) the name and address of the alleged offender;
- (b) a description of the alleged offence;
- (c) the place where and the time when it was allegedly committed;
- (d) the amount of the fine, which may not exceed the amount -
  - (i) prescribed for the offence; and
  - (ii) which a court would presumably have imposed in the circumstances;
- (e) the period within which it must be paid; and
- (f) the organ of state to whom it must be paid.

(4) An infringement notice lapses if -

- (a) the alleged offender prefers to be tried by a court; or
- (b) the infringement notice is withdrawn.

(5) If the fine is paid within the period stated in the notice or such longer period as may be allowed by an environmental management inspector, the person to whom the infringement notice was issued may not be prosecuted for the alleged offence.

(6) Payment of a fine may not be regarded as an admission of guilt for the purpose of any civil or criminal proceedings.

### **Part 5: Miscellaneous**

#### **Consultation**

**47Y.** When in terms of a specific environmental management Act the Minister, an MEC or municipality is required to consult any person or organ of state, such

consultation is regarded as having been satisfied if a formal written notification of intention to act has been made to that person or organ of state and no response has been received within a reasonable time.

**Extension of time periods**

**47Z.** The Minister may extend, or condone a failure by a person to comply with, a time period in terms of specific environmental management Act, except a time period which binds the Minister.

**Regulations, legal documents and steps valid under certain circumstances**

**47AA.** (1) A regulation or notice, or an authorisation, permit or other document, purportedly made or issued in terms of a specific environmental management Act –

- (a) which does not comply with any procedural requirement of the relevant Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person; or
- (b) may be amended or replaced without following a procedural requirement of the relevant Act if--
  - (i) the purpose is to correct an error; and
  - (ii) the correction does not change the rights and duties of any person materially.

(2) The failure to take any steps in terms of a specific environmental management Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure -

- (a) is not material;
- (b) does not prejudice any person; and
- (c) is not procedurally unfair.

**Delivery of documents**

**47BB.** (1) A notice or other document in terms of a specific environmental management Act may be issued to a person -

- (a) by delivering it by hand;
- (b) by sending it by registered mail -
  - (i) to that person's business or residential address; or
  - (ii) in the case of a juristic person, to its registered address or principal place of business; or
- (c) where an address is unknown, despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.

(2) A notice or other document issued in terms of subsection (1) (b) or (c) must be regarded to have come to the notice of the person, unless the contrary is proved."

**Substitution of section 49 of Act 107 of 1998**

5. The following section is hereby substituted for section 49 of the principal Act :

**"Limitation of liability**

**49.** Neither the state nor any other person is liable for any damage or loss caused by –

- (a) the exercise of any power or the performance of any duty under this Act or any specific environmental management Act; or
- (b) the failure to exercise the power, or perform any function or duty under this Act or any specific environmental management Act,

unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith." .

**Substitution of Schedule 3 to Act 107 of 1998**

6. The following Part is hereby substituted for Part (a) of Schedule 3 to the principal Act:

"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) (1) in so far as it relates to contraventions of sections 7 and 7bis
Act No. 71 of 1962	Animal Protection Act, 1962	Sections 2(1) and 2A
Act No. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	Section 9
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 1976	Mountain Catchment Areas Act, 1976	Section 14 in so far as it relates to contraventions of section 3
Act No. 63 of 1977	Health Act, 1977	Section 27
Act No. 73 of 1980	Dumping at Sea Control Act, 1980	Sections 2(1)(a) and 2(1)(b )
Act No. 6 of 1981	Marine Pollution (Control and Civil Liability) Act, 1981	Section 2(1)
Act No. 43 of 1983	Conservation of Agricultural Resources Act, 1983	Sections 6 and 7
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act , 1986	Section 3A"
Act No. 73 of 1989	Environment Conservation Act, 1989	Section 29(2)(a) and (4)
Act No. 18 of 1998	Marine Living Resources Act, 1998	Section 58(1) in so far as it relates to contraventions of

f		sections 43(2), 45, and 47 , and section 58(2) in so far as it relates to contraventions of international conservation and management measures
	Act No. 36 of 1998	National water Act, 1998 Section 151(I) and (j)

***Note: Table needs further refinement and alignment with  
Biodiversity Bill, Protected Areas Bill and Coastal Zone  
Bill.***

**Substitution of long title of Act 107 of 1998**

7. The following long title is hereby substituted for the long title of the principal Act:

**"To provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment , institutions that will promote co-operative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects ofthe administration and enforcement of other environmental management legislation; and to provide for incidental matters." .**

**Short title and commencement**

8. This Act is called the National Environmental Management Amendment Act , 2003, and takes effect on a date determined by the President by proclamation.