



**Western Cape
Government**

Environmental Affairs &
Development Planning

***National Environmental Management Act, 1998
(107 of 1998) (“NEMA”),
Section 24G and
Section 24G Fine Regulations, 2017***

NACA Event - 27 August 2020

Considerations/Questions

- **Why air quality activities are still listed activities?**
- **Is the double application processes not too onerous?**
- **What are the implications for compliance since new and expansion air quality activities are captured under NEMA and NEM:AQA**
- **Can NEM:AQA and Air Quality By-Laws adequately manage air quality and related activities?**

LEGISLATIVE FRAMEWORK

Environmental Right

Constitution of the Republic of South Africa Act, No. 108 of 1996

“24. Environment.- Everyone has the right-

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations,

*through reasonable **legislative** and other measures that-*

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”

LEGISLATIVE CONSIDERATIONS

ECA – Environmental Conservation Act, 1989

NEMA – National Environmental Management Act, 1998

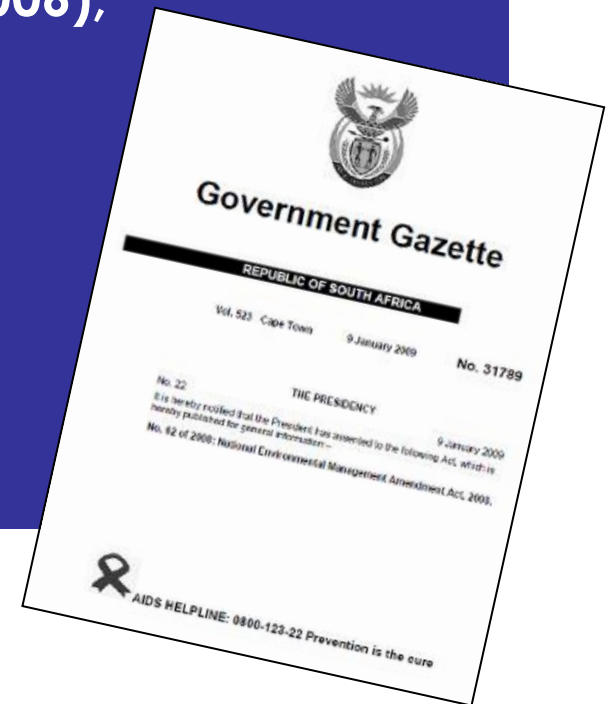
EIA Listing Notices – ECA (Sep 1997–June 2006),

NEMA 2006 (July 2006-July 2010),

NEMA 2010 (August 2010 – Nov 2014) &

NEMA EIA 2014 (Dec 2014 to current)

PAJA & CONSTITUTION



NEMA 24(4)(a) Min Requirements

- **Must ensure...every application for EA**
 - **Co-ordination & co-operation – jurisdiction of the activity**
 - **Findings & recommendations from an investigation**
 - **General objectives of IEM**
 - **Principles of NEMA taken into account**
 - **Description significantly affected**
 - **Investigation of potential consequences for or impacts on environment**
 - **Assessment of significance of consequences or impacts**
 - **Public participation**

NEMA 24(1A)

(1A) Every applicant must comply with the requirements prescribed in terms of NEMA in relation to -

- steps to be taken before submitting an application, where applicable;
- any prescribed report;
- any procedure relating to public consultation and information gathering;
- any environmental management programme;
- the submission of an application for an environmental authorisation and any
- other relevant information; and
- the undertaking of any specialist report, where applicable.

NEMA 24E

Minimum conditions attached to environmental authorisations

- Every environmental authorisation must as a minimum ensure that -
 - (a) adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity;
 - (b) the property, site or area is specified; and
 - (c) provision is made for the transfer of rights and obligations.

SECTION 24G OF NEMA & LISTED ACTIVITIES



Environment & Commencement

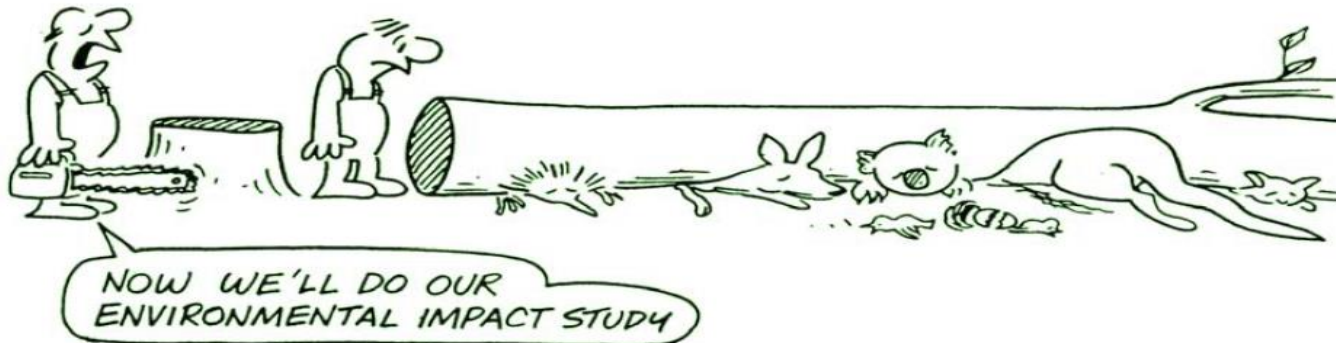
“environment” means **the surroundings within which humans exist** and that are made up of - (i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and (iv) the **physical, chemical, aesthetic and cultural** properties and conditions of the foregoing that influence human health and wellbeing;

“commence”: **“the start of any physical activity, incl. site preparation & any other activity on the site in furtherance of a listed activity or specified activity, but does not include any activity required for the purposes of an investigation or feasibility study as long as such investigation or feasibility study does not constitute a listed activity or specified activity”**

Section 24G of NEMA

Section 24G – provision in NEMA...the regularisation of the **unlawful commencement** of a listed & waste management activity

Retrospective Environmental Authorisation



Section 24G – regularisation process for EA

- A person who **unlawfully commenced** with listed/waste management activity **may** apply in terms of section 24G of the NEMA to obtain EA
 - May be directed to **cease, remedy, prevent, modify, control**, the activity while the application process is underway, report (EIA)
 - **Decision: refuse / issue EA (with conditions) – effective from issue date of EA**
 - In decision – **rehabilitate or any other steps necessary**
 - Applicant **MUST pay administrative fine** of a maximum of **R5 million**
 - **Submission of application – not derogate from prosecution; application may be deferred**

Air Emission Listed Activities: 1997 - 2006

ECA: activity 9 - Scheduled processes listed in the Second Schedule to the **Atmospheric Pollution Prevention Act, 1965** (Act No. 45 of 1965).

activity 1c - The construction, erection or upgrading of -

(c)with regard to any substance which is dangerous or hazardous and is controlled by National legislation – (ii)manufacturing, storage, handling, treatment or processing facilities for any such substance;

NEMA EIA 2006: 386 - activity 24 - The **recommissioning or use of any facility or infrastructure, ..., for - facilities for any process or activity, which require permission, authorisation, or further authorisation, in terms of legislation governing the release of emissions**, pollution, effluent or waste prior to the facility being recommissioned.

NEMA EIA 2006: 386 - activity 25 -The **expansion of or changes to existing facilities for any process or activity, which requires an amendment of an existing permit or license** or a new permit or license in terms of **legislation governing the release of emissions**, pollution, effluent.

Air Emission Listed Activities: 2006 - 2010

NEMA EIA 2006: 387 - activity 1(e) - The **construction of facilities or infrastructure**, including associated structures or infrastructure, for - any process or activity which **requires a permit or license in terms of legislation governing the generation or release of emissions**, pollution, effluent or waste and which is not identified in Government Notice No. R. 386 of 2006;

NEMA EIA 2010: 544 - activity 2 - The **construction of facilities or infrastructure for the storage of ore or coal that requires an atmospheric emissions license in terms of the *National Environmental Management: Air Quality Act (Act No. 39 of 2004)***.

Air Emission Listed Activities: 2010 -2014

NEMA EIA 2010: 544 - activity 28 - The **expansion of or changes to existing facilities for any process or activity where such expansion or changes to will result in the need for a permit or license** in terms of national or provincial legislation governing the release of emissions or pollution...

NEMA EIA 2010: 545- activity 5 - The **construction of facilities or infrastructure for any process or activity which requires a permit or license in terms of national or provincial legislation governing the generation or release of emissions**, pollution or effluent and which is not identified in Notice No. 544 of 2010...

NEMA EIA 2014: Listing Notices: Expansion needs a permit/licence

● LN 1 Item 34:

The **expansion** of **existing facilities** or infrastructure for any process or activity where such expansion will result in the **need for a permit or licence** or an amended permit or licence in terms of national or provincial legislation governing the **release of emissions, effluent or pollution**,

excluding—

- (i) where the facility, infrastructure, process or activity is included in the **list of waste management activities** published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies;
- (ii) the expansion of existing facilities or infrastructure for the **treatment of effluent, wastewater, polluted water or sewage** where the capacity will be increased by less than 15 000 cubic metres per day; or
- (iii) the expansion is directly related to **aquaculture facilities** or infrastructure where the wastewater discharge capacity will be increased by 50 cubic meters or less per day.



NEMA EIA 2014: Listing Notices - Permit or licence

● LN 2 Item 6:

The **development** of facilities or infrastructure for **any process or activity** which **requires a permit or licence or an amended permit or licence** in terms of national or provincial legislation governing the generation or release of **emissions, pollution or effluent, excluding—**

- i. activities which are identified and included in **Listing Notice 1** of 2014;
- ii. activities which are included in the list of **waste management activities** published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies;
- iii. the development of facilities or infrastructure for the treatment of effluent, polluted water, wastewater or sewage where such facilities have a daily throughput capacity of **2 000 cubic metres or less**; or
- iv. where the development is directly related to **aquaculture** facilities or infrastructure where the wastewater discharge capacity will not exceed 50 cubic metres per day.



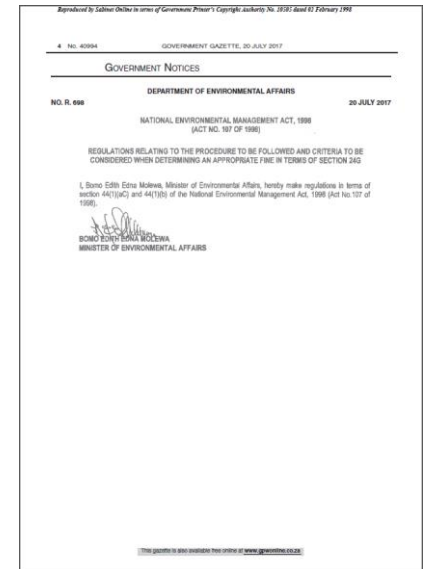
SECTION 24G & FINE REGULATIONS, 2017





Section 24G Fine regulations

- Came into effect **20 July 2017**
- *The purpose of these Regulations is to provide for the **procedure to be followed** and **criteria to be considered** in the **determination of a fine** pursuant to an application submitted in terms of section 24G of the Act and any matters incidental thereto.*
- Company/trust/Parastatal/Government
Department = **Firm**



Section 24G fine regulations: Preliminary advert

- A **preliminary advertisement** of an application **prior to submission of an application**:
 - In local newspaper within the area activity commenced
 - Register must be created with a list of all Interested and Affected Parties
- Competent Authority to keep records of the 24G process (application received and all information relating to the fine amount imposed, including appeals)
 - Registers must be submitted biannually by each competent authority to the National Department of Environmental Affairs



Section 24G fine regulations: Fine committee and Calculator

- *Competent authority to establish a Fine committee*
- *Social benefit Index of the S24G Calculator has been removed*
- Applicant is allowed to **make representation of the fine quantum** when submitting the application, indicating, at each impact index, **why the competent authority should not issue the maximum fine amount.**
- Applicants **personal circumstances** taken into consideration when determining the fine amount:
 - **Firm or natural person**
 - Any **other relevant information** that the applicant would like to be considered

Section 24G fine regulations: Applicant History

- **Compliance history in respect of the NEMA** of applicant requested:
 - Previous enforcement **administrative notices** or **pre-notices, 24G applications or 24F(1) convictions**
 - If the **Directors** of the Firm were, at the relevant time, **directors during the time** (mentioned above)
- Once an application is submitted the Minister or MEC may **defer a decision** until such time that an ongoing criminal investigation ITO S24(F) has been concluded.
- **Recommendation: Repeat contraveners to pay the maximum fine amount as specified in section 24G(4) of the Act.**

WC DEA&DP: 24G Consultation Form

Sections of the Consultation form:

- Section A: Background information, includes application history
- Section B: Activity information, includes specific project description, size and pictures of the site
- Section C: Description of receiving environment
- Section D: Public Participation Process, highlighting both the requirements in terms of the 24G Fine Regulations as well as in terms of the NEMA EIA 2014 Regulations

- Section E: Appendices –
- Declarations

| | |
|--------------------|--|
| Appendix A: | Locality map |
| Appendix B: | Site plan(s) |
| Appendix C: | Photographs |
| Appendix D: | Any Other (if applicable) (describe) |
| Appendix E: | Certified copy of Identity Document of Transgressor / Applicant |
| Appendix F | Certified copy of the title deed (or title deeds in the case of linear activities) |

24G Pre-Application Process: Consultation Form

- A pre-application **Consultation Form** - used in order to advise a potential applicant of the section 24G application process, including the **requirements of the pre-application public participation process.**
- An independent EAP must be appointed to complete the Consultation Form on behalf of the applicant.
- An information requirement letter will be issued by the department in order to provide direction in terms of submission of the Section 24G application, as well as will advising the applicant/EAP on the pre-application process to be followed including the requirement for a pre-application public participation process in terms of Regulation 8.

SECTION 24G APPLICATION PROCESS

24G Application Process: Pre-Directive/Directive

- Once the application has been received and acknowledged by the Department, the applicant will be requested to submit the EIA report and any additional information by means of a **Directive**.
- Representation as to why they should not be directed to provide certain information is contained in Annexure A of the application form.
- Failure to comply with the Directive: Refer to Directorate: Compliance and Enforcement. The Directive may be Appealed.
- The public participation on the draft EIA has been removed as only the final EIA report will be submitted (subject to a 30 day PPP on the Final EIA report.)

Application Form

- Sections of the Application Form:
 - Section A: Background Information
 - Section B: Activity Information
 - Section C: Description of Receiving Environment
 - **Section D: Preliminary Impact Assessment, Management, Mitigation and Monitoring**
 - **Section E: Motivation for response to an incident or emergency situation**
 - Section F: Public Participation Process
 - Section G: Appendices (same as Consultation form)
 - **Annexure A: Information requirements i.t.o. the Section 24G Fine Regulations**
 - **Annexure B: Waste Management Activity Supporting Information (to be completed and submitted if relevant)**

24G Admin. Fine Calculator

Approved by the Minister which incorporates all information relating to the application form, specialist reports, etc. and includes a formula for the determination of an appropriate fine

- Impact Indices (Weighting)

- Socio-Economic Impact Index
- Biodiversity Impact Index
- Sense of Place/Heritage Impact Index
- Pollution Impact Index

| 5 Pollution Impact Index | | Weighting | 30 | |
|--|--|-----------|-----------|-------|
| Description of variable | | | Selection | Score |
| 5.1 | The activity will not give rise to any pollution | 0.5 | | 0 |
| 5.2 | The activity could give rise to pollution with moderate impacts. | 5 | | 0 |
| 5.3 | The activity could give rise to pollution with high impacts. | 8 | | 0 |
| 5.4 | The activity could give rise to pollution with major impacts. | 10 | X | 300 |
| Notes: Each of the indices provides for notes to be made while determining the appropriate weighting. This should be completed diligently as it will serve as a record should this be required for future purposes (such as appeal or review of the fine). | | | | |

This number apportions a percentage score of the index weighting

Each index is assigned a percentage score out of a total of 100%. In the case of the Pollution index it accounts for 30% of the overall score

Do not insert or tamper with this field. A score is automatically generated based on the selection made

Depending on the information submitted by the transgressor/applicant, a decision must be made in relation to the impact the specific activity has on the environment. The range in each of the variables is ranked from minor activities to that which impacts significantly on the environment.

RESPONSE TO QUESTIONS

Response/Opinion

- Why still listed? Broader considerations of the environment, air emissions a specialist aspect of the EIA; NEMA obligations in 24G integral to the application. Have engaged and commented in National amendment to legislation processes.
- Double application process? Not really if you consider the EIA requirements in comparison. May be some overlap, but the information requirements can inform each application and can be run concurrently instead of sequential applications. Always encourage concurrent alignment of applications to expedite the processes.

Response/Opinion

- Compliance implication? Separate legislation and thus contraventions in terms of the applicable legislation applies. Competent authorities are obliged to act in terms of their relevant mandate.
- NEM:AQA & Bylaws adequate: Yes, can be but funded mandate has always been the argument and thus air emissions has been in National legislation, even though Local and District competent authorities. Capacity constraints has been argued at local and district municipal level.

Thank you

Contact Us



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