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Department:  
Environment Affairs and Tourism  
REPUBLIC OF SOUTH AFRICA

## IMPLICATIONS OF THE AMENDMENTS TO NEMA & EIA REGULATIONS ON MINING AND BIODIVERSITY

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## BACKGROUND

- Ministers agreed that it is not desirable that there are different environmental management systems for different activities.
- Agreed that there should be one system and that this system should be prescribed by the environmental authority.
- The Minister of M&E has an existing mandate regarding environmental management of mining and this must be retained.
- The Minister of EA&T is the custodian of the environment, and must be enabled to fulfil this function, also regarding mining.



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## Agreement (1)

- In principle agreement by ministers:
  - One system – prescribed by NEMA
  - Minister of M&E retain mandate as designated competent authority to implement system relating to mining
  - Minister of EA&T to be appeal authority for mining environmental management process – enable him to exercise function as custodian
- Agreement expanded in Parliament when 2 PC's agreed that after 3 years, whole function will move to environmental authority

## Agreement (2)

Actions to give effect to the “in principle” agreement and parliamentary instruction:

- In terms of “one system”
  - MPRDA to be amended by:
    - Repeal all provisions related to environmental management
    - Prospecting / mining / reconnaissance to be subject to environmental authorisation (one of the granting conditions)

## Agreement (3)

- NEMA to be amended by:
  - Inclusion of environmental management provisions of the MPRDA currently not adequately covered by NEMA (e.g. financial provisions for rehabilitation, closure, etc.)
  - Allow for combination of applications
  - Accommodate stricter time frames for mining related processes
- Result: environmental management to be regulated by NEMA only

## Agreement (4)

- In terms of competent authority:
  - NEMA to be amended by:
    - Assigning competence to the Minister of Minerals and Energy for the implementation of environmental management system (Minister of M&E cannot regulate environmental management, develop policy or guidelines or norms & standards in this regard, but must implement these)
  - Result: environmental management regulated by NEMA only, but for mining, implemented by DME.

## Agreement (5)

- In terms of appeal authority:
  - NEMA to be amended by:
    - Assigning the Minister of Environmental Affairs and Tourism as the appeal authority for all environmental authorisations issued for mining related activities by the Minister of Minerals and Energy

## Agreement (6)

- In terms of transition:
  - NEMA and MPRDA to be amended by inclusion of transitional arrangements of a 18 month period where DME will implement NEMA & NEMA EIA Regs (act as competent authority)
    - Biodiversity aspects dealt with in EIA process also for listed mining activities
  - NEMA to be amended further through a schedule providing that after a further 18 months, the entire function revert to environmental authorities

## AMENDMENTS TO EIA REGIME AS RESULT OF AGREEMENT

### Amendments as a result of agreement

- NEMA & MPRDA: various amendments
- EIA regulations: definitions, financial & rehabilitation provisions, powers to Minister of M&E
- Listing Notices:
  - making DME competent authority for mining and related activities in a mining area
  - Include prospecting & small scale mining in BA list
  - Include mining, exploration & production in Scoping & EIA list



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## IMPLICATIONS

### Implications for provinces in implementation of Phase 1 of agreement

- Provinces currently commenting authority on mining EMPs & EMPRs in terms of MPRDA – will now just be commenting authority in terms of NEMA – no additional requirements
- Provinces will however be requested to participate in development of implementation plan for phase 2
- As mining now part of NEMA, EMI activities may (on province's discretion) be expanded to mining



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## Implications to provinces in implementation of Phase 2 of agreement

- Implementation of phase 2 is still being conceptualized and mining task team (constituted through earlier MINMEC decision) will need to derive an implementation plan
- “Partners” will need to agree whether function will revert to DEAT national or to provinces
- Regional offices currently responsible for EMP & EMPR review and decision making in terms of MPRDA and soon EA in terms of NEMA would need to be transferred to environmental authority
- Enforcement will be through environmental management inspectorate.

QUESTIONS