
MONTHLY SUSTAINABILITY LEGISLATION UPDATE DECEMBER 2009

- ❖ **Legislation Regulation and Parliamentary Update:**
- ❖ **Part One:** Legislation, Draft Legislation, Regulations, Policy and other documents
 - ❖ Section A – Environmental (National)
 - ❖ Section B – Safety and Health (National)
 - ❖ Section C – Safety, Health and Environmental (Draft National Legislation and Regulation)
 - ❖ Section D – Safety, Health & Environmental (Provincial Legislation & Municipal By-laws)
 - ❖ Section E – Safety, Health & Environmental (Draft Provincial Legislation & By-laws)
- ❖ **Part Two:** Parliamentary Monitoring
- ❖ **Part Three:** Case Law

LEGISLATION, REGULATION AND PARLIAMENTARY UPDATE

PART ONE: LEGISLATION, DRAFT LEGISLATION, REGULATIONS, POLICY AND OTHER DOCUMENTS - NATIONAL AND PROVINCIAL GAZETTES

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to obtain electronic copies of any of the government gazettes referred to in this part.

Please note that only paid-up subscribers to the IMBEWU's SHE legislation update service are entitled to receive electronic copies of the government gazettes listed below from IMBEWU.

When requesting a particular government gazette please quote the number of the relevant document found below, e.g., "1", "2", etc.

Some of the information in this part is accessed through www.sabinet.co.za

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SECTION A: ENVIRONMENTAL (NATIONAL)

National Environmental Management Act 107 of 1998

1. Environmental Management Plan: Second Edition published by the Department of Transport as required by section 11(1) of the Act. Published in GG 32795 Notice Number 1613 dated 11 December 2009.

National Environmental Management: Protected Areas Act 57 of 2003

2. Regulations for the proper administration of the Knysna Protected Environment. Published in GG 32797 Notice Number 1175 dated 11 December 2009.

National Environmental Management: Air Quality Act 39 of 2004

3. National ambient air quality standards. Published in GG 32816 Notice Number 1210 dated 24 December 2009.

National Heritage Resources Act 25 of 199

4. Declaration of Farm 1341A part of the Cape Winelands Cultural Landscape, Daljosafat Cultural Landscape as a National Heritage Site. Published in GG 32837 Notice Number 1247 dated 31 December 2009.

National Water Act 36 of 1998

5. Replacement of general authorisation in terms of section 39. Published in GG 32805 Notice Number 1199 dated 18 December 2009.
6. General authorisation in terms of section 39 of the Act in terms of section 21(C) and (I) for the purpose of rehabilitating a wetland for conservation purposes. Published in GG 32805 Notice Number 1198 dated 18 December 2009.

Gas Act 48 of 2001

7. National Energy Regulator Rules. Published in GG 32849 Notice Number 1251 dated 31 December 2009.

Electricity Regulation Act 2006

8. Determination regarding the Integrated Resource Plan and New Generation Capacity. Published in GG 32837 Notice Number 1243 dated 31 December 2009.

Promotion of Access to Information Act 2 of 200

9. Description of category of automatically available records, records available for purchase and records available for copying at the offices of the Provincial Government of Limpopo and submitted in terms of section 15(1). Published in GG 32838 Notice Number 1231 dated 31 December 2009.
10. Description of category of automatically available records, records available for purchase and records available for copying at the Department of Justice and Constitutional Development and submitted in terms of section 15(1). Published in GG 32806 Notice Number 1185 dated 18 December 2009.

Agricultural Pests Act 36 of 1983

11. In terms of section 6 of the Agricultural Pests Act, the Control Measures set out in the Schedule to the Act are hereby amended. Published in GG 32781 Notice Number 1148 dated 12 December 2009.

SECTION B: SAFETY AND HEALTH (NATIONAL)

Medicines and Related Substances Act 101 of 1965

12. Medicines Control Council: Conditions of registration of a medicine in terms of the provisions of section 15(7). Published in GG 32774 Notice Number 1598 dated 9 December 2009.
13. In terms of section 22A(2) of the Act, and on the recommendation of the Medicines Control Council, the Minister of Health has made and updated the Schedules to the Act. Published in GG 32838 Notice Number 1230 dated 31 December 2009.

National Nuclear Regulator Act 47 of 1999

14. Notice in terms of section 28 on fees for nuclear authorisations. Published in GG 32753 Notice Number 1130 dated 4 December 2009.

National Railway Safety Regulator Act 16 of 2002

15. Safety permit fee notice. Published in GG 32753 Notice Number 162 dated 4 December 2009.

Mines and Works Act 27 of 1956

16. Declaration of work in national interest: Mogalakwena Platinum Mine. Published in GG 32837 Notice Number 1245 dated 31 December 2009.
17. Declaration of work in national interest: Penumbra Opencast Mine. Published in GG 32837 Notice Number 1244 dated 31 December 2009.

Mineral and Petroleum Resources Development Act 28 of 2002

18. Exemption of organs of state in terms of section 106(1): Chris Hani District Municipality. Published in GG 32805 Notice Number 1196 dated 18 December 2009.
19. Exemption of organs of state in terms of section 106(1): Engcobo Municipality. Published in GG 32805 Notice Number 1195 dated 18 December 2009.

National Road Traffic Act 93 of 1996

20. In terms of Section 75 read with regulation 252 of the National Road Traffic Regulations, 2000 under the National Road Traffic Act, 01 July 2009 is determined as the commencement date for the proviso clause after sub-regulation (2), of regulation 252 the National Road Traffic Regulations, 2000.

SECTION C: SAFETY, HEALTH AND ENVIRONMENTAL **Draft National Legislation and Regulations**

National Environmental Management: Biodiversity Act 10 of 2004

21. Draft norms and standards for the regulation of the hunting industry in South Africa. Published in GG 32798 Notice Number 1614 dated 11 December 2009.

National Health Act 61 of 2003

22. Draft regulations for cancer registration (establishment of a National Cancer Registration Advisory Committee and a National Cancer Registry). Published in GG 32838 Notice Number 1229 dated 31 December 2009.

SECTION D: SAFETY, HEALTH AND ENVIRONMENTAL **Provincial Legislation and Municipal By-Laws**

Eastern Cape Province

23. Local Government: Municipal Systems Act 32 of 2000: Buffalo City Municipality: Electricity Supply By-law. Published in PG 2245 Notice Number 148 dated 10 December 2009:
24. Nature Conservation Act 10 of 1987: Hunting Season for the former Ciskei. Published in PG 2255 Notice Number 73 dated 18 December 2009.
25. Nature and Environmental Conservation Ordinance 26 of 1957: Hunting seasons, daily bag limits and hunting by prohibited hunting methods. Published in PG 2255 Notice Number 5 dated 18 December 2009.
26. Local Government: Municipal Systems Act 32 of 2000: Mhlontlo Municipality: By-laws relating to dumping, littering and waste collection. Published in PG 2246 Notice Number 151 dated 11 December 2009.
27. Local Government: Municipal Systems Act 32 of 2000: Mhlontlo Municipality: By-laws relating to the prevention of nuisances. Published in PG 2246 Notice Number 149 dated 11 December 2009.

Western Cape Province

28. Overstrand Municipality: Water Supply and Sanitation Services By-law. Published in PG 6683 dated 11 December 2009.
29. Western Cape Nature Conservation Board: Hunting seasons, daily limits and hunting by the use of prohibited hunting methods. Published in PG 6681 Notice Number 460 dated 4 December 2009.

Gauteng Province

30. Gauteng Transport Infrastructure Act 8 of 2001: Proposed acceptance of the preliminary design for the Gautrain Rapid Rail Link between Road P66-1 (K71) and road D51 (K58). Published in PG 261 Notice Number 4022 dated 1 December 2009.
31. Rationalisation of Local Government Affairs Act 10 of 1998: Ekurhuleni Metropolitan Municipality: Repeal of various by-laws. Published in PG 280 Notice Number 2033 dated 23 December 2009.

Northern Cape Province

32. Nature and Environmental Conservation Ordinance 19 of 1974: Hunting seasons, daily bag limits and hunting by prohibited hunting methods. Published in PG 1373 Notice Number 15 dated 17 December 2009.

SECTION E: SAFETY, HEALTH AND ENVIRONMENTAL **Draft Provincial Legislation and Municipal By-Laws**

Western Cape Province

33. Western Cape Department of Environmental Affairs and Development Planning: Western Cape Land Use Planning Ordinance Draft Amendment Bill. Published for public comment in PG 6683 Notice Number 467 dated 11 December 2009.

Mpumalanga Province

34. National Building Regulations and Building Standards Act 103 of 1977: Maruleng Local Municipality: Draft By-laws. Published in PG 1711 Notice Number 362 dated 4 December 2009:
- Advertising Billboards and Hoarding By-law
 - Building Regulation By-law

Northern Cape Province

35. Municipal Systems Act 32 of 2000: Renosterberg Municipality: Sanction of draft by-laws. Published in PG 1362 Notice Number 141 dated 30 November 2009.

North West Province

36. Draft amendment to the North West Wildlife Fencing Policy. Published for public comment in PG 6717 Notice Number 393 dated 23 December 2009.
37. North West Biodiversity Conservation Draft Bill. Published for public comment in PG 6719 Notice Number 394 dated 23 December 2009.

PART TWO: PARLIAMENTARY MONITORING

This information accessed through the Parliamentary Monitoring Group (www.pmg.org.za).

Introduction:

The Constitution describes four kinds of bills, namely:

Section 74 bills: constitutional amendments.

Section 75 bills: ordinary bills not affecting the provinces. Once a Section 75 bill has been passed by the National Assembly (NA), it is referred to the National Council of Provinces (NCOP). If the NCOP amends the bill or rejects it, it is referred to the NA, which may pass the bill again, with or without amendments, and submit for the President's assent. In other words, the NA can pass a Section 75 bill even if the NCOP disagrees.

Section 76 bills: ordinary bills affecting the provinces. The NCOP and the NA both consider Section 76 bills.

Section 77 bills: money bills (must be introduced by the Minister of Finance in the NA).

Each type of bill has a different passage to becoming law and usually fits into only one category. If a bill does not fit clearly into one category, or if it fits into more than one category, it is usually redrafted or split into more than one bill, e.g., the NEM: Biodiversity Bill which was split into the NEM: Biodiversity Bill and NEM: Protected Areas Bill. Both of these have now been enacted.

(<http://www.pmg.org.za>)

Sustainability Related Legislative Programme: Parliament of South Africa

BILLS BEFORE PARLIAMENT: (as of 1 December 2009)

- Before National Assembly Committees
 - Mineral & Petroleum Resources Development Amendment Bill (B10-2007)
 - Land Use Management Bill (B27 of 2008)
 - Prevention of Illegal Eviction from Unlawful Occupation of Land Amendment Bill (B8 – 2008)

- National Health Amendment Bill (B65 - 2008)
- Medicines and Related Substances Amendment Bill (B44 - 2008)
- Prevention of and Treatment for Substance Abuse Bill (B12 - 2008)
- Built Environment Professions Bill (B53 - 2008)
- South African National Water Resources Infrastructure Agency Limited Bill (B36 - 2008)
- Cross Boundary Municipalities Law Repeal Bill (B3 of 2009)

PART THREE: CASE LAW

CASE NOTE – NATURE’S CHOICE PROPERTIES (ALRODE) (PTY) LTD V EKURHULENI METROPOLITAN MUNICIPALITY (487/09 [2009] ZASCA 90

This matter was an appeal against an interdict granted in favour of the Respondent in the Court *a quo* for the removal of a coal boiler erected on the Appellant's property without the prior consent of the Respondent, as is required in terms of regulation 3 of the Smoke Control Regulations (the Regulations) promulgated in terms of the Atmospheric Pollution Prevention Act 45 of 1965 (the Act). Regulation 4 of the Regulations provides that the local authority may request the removal of a boiler if the consent required in terms of regulation 3, is not obtained. Regulation 3, more broadly stated, provides that that a person may not install any fuel burning appliance (which includes a boiler) designed to burn solid or liquid fuel in or on any premises, unless the plans and specifications in respect of such installation are approved by the relevant municipality.

In this instance, the Court held that the purpose of the regulations is to enable municipalities to determine, in advance, whether or not the burner in question complies with section 15(1) of the Act. The Court therefore considered the matter in terms of sections 15(1) and the related section 15(2) of the Act. Section 15(1) provides, *inter alia*, that a person may not install any fuel burning appliance unless it is, so far as is reasonably practicable, capable of being operated continuously without emitting dark smoke or smoke of a colour darker than may be prescribed by regulation, or one designed to burn solid fuel, unless it is provided with effective appliances to limit the emission of grit and dust. The Act does not prohibit the installation of fuel burners or burners of a particular type, confining itself to dealing with the smoke emitted by the appliance, i.e., the Act only prohibits burners that emit smoke and grit in contravention of section 15(1). Section 15(2) is aimed at ensuring that only burners complying with section 15(1) are installed, by requiring prior written notice of the proposed installation be given to the local authority. Upon consideration, the Court found that if the burner in question complies with section 15(1), then the local authority is obliged to authorise the installation of the boiler, unless the boiler is not suitably sited or there are other relevant issues.

The Court held that as the Appellant had not submitted plans and specifications prior to the installation of the boiler as is required by regulation 3; the Respondent was entitled, either, (i) to request the Appellant to remove the boiler in terms of regulation 4, or, (ii) to otherwise remedy the situation. The Respondent did not request the Appellant to remove the boiler in question, but requested the Appellant to submit plans and specifications of the installed boiler, which were subsequently rejected by the Respondent. However, the Respondent rejected the plans not because the boiler specification fell foul of the requirements set out in section 15(1) regarding smoke emitted by the boiler, but rather because of the type of boiler that was installed; that is, the plans were rejected because the Appellant had installed a coal boiler, as opposed to a gas boiler. The Court held that, having made the choice of requiring the Appellant to remedy the situation, the Respondent had no free discretion to reject the plans and specifications if they complied with the requirements of section 15(1). The Court held that this action taken by the Respondent was *ultra vires* (outside the scope of its legal mandate as determined by the Act and the regulations) and thus upheld the appeal with costs. The order of the Court *a quo* was amended to read that the initial application was dismissed with costs.

IMBEWU Sustainability Legal Specialists (Pty) Ltd is a Johannesburg (South Africa) based legal specialist consultancy providing services to the South African and international markets. IMBEWU employs six lawyers all specialising in an aspect of environmental, climate change or health & safety law. IMBEWU collaborates with law firm **Warburton Attorneys** in order to provide specialist environmental litigation and other legal services, including commercial services, to its clients and also to provide attorney client privilege, where appropriate.

Specific services include:

- Undertaking SHE legal compliance audits.
- Undertaking environmental legal due diligence investigations.
- Compiling environmental legal reviews of environmental management plans for environmental impact assessments and providing process advice.
- Advising on environmental authorisation requirements.
- Conducting training sessions on environmental legal auditing and general environmental legal compliance issues.
- The provision of site specific SHE Electronic Legal Registers.
- Climate Change specialist legal advice.
- Environmental legal and climate change training and capacity building.

IMBEWU approaches sustainability & environmental legal issues from an integrated and multi-disciplinary perspective and we work closely with a range of other specialists, including environmental scientists, engineers, health and safety specialists and public participation specialists, to produce team reports that integrate a wide variety of relevant issues.



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