Environmental legislation development MINING SECTOR, TAKE NOTE

In order to keep up with the moving target of environmental legislation, the South African mining industry needs to keep its pencils sharp. Not only is environmental compliance a confusing business given the rapidly changing legislation imposed by different environmental authorities, but it is also becoming an ever more risky business with legislation becoming more stringent, more prescriptive and better enforced. In this article we discuss two recent, but very different, environmental-legal developments that the mining sector should take note of.

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Financial provisioning is the first aspect. The requirement to undertake financial provision was moved away from the Mineral and Petroleum Resources Development Act (MPRDA) Regulations in 2015, to become the standalone "Financial Provisioning Regulations" in terms of the National Environmental Management Act (NEMA) and has subsequently been amended twice.

The first amendment, in 2016, extended the time period for all applicants and holders to comply with the Regulations by 19 February 2019. The second amendment, in 2018, extended the time period for offshore oil and gas exploration or production rights to 19 February 2024. The Department of Mineral Resources (DMR) remains the competent authority.

In late 2017, a reworked set of draft Regulations titled: "Proposed Regulations pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations" was published for comment. These draft regulations are moreover considered as a step in the right direction, with detailed methodologies provided to calculate financial provision for new and existing developments.

However, it has not yet been promulgated, and the 2015 regulations are still in effect. Both the 2015 and the draft 2017 regulations require that the documentation submitted to the DMR be signed off by the CEO as well as an independent (financial) auditor. Both regulations also require that the financial provision be made available to the public.

Speaking of money, the Department of Water and Sanitation (DWS) has stated in the final draft of the National Water and Sanitation Master Plan (31 March 2018) that it intends on implementing the Waste Discharge Charge System (WDCS) in the upper Crocodile, upper Vaal, and upper Olifants catchments for revenue collection by 2019.

This system has been in the pipeline since the early 2000s, with charges calculated based on the load of certain constituents onto surface and groundwater. The Master Plan furthermore states that the DWS intends to review the raw water pricing strategy by 2019. Given the water security issues in South Africa, we can anticipate even higher costs for water use by mines, for both raw water intake and activities with pollution potential.

↖ **Unlined pollution** control dam at a copper mine

A further action employed by the DWS to tighten the reins on water users, is to impose the condition of developing a water conservation and demand management (WC/WDM) plan on licences issued since early 2016. The licensees are to quantify their water use efficiency, and set targets for improvement thereof. The licensees are to annually update their WC/WDM plans and report their implementation progress to the DWS.

In my opinion, with the right attitude these measures may prove to be beneficial not only to the environment but also to the optimised functioning of mining operations.

These and many other environmental instruments aim to prevent and manage environmental impacts by utilising financial instruments, and the onus is on the mining houses to run a tight ship, as environmental liability costs are coming to the fore. MRA

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