

FINANCIAL PROVISIONS IN NATIONAL ENVIRONMENTAL MANAGEMENT ACT

Frequently asked questions



MINERALS COUNCIL
SOUTH AFRICA

Formerly the Chamber of Mines of South Africa

HOW DID THIS COME ABOUT?



It came into being through an agreement between the ministers responsible for Environmental Affairs and Mineral Resources. All environment-related aspects undertaken for mining and related activities would no longer be regulated in terms of the Mineral and Petroleum Resources Development Act but will be governed by the National Environmental Management Act (NEMA).

WHO IS RESPONSIBLE FOR WHAT?



The Minister of Mineral Resources is the competent authority charged with implementing the provisions of NEMA, issuing environmental authorisations, in terms of NEMA, for prospecting, exploration, mining or operations, while the Minister of Environmental Affairs is the appeal authority for decisions taken by the Minister of Mineral Resources.

WHAT ARE THE IMPLICATIONS OF THE NEW REGULATIONS FOR THE MINING INDUSTRY?



- Money is required to sit in a trust fund for latent defects and as a guarantee to provide for concurrent and ongoing rehabilitation. The guarantee is not accessible to the holder for use during the life of the mining right so there is duplicate funding or double provisioning. This is considered double funding for financial provisions in that mining companies would continue funding ongoing rehabilitation activities through operating costs, and at the same time provide for ongoing concurrent rehabilitation and environmental management costs in the financial provision kitty.
- Permit holders, after 20 November 2015, will no longer use a “trust fund” as a vehicle to finance annual rehabilitation, final rehabilitation, decommissioning and closure but only for residual and latent environmental impact, which is difficult, in most cases, to determine scientifically. Holders who used a trust fund as a financial provision vehicle to obtain environmental authorisation would need, in the next annual review and adjustment, to amend any trust fund and update accordingly as required by the regulations in order to acquire a mining or prospecting right. Amendment or withdrawal from trust funds for rehabilitation attracts a tax liability in terms of the Income Tax Act.
- A substantial portion of current trust funds may not be used for final rehabilitation as the new regulations stipulate that funds may only be used for latent and residual impacts, and funding may have to be either through a financial guarantee or cash deposit. Given the wording of the existing and draft trust deed, it might not be possible to withdraw the excess funds from the trust to be used as financial guarantees.
- The requirements for an assessment by a specialist (audited by an independent auditor), proof of payment or arrangement to provide for any adjustment to the financial provision, included in the environmental audit report, must be submitted to the Minister for approval within stipulated time frames. This places an extraordinary administrative and cost burden on the industry, and is likely to cripple any operation that is able to mine profitably.

Q WHAT CONSULTATION AND ENGAGEMENT HAS TAKEN PLACE BETWEEN GOVERNMENT AND INDUSTRY?



The Minerals Council has been engaging extensively with the Department of Environmental Affairs (DEA) and the Department of Mineral Resources (DMR), pointing out the technical and financial implications of the proposed NEMA Financial Provision regulations, throughout various drafts, with a view to finding win-win solutions to resolving issues of concern. Meetings have been held with the DMR, DEA and the Chairperson of the Parliamentary Portfolio Committee on Environmental Affairs.

Q HAVE THERE BEEN DISAGREEMENTS ABOUT INTERPRETATION BETWEEN THE MINING INDUSTRY AND GOVERNMENT?



Yes, there are disagreements about interpretation between the two parties. An interpretation note is currently being prepared by the DEA but further engagement is required to reach an amicable outcome.

Q WHAT HAS THE MINERALS COUNCIL SOUTH AFRICA (MINERALS COUNCIL) DONE?



The mining industry has noted challenges with some of the provisions of the regulations since the discussions on preliminary drafts. The Minerals Council's environmental team has engaged extensively with the DEA and the DMR, pointing out the technical and financial implications of the proposed NEMA Financial Provision regulations in various drafts, with a view to finding a satisfactory resolution to issues of concern.

Q WHAT IS THE MINERALS COUNCIL'S PLAN MOVING FORWARD?



The Minerals Council is aware that the NEMA Financial Provision regulations present serious challenges for mining operations from legal, tax, financial and practical implementation perspectives. The Minerals Council continues to engage with the relevant parties to find workable solutions. Minerals Council members are hopeful that, with commitment from all stakeholders, solutions will be found. We are exploring all avenues to resolve this matter. Legal recourse is one avenue but not necessarily the preferred approach.



“The Minerals Council is aware that the NEMA Financial Provision regulations present serious challenges for mining operations from legal, tax, financial and practical implementation perspectives.”

CONTACT DETAILS

MINERALS COUNCIL SOUTH AFRICA

T +27 11 498 7100
E info@mincosa.org.za

MEDIA

T +27 11 880 3924
E mincosa@rasc.co.za

@Mine_RSA

www.facebook.com/Mine

5 Hollard Street, Johannesburg 2001
PO Box 61809, Marshalltown 2107

www.mineralscouncil.org.za