



FINANCIAL PROVISIONS **IN** **NEMA -** **THE VIEW** **OF THE CHAMBER** OF MINES

HOW DID THIS COME ABOUT?

OES came into being through an agreement between the ministers responsible for environmental affairs and mineral resources, under which all environment-related aspects undertaken for mining and related activities would no longer be regulated in terms of the Minerals and Petroleum Resources Development Act (MPRDA), but will be governed by NEMA.

WHO IS GOING TO BE RESPONSIBLE FOR WHAT?

Flowing from this, the Minister of Mineral Resources will be the competent authority to implement the provisions of NEMA, issue environmental authorisations in terms of the NEMA for prospecting, exploration, mining or operations, with the Minister of Environmental Affairs being the appeal authority for the decisions taken by the Minister of Mineral Resources.

WHAT HAS THE CHAMBER DONE?

The mining industry noted challenges with some of the provisions of the regulations since the discussions on preliminary drafts. The Chamber'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 on various drafts, with a view to finding a satisfactory resolution to resolving issues of concern.

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

Some of the implications of concern to the industry are:

- The requirement for money to sit in a trust fund for latent defects and for the guarantee to provide for concurrent and ongoing rehabilitation, which guarantee is not accessible to the holder for use during the life of the right means that there is duplicate funding or double provisioning. This is considered double funding for financial provisions in that mining companies would continue funding on-going rehabilitation activities through operating costs, and at the same time provide for on-going 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 for financial provision for annual rehabilitation, final rehabilitation, decommissioning and closure but only for residual and latent

environmental impact which in most cases is difficult to determine scientifically. Holders who made use of 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 up-date 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.

- There is a concern that a substantial part of current trust funds may not be used for final rehabilitation as the new regulations requires them to be used only for the latent and residual impacts and may have to be funded 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 for financial guarantees.
- The requirement that the assessment must be done by a specialist and must be 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 and that all these must be submitted for approval by the Minister within the stipulated time frames, places an extraordinarily administrative and cost burden on the industry which is likely to be crippling to any operation that is able to mine profitably.

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

The Chamber has been engaging extensively with the DEA and the 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 Parliament Portfolio Committee (PPC) on the Environment.

THERE INTERPRETATION DISAGREEMENTS BETWEEN THE MINING INDUSTRY AND GOVERNMENT?

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

WHAT IS THE CHAMBER'S PLAN MOVING FORWARD?

The Chamber is aware that the NEMA Financial Provision regulations present serious challenges for mining operations from legal, tax, financial and practical implementation points of view. The Chamber continues to engage with the relevant parties to find workable solutions. Chamber of Mines members are hopeful that with commitment from all stakeholders, solutions would be found, however, we are exploring all avenues to resolve this matter. A legal recourse is one avenue but not necessarily a preferred approach.