

Broken Promises from the Underground?

In the first article that I published in the IAIA newsletter, I wrote the following: *From the time that I first heard of EMPRs I have remained perplexed by their purpose. I still cannot get to grips with the purported need for one assessment approach that works for mining and one that works for everything else. My confusion is compounded by the experience that I have had in drawing the line between a project governed by the Minerals Act and that governed by the Environment Conservation Act. My understanding of the distinction is best reflected in an informal comment conveyed to me by an official working at the Department of Environmental Affairs and Tourism which went something like ‘... as jy a gat in die grond grou dan’s dit ’n EMPR - enige iets anders is EIA’, but those of you who have faced the dilemma will know that it is just not that simple. You will also know that the Minerals Act is the more powerful and where doubt exists, the benefit (or should I say beneficiation) of the doubt lies with the Minerals Act.*

I will need some convincing that the EMPR is not a weaker process than EIA. In fact the revision to the Aide Memoire on EMPRs is geared towards making the EMPR requirements more closely aligned with the EIA regulations. That is bizarre – why not one process standard that applies without ambiguity to all development projects? I have no doubt that there are any number of mining developments that would not have been authorised were they to have undergone a good EIA process and I can cite specific examples of ‘mining’ developments (categorically not holes in the ground) that really should have been assessed and ultimately authorised (or not) within the requirements of the Environment Conservation Act. As long as the two standards exist in South Africa, the quality of environmental assessment will always be under threat.

What is depressing about this is that the article was published in 2001 and here we are ten years later still no further down the road. In fact we may even be worse off now because in 2001 we had at least the possibility that

things could change, now it looks like the Department of Mineral Resources (DMR) has decided that they want to continue having their cake and eating it too. The latest news is that the DMR is trying to renege on their commitment to progressively move mining authorisations into the NEMA fold.

The required amendments to the MPRDA that would have seen the start of the transition have simply never happened, with Minister of Mineral Resources Susan Shabangu saying that the amendment has been delayed because of concerns raised by ‘mining sector stakeholders and government departments’. Well, of course they are concerned because the move to a NEMA jurisdiction would mean that mining authorisations would be more difficult and, as argued by a coalition of 13 environmental and rights groups, the penalties for environmental transgressions ‘are so low as to be no disincentive whatsoever for mining companies’.

The irony of this (again, please excuse the pun) is that as an EAPI I can have ‘no business, financial, personal or other interest in the activity’ and ‘that there are no circumstances that may compromise the objectivity of that EAP or person in performing such work’ – yet there is no such limitation on a Department that despite all its protestations to the contrary will always be poacher and gamekeeper. Who knows what has driven the decision to renege on their commitment to amend the MPRDA but the parallel establishment of the African Exploration Mining and Finance Corporation (Pty) Ltd has to raise at least one questioning eyebrow in this regard.

The DMR’s reluctance to allow an independent third party such as the DEA to make decisions on the environmental acceptability of mining can be construed as nothing other than limiting the environmental protection obligations of the mining industry. I find it deeply disconcerting that an industry that is by definition unsustainable is enveloped in the maternal embrace of a state Department that declares as its mission the *sustainable development* of the country’s

mineral resources. Forgive my scepticism but I am reminded of a quote that came from the 2007 IAIAsa Conference that went ‘the only thing sustainable about sustainable development is development’ (by the way, if anyone can remind me who said that I would love to be able to properly acknowledge the source).

So how big a deal is this? Big enough to mobilise WWF, Lawyers for Human Rights and the Endangered Wildlife Trust, amongst others, for a start. But the real issue is how significant the mining industry is in terms of its impact on the environment in South Africa. Consider the following facts that derive from several publications that were made available to me by the Federation for a Sustainable Environment’s Mariette Lieferink¹. I have done nothing more than extract verbatim from the various publications Ms Lieferink has authored:

- As early as 1987, the US Environmental Protection Agency recognised that “... *problems related to mining waste may be rated as second only to global warming and stratospheric ozone depletion in terms of ecological risk. The release to the environment of mining waste can result in profound, generally irreversible destruction of ecosystems*”.
- As at 1997, South Africa produced an estimated 468 million tons of mineral waste per annum. Gold mining waste was estimated to account for 221 million tons or 47% of all mineral waste produced in South Africa, making it the largest, single source of waste and pollution.
- [Mining companies] elude the great issues, inter alia the pumping and treatment of AMD for centuries, the remediation of sterile river systems and eco-systems, the address of the diffuse sources of AMD such as the 270 tailings dams containing 6 billion tons of iron pyrite tailings and 450 000 tons of uranium, the “making safe” of large amounts of highly toxic and radioactive substances which remain an incalculable danger to the whole of creation for historical or even geological ages.
- With slimes dams in the goldfields of the Witwatersrand Basin covering an area of about 400 km² and containing some 430 000 tons of U₃O₈, and 6 billion tons of iron pyrite tailings, they constitute an environmental problem of extraordinary spatial dimensions.

- The measured uranium content of many of the fluvial sediments in the Wonderfontein spruit, including those off mine properties and therefore outside the boundaries of licensed sites, exceeds the exclusion limit for regulation by the National Nuclear Regulator; and,
- The potential volume of AMD for the Witwatersrand Goldfield alone amounts to an estimated 350Mℓ/day (1Mℓ = 1000m³). This represents 10% of the potable water supplied daily by Rand Water to municipal authorities for urban distribution in Gauteng province and surrounding areas, at a cost of R3000/Mℓ.

With a track record like this, it is clear that the industry needs tough, uncompromising regulation. Yet just when there was the emergence of that vague possibility, mining sector stakeholders (I would similarly love to know who they are exactly) say ‘we don’t like this!’ and the process is suddenly stopped. If the mining industry is as committed to sustainable development as they say they are, why are they so scared of being under the jurisdiction of the NEMA and the SEMAS (specific environmental management acts, as I only recently learned).

The sustainable development challenge facing the mining industry is unprecedented in its complexity. Amongst a host of critical challenges, the industry needs to consider how the capital value of the resources that are mined are retained for the benefit of future generations rather than being translated into the obscene present day wealth of some of the major players. In similar vein, sustainable development demands an end to future generations inheriting mining (and other) legacies such as the pollution in the West Rand and the abandoned mines of the Mpumalanga coal fields. Most importantly, sustainable development demands rational, ethical and sometimes unpopular decision-making empowered to say ‘no’ if the consequences of a proposed activity mean losing important components of our natural heritage. Even, dare I say it, if that decision flies in the face of the ‘concerns of mining sector stakeholders’.

How can we have any confidence that the DMR is indeed committed to the promise of sustainable development when their first step in that journey is to avoid the only legislation in South Africa that has sustainable development as its foundation?

Sean O’Beirne

¹ The FSE made several publications available which make for very sobering reading. These publications include *General Comments on the Integrated Reporting Framework* and *Comments on the Desired State Report for the West Rand District Municipality*. The statements presented above have been meticulously referenced in the original publications listed in this footnote. The availability of these publications from the FSE is acknowledged with gratitude.

‘All the world’s a stage..’

Performance and environmental decision-making

PROLOGUE

*Shakespeare said it, and like many things he said – besides the creation of terms like *ratolorum*¹ – his words are still relevant today. We all know what it is like to act up and to act out, to put on masks, to set the scene, to play a role – and none of these in the strictly dramatic sense of the words. Intuitively, we are constantly performing and this is no more obvious than in decision-making. Anyone involved in any kind of decision-making process with others – be it personal, professional or political – will experience this drama directly; therefore when analysing environmental decision-making, the data is the obvious and possibly even banal goings-on in the fascinating laboratory of everyday life.*

What is not so obvious is the process of taking these experiences – the very interactions between us all – and breaking them down to unsettle the (extra)ordinary in our lives. Looking at what we take for granted and asking the question, “Why?”.

Many of us find this process frustrating and even pointless, but its results can illuminate why we make the supposedly rational but often astonishing decisions we do, why our decision – and policy-making processes stagnate (if they happen to do so), and how we can ensure that we use these processes most effectively. So without further ado (and hopefully with much figurative applause from you the reader), let me raise the curtain on the examination of environmental decision-making with our opening act.

ACT I

Although I am a fan of the postmodern inclination of showing little regard for chronology and logic, I must admit that I do find it easiest to start at the beginning, which in this case means explaining the background to our analysis. Borrowing from our friends in political science, most notably various works by Maartin Hajer, we can effectively analyse decision-making processes using three tools: namely discourse, dramaturgy and deliberation. Discourses are at the most basic level “shared ways of understanding the world” (Dryzek, 1997). Two different discourses of which I am sure we are all aware are ‘sustainable development’ versus ‘development at any cost’. Within decision-making processes, discourses are ‘performed’ in certain ways to gain power for that particular perspective or world view. Dramaturgy is the socially scientific term for what we have already touched on and the primary focus here – the analysis of

social interactions as performances. Lastly, deliberation according to Hajer (2005: 450) is “the *democratic quality* of a discussion”, where a high level of deliberation is an indicator of success in democracies. Using this ‘3D’ approach allows for a multifaceted look at the decision-making process and the actors within it.

Along with our analytical repertoire, we need a case to work through – ours will be water quality and the marine environment in Durban as seen through WESSA’s Coast Watch Marine Cumulative Impact Initiative (CMCII). Running from 2003 to 2009, this initiative primarily dealt with pipelines along the KwaZulu-Natal coast, but eventually became involved with a number of other marine and coastal challenges, particularly around water quality. Notable issues were the 2008 loss of Blue Flag status for eThekwinini’s beaches and the Durban Bay fish kill in 2007, as well as various concerns about the regulation, monitoring and assessment of marine and riverine pollution.

Of particular interest to us is that this initiative started and participated in a number of forums and decision-making processes, for example the Durban Bay Authorities Forum, the Marine Advisory Group, License Advisory Forums, the Provincial Coastal Committee and more – and so we can use these to examine power, discourse and politics at play. To get to the juicy bits of our performance plot, we are now set to pick out key findings from my research on the CMCII conducted in 2008.

ACT II

When analysing dramaturgy, we have to examine the setting, scripting, staging and overall performance found within a given decision-making process. All of these are crucial aspects. However, for our purposes, we only need to draw out some of the staging findings to get a feeling for the importance of analysing performance in environmental decision-making processes and its relevance to practitioners, professors and the public alike.

Staging refers to how actors (stakeholders in a decision-making process) stage a particular interaction; in other words, how they do what they do. It also includes the key difference between those who are the actors, and those who are considered the audience, and thus ‘presumably passive’ – a critical difference if, for example, we think of the way public participation processes are handled.

Let us take the situation in which stakeholders ‘act out of

¹Ratolorum is a Shakespearean/Elizabethan word meaning ‘a ludicrous mistake’ and it is no longer in common use today.

turn'. This is when actors attempt to gain power through staging their arguments in a way that defies the scripted formalities of meetings. The behaviour reflected in this particular staging is unexpected and demands attention – for example, emotionally charged statements in a formal meeting. I am sure we can all easily recall a meeting when this has happened. This behaviour may have positive consequences, such as to highlight the urgency of the environmental issue and in doing so to influence the decision-making processes. On the other hand, 'acting out of turn' can create conflict and tension if other stakeholders begin to feel that such performances are inappropriate. It can also be a show of dominance – for example, one government official in meetings involving the CMCII frequently interrupted, walked out to speak on his cellphone and made comments such as: "... my priorities will be determined by myself... I can't work only for this committee". An awareness and understanding of 'acting out of turn', which has the potential to either disrupt or enable progress, is crucial for effective performance within decision-making concerning the marine environment with its wide range of stakeholders, high stakes, strong positions and heated debates.

Another key finding is the notion of a 'backstage'. Scripted processes take place formally on the 'front stage', while many engagements take place outside of meetings – or 'backstage' (Scott and Oelofse, 2007). The 'backstage' refers to external interactions and it is facilitated by new communication technologies such as email and even social networking sites. In the words of the CMCII facilitator and WESSA environmental coordinator, "... it's what you do behind the meetings, not what you do in them". An example of this would be the way that the CMCII carefully planned who would present which ideas in the meetings before they happened. This was because they found that often authority representatives would accept a proposal if it came from another authority representative but not from an NGO stakeholder. To engage successfully on both of these stages, as the CMCII did, is a powerful achievement for organisations and/or individuals involved in decision-making.

It is important to mention the presence of 'offstage voices' in environmental decision-making. With the CMCII processes, the media was a very strong offstage voice – one not present at the various meetings and forums, but which influenced them none the less. The CMCII facilitator, for example, stated after the Durban Bay Authorities Forum meeting on the 18 March 2008 that:

"the real seat of power in that meeting yesterday... was held by a role player that was not at the meeting – the media. The pooh [*sic*] has hit the fan about pollution of our water resources as a result of the article written by

Tony Carnie of the *Mercury*..."

So pertinent is the influence of the 'offstage voice' that strategies for the stakeholders to use the media to their advantage, or simply curb what is reported, are often discussed by the actors themselves in the meetings (on the front stage). There are two reasons for the influence of the media in our case of water quality in Durban. Firstly, the media puts extreme pressure on authorities to take action over incidents of poor water quality, and this influences their reactions in the meetings and the forums – especially in the case of the very public loss of Blue Flag status and the Durban Bay fish kills. Moreover, the media is the mediator between the actors (government and private business) and the passive audience (the public at large), making this 'voice' an extremely powerful one in influencing the public's perceptions of authorities.

Thus, as the curtains come down on Act II – where we were able, partly, to witness the dismantling of decision-making processes – my hope is that you will have gained insight into the importance and relevance of this kind of analysis of environmental decision-making. It is true that for all those working in the environmental field, it may seem that this type of examination, firmly based in the social sciences as it is, only has to do with those processes that are more 'peopled' and more political, such as public participation. However, if you take just these three elements of staging (and there are many other aspects to performance), it is clear that they can be found in all types of processes, even those involving hard core environmental science.

Take, for example, the case of the Blue Flag beaches in eThekweni. A large part of the discussion was based on water quality – 'clean or not clean; that is the question', as Hamlet would say. As the issue unfolded there was one side arguing that the water was fine and another that it was not – tests were done but they were interpreted in different ways and the method of testing was also a point of contention. Essentially then, it came down to how the science was presented, who it was presented by and of course how the 'audience' reacted to it, reinforcing the importance of performance in all aspects of environmental decision-making.

EPILOGUE

All good plays have something we can take away from the theatre and apply in our own lives, and this little script is no different. Once aware of performance and its influence on power within environmental decision-making processes, we as environmental practitioners, academics, authorities and the public may have an improved understanding of the process – as well as of other stakeholders. We can better our own performances and can ensure our management of the

process is more effective. This is increasingly important in today's society with the rising number of partnerships, multi-stakeholder forums and cooperative governance, within which performance is even more important; we only have to watch the global climate change negotiations to witness this. Thus, by examining what happens in environmental decision-making processes, we can become empowered as stakeholders within our various fields and, over and above that, as environmentally and socially aware citizens in a democracy.

THE END

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IAIASa2011 Conference

All the information pertaining to the conference is now available on http://www.iaia.co.za/Conference_2011/Pages/general.asp

Please have a look at all the opportunities to participate in what promises to be a very exciting and rewarding conference, with plenty of preconference training courses and field trips and more leisurely activities. KwaZulu-Natal always provides something fresh, challenging and interesting! A lot of thought and planning have gone into the sub-themes and ways in which delegates can participate.

We trust that the industry will make use of the opportunity to showcase their goods and services at the **exhibition** during the conference.

If you have a contribution to make or an issue that you have not yet raised with the conference organisers but which you feel needs to be addressed, please make contact with the Secretariat.

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IUCNAEL2011

The **IUCN Academy of Environmental Law** will hold its 9th Colloquium, *Water and the Law: towards Sustainability*, at Mpekweni Beach Resort in the Eastern Cape during 3 – 8 July 2011.

The aim of the Colloquium is to share understanding and experience in this field of research, not only to document the challenge, but to gain insight into what needs to be done, what has been tried, what is working and what might work as regards water and the law.

The Colloquium programme, general information and registration form are available on the website www.iucnael-watercolloquium-2011.com

Non-Academy members are very welcome to register for the colloquium.

Please register on the website, or for further particulars and enquiries, please make contact with the Colloquium coordinator Glaudin Kruger at telephone numbers 028 316 2905 and 072 320 7015.



A significant development during the period under review is the judgement in S v Frylinck and Another which has important implications for environmental assessment practitioners.

Biodiversity

The Minister of Water and Environmental Affairs published for comment in terms of section 100 of the National Environmental Management: Biodiversity Act, 10 of 2004, the draft Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Amendment Regulations. The notice invited any person who wished to submit representations or comments in connection with the CITES Amendment Regulations to do so within 30 days of the date of the notice (GN 1101 in GG 33833 of 3 December 2010).

The Minister of Water and Environmental Affairs published for comment in terms of section 100 of the Biodiversity Act, the draft Threatened or Protected Species (TOPS) Amendment Regulations. The notice invited any person who wished to submit representations or comments in connection with the TOPS Amendment Regulations to do so within 30 days of the date of this notice, to the Director-General of the Department of Environmental Affairs (GN 1100 in GG 33833 of 3 December 2010).

The Minister of Water and Environmental Affairs announced by publication that the CITES Appendices had been amended as agreed at the 15th meeting of the Conference of Parties to CITES and these came into effect on 24 June 2010. These amendments include the withdrawal of *Haliotis midae* (Abalone) from CITES Appendix III. The CITES Appendices are available on the official website

of CITES, (GN R.1205 in GG 33870 of 13 December 2010).

The date by which to send comments regarding the draft norms and standards for the Management of Damage Causing Animals was extended allowing the public to submit representations and/or objections to the draft norms and standards until 31 January 2011 (GN 1142 in GG 33900 of 31 December 2010). The Regulations have been amended as follows:

Regulation 1 of the Regulations is amended by the substitution for the definition of “Deputy Director-General” for the following definition: “Deputy Director-General means the Deputy Director-General of the Department of Environmental Affairs within the branch responsible for coastal matters” (GN. R. 1012 in GG 33711 of 5 November 2010).

Proposed prohibited activities involving specimens of certain *Encephalartos* species (cycads) were submitted for comment in terms of the Biodiversity Act, 2004 (GN 92 of GG 34026 of 15 February 2011). These prohibited activities include the trading in certain *Encephalartos* species listed as critically endangered with a stem diameter of more than 15cm and with the exception of *Encephalartos cerinus*, where trade is prohibited if the stem diameter is more than 7 cm, for a period of 5 years.

In terms of the Biodiversity Act, 2004, a Bio-prospecting Benefit Sharing Agreement was entered into between Edakeni Muthi Futhi Trust and the Edakeni community in Umlalazi Municipality, KwaZulu-Natal. Information relating to this agreement was published, inviting any person to submit representations and objections within 30 days of the publication of the notice (GN 133 of GG 34093 of 10 March 2011). The information was published as required by section 100 of the Act read with regulation 17(3)(c) of the Bio-prospecting, Access and Benefit Sharing Regulations, 2008.

Air

Proposed regulations regarding the phasing-out and management of ozone depleting substances in the Republic of South Africa

have been published (GN 12 in GG 33925 of 14 January 2011).

Water

The notice of a proposed allocation schedule for the Tosca Molopo geographic area in terms of section 45(4)(a) of the National Water Act, 1998, invited any written objections on the proposed allocation schedule, no later than 60 days from the date of publication of the Notice (GN 1204 in GG 33869 of 17 December 2010).

Water use restrictions were imposed in terms of section 6(1)(i) of schedule 3 of the National Water Act, 1998, in the following municipalities: Mossel Bay, George, Knysna and Bietou in the Western Cape. As from 1 January 2010 until further notice, the taking of raw water for domestic and industrial purposes from natural resources in the areas of jurisdiction of the following municipalities was reduced by 40%, to supply 60% of the unrestricted use. The reduction is based on water consumption in the periods as indicated, and allowing for adjustment to allow for population growth. The taking of groundwater from private boreholes for the irrigation of gardens is not permitted between 7h00 and 19h00 hours (GN 1203 in GG 33859 of 17 December 2010).

Water use restrictions were imposed in terms of section 6(1)(i) of schedule 3 of the National Water Act, 1998, in the Local Municipality of George in the Eden District Municipality of the Western Cape as from 15 November 2010 until further notice. As follows: the taking of raw water for domestic and industrial purposes from natural water resources in the local municipal area of George is reduced by 30%, to supply 70% of the unrestricted use. The restrictions are to be applied at the points of source as well as on the consumptive use. The reduction is based on water consumption in the period indicated and will be adjusted to allow for population growth (GN 1260 in GG 33909 of 28 December 2010).

In terms of the Water Services Act, 108 of 1997, the service area of the Sedibeng Water Board has been extended by the Department of Water Affairs (GN 311 of GG

34185 of 8 April 2011) and the Namakwa Water Board has been disestablished (GN 312 of GG 34185 of 8 April 2011).

In terms of the National Water Act, 36 of 1998, restrictions have been placed on the use of water for domestic, industrial and agricultural uses from the Kouga Dam and the Gamtoos Canal, from the Kromme River Government Water Scheme (the Impofu Dam) and Churchill Dam on the Kromme River, and from the Groendal Dam on the KwaZungu River, in the Fish-to-Tsitsikamma Water Management Area in the Eastern Cape Province (GN 295 in GG 34183 of 6 April 2011).

Restrictions have been placed on the use of domestic water in the town of Beaufort West in the Western Cape (GN 92 in GG 34002 of 11 February 2011).

Forestry

A correction notice was published in respect of the list of Champion Trees in terms of section 12(1)(a) and section 12(1)(b) of the National Forests Act, 84 of 1998, as amended (GN 1132 of GG 33812 of 3 December 2010).

Fisheries

Regulations published in terms of section 77 of the Marine Living Resources Act, 18 of 1998, have been amended (GN 1060 in GG 33767 of 12 November 2010). Regulation 51 is amended by substitution as following:

A person over the age of 12 years may obtain from any authorised office a recreational fishing permit to engage in fishing, collecting, keeping, controlling, landing or transporting of, or to be in possession of not more than four west coast rock lobster per day everyday from 15 November to 21 November, only on weekends and public holidays from 27 November to 12 December, everyday from 13 December to 31 December in any year all dates inclusive and only weekends and public holidays from 1 January to 16 January, from 17 January to 21 April no recreational fishing is allowed, and only on weekends and public holidays from 22 April to 25 April in any

year both dates inclusive, subject to the payment of the fees determined by the Minister under section 25 of the Act (GN 1060 in GG 33767 of 12 November 2010).

Annexure 2 to the regulations is hereby amended by substitution:

“recreational or subsistence permit - from 26 April in any year to 14 November in any year all dates inclusive” (GN 1060 in GG 33767 of 12 November 2010).

Environmental Impact Assessment (EIA)

The Minister of Water and Environmental Affairs published for public comment in terms of section 47(1) of the National Environmental Management Act, 1998, the draft amendments to the Environmental Impact Assessment Regulations, 2010 under sections 24(5), 24M and 44 the Act, 1998. The publication invited any person who wished to submit written representations or comments in connection with the draft amendments to do so within 30 days of the date of this notice (GN 1103 in GG 33841 of 10 December 2010). This time period was extended by notice in the Government Gazette to include comments submitted up to 8 March 2011 (GN 46 in GG 33954 of 28 January 2011).

The Minister of Water and Environmental Affairs published corrections to the Environmental Impact Assessment Regulations, 2010 in terms of sections 24(2), 24(5), 24D and 24M, read with section 47A(1)(b) of the National Environmental Management Act, 1998 (GN R. 1159 GG 33842 of 10 December 2010).

Waste

The Minister of Water and Environmental Affairs published an intention to make amendments to the published List of Waste Management Activities which have, or are likely to have, a detrimental effect on the environment in accordance with section 19 (1) of the National Environmental Management: Waste Act, 59 of 2008, inviting interested and affected parties to submit written comments within

60 days of publication of the notice (GN 1113 in GG 33880 of 14 December 2010).

The National Domestic Waste Collection Standards were published under section 7(10)(b) of the National Environmental Management: Waste Act, 59 of 2008 (GN 21 of GG 33935 of 21 January 2011). These standards came into effect on 1 February 2011. The purpose of these standards is to ensure “acceptable, affordable and sustainable waste collection services.”¹

The Minister for Environmental Affairs published a list of proposed changes to licensing authorities in terms of the National Environmental Management: Waste Act, 59 of 2008 (GN 77 in GG 34019, 18 February 2011). These proposed changes are listed in schedule A and will allow MECs to consider certain applications for waste management licences in terms of section 43(3) of the Act. The Minister invited the submission of written comments in relation to these proposed changes, this period has however expired.

The Draft Municipal Waste Sector Plan was published for public comment by the Department of Environmental Affairs (GN 182 in GG 34167 of 30 March 2011). Interested and affected parties were invited to submit comments within 60 days of publication of the notice. This Sector Plan has been drafted in order to assist the fast tracking of service delivery and to address backlogs.

Agriculture

In terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947, a Pesticide Management Policy for South Africa has been adopted. The policy was published in the Government Gazette (GN 1120 in GG 33899 of 24 December 2010). Proposed regulations have been published relating to fertilizers under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (GN 160 in GG 34134 of 25 March 2011).

¹GG 33935 of 21 January 2011, page 15.

Genetically Modified Organisms

Amendments have been made to the schedule in the regulations concerning fees payable under regulations published in terms of the Genetically Modified Organisms Act, 15 of 1997 (GN 106 in GG 34020 of 18 February 2011).

Protected Areas

In terms of the National Environmental Management: Protected Areas Act, 57 of 2003, the KwaZulu-Natal Conservation Board declared the following:

- the Hilton College Nature Reserve (PG 552 in Notice 2, 17 February 2011);
- the Mpushini Protected Environment (PG 552 in Notice 3, 17 February 2011);
- the Gelijkwater Mistbelt Nature Reserve (PG 552 in Notice 4, 17 February 2011);
- the Mbona Private Nature Reserve (PG 552 in Notice 5, 17 February 2011) and
- the Somkhanda Game Reserve (PG 552 in Notice 6, 17 February 2011).

Miscellaneous

The KwaZulu-Natal Mandeni Municipality has published its Waste Management By-law (PG 535 Notice 3 12 January 2011 in terms of the Constitution and Local Government: Municipal Systems Act 32 of 2000). The City of Cape Town has published its Water By-law (PG 6847 of 18 February 2011 in terms of the Constitution and Local Government: Municipal Systems Act 32 of 2000) and George Municipality has published a Water and Sanitation Services By-law (PG 6839 of 22 February 2011 in terms of the Constitution and Local Government: Municipal Systems Act 32 of 2000). The Eastern Cape Buffalo

Municipality has published its Water Services By-law (LAN 4 PG 2532 of 22 March 2011 in terms of the Constitution and the Local Government: Municipal Systems Act, 32 of 2000).

The KwaZulu-Natal Msunduzi Municipality issued a correction notice relating to the Water Services By-law (LAN 36 in PG 565 of 31 March 2011 in terms of the Constitution and Local Government: Municipal Systems Act 32 of 2000).

Case law

In *S v Frylinck and Another*, an environmental assessment practitioner (EAP) was convicted in terms of regulation 81(1)(a) of the Environmental Impact Assessment Regulations, 2006, for providing incorrect and misleading information in a basic assessment report. The EAP, Stefan Frylinck, of Mpofo Environmental Solutions CC, submitted a basic assessment report which stated that no wetland existed within a 500m radius of the site proposed for the Pan African Parliament construction site in Midrand. The EAP failed to undertake a wetland delineation or consult a wetland specialist, despite indications of a wetland on the site. An environmental authorisation was granted on the basis of the information contained in the Report but later it became apparent that construction was causing serious damage to a wetland on the site. The Court held that the EAP failed to meet the standard of conduct required of an EAP, as a reasonable person would have sought the advice of a wetland specialist.

In *Shear v Eye of Africa Development (Pty) Ltd and Others*, the South Gauteng High Court set aside an amendment to an

environmental authorisation granted in terms of the Environmental Impact Assessment (EIA) Regulations, 2006. Eye of Africa was granted an amendment to their environmental authorisation, allowing for the use of borehole water as opposed to grey water, to irrigate the golf course. The court found that this could potentially adversely affect the environment and therefore a public participation process in terms of regulation 42(3) of the EIA Regulations should have been undertaken. This judgement evidences the increasing importance of ensuring adequate public participation in decisions affecting the environment.

In *HMKL 3 Investments (Pty) Ltd v the South African National Roads Agency Limited and Others*, the North Gauteng High Court considered an urgent interdict application to prevent the South African National Roads Agency (SANRAL) and Trencon Construction from erecting a toll gantry on a section of the N1 in Pretoria. The interdict was granted, amongst other things, due to SANRAL's failure to consider the environment when determining the location of the toll gantry. The Court held that the failure to consider the environment constituted non-compliance with a "material issue". This judgement gives effect to the precautionary principle found in NEMA, in terms of which decisions by government agencies must be made with due consideration to potential environmental harm.

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