THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002 AND MINE CLOSURE OBLIGATIONS

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Existing requirements – Minerals Act 50 of 1991

Requirements under Mineral & Petroleum Resources Development Act

- Preamble and objects
- Management principles
- Responsibility to remedy
- Management programmes
OUTLINE (cont.)

- Financial provision
- Issuing a closure certificate
- Transfer
- Other laws?
- Transition

t he l aw o f b us i n e s s ▲ t he b us i n e s s o f l aw
Section 9(3)(c) - no mining authorisation unless the applicant has the ability and can make the necessary provision to mine such mineral optimally and to rehabilitate disturbances of the surface.

Section 12 - Continuation of liability until certificate is issued.

Section 38 - Rehabilitation of surface of land:

- in accordance with EMP;

- as an integral part of mining operations.
Section 39 - EMP in respect of surface of land concerned

Section 40 - Removal of buildings, structures and objects
Affirm the state’s obligations to:

- protect the environment for the benefit of present and future generations;

- ensure ecologically sustainable development of mineral and petroleum resources;

- promote economic and social development
Section 37(1): The principles set out in section 2 of the National Environmental Management Act, 1998 apply to all prospecting and mining operations and serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.

Section 37(2): prospecting or mining operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.
The holder of the reconnaissance permission, prospecting right, mining right, mining permit or retention permit must inter alia:

- manage impacts in accordance with the approved EMP and as an integral part of mining operations

- as far as it is reasonably practicable rehabilitate the environment to its natural or predetermined state or a use which conforms with general principles of sustainable development

- is responsible for environmental damage, pollution, or degradation as a result of mining, inside or outside the boundaries of the mining area
- Time frameworks for request (14 days of application), submission (180 days) and approval (120 days) of the EIA and EMP.

- The right only becomes effective on the date on which the EMP is approved.
The Minister must, following consultation with relevant State departments approve the plan if:

- it complies with the requirements set out in 39(3)

- the applicant has complied with section 41(1) (financial provision for rehabilitation)

- the applicant has the capacity, or has “provided for the capacity”, to rehabilitate and manage negative impacts on the environment

Regulation 34 of the draft regulations requires that the EMP must provide a description of the environmental objectives and specific goals for mine closure
FINANCIAL PROVISION

- Defined in the Act as the insurance, bank guarantee, trust fund or cash: "... guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the prospecting, mining, reconnaissance, exploration or production areas"

- The holder must annually assess his or her environmental liability and increase financial provision to the satisfaction of the Minister

- The draft regulations include standard forms for financial provision (with the exception of insurance). The standard forms reflect existing practice
Section 43

The holder remains responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Minister has issued a closure certificate to the holder concerned.

The holder, or the person to whom identified rights and liabilities are transferred, must apply for a closure certificate from the Regional Manager within 180 days of-

- the lapsing, abandonment or cancellation of the right or permit in question;

- cessation of the prospecting or mining operation;
ISSUING OF A CLOSURE CERTIFICATE (cont.)

- the relinquishment of any portion of the prospecting of the land to which a right, permit or permission relate; or

- completion of the prescribed closing plan to which a right, permit or permission relates.

- The application must be accompanied by the prescribed environmental risk report.

- The Chief Inspector and the Department of Water Affairs and Forestry must confirm in writing that the provisions pertaining to health and safety and management of potential pollution to water resources have been addressed.
The Minister may return a portion of the financial provision to the holder but may retain any portion of such financial provision for latent and or residual environmental impact which may become known in the future.

The draft regulations set out general requirements for closure and require that the applicant must ensure that:

- closure is regarded as a life-cycle process
- environmental risks must be quantified and managed pro-actively
- the safety and health of humans and animals are safeguarded
- environmental damage and residual impacts are minimised
- land is rehabilitated to, as far as is practicable, its natural state
- closure is efficient and cost effective
ISSUING OF A CLOSURE CERTIFICATE

An application for a closure certificate must be accompanied by an environmental risk report.

The draft regulations require that the risk report must include:

- an initial screening level risk assessment

- a second level risk assessment on issues classified as potential significant risks

- the identification of alternative risk prevention or management strategies

- agreement (it is not clear with who) on management measures to be implemented
The Minister may transfer environmental liabilities and responsibilities identified in the EMP and any prescribed closure plan to a person “with such qualifications as may be prescribed.”

The Chief Inspector and the Department of Water Affairs and Forestry must confirm that the provisions pertaining to health and safety and management of potential pollution to water resources have been addressed.
The regulations require that the qualified person must *inter alia* have:

- expertise, resources and ability to integrate risk assessment, risk management, and risk financing to ascertain the cost of environmental management

- the expertise and resources to fulfill the obligations in the EMP

- acess to insurance products and and alternative risk financing services

- “the ability to manage trusts set up in terms of section 10(1)(cH)

- expertise and exerience to interpret and manage the findings of a risk assessment
Prospecting rights and mining rights are subject to "any other relevant law"

- National Environmental Management Act
- Atmospheric Pollution Prevention Act
- Air Quality Bill
- National Water Act
Any EMP submitted for approval in terms of section 39(1) of the Minerals Act which had not been approved when this Act took effect must be regarded as having been lodged in terms of section 39 of the Act.

One of the requirements for conversion of an old order prospecting or mining right is an approved EMP (no mining with a temporary license will be possible).

Any EMP approved in terms of section 39(1) of the Minerals Act remains in force.

The Minister may order amendment to an existing approved EMP to “bring it in line with the Act”.

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A person exempted in terms of 39(2)(a) of the Minerals Act may apply for an exemption in terms of the new Act, but the new Act does not provide for exemption.

If the holder of an old order prospecting right or old order mining right ceases the relevant prospecting or mining operation, the holder must apply for a closure certificate in terms of section 43.
In many respects the Mineral and Petroleum Resources Development Act enacts and legislates existing practice.

DME remains the lead agent.

No time framework prescribed for issue of mine closure certificate.

Closure is a life-cycle process.