



### APRIL NEWSLETTER 2020

Dear Readers,

We hope that you and your family are safe and healthy amidst the COVID-19 crisis.



The April edition of our newsletter looks at updates on mine closure and COVID-19, while also focusing on recent legal notices and amendments.

### NATIONAL LEGISLATION

❖ **DISASTER MANAGEMENT ACT 57 OF 2002**

GN R471 in GG 43240 of 20 April 2020 - 'Lockdown Regulations' issued in terms of s. 27 (2) of the Act amended

GN 479 in GG 43257 of 29 April 2020 - COVID-19 Occupational Health and Safety Measures in Workplaces COVID-19 (C19 OHS), 2020

Gen Notice 250 in GG 43256 of 29 April 2020 - Mineral Resources and Energy Directions - Measures for the Protection and Safety of Persons

❖ **FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT 36 OF 1947**

GN R395 in GG 43146 of 27 March 2020 - Regulations relating to the tariffs for the registration of Fertilizers, Farm Feeds, Agricultural Remedies, Stock Remedies, Sterilizing Plants and Pest Control Operators, Appeals and Imports amended with effect from 1 April 2020

❖ **PETROLEUM PRODUCTS ACT 120 OF 1977**

GN R434 in GG 43185 of 31 March 2020 - Regulations in respect of the maximum retail price of Liquefied Petroleum Gas supplied to residential customers published in GN R242 in GG 43063 of 3 March 2020 substituted with effect from 1 April 2020

❖ **NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT 57 OF 2003**

Proc 15 in GG 43145 of 27 March 2020 - Declaration of an area as the Meerkat National Park

PROVINCIAL LEGISLATION

❖ **KWAZULU-NATAL**

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998**

PN 39 in PG 2178 of 2 April 2020 - Ugu District Municipality - Environmental Management Framework

❖ **EASTERN CAPE**

**DISASTER MANAGEMENT ACT 57 OF 2002**

Gen Notice 10 in PG 4407 of 20 April 2020 - Kouga Local Municipality - Extension of Local State of Disaster due to the prevailing drought conditions for a further month

FOR COMMENT

- ❖ Draft framework for the risk-adjusted strategy to bring different sectors of the economy back to work 25 April 2020

**MINE CLOSURE OBLIGATIONS – CLOSE THE DRIPPING TAP**

*27 April 2020 by Adam Gunn*

South Africa's mine closure and related environmental legislation is a minefield.

Being one of the countries in the world with the longest legacy of mining, mine closure is complicated due to the longevity of certain mines, the change in legislation, land uses and other factors over the life of mine. Currently, mine closure is regulated by a host of legislation – principally the National Environmental Management Act 108 of 1998 (NEMA), the Mineral

and Petroleum Resources Development Act, 28 of 2002 (MPRDA) and where water issues are concerned the National Water Act 36 of 1998 (National Water Act).

A conclusion to which all mines strive is to obtain sustainable closure at the end of the life of mine. Section 43 of the MPRDA states that mines must apply for a closure certificate at the end of life of mine. Section 43 (1) states that mines remain responsible for the environmental impacts thereof until a closure certificate is issued. It does not go so far as to say though that once a closure certificate is issued the mine is no longer liable, but this inference could be drawn.

In addition, NEMA and the ubiquitous duty of care is specifically retrospective and was purposefully made to be so, after some cases such as *Bareki NO and Another v Gencor Ltd and Others 2006 (1) SA 432 (T)* required clarity in this regard. Section 28 of the NEMA was subsequently amended to ensure that it is retrospective as the wording of Section 28 originally referred only to persons who caused pollution whereas today's amended section refers to anyone who caused, may cause or has caused pollution or degradation.

In addition, NEMA Section 24(R)(1) states that the holder of a mining right remains liable for environmental liability, pollution or ecological degradation, the pumping and treatment of polluted or extraneous water, the management and sustainable closure thereof, notwithstanding the issuing of a closure certificate.



Therefore, how is a mine to obtain closure and a level of certainty and confidence that environmental liabilities and obligations have been dealt with and that the mine is not going

to be held accountable years down the line, an issue which is particularly difficult to deal with when all economic activity has ceased? In short, how is the dripping tap of liability to be closed?

The answer is multi-faceted, but the following can be used as guidelines.

- Compliance to the conditions of the environmental authorisations during life of mine. This may seem obvious but with the multitude of authorisations and sometimes onerous conditions, it is not so simple. A good environmental management system is beneficial as are a committed environmental staff. In fact environmental compliance needs to be built into all staff performance for it to succeed.
- Ensuring conditions are not overly-onerous. Too often a mine simply accepts the conditions of an authorisation so that it can commence mining, however it is not able to comply with the conditions. If that is the case, this needs to be addressed with the authorities timeously.
- Mining towards sustainable closure. Mines that follow a closure programme and incorporate it into their mine plan are more likely to succeed.
- Identifying post-mine sustainable land uses and working together with these stakeholders.

- Embrace innovation. There are a host of innovative products and solutions available to assist with issues such as water treatment and soil remediation.
- Strive towards relinquishment. The MPRDA specifically acknowledges this principle and mines should aim towards relinquishment of the mines assets and land while dealing with environmental issues in a sustainable way.

One can think of a few examples of relinquishment and sustainable mine closure in South Africa. While some of the scars of mining might never be erased, ensuring a sustainable land use and community post-mine closure ensures that the land and assets are applied to another purpose. Kimberley is a good example, with the great hole being a major tourist attraction and Kimberley is an administrative hub and Capital of the Northern Cape. The towns of Barberton and Cullinan have also been turned into tourist centres.

At the end of the day, mines need to strive towards relinquishment and have a plan to deal with any latent environmental impacts. That is, transferring the mine and its assets for sustainable land use after mining activity. This principle is not new but it is gaining momentum and acceptance as the best way for a mine to close the dripping tap of liability.

In our next few issues, we will explore some other topics related to mine closure such as pit lakes and sustainable water treatment.

### **TO RECOVER FROM COVID-19, SA NEEDS 'GREEN NEW DEAL'**

*24 April 2020 by Alex Lenferna & Jennifer Wells*

South Africa is being urged to tackle the Covid-19 and climate crises with a single strategy — transforming its economy along more just, inclusive and environmentally friendly lines.

Prior to the outbreak of Covid-19, South Africa was in its second recession in the space of a few years — which came on top of deepening inequality and poverty. The South African Reserve Bank has forecast the country's GDP to contract by 6.2% in 2020 — but even that figure may end up being an underestimation, with all predictions being marked by “extreme uncertainty”, according to the International Monetary Fund's chief economist.

In the short-term, the government needs to adequately resource public health services and put in place measures to prevent people from buckling under the impact of economic blows from Covid-19. Examples from stimuli packages in other countries include cash grants, wage cover, food packages, extended paid sick leave, childcare, rent and mortgage holidays, and much more.

On Tuesday night President Cyril Ramaphosa announced a major stimulus and recovery programme worth R500 billion — which will help fund such measures.

In the longer term, though, the South African economy will need a much bigger boost as, even with short-term measures in place, there is a risk that the long-term impact will be devastating.

According to the chief of the UN's International Labour Organisation, the world faces the prospect of 195 million job losses in the next three months alone. Such an effect could push hundreds of millions more people into unemployment, underemployment and working poverty.

### **Towards a Longer-Term Solution**

Momentum has been growing recently for governments to implement a "Green New Deal" (GND), a major government-led programme to build a more socially and economically just, green and renewable energy-powered economy and resilient society that promotes human rights and addresses poverty and inequality. This is now needed more than ever as it would help counter the damage wrought by Covid-19.

As the UN's Intergovernmental Panel on Climate Change has highlighted, to keep global warming from surpassing the crucial threshold of 1.5°C, transformation across virtually all sectors of society is required. If all countries implement a GND up to the task, a UN report shows that 170 million new jobs can be created globally, nearly making up for the projected job losses from Covid-19.

Such a project can also create a more just and economically prosperous future.



A Green New Deal can significantly boost an economy and reduce healthcare costs. Research from Stanford University shows that, with renewable energy becoming increasingly cheaper than fossil fuels, a 100% renewable energy system will save the world about R200 trillion on fuel costs every year. It would also save the world a further R180 trillion every year by reducing the health and ecological effects of fossil fuel pollution.

In South Africa, studies show a renewable energy system could cut energy costs by a quarter, compared to sticking with the existing polluting coal-fired system. It would also create 200,000 more jobs, lower the cost of energy by 25%, save 196 billion litres of water per year, make the energy system more reliable and remove our biggest source of air, water and climate pollution.

Those additional 200,000 jobs are in the energy sector alone. Transforming the broader society to a zero-carbon, resilient future pushes the potential new jobs estimate above a million.

As with the Covid-19 crisis, the longer we wait to tackle the climate crisis, the worse the effects will be – and the results of delaying action on climate could be much worse in the long run.

### **Covert Covid-19 Operations**

Heading in the opposite direction of a GND, on Day 1 of the lockdown Minister of Mineral Resources and Energy Gwede Mantashe used the moment of distraction to sneak through regulation that weakens communities' right to say no to harmful mining projects. Minister of Forestry and Fisheries and Environmental Affairs Barbara Creecy also pushed through regulations, weakening clean air regulations, despite research showing high levels of air pollution may be “one of the most important contributors” to deaths from Covid-19.

Ramaphosa's delay in introducing a carbon tax — as part of the Covid-19 response — also raises worries that the interests of polluting corporations will be prioritised over the health of people as we make our recovery from the pandemic. We cannot afford to bail out polluting corporations and should not use the current crisis as an excuse to worsen the climate situation and foster environmental degradation. Polluting and corrupt coal projects are already costing South Africa too much, with just Medupi and Kusile power stations projected to cost almost as much as Ramaphosa's entire stimulus and recovery programme.

A South African-tailored vision of a GND provides a path to a more socially and ecologically just future. Not only would it help protect human rights and tackle the devastation of a Covid-19-induced recession, it would provide a route to dealing with the intertwined climate and Eskom crises. It could tackle both immediate threats to the country and one of the biggest long-term ones at the same time.

The GND vision is not just about renewable energy and climate change. It is about building a more ecologically *and* socially just future that protects all people, including workers, communities and people living in poverty. It is about protecting human rights and creating a stronger social safety net with access to basic services for all. It is about a transformative and just transition to ensure that nobody is left behind.

The government needs to be pushed to invest in the health of South Africa's people, its communities and its environment. We, the Climate Justice Coalition — a coalition of trade unions, civil society and community organisations working together on climate justice — are calling for a just recovery and a South African vision of a Green New Deal.

<https://www.dailymaverick.co.za/article/2020-04-24-to-recover-from-covid-19-sa-needs-green-new-deal/>

## **INTERESTING ENVIRONMENTAL TOPICS**

- ❖ **Barbara Creecy over-rules officials on air pollution data**  
<https://www.groundup.org.za/article/barbara-creecy-over-rules-officials-air-pollution-data/>
  
- ❖ **Department issues directives on Covid-19 protection for mineworkers returning to work**  
<https://www.businesslive.co.za/bd/national/2020-04-23-mines-department-issues-a-directive-over-return-to-work/>
  
- ❖ **Watch: Penguins on the loose in SA's empty streets**  
<https://www.businessinsider.co.za/penguins-roads-2020-4>

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This newsletter does not aim to provide a summary of all the legal developments in the environmental, mining and natural resources sectors. For professional legal advice on any particular issue, please contact us.