



# Environmental Law

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# Introduction

Parts of this chapter have been substantially adapted from *Environmental Law in South Africa* by Prof. Jan Glazewski. Certain information has also been taken from *Environmental Laws of South Africa* by P. W. G. Henderson.

The Constitution says that *everyone has the right to a safe and healthy environment*. What is the environment? It is a very broad concept and is generally understood to mean the surroundings within which we live, including the land, water and atmosphere of the earth; plants and animals; the relationships between these natural resources and animals, and the conditions that influence people's health and well-being.

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## Why do we need to protect the environment?

The quality of our environment affects all of us no matter where we live. When people abuse the environment, this affects us all. If water is polluted, if the air is full of smoke and chemicals, and if food contains poisons, people (and plants and animals) are harmed. Many of the natural resources that we use or consume every day, such as water, wood, minerals and fish, will soon run out if we do not limit the rate at which we use them. All people have a responsibility to protect and use the environment to ensure that it will be protected for ourselves as well as future generations.

Many people believe that human needs are more important than the environment and believe that our major aim should be promoting economic growth and creating jobs while the green (environmental) agenda should take second place. Some people feel hurt or insulted when others show concern over endangered species like rhinoceros when children do not have enough to eat.

However, the environment is the whole planet on which we live. Everything (winds, trees, animals, insects, people, etc) forms part of the living system of Earth. Because the earth has been so badly exploited and not protected, this has created changes in weather patterns - there are more droughts and more floods, good farmland is turning into desert, temperatures are rising, and most importantly, the ozone layer that should protect us from the dangerous rays of the sun has been damaged and is not functioning as effectively as it did before. All of this impacts how people live and is the reason why the concept of sustainable development is becoming more and more important.

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## What is sustainable development?

Sustainable development refers to development that can continue on an ongoing basis because it does not do irreversible harm to the environment. Development like this should balance social, economic and environmental concerns. This is not easy because these three concerns often compete with each other. For example, a sustainable forestry industry should allow a certain number of trees to be cut down and used by people, but at the same time, make sure that enough trees are left to be cut down and used in the future. This could be achieved by cutting down some of the trees and also planting new trees to replace those harvested so that there will be trees in the years ahead. Sustainable development is an international issue. South Africa has signed and ratified certain important international agreements that aim to protect the environment.

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## Which laws are relevant to the environment?

There are three categories of law in South Africa that affect the relationship between people and the environment:

1. The **Constitution** protects various human rights, including our right to enjoy and have access to the environment
2. The **Common Law** regulates how people interact with each other in the context of the environment and protects our use and enjoyment of our own property, for example, but limits it in certain ways so that this use and enjoyment does not interfere with the rights of other people
3. **National, Provincial and Municipal Laws (legislation)**: some laws are like a framework because they apply across all aspects of the environment. Other laws are sectoral in nature as they only apply to certain aspects of the environment, such as freshwater, the marine environment, forests or mineral resources, etc.

It is very important to understand that the different areas of law dealt with in this chapter do not work in isolation from each other. In other words, all of the laws that we talk about work together. Therefore, the Constitution, the common law and legislation work together like a web of rules, which you can use to determine the rights that people enjoy and how best to protect those rights. For example, if a community is experiencing problems with smoke pollution, you may find that they are protected by the Constitution, the common law and legislation all at the same time.

These three categories of law are discussed in more detail below. At the end of this chapter we will consider which strategies individuals and communities can use to protect their environmental rights.

## The Constitution

The Constitution contains a number of sections that are relevant to the environment.

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### **The Environmental Rights - Section 24**

Everyone has the right to:

- An environment which is not harmful to their health or well-being
- Have the environment protected for the benefit of present and future generations through reasonable legislation and other measures that:
  - Prevent pollution and ecological degradation
  - Promote conservation
  - Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development

Section 24, therefore, places a duty on all spheres of government to take reasonable steps - including making laws - to prevent pollution, promote conservation and ensure sustainable development.

#### **WHAT DO THE WORDS 'HEALTH AND WELL-BEING' MEAN?**

The meaning of these words is not entirely clear, so it will be up to the courts to decide on their exact meaning in the future. It seems that “health and well-being” include the following:

- Protection from pollution in the air, water, food or soil. This includes protection from dangers in the workplace and less obvious dangers to health, such as excessive noise.
- Protection of our well-being covers both physical and mental well-being. This would include protection from nuisances and invasions of privacy and dignity. The European Court of Human Rights recently ruled that a bad smell from a tannery that offended neighbouring residents was a violation of their right to privacy. In our law, this would probably qualify as a violation of the

right to well-being. The Eastern Cape High Court was required to consider a case in which the applicant argued that the production of hydrogen sulphide (which smells like rotten eggs) by a tannery was causing pollution in the neighbouring area. The Court held that to be forced to work in an 'environment of stench' was contrary to one's well-being. Therefore, we can say that something affects our well-being if it affects our ability to enjoy our life.

## **WHO CAN YOU ENFORCE YOUR ENVIRONMENTAL RIGHTS AGAINST?**

There has been much debate about the application of environmental rights. It is quite clear that these rights apply between the state and private persons. However, the question is whether the right applies between two private persons. It seems that the courts have accepted that environmental rights can apply between private persons. (See pg 33: Section 8: Application of the Bill of Rights)

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## **Other rights relevant to the environment**

The Constitution recognises the general need to improve the quality of life of all persons. Certain constitutional rights can be used to support reasonable environmental demands. However, it should also be noted that there may be tension between the environmental right and other rights in the Bill of Rights. These include:

- The right to life (Section 11)
- The right to human dignity (Section 10)
- The right to privacy (Section 14)
- Certain socio-economic rights that are relevant:
  - The right of access to adequate housing (Section 26)
  - The right of access to sufficient food and water (Section 27)
  - The right of access to health care services (Section 27)
  - The rights of children to basic nutrition and shelter, and to be protected from maltreatment, neglect, abuse or degradation (Section 28)

(See pg 43: Section 26: Right of access to housing; See pg 44: Section 27: Right of access to health care, food, water and social security)

## EXAMPLE

### GENERAL RIGHTS RELATING TO THE ENVIRONMENT

*A community residing in an informal settlement is living with no running water, refuse removal and sanitation. The bucket toilet system is used, which is a constant health risk to the environment and community. Which rights are potentially affected in this case?*

*The lack of water or sanitation in the informal settlement could pose a threat to the health of the residents. The failure of the local authority to provide toilets, water, sanitation, adequate housing, and refuse removal potentially violates many constitutional rights, including:*

- *The health of the residents*
- *The well-being of the residents is threatened*
- *The right of access to adequate housing*
- *The right of access to water is violated*
- *The rights of the children to be protected from degradation*
- *The right to life, due to the potential for the outbreak of a disease like cholera*
- *The rights to privacy and dignity, due to the lack of toilets*

#### **What can the residents do?**

*The Constitution places a duty on all spheres of government to take reasonable steps, including making laws and policies, to provide access to basic health care, food and running water. If the residents felt that the government had not taken reasonable steps to provide access to water, sanitation and housing, they would be able to approach a court, which would be required to decide whether the steps taken by the government to realise these rights were reasonable. Strategies the residents can take are suggested on **pg 757**:*

**Ways to resolve environmental disputes.**

## THE RIGHT TO EQUALITY - SECTION 9

The right to equality and non-discrimination is important for people working on environmental issues. An indirect form of discrimination was recognised in the United States of America, where it was found that most hazardous or polluting industries are built in poor or black neighbourhoods. These areas then bear an unequal share of the environmental problems from these industries as a result of their harmful effects on the health and safety of residents. This practice has been called environmental discrimination or environmental racism. Many decisions about the use of land taken in South Africa during apartheid can also be criticised as environmental discrimination.

The opposite of environmental discrimination can be called **environmental justice**. Environmental justice requires that:

- The benefits we derive from the environment are shared equally among all people
- Negative aspects, such as rubbish dumps or power stations, are shared among all communities

#### EXAMPLE

*A local municipality requires rubbish collection to take place only twice a month in a local township because the township is far from the main town centre. The wealthy neighbourhood, which is close to town, has rubbish collections once a week. This is a clear case of inequality on the part of the municipality.*

#### THE RIGHT OF ACCESS TO INFORMATION - SECTION 32

Section 32 of the Constitution guarantees every person the right of access to any information held by the state and any information that is held by another person that is required for the protection of any rights. The right to information is important for environmental issues. Without access to the proper information, people do not know what action is being planned or the procedures that will be followed. It is not possible to participate properly in public debates if the public doesn't have relevant information. For example, the public has the right to know in advance about possible plans for the building of a new railway line or factory in their neighbourhood, and they have the right to inform decision-makers if they are against the building of these structures.

The *Promotion of Access to Information Act* (No. 2 of 2000) (PAIA) sets out detailed procedures which must be followed in order to obtain access to information.

## EXAMPLE

1. *People in your community own land next to the sea. They find out that a developer has applied to the local government for permission to build a steel mill in the area in which they live. Although they have tried to get information about the proposed development from the developer, they have not been successful. Members of the community are concerned that the development of the steel mill could cause pollution and other environmental problems. They need this information to participate fully and effectively in the public consultative process that is to follow.*
2. *A large factory is established next to your community. Many people get sick and you suspect that it is caused by fumes from the factory. The company refuses to tell the community what substances are being produced by the factory. People need this information to be able to lodge a complaint with the relevant authority.*

The community can demand this information from the developer or factory as well as from any government department or local authority which has access to the relevant information. The best way to protect this right of access to information is to make an application to the court for an order telling the developer or factory to provide the community with the information that it needs.

Before a community takes any action, it will have to establish that a constitutional right (such as the environmental right) has been infringed. Secondly, it will have to prove that it needs the information to protect this right. Thirdly, the community will need to comply with the procedures set out in PAIA. Many environmental non-governmental organisations have relied on this right to obtain access to information, for example, concerning genetically modified organisms.

## THE RIGHT TO JUST ADMINISTRATIVE ACTION - SECTION 33

Administrative action refers to decisions made by the state and representatives of the state. Environmental conflicts often arise as a result of the incorrect or unfair use of administrative decision-making powers. In terms of Section 33:

- Everyone has the right to administrative action that is lawful, reasonable and procedurally fair - Section 33(1)
- Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons for the decision - Section 33(2)

The Government has passed the *Promotion of Administrative Justice Act* (No. 3 of 2000) (PAJA), which sets out what administrative action is, the actions that would amount to procedurally fair administrative action, the grounds on which administrative action can be challenged, the remedies available, the procedures that

must be followed to obtain written reasons and the relief that a court can grant a person who is asking for the review of a decision. (See pg 48: What are the requirements of lawfulness, procedural fairness and reasonableness in terms of the PAJA?)

## EXAMPLE

Certain people in your community live in an informal settlement close to an expensive coastal resort where people from the city own holiday houses. A chemical company has been granted permission by the local authority to set up a production plant very close to the informal settlement.

This chemical plant will likely harm the environment as well as the health of the people in the community. These people want to find out how the chemical company got permission to set up the production plant and what other action the chemical company may be thinking of taking. They have formally requested the local authority to provide them with information about the new chemical production plant so that they can use the information to comment on whether they think the permission for the plant should have been granted or not. The local authority is a part of government. Therefore, any decision that it makes is an administrative decision.

### **What can the community members do?**

The community can use the PAJA to:

- Get written reasons from the local authority for its decision to allow the erection of the chemical production plant
- Challenge the procedural fairness of the municipality's decision as their rights are affected by the decision, and they were not consulted before it was made
- Challenge the reasonableness of the decision; here, the court would consider all of the surrounding circumstances to see whether the decision was suitable, necessary and proportionate

Other rights that are potentially affected in this example include the right to equality if the nearby (wealthier) resort has not been negatively affected in the same way as the informal settlement and the right of access to information because the community's request for information about the chemical production plant has been ignored.

# The Common Law

The Common Law is relevant in dealing with environmental issues through the Law of Delict, the Law of Nuisance and the Law of Neighbours. The rules of these laws can be used to protect people's environmental rights relating to noise pollution, air pollution and water pollution.

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## The Law of Delict

The common law of delict allows you to claim compensation from someone who does something that causes you harm. Provided that certain requirements are met (listed below), such an action is called a delict. For example, if a person drives their car negligently and collides with the car of another person, the owner of the damaged car could sue the driver who negligently or intentionally caused the crash and could claim the cost of repairing the damage to the car as well as compensation for any of their injuries. This claim would be made under the common law of delict.

For a delictual claim to succeed, the person making the claim (the claimant) must prove that:

- The action of the other person was wrongful because it caused harm to the claimant or their property
- The person performing the action was negligent (was at fault) or acted intentionally
- The claimant suffered loss that can be given a monetary value (such losses are called damages)
- The claimant suffered loss that can be given a monetary value. This monetary value is called damages
- The monetary loss (damages) was suffered as a result of the action of the negligent person (the action of the negligent person caused the monetary loss)

## HOW DOES THIS HELP YOU WITH AN ENVIRONMENTAL ISSUE?

You can sue a person in court for loss caused to you by the wrongful actions of that person and claim compensation for this loss. This will have to be done through an attorney who will prepare the case and take it to court. (See pg 758: *Ways to resolve environmental disputes*)

## EXAMPLE

*Eric owns a small holding with a few animals. He makes a small living from his animals. The small-holding borders on a national road.*

*A truck carrying fertiliser goes out of control, leaves the national road and overturns on Eric's land, spilling a load of fertiliser into the small dam on his property. As a result, the water in the dam is contaminated or polluted. Eric's animals drink from this dam. Eric is not at home to stop his animals from drinking the water, and as a result, they become sick and die. Can Eric claim compensation from the owner of the fertiliser company?*

*The general rule of delict says that Eric can claim compensation from someone who has done him harm, but he will have to show that all of the elements of delict are present. This means that he will have to show that:*

- *The action of the driver in spilling the fertiliser into his dam was wrongful*
- *The driver, and therefore the company, was negligent*
- *The accident caused the damage (in other words, the spilling of the fertiliser polluted the dam, resulting in the death of the animals)*
- *As a result of the negligent action of the driver, he suffered a quantifiable monetary loss*

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## The Law of Nuisance

The most important aspect of the law of nuisance regarding environmental rights is the law of private nuisance, which recognises the right of an owner of land to enjoy their land in physical comfort, convenience and well-being without unreasonable interference from others. People do have to endure a certain amount of interference with their right to enjoy their land, for example, smoke blowing across or noise generated by another person, as long as this interference is not unreasonable. If the interference is unreasonable, then a landowner can take legal action to protect their right to enjoy their land.

The person suffering the nuisance can apply to the court for:

- a. An interdict to stop the person who is causing the nuisance from continuing with the conduct, and
  - b. Damages (monetary compensation) where the conduct has resulted in financial loss.
- The claim can be made against the owner of the property.

However, a landowner is not responsible for the nuisance caused by their tenant unless they authorised the nuisance.

## EXAMPLE

Bethuel lives in a small town next to a disused quarry. The local authority uses the quarry to dump all of the household waste that is collected from residents. Bethuel has become sick as a result of living so close to the waste and has started to develop bad skin ailments.

### **What rights are affected?**

- Bethuel has a right to an environment not harmful to his health and well-being
- The common law of nuisance gives him the right to enjoy his land without his enjoyment being unreasonably infringed

In this case, it would be possible to argue that the municipality's action in setting up the waste disposal site infringes Bethuel's environmental right and constitutes a nuisance as it unreasonably infringes upon his right to enjoy his property in physical comfort, convenience and well-being.

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## The Law of Neighbours

It is a general rule of our law that a landowner may not use their property in a way that causes harm to another person. This means that a landowner's right to use the property is limited and there is an obligation on them not to act in a way that will infringe the rights of a neighbour. The test of whether the landowner's use of their property fails to comply with this obligation is one of reasonableness and fairness. This principle of reasonableness is relevant to all forms of polluting activities.

## EXAMPLE

Derrick lives on a cattle farm in a quiet rural area. His neighbour has set up a device which makes explosive noises at regular intervals during the day and night to scare baboons away from his kitchen vegetable garden. Derrick's family cannot sleep because of the noise, and his cattle have become restless and uncontrollable.

### **What can he do? What rights are affected?**

It is possible to see the interaction of the three branches of law that have been discussed so far:

- The Constitution (Section 24) gives Derrick the right to an environment that is not harmful to his health or well-being. This right is being infringed by noise

*pollution.*

- *The Common Law of Nuisance says that Derrick has the right to enjoy his land without his enjoyment being unreasonably infringed by another person*
- *The Common Law of Neighbours says that Derrick is entitled to require his neighbour not to use his property (the neighbours) in a way that will infringe Derrick's legally protected rights*

*In this case, it would be possible to argue that:*

- *Neighbour Law gives Derrick the right to have his neighbour not cause a greater noise than is reasonable for the carrying out of the neighbour's economic activities*
- *The interest which the neighbour is trying to protect (growing a vegetable garden) is very limited*
- *The method used is not in proportion to the disturbance created by the explosive device*
- *Consequently, the neighbour's use of his property is not reasonable or fair to Derrick*

## Laws made by national, provincial and local government

Laws made by national, provincial and local governments add to the rights and responsibilities that are part of the Constitution and the common law. These laws, also called legislation, must comply with the Constitution, but they can amend (change) the common law.

Environmental laws made by the government set out the rights and responsibilities of people relating to three over-arching areas, namely: land-use management, pollution control and waste management control, and natural resources.

Environmental laws, therefore, regulate various activities, including who can build, what can be built, and where can they build; who can fish or mine, cut trees and shoot animals, as well as where and when this can happen.

These laws contain a number of rules. Anyone who fails to comply with these rules could be punished through imprisonment and/or a fine.

There are two broad types of laws. Firstly, there are framework laws that regulate all environmental concerns and should be taken into account when dealing with any environmental issue. Secondly, there are sectoral laws that deal with things like land-use management, pollution control and waste management, or nature conservation. So, for

example, if you are dealing with a waste site that is polluting the water in the area of your community, you will need to consider both framework laws and the sectoral laws that are relevant to land and water pollution.

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## **Framework environmental laws**

Two laws deal with the environment generally:

1. *National Environmental Management Act* (No. 107 of 1998) (NEMA)
2. *Environment Conservation Act* (No. 73 of 1989)

Two other framework laws, the *Promotion of Administrative Justice Act* and the *Promotion of Access to Information Act*, are not concerned specifically with the environment, but they give content to environmental rights and issues. These laws should be considered when dealing with all environmental issues.

### **NATIONAL ENVIRONMENTAL MANAGEMENT ACT (NO. 107 of 1998) (NEMA)**

NEMA is relevant to the regulation of all three of the environmental areas referred to, namely land-use planning and development, natural resources, pollution control and waste management.

The object of NEMA is to provide a framework for cooperative environmental governance (making sure that the government authorities coordinate their efforts to manage the environment) and aims to achieve this by establishing principles for:

- State decision-making on matters that affect the environment and procedures for co-ordinating environmental functions

### **WHAT ARE THE NEMA PRINCIPLES?**

NEMA sets out a range of national environmental management principles, some of which are set out below. The actions of all state institutions that 'may significantly affect the environment' must comply with these principles. These state institutions would include national, provincial and local government as well as state institutions like Eskom. The importance of these principles has been recognised by South African courts and include:

- Environmental management must put people and their needs first
- Development must be socially, environmentally and economically sustainable
- There should be equal access to environmental resources, benefits and services to meet basic human needs

- Government should promote public participation when making decisions about the environment
- Communities must be given environmental education
- Workers have the right to refuse to do work that is harmful to their health or to the environment
- Decisions must be taken in an open and transparent manner, and there must be access to information
- The costs of remedying pollution, environmental degradation and negative impacts on health must be paid for by those responsible for such pollution, degradation and health impacts (the 'polluter pays' principle)
- The role of youth and women in environmental management must be recognised
- The environment is held in trust by the state for the benefit of all South Africans
- The utmost caution should be used when permission for new developments is granted

#### **HOW DOES NEMA PROTECT THE ENVIRONMENT?**

NEMA provides a range of tools aimed specifically at protecting the environment. These include the following:

- **Integrated environmental management:** NEMA regulates the system of environmental impact assessments (EIA). The Government has passed several EIA regulations in terms of NEMA, which set out the EIA processes and requirements. These require that the potential impact on the environment of certain listed activities must be considered, assessed and reported to the relevant authorities. There are several lists of activities. One list sets out activities for which a full environmental impact assessment is required before such activities can be carried out, while another list sets out activities for which only a basic environmental assessment is required before the activities may be carried out. A further list sets out activities in specific geographical areas that require environmental authorisation.
- **Duty of care to protect the environment:** People whose activities cause significant pollution or degradation (spoiling) of the environment must take reasonable steps to prevent the pollution or degradation from happening or to prevent such pollution or degradation from continuing. If the activity is authorised by law or cannot reasonably be avoided or stopped, NEMA requires that the

responsible person take steps to minimise (lessen) and remedy the pollution or degradation.

- **Worker protection:** Workers can refuse to do environmentally hazardous work.
- **Emergency situations:** NEMA sets out detailed procedures that must be followed by people in the case of an emergency incident occurring which will impact on the environment.
- **Protection of whistleblowers:** People who disclose information about an environmental risk (whistleblowers) are protected.
- **Private prosecution:** People can prosecute others if it is in the public interest or in the interest of protecting the environment where the state fails to do so.
- **Access to environmental information:** People have the right to have access to environmental information from the government or private persons.
- **Controlling the use of vehicles in the coastal zone:** the Off-Road Vehicle Regulations (ORV Regulations) regulate the use of vehicles on the shoreline and the establishment of boat launching facilities.

## ADMINISTRATION AND ENFORCEMENT

NEMA provides for the enforcement of provisions of certain environmental Acts and allows the Ministers of Forestry, Fisheries and the Environment, Water and Sanitation, Mineral and Petroleum Resources, or the MEC of the provincial department responsible for environmental management to appoint Environmental Management Inspectors to implement this function.

In terms of Section 24G of the *National Environmental Management Laws Amendment Act (2 of 2022)* (NEMLAA), if a person has started a listed activity without an environmental authorisation (EA) or waste management license (WML) in terms of NEMA, that person can submit an application to the authority in charge in terms of Section 24G of NEMA. If this is successful, the person will be allowed to continue lawfully with the particular activity. This is referred to as the 'rectification provision'. Where a person starts with a listed activity without the required EA or WML, a maximum administrative fine of R10 million may be imposed in certain circumstances. This aims to prevent people from starting activities without the necessary EA or WML.

### **What is a 'listed activity'?**

In terms of the environmental management principles of NEMA, certain activities that may harm the environment are referred to as 'Listed activities' and require Environmental Authorisation (EA) from the Department of

Forestry, Fisheries and Environment. For more information see <https://cer.org.za/wp-content/uploads/1999/01/Listing-Notice-1-2.pdf> (NEMA: Listing Notice 1: List of activities and competent authorities identified in terms of sections 24(2) and 24D))

### **WHEN CAN YOU USE NEMA TO MAKE A COMPLAINT?**

NEMA says you can take legal action to enforce any environmental law or a principle of NEMA:

- To protect your own interest
- To protect someone else's interests who cannot do so
- On behalf of a group of people whose interests are affected
- If the legal action is in the public interest
- If the legal action is in the interest of protecting the environment

### **WHAT DOES NEMA ALLOW YOU TO COMPLAIN ABOUT?**

A person can make a complaint or take legal action under NEMA if:

- Someone, including the government, has broken an environmental law, including NEMA
- The government has not complied with a principle of NEMA
- The government has permitted an activity or development that affects the environment without properly checking how it could affect the environment and people
- Someone, including the government, has caused serious pollution or damage to the environment
- A person has been punished for refusing to do work that might harm the environment or for reporting someone who is harming the environment
- A major accident (emergency incident) that threatens the public or the environment has taken place, and there has not been a proper report about it, nor has there been a clean-up operation
- The state has not prosecuted a person for breaking an environmental law, and you believe that they might be guilty.

#### **EXAMPLE**

*An explosion releases a cloud of poisonous gas. Residents are warned on the radio to go indoors and shut their windows, and asthmatics are told to seek urgent medical*



treatment. People are told what kind of gas it is. The health department and municipal emergency services are told how to treat people who get sick from the gas.

NEMA requires the company that caused this incident to:

- Minimise (reduce) the risk and to clean up the mess
- Find out how the incident has affected public health
- Send a report to the government within 14 days of the accident which deals with:
  - The nature and causes of the incident
  - Substances released and how they could affect human health and the environment
  - What was done to prevent this from happening again

If the company does not take these steps, action can be taken to protect the environment and public health.

## **WHAT ACTION CAN YOU TAKE UNDER NEMA?**

You can take action under NEMA not only when someone breaks the law but also when someone has a duty to do something and does nothing. For example, the government has a duty to stop people from polluting rivers. If the government does nothing to stop the pollution, you can take action to compel the government to fulfill its duty. Therefore, if you feel that the government or any person has violated, or is violating, an environmental law, including NEMA, you can:

- Go to the police and lay a criminal charge
- Approach the government regarding the appointment of a facilitator so that the issue can be referred to conciliation
- Ask the Director General to investigate (*See: Complaining to the Director General*)
- Refuse to work if it could cause environmental damage
- Alert people to an environmental risk by 'whistleblowing'
- React to emergency incidents
- Approach the Public Protector
- Approach the South African Human Rights Commission or
- Approach a court for an order:
  - To stop the person or government from breaking the law
  - To compel government to stop the person from breaking the law, or
  - For the responsible person to do a clean-up of the pollution if they haven't done this when they should have

## CONCILIATION UNDER NEMA

NEMA allows a person to request the government to appoint a facilitator in order to facilitate meetings of interested and affected parties, with the intention of reaching an agreement on referring a disagreement to conciliation.

## ENVIRONMENT CONSERVATION ACT (NO. 73 OF 1989)

The *Environment Conservation Act* is another law that relates generally to the environment. This Act has largely been replaced by NEMA, and only a few relevant sections remain. These sections relate to:

- Limited development areas and
- Regulations regarding noise, vibration and shock

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## Sectoral laws relating to the environment

Certain environmental laws apply to specific environmental areas in the overarching categories of land-use planning and development, natural resources and pollution control, and waste management.

When dealing with an environmental issue falling into one of these three categories, you must consider both the sectoral legislation relevant to the issue and the framework legislation.

Therefore, if you were looking for laws relating to the development of a steel mill, you would look under land-use planning and development because the law relating to planning would be important. On the other hand, if you needed information regarding how to apply for a commercial fishing permit or commercial forestry permit, you would look at the laws dealing with natural resources because fish and forests are natural resources, and there are specific laws that deal with the allocation of fishing and forestry quotas and licences. You may also need to consider framework legislation such as NEMA and the EIA provisions contained in these laws and regulations. If your quota or licence application was refused, you could consider using the *Promotion of Administrative Justice Act* to obtain reasons for the decision or to challenge the decision.

Two sectoral laws are set out briefly here, namely the *National Environmental Management: Air Quality Act* (No. 39 of 2004) and the *National Water Act* (No. 36 of 1998).

## NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT (NO. 39 of 2004)

The objective of the Air Quality Act(AQA) is to improve air quality and prevent air pollution through several measures, including setting standards for monitoring, managing and controlling air quality and establishing fines and penalties for people who do not comply with the Act.

The AQA requires the establishment of a national framework for achieving the objectives of the Act and the adoption of national, provincial and local standards for ambient air quality. Ambient air refers to outdoor air, and so excludes indoor air. Importantly, the AQA makes the management of air quality the responsibility of local government through air quality management plans, pollution prevention plans, by-laws and other policies.

### HOW DOES THE AQA REGULATE AIR QUALITY?

The AQA aims to regulate air by providing for:

- The establishment of a national framework for air quality
- The monitoring of ambient air quality and emissions at the national, provincial and local levels
- The collection and management of air quality data
- National, provincial and local air quality management plans
- The control of certain polluting fuels
- The control of certain fuel-burning appliances
- The control of dust, noise and offensive smells
- A licensing system for certain fuels, appliances and activities

### EXAMPLE

Cape Town's Air Quality Management Unit is part of the City's Health Directorate and works in partnership with Water Services and Environmental Resource Management. The City's Air Quality Management Unit has developed an **Air Quality Management Plan (AQMP)** in terms of the Air Quality Act. The AQMP has the following objectives:

- To formulate an air quality management system for the City of Cape Town
- To specify ambient air quality standards and targets for Cape Town
- To monitor pollutants that cause brown haze and affect people's health
- To improve air quality in informal areas
- To enforce current and future legislation for air quality management
- To compile a comprehensive emissions database for the City of Cape Town
- To control emissions from vehicles in the City

- To consider air quality in land use and transport planning
- To establish the bad effects of air pollution on the people who live in Cape Town
- To establish an education and communication strategy for air quality management
- To review the air pollution situation on an ongoing basis and report on progress

## **TYPES OF AIR POLLUTANTS THAT ARE REGULATED BY THE AQA**

Air pollutants are things like gases and particles that pollute the air. The AQA sets limits and standards for the concentrations of these gases and particles. The following are some of the most important air pollutants (for which the Minister has set national standards in regulations):

**Carbon monoxide:** its main source is burning fuel from motor vehicles as well as from burning wood and industrial processes;

**Sulphur dioxide:** coal-fired power stations and diesel engines are the main sources of this gas;

**Lead:** lead is found in non-lead-free fuels, paints, batteries and pipes; when it is heated, it becomes a liquid and appears in the air as fine particles;

**Particulate matter:** Particulates are the tiny particles in the air, such as soot, dust, smoke, pollen, ash, aerosols and droplets of liquid. This can be seen as a white or brown haze. Very small particulates can be breathed deep into the lungs. The sources of particulates include fuels, diesel engines, wood burning, industrial smokestacks and chimneys.

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*(Source: City of Cape Town - Air quality)*

## **NATIONAL WATER ACT (NO. 36 of 1998)**

The National Water Act recognises that water is a natural resource that belongs to all people and appoints the State as public trustee of South Africa's water resources.

The *National Water Act* regulates the way in which people obtain the right to use water and provides for just and equitable use of water resources. The main purpose of the Act is to protect, conserve and manage water resources in a sustainable and equitable way so as to take account of various factors, including:

- The basic human needs of present and future generations
- The need to protect water resources
- The need to share some water resources with other countries and
- The need to promote social and economic development through the use of water.

National government, acting through the Minister and Department of Water and Sanitation, is responsible for achieving these basic principles. The Minister has the final responsibility of fulfilling certain obligations relating to the use, allocation and protection of water resources.

It is not possible to deal in detail with all of the sectoral laws. Therefore, all relevant sectoral legislation has been listed according to the three over-arching categories in the Checklist at the end of this chapter. You can use the Checklist to help you find out the laws that will apply in a particular situation. Once it has been established which laws apply, you can then follow the steps set out in the section on ways to resolve environmental disputes.

## Ways to resolve environmental disputes

It is important to note that there are two ways to resolve environmental disputes:

- Using the courts and the formal legal channels or
- Using alternative ‘non-legal’ methods such as public campaigns, petitions, etc.

It may be appropriate to use both ways in specific situations.

When deciding what action to take to solve an environmental dispute, it is important to first determine what rights have been infringed. Once you have done this, you will be able to consider which action would be most appropriate.

Here is a suggested three-step plan for dealing with an environmental dispute:

**Step 1:** Establish which rights are infringed

**Step 2:** Work out what you want to do to address the infringement (for example, use the courts, hold a public demonstration, etc) - this would probably be informed by the relief you are seeking as well as by what is provided for in the applicable laws

**Step 3:** Decide who to approach for help - this would depend on the relief sought. (**See: Resources**) Refer to the website of the Department of Forestry, Fisheries and Environment: [www.environment.gov.za](http://www.environment.gov.za).

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## **Solving environmental disputes without going to court**

There are different ways in which environmental disputes can be solved without going to court.

### **PUBLIC PARTICIPATION**

Certain environmental laws require certain public participation procedures to be followed when the relevant authorities make decisions (such as whether or not to issue permits or licenses) or make regulations under the law. These laws include the NEMA, the AQA, the *National Forests Act* and the *Marine Living Resources Act*.

### **THE PROMOTION OF THE ADMINISTRATIVE JUSTICE ACT**

This Act sets out requirements for procedurally fair administrative action. These requirements range from notice-and-comment type procedures to public hearings. If the relevant authority fails to comply with these procedures, their actions could be held to be invalid. The public participation procedures provide valuable opportunities for the public to become involved in the decisions and actions taken under these laws. However, public participation in these processes may require a fairly high level of expertise and awareness of planning and development procedures. Partnerships with environmental groups and supportive academics will probably be necessary. (*See pg 48: Just Administrative Action*)

### **ENVIRONMENTAL CAMPAIGNS**

Environmental issues are increasingly becoming the focus of public campaigns. These issues are often called green issues. Drawing the attention of the government and developers to the facts may be enough to motivate them to seek better solutions or be prepared to negotiate. It is often best to tackle a problem by appealing for negotiations or mediation with those responsible for the problem. Other actions should be considered, such as protests, media campaigns and, finally, possible court action.

Approach local community organisations to add pressure to the campaign and use local newspapers to publicise issues with the environment.

Environmental organisations may be involved in helping to develop government policy, empowering people to participate in law-making or policy processes or public participation processes, lobbying for environmental changes or actions, taking up peoples' environmental rights, taking up environmental or conservation issues caused by existing developments, working on conservation, and so on.(See Resources)

## **TRADE UNIONS**

Members of trade unions can play an active role in environmental issues by taking up issues relating to workplace health and safety. Trade unions can extend their activities beyond immediate workplace needs to the worker environment in general. Trade unions can take action against industries that have a bad effect on the environments in which communities live. For example, if a particular industry dumps its poisonous waste products into a river that runs through a town, this can have serious consequences for people who use the river or children who play in the river. The trade union can take this up with the management and threaten to take action unless management does something about the pollution.

## **LOBBYING LOCAL GOVERNMENT**

Many decisions affecting the environment take place at a local level. While laws about environmental issues are made at national, provincial and local levels, implementation and monitoring of the laws is often a local issue. For example, it is at local level that settlements are planned and development decisions regarding industrial, commercial and residential growth are taken. The local municipality manages sewage and drainage, waste disposal and so on. So, it is at local level that people need to contribute to environmental decisions and take up issues. If there is a particular environmental issue in your area that needs attention, you can approach the local municipality in your area and point this out to them. If they don't take action, then you could approach the relevant department in the provincial government and, thereafter, national government. The national Department of Forestry, Fisheries and Environment and provincial departments dealing with environmental affairs are mainly responsible for environmental conservation. However, other government departments would be involved if the issue concerns the provision of safe and healthy environments. You could also lobby parliamentary portfolio committees. (See pg 104: *Lobbying, campaigning and petitioning*)

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## **Solving environmental disputes in the courts**

There are various remedies to environmental problems that are available through the legal system. However, using the courts to solve an environmental problem can be very expensive because of the legal fees involved. For this reason, going to court should be seen as the last resort in solving a problem. Other 'non-legal' methods should first be explored.

### **LEGAL STANDING TO BRING A MATTER BEFORE THE COURT**

The law requires that a person have some personal interest in a matter to bring that matter before the court. This rule (called the requirement of locus standi) has sometimes prevented people wanting to raise an environmental issue from approaching the courts because it was found that they did not have sufficient personal interest in the matter. However, the Constitution has broadened the requirement of locus standi and states that in addition to people acting in their own interest, the following people may approach a court in connection with the infringement of a person's rights:

- Anyone acting on behalf of another person who cannot act in their own name
- Anyone acting as a member of, or in the interest of, a group or class of persons
- Anyone acting in the public interest
- An association acting in the interests of its members

Therefore, individuals and non-governmental organisations (NGOs) are allowed to take action to protect the environment in the public interest. One person from the group can represent the interests of the whole group. If the group does not have sufficient funds to pay the legal costs, it could approach an NGO to bring the relevant action.

NEMA also states that a person may approach the court for relief in the case of a breach, or threatened breach, of NEMA or any other environmental law if it is:

- In that person's or group of persons' own interest
- In the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings
- In the interest of or on behalf of a group or class of persons whose interests are affected
- In the public interest and
- In the interest of protecting the environment

NEMA also contains provisions relating to the legal costs associated with taking a matter to court. It states that if a person brings a matter to court in the

environmental or public interest and is not successful if certain requirements are met, the court may decide not to order that person to pay the costs of the successful party. In addition, if the relevant person is successful, the court may decide (on application by the relevant person) to grant them certain additional legal costs to which they would not ordinarily have been entitled. These provisions should assist people who wish to bring matters to court in the environmental or public interest.

## **TYPES OF LEGAL REMEDIES**

### **STATUTORY REMEDIES**

The various laws listed above each provide legal remedies that are specific to the relevant laws. To use these remedies, you will need to determine which law applies to a person's specific needs and, perhaps with the help of an attorney, decide how to use the specific law.

When trying to establish which law applies to your client's query, you should ask the following questions:

- What do NEMA or any of the other framework environmental laws say? (*See pg 749: Framework environmental laws*)
- What sectoral laws might apply? For example, does the query relate to pollution and waste management, land-use planning and development, natural resources or workers' environmental rights?

Once you have identified the applicable law, you must decide what legal remedy you wish to pursue. The remedies that follow are useful in the protection of environmental rights.

### **THE INTERDICT**

The courts can be approached to interdict a person from performing a harmful action without going through the process of claiming damages. (*See pg 251: Interdicts*)

There are three basic requirements for granting an interdict:

1. There must be an action that is already occurring or which is threatening (i.e. Is about to occur)
2. The action must be wrongful – this also means that the person asking for the interdict must have a clear right that requires protection and
3. The person requesting the interdict must have no other remedy available to him

## EXAMPLE

### OBTAINING AN INTERDICT

*Members of your community live near a sawmill, which prepares wood planks for sale to the building trade. Once the planks are made, the remaining sawdust and wood chips are burnt. This results in huge clouds of smoke, which cause serious air pollution in the area. Children living near the sawmill have started to develop serious asthma symptoms, which the doctor says is caused by the pollution.*

*The sawmill is causing air pollution, which may be infringing the community's (constitutional) right to an environment not harmful to their health or well-being. It is also likely that the requirements of a specific law, such as the AQA are being violated. This factor would strengthen an application made to court for an interdict to prevent the pollution from continuing. It also appears that there is no other remedy available to the people living near the sawmill.*

*The community could bring an application for an interdict ordering the owners of the sawmill to stop the burning process.*

### APPEAL AND REVIEW

**Review** - This refers to the court's ability to question whether the procedure followed by an organ of state, in making an administrative decision, was correct. You can approach the court to review an administrative decision when you feel that correct procedures have not been followed in making that decision. For example, a factory has been built without the people who live near the factory being given an opportunity to express their views on whether or not they want the factory to be built. Different laws set out different periods within which you must review a decision, and you should abide by these time frames. You will need to consult with an attorney to apply for a review. The procedures set out in the PAJA must be complied with. (See pg 201: What is a review?)

**Appeal** - This is another way to challenge the outcome of an administrative decision. While review limits you to test whether the procedure followed in making an administrative decision was correctly followed, when you appeal against an administrative decision, you are asking the court to look at the reasons for the decision. In other words, the court is asked to look at the information that was considered by the decision-maker in coming to the decision. You can appeal against the outcome of an administrative decision when you feel that the information available to the decision-maker should

have resulted in a decision different from the one that was made. Different laws set out different periods within which you must appeal a decision, and you should abide by these time frames. You will need to consult with an attorney to lodge an appeal. (*See pg 201: What is an appeal?*)

### **DELICTUAL CLAIM**

You can bring a delictual claim when the actions of another person have caused harm to your property or yourself. The harm is represented as the amount of money that you claim from the wrongdoer to compensate you for the harm that you have suffered. You will need to consult with an attorney to bring a delictual claim before the court. (*See pg 745: Law of Delict*)

## Climate change

In recent years, the problem of global climate change has received increasing attention. Climate change has been caused by a significant increase in global greenhouse gas emissions (since the Industrial Revolution) and has led to various problems, including increasing temperatures, rising sea levels and more extreme weather conditions, including droughts and floods.

Another problem of climate change is adaptation, which will see many (mainly developing) countries being forced to adapt to the negative impacts of climate change, including reduced crop yields caused by droughts. In response, the international community has adopted the United Nations Framework Convention on Climate Change ('UNFCCC') and the Kyoto Protocol to the UNFCCC, which require the reduction of greenhouse gas emissions by all countries.

In 2015, at the UN Climate Change Conference (COP21) held in Paris, the Paris Climate Agreement was adopted by 196 parties. The Paris Agreement is a legally binding international treaty on climate change falling under the United Nations Framework Convention on Climate Change (UNFCCC). This is the first time that a binding agreement brings all nations together to combat climate change and adapt to its effects. South Africa is a signatory to the Paris Agreement and has made commitments to reducing Greenhouse Gas Emissions (GHG) in terms of this agreement.

### **HOW DOES THE PARIS AGREEMENT TO THE UNITED NATIONS WORK?**

The Paris Agreement works on a five-year cycle where countries are required to increase and accelerate their actions to limit global warming. Countries must submit their national climate action plans, known as nationally determined contributions (NDCs). Each NDC is meant to show an increase in action compared to the previous version.

South Africa has a relatively high level of greenhouse gas emissions because most of South Africa's energy is produced from coal. South Africa and Southern Africa have been identified as a climate change hotspot, and a study has shown that Southern Africa is heating at twice the global average rate. The South African government has acknowledged the urgency of responding to climate change. However, it is important that any climate change-related measures that are implemented do not impact negatively on the poor.

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## Laws and policies on climate change in South Africa

### NATIONAL ENVIRONMENTAL MANAGEMENT ACT (NEMA) AND CLIMATE CHANGE

Section 28 of NEMA makes it the government's duty to take reasonable measures to stop damage to the environment. This applies to things that are harmful and are caused by climate change.

Section 24 of NEMA requires environmental impact assessments to take place before starting any listed activity. These activities include power stations and mining operations. An environmental impact assessment must consider the impact of climate change on the activity that is being assessed.

In the 'Thabanetsi' case (*Earthlife Africa Johannesburg v Minister of Environmental Affairs*), the applicants challenged the authorisation given for a proposed coal-fired power station in Lephalale, an area with water scarcity. The High Court held that climate change impacts must be considered when an environmental impact assessment is conducted to comply with the National Environmental Management Act.

In the court case *Trustees for the Time Being of Groundwork Trust v Minister of Environmental Affairs* ('Deadly Air') 98 and *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd* ('Eskom Holdings') - the 'Deadly Air' case - the focus was on air pollution caused by coal-fired power stations and the harmful impact of this on human health. The court held that Section 24(a) of the Bill of Rights creates the right to an environment that is not harmful to a person's health and well-being is a right that is immediately realisable. In other words, these rights are not subject to progressive realisation over time like many other socio-economic rights in the Constitution. In a subsequent judgement, the Constitutional Court endorsed this interpretation of Section 24(a).

### CARBON TAX

The *Carbon Tax Act* (No. 15 of 2019) aims to reduce the impact of climate change and allows the government to tax anyone, including municipalities, with greenhouse gas emissions. The Carbon Tax works on the polluter-pays principle and helps to ensure that companies and consumers take these costs into account in their future production, consumption and investment decisions. In other words, the Carbon Tax 'puts a price' on carbon to discourage the generation of carbon dioxide as activities that generate carbon emissions will become more expensive. This aims to reduce South Africa's greenhouse gas emissions.

## REGULATIONS UNDER NEMA: AIR QUALITY ACT

### **NATIONAL GREENHOUSE GAS EMISSION REPORTING REGULATIONS, 2016**

These Regulations require polluters to submit data on emissions and related activities. In terms of the Regulations, every facility (such as Eskom power stations) must submit a separate report. The Regulations also make it an offence to fail to submit accurate data or to falsify information. However, the Regulations do not require the data to be made available to the public, which is a barrier to access to information.

### **THE DECLARATION OF GREENHOUSE GASES AS PRIORITY AIR POLLUTANTS AND THE NATIONAL POLLUTION PREVENTION PLAN REGULATIONS, 2017**

In terms of this Declaration, Greenhouse Gas Emissions (GHGs) are declared priority pollutants. According to the Regulations any facility that emits GHGs must submit a pollution-prevention plan which sets out their plan to monitor and reduce the GHG emissions, and they must submit a progress report on the implementation of the plan.

### **THE NATIONAL CLIMATE CHANGE ADAPTATION STRATEGY, 2019**

This policy outlines steps to decrease the degree to which systems are exposed to climate change which makes people more vulnerable. Various government departments are working on ways to adapt and respond, including job creation, growth strategies, and protecting the vulnerable.

## CLIMATE CHANGE ACT (2022)

The *Climate Change Act* sets out a national response to climate change, including mitigation and adaptation action and aims to ensure that South Africa can respond to the risks and impact of climate change. The Act aims to strengthen coordination between national sector departments and provide policy and decision-making to enable South Africa to meet the commitments of its Nationally Determined Contribution (NDC) under the Paris Agreement. The NDC is a set of commitments that South Africa has made under the International Paris Agreement to reduce greenhouse emissions as part of mitigating climate change. The areas of focus in the Act include:

- **Mitigation** of climate change - the reduction of greenhouse gas carbon emissions to slow down and stop climate change. The Minister responsible for environment is required to assign carbon budgets to companies to limit their carbon emissions

- Manage climate change **adaptation** - adapting to impacts such as flooding, drought, wildfires, excessive heat and water and food insecurity - impacts which will intensify as climate change worsens. The government is obliged to assess all of the risks and expected impacts and create response plans. This happens at a national, provincial and local level
- Defines **responsibilities** for different national government departments, as well as for provincial and local government, including municipalities. This ensures that all relevant role-players are mandated to do their part in responding to climate change and work together effectively

There are six ways the Climate Change Act is fighting climate change.

1. **Allocate carbon budgets:** Companies that give off a certain quantity of greenhouse gases (GHG) will be allocated a carbon budget by the Department of Forestry, Fisheries and Environment. This means there is a legal limit to the GHG emissions that each company can give off in a certain period. If the company goes over the budget, it will have to pay a higher carbon tax as a penalty. Companies that have been allocated budgets, must also submit greenhouse gas mitigation plans.
2. **Duties of provinces and municipalities:** The Act makes it the government's responsibility to assess the risks and impacts of climate change and to develop an adaptation strategy and plan. This must happen at all levels: national, provincial and municipal. For example, municipalities must map climate risks, such as extreme climate events, like the floods in KwaZulu-Natal in 2022. The Act requires provinces and municipalities to supply data and information on climate risk and then develop a plan for how they intend to respond (such as disaster risk strategies and programmes).
3. **Develop a national adaptation strategy:** The Act says that within two years of the Act coming out, the environment minister must develop and publish a National Adaptation Strategy in consultation with various other ministries, such as the Department of Agriculture or Human Settlements. These departments must then also develop adaptation plans for their sectors.
4. **Making the Presidential Climate Commission (PCC) a statutory body**
5. **List sectors that will give sectoral emissions targets:** The Environment Minister must provide a list of the sectors that are going to get sectoral emissions targets. The minister must consult with ministers responsible for each sector, including transport, electricity and energy, and agriculture, to determine their emissions targets.
6. **Accountability:** Ministers must publish by Gazette what relevant policies and measures they are developing to reach their sectoral emission targets.

The Act indicates that failure by ordinary citizens or stakeholders outside the government to supply certain information to the minister as required by law is an offence and can be punished by having to pay a fine of R5 million or five years in prison. The failure to report data or misrepresentation of data is the only offence recorded in the Act. There are no other penalties for non-compliance for ministers, MECs or mayors who fail to implement certain actions required by law.

#### **NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL**

The National Environmental Management: Biodiversity Bill is currently being released for public comment. The aim of the NEMA Biodiversity Bill is to provide for animal well-being and human practices, actions and activities. It will provide the Minister of Forestry, Fisheries and Environment with the right to impose conditions, restrictions and permits or any other measures for the protection of any listed or non-listed species or ecosystem. The Bill provides for a scientific authority to regulate, restrict and assess the impact on species of international trade and to advise the Minister of Forestry, Fisheries and Environment on captive breeding operations and species. The Bill increases the sentences for wildlife violations of the regulations. If a person is convicted of an offence involving a specimen or a listed species or ecosystem for commercial exploitation, they can be fined up to R10 million or get 10 years in prison. Members of criminal syndicates or State employees found guilty of offences involving priority species (rhinos, elephants, lions, etc) will be liable for fines of up to R20 million or 20 years in prison.

# Problems

## 1. Making complaints about environmental problems

### INDUSTRIAL FUMES

A small factory in your neighbourhood is burning something that gives off fumes and clouds of smoke that make you feel ill.

#### WHAT CAN YOU DO?

Write a letter to the committee in the municipality that deals with environmental issues, reporting the matter and asking them to investigate.

### RAW SEWERAGE

A sewerage treatment plant regularly overflows, and raw sewerage is pumped into a river where children play.

#### WHAT CAN YOU DO?

Write a letter of complaint to the Department of Water and Sanitation, and to the committee in the municipality that deals with water affairs.

### LOCAL DEVELOPMENT

Your municipality is making a decision about a development that will change the environment in the area. You feel certain procedures of NEMA haven't been followed in the planning process and you are afraid that the development will go ahead.

#### WHAT CAN YOU DO?

You can:

- Approach the full-time municipality officials, like the town planning department, and explain your concern. Ask for information about the development and which committees will decide on the issue.
- Report your concerns and recommendations to the chairperson of the relevant local government committee responsible for making decisions regarding development. Ask them for feedback within a specified period of time.
- If the committee does not respond to your recommendations, write a letter of complaint to the council executive committee. Warn them if you believe they did not follow the right procedures or went against NEMA. Tell them you might go to court to challenge their decision.

Wait for the response to your complaint. If it goes against you, think about appealing or applying for conciliation, and only then consider going to court to have the decision set aside.

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## **2. Appealing against government environmental decisions**

### **LAND USE**

The government plans to use land in a certain way and you think it is going to have a bad effect on the environment.

#### **WHAT CAN YOU DO?**

Check with your local municipality whether there is a formal Land Use Application Appeal Form or an email address that you need to use to lodge your appeal. Also check the time limits on being able to lodge an appeal. Complete the form or send an email, and make sure you include the following information:

- Explain your complaint in detail
- Say which NEMA environmental principle/s have been violated (*See pg 750: What are the NEMA principles?*)
- Say which law has been broken and why you think the decision is unreasonable (*See pg 773: Checklist: Sectoral laws; See pg 693: Spatial Planning and Land Use Management Plan (SPLUMA)*)

Once an appeal is lodged, the municipality should circulate it to the relevant parties for a response. Once these responses have been received and the reasons for the appeal have been considered, a report is prepared and sent to the municipal manager. The municipal manager will make a final decision, and all parties will be informed in writing. If you are not satisfied with the result of your appeal you can ask the government to appoint a facilitator to have the dispute referred to conciliation.

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## **3. Complaining to the Director-General**

### **POLLUTION**

A group of people have been burning large numbers of tyres in an open field to sell the steel that is found inside the tyres. Your municipality has been unable to catch

them or stop them from burning the tyres. The land owner cannot control the tyre burners either.

#### **WHAT CAN YOU DO?**

First, complain to the municipality and then to the provincial government. If you are not satisfied with the steps taken by the municipality or provincial government, you should write to the Director-General or provincial head of department. You must:

- Write a statement of the facts of the complaint
- Add copies of all letters of complaint to other government officials and answers received
- Add maps, photographs or video evidence, medical evidence of injury and so on, if you have this

If you make a complaint to the Director-General or provincial head, they must investigate the case and tell the responsible for the pollution to take reasonable steps to stop the problem by a certain date.

If you are not satisfied with the result of your complaint you can request the government to appoint a facilitator to try to have the disagreement referred to conciliation. (See pg 755: *National Environmental Management: Air Quality Act* [No. 39 of 2004])

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## **4. Applying for conciliation or arbitration**

### **GOVERNMENT AND COMMUNITY DEADLOCK**

The government decides to allow a dam to be built that will destroy many villages and natural areas. A study was done on the likely impact on the environment (environmental impact assessment). However, the environmental impact assessment report does not take into account cultural considerations, like the fact that the dam will flood graves and religious sites. The local community is against the dam development because of this. The community and the government cannot resolve their differences.

#### **WHAT CAN YOU DO?**

Write a letter to the minister, member of the provincial executive council or municipal council (whichever one is concerned with the dispute), and ask them to refer the dispute to a conciliator or facilitator.

If the parties cannot agree, the conciliator can ask the two parties whether they would like the case to go to arbitration. The arbitrator's decision will then be final.

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## **5. Harm to the environment**

### **WORKERS CAN REFUSE TO DO WORK THAT HARMS THE ENVIRONMENT**

You work for a doctor and your work includes cleaning up and throwing away waste. The doctor always tells you to throw the medical waste in a nearby rubbish dump. You feel this is wrong, and one day, you tell the doctor why you think it is wrong and that you will not continue throwing this waste in the dump. The doctor threatens to dismiss you for failing to do your job.

#### **WHAT CAN YOU DO?**

Tell the doctor that the NEMA states you cannot be dismissed for refusing to do an action that is against the law and the environment.

### **REPORTING ACTIVITIES THAT HARM THE ENVIRONMENT**

You work for a company that grows vegetables. One of your employers is secretly using a banned pesticide on one of the farms to grow more vegetables.

#### **WHAT CAN YOU DO?**

You may disclose this information to various persons, including a committee of parliament or a provincial legislature, the Public Protector, or the South African Human Rights Commission. NEMA helps to protect you against being victimised for blowing the whistle on your employer, provided that you comply with the provisions of NEMA.

# Checklists

## Best action to take when dealing with environmental issues

These are things to think about when choosing the best action to take when someone or the government has done something bad to the environment:

- How much will it cost to take this action?
  - How long will the action take?
  - Are we likely to achieve our aims?
  - Besides financial backing, what other support do we need, such as technical support, to achieve our aims?
  - Is this support available?
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## Sectoral laws

The laws listed here are only the most important national laws that deal specifically with environmental issues. Provincial laws are not included.

### LAND-USE PLANNING AND DEVELOPMENT

#### LAND REFORM

- *Upgrading of Land Tenure Rights Act* (No. 112 of 1991)
- *Restitution of Land Rights Act* (No. 22 of 1994)
- *Land Reform (Labour Tenants) Act* (No. 3 of 1996)
- *Communal Property Associations Act* (No. 28 of 1996)
- *Interim Protection of Informal Land Rights Act* (No. 31 of 1996)
- *Extension of Security of Tenure Act* (No. 62 of 1997)
- *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act* (No. 19 of 1998)
- *Communal Land Rights Act* (No. 11 of 2004)

#### PLANNING

- *Local Government Transition Act* (No. 209 of 1993)
- *Local Government: Municipal Structures Act* (No. 117 of 1998)
- *Local Government: Municipal Systems Act* (No. 32 of 2000)
- *National Building Regulations and Building Standards Act* (No. 103 of 1977)
- *Provincial Land Use Planning Ordinances*

- *Spatial Planning and Land Use Management Act* (No. 16 of 2013)

#### **ENVIRONMENTAL ASSESSMENT**

- *National Environmental Management Act* (No. 107 of 1998) (Chapter 5) and Government Notices 982, 983, 984 and 985 in Government Gazette No. 38282 of 4 December 2014
- *Minerals and Petroleum Resources Development Act* (No. 28 of 2002)
- *Marine Living Resources Act* (No. 18 of 1998)
- *National Water Act* (No. 36 of 1998)

#### **PROTECTED AREAS**

- *National Environmental Management: Protected Areas Act* (No. 57 of 2003)
- *National Forests Act* (No. 36 of 1998)
- *World Heritage Convention Act* (No. 49 of 1999)
- *National Heritage Resources Act* (No. 25 of 1999)
- *Marine Living Resources Act* (No. 18 of 1998)

#### **THE COAST**

- *Maritime Zones Act* (No. 15 of 1994)
- *ORV Regulations* (GN R 1399 in Government Gazette No. 22960 dated 21 December 2001, as amended in 2004)
- *National Environmental Management: Integrated Coastal Management Act* (No. 24 of 2008)

### **NATURAL RESOURCES**

#### **AGRICULTURAL RESOURCES**

- *Conservation of Agricultural Resources Act* (No. 43 of 1983)
- *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act* (No. 36 of 1947)
- *Agricultural Pests Act* (No. 36 of 1983)
- *Foodstuffs, Cosmetics and Disinfectants Act* (No. 54 of 1972) *Subdivision of Agricultural Lands Act* (No. 70 of 1970)
- *Sustainable Use of Agricultural Resources Bill* (will repeal the *Conservation of Agricultural Resources Act*)

#### **BIODIVERSITY AND GENETIC MODIFICATION**

- *National Environmental Management: Biodiversity Act* (No. 10 of 2004)
- *National Environmental Management: Biodiversity Bill* (2024)
- *Genetically Modified Organisms Act* (No. 15 of 1997)

- *Plant Breeders' Rights Act* (No. 15 of 1976)
- *Plant Improvement Act* (No. 53 of 1976)
- *Animal Improvement Act* (No. 62 of 1998)
- *Conservation of Agricultural Resources Act* (No. 43 of 1983)
- *Provincial Nature Conservation Ordinances*

#### **WILD ANIMALS, FORESTS AND PLANTS**

- *Game Theft Act* (No. 105 of 1991)
- *Animals Protection Act* (No. 71 of 1962)
- *National Forests Act* (No. 84 of 1998)
- *National Veld and Forest Fire Act* (No. 101 of 1998)