

# Environmental & Sustainability Studies (ESS) 122

## Lecture 3 Framework Legislation / NEMA

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# Framework Legislation

- - Aims to define overarching and generic principles in terms of sector-specific legislation.
- - Regarded as a primary point of reference for information and laws on subject-specific issues.

# The National Environmental Management Act 107 of 1998

- (i) The framework legislation for environmental law in SA is NEMA. Aims to define overarching and generic principles i.t.o sectoral-specific legislation.
- (ii) NEMA expressly refers to the environmental right as mentioned in s24 of the Constitution (its basis) - Giving effect to the environmental right at a framework level.

# NEMA

- Also give effect to Chapter 3 of the Constitution.
- Significance:
- The '*environment*' is designated as an area of concurrent national and provincial legislative competence.
- Reason : both Provincial and National authorities are responsible for the administration of laws protecting the environment.

# The origins of NEMA

- Before:
- The Act that most closely the environment , was the Environment was the Environment Conservation Act 73 of 1989.( ECA)
- The Act only suggested to provide comprehensive protection to the environment.
- The Act addresses only selected aspects of environmental Conservation.
- ECA did not give effect to section 24 of the Constitution.
- Therefore :
- it became apparent that a new framework environmental Act was necessary.

# The New NEMA

- NEMA grew out of the environmental policy development process known as:
- The Consultative National Environmental Policy Process (CONNEPP).
- Involved extensive public participation.
  
- CONNEPP resulted in the publication of the White Paper on:
- Environmental Management Policy for SA.
  
- Those forms the basis for NEMA.
- NEMA came into effect on 29 January 1999.
  
- Since the enactment of NEMA in 1998 , the act has been amended seven times.

# NEMA - Purpose

- To provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment
- Institutions that will promote co-operative governance and procedures for co-ordinating environmental functions.
- Administration and enforcement of environmental management laws.

# National environmental management principles

- The Act contains an extensive list of principles that apply throughout the Republic to the actions of all organs of state that may significantly affect the environment.
- The first two principles provide that:
  - (1) Environmental management must place people at the forefront of its concern.
  - It must serve there their physical, psychological ,development, cultural , and social interests equitably.



# National environmental management principles

- (2) That the development must be socially, environmentally and economically sustainable.
- These principles are followed by 18 further principles and some of them are subdivided.
- Section 2 of NEMA.
- These principles have many features in common with internationally accepted principles of environmental management .

# National environmental management principles

- Section 2(1)
- Makes it clear that these principles apply to all actions of state that may effect the environment, particular in situations itemised in this section.

# Chapter 2 - Institutions

- Chapter 2
- Makes provision for establishment of institutions for environmental management.

# Chapter 3 - Environmental Implementation and Management Plans

- Chapter 3 provides:
- For co-operative governance: it revolves around submission and scrutiny and compliance with the two plans.
- Schedule 1:
- National Department that exercise functions which may effect the environment & every province must prepare an environment implementation plan within 1 year of the promulgation of the Act and At least every four years thereafter.

# Environmental Implementation and Management Plans

- Schedule 2:
- Every National Department which exercise functions involving management of the environment must prepare an environmental management plan within in 1 year of the promulgation of the Act and at least every four years thereafter.

# Purpose of the Plans

- To provide for co-operative environmental governance .
- More specifically to:
- Co-ordinate and harmonise the environmental policies, plans programmes and decisions of the various national departments.
- The Minister or MEC scrutinises the plans once they are submitted or otherwise approves it.

# Purpose of the Plans

- They must be consistent with environmental legislation or other plans.
- The importance of these plans lies in the fact that every organ of state must exercise every function it may have.
- This is a system for ensuring coherent environmental policy from all government departments.
- The Act requires all management plans of national departments to be published in the Government Gazette.

# Chapter 4 - Fair decision-making and conflict management

- Chapter 4:
- Deals with fair decision-making and conflict management.
- This Chapter provides for conciliation , mediation and arbitration as forms of disputes resolution in environmental issues.



# Chapter 5 - Integrated Environmental Management

- Chapter 5:
- Deals with Integrated Environmental Management.
- This Chapter address the authorisation of activities likely to be detrimental to the environment.
- Such authorisation is being considered on the basis of environmental impact assessments procedures.

# Chapter 6 - International obligations and agreements

- Chapter 6:
- Brings SA into line with international standards of environmental management.
- Section 25:
- Deals with issues relating to SA`s joining of international conventions & domestic implementation.

# International obligations and agreements

- Section 26:
- Requires that annual reports must be submitted by the Minister to Parliament on international environmental instruments , for which he is responsible to implement.
- The Minister must also initiate an Annual Performance Report on Sustainable development i.t.o Agenda 21.

# International obligations and agreements

- The report must cover the activities of all national departments and spheres of government i.t.o their performance under Agenda 21.
- As well as the procedures of review for co-ordination of policies and budgets to meet the objectives of Agenda 21.

# Chapter 7 - Compliance, Enforcement and protection

- Chapter 7:
- This chapter is very important as far as the public is concerned.
- Chapter 7 is divided into 3 parts:
- Part (1)
- Environmental hazards , access to information and protection of whistleblowers
- Duty of care and remediation of environmental damage
- Protection of workers refusing to do environmentally Hazardous work.
- Control of emergency incidents.

# Compliance, Enforcement and protection

- Part (2)
- The application of the Act and specific environmental management Acts which deals with the appointment of environmental management inspectors and their powers and responsibilities , including their power to issue compliance notices.

# Compliance, Enforcement and protection

- Part 3
- Legal standing to enforce environmental laws.
- Private prosecution.
- Criminal proceedings(including issues such as Directors liability and other aspects relating to prosecution of environmental offences)

# Chapter 8 - Environmental Management co-operation agreements

- Chapter 8 provides for environmental management co-operation agreements.
- Also known as EMCA`s.
- This chapter authorises the Minister , provincial governments and local authorities to enter into co-operative agreements with any person or community for the purpose of promoting compliance with the principles of environmental management.



# Chapter 9 - Administration

- This chapter confers on officials certain competencies and powers for the achievement of the objectives of these Acts.

# Administration

- The Director-General:
- May enter into agreements with organs of state to fulfil his/her responsibilities.
- The Minister:
- May draft model by-laws to establish measures for the management of environmental impacts of any development within the jurisdiction of a municipality and the latter may adopt them as by-laws.

# Administration

- Municipalities:
- May request the Director-General to assist with preparation of by-laws on matters affecting the environment and programmes may be instituted to assist them with the preparation of by-laws for the implementation of the Act.

# Administration

- Chapter 8 also deals with:
- Appeals
- Delegation of powers and
- the procedures for enacting regulations.

# Assessment

- In many respects NEMA is a pioneering statute.
- Overall ,this is one of many South African environmental laws that on paper are excellent.
- The main challenge facing the environmental authorities in all three spheres of government , is ensuring that the promise of these laws on paper is translated into reality.

# Assessment

- The effectiveness of SA`s environmental laws has been a concern for years and there is still concern in this regard.
- There are now mechanisms for enforcement than ever before , and encouraging developments in the enforcement and compliance arena.
- However, there is still considerable room for improvement.