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**No. 37666**

## THE PRESIDENCY

No. 390 19 May 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 20 of 2014: National Environmental Management: Air Quality Amendment Act, 2014**

## IHHOVISI LIKAMONGAMELI

No. 390 19 May 2014

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelwa umphakathi:—

**Ino. 20 Ka 2014: Umthetho Wokusingathwa kwezeMvelo kuZwelonke: uMthetho oChibiyela izinga loMoya wezi, 2014**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

[                      ]      Words in bold type in square brackets indicate omissions from existing enactments.

—————                      Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)*

*(Assented to 16 May 2014)*

# ACT

To amend the National Environmental Management: Air Quality Act, 2004, so as to substitute certain sections; to provide for the establishment of the National Air Quality Advisory Committee; to provide for the consequences of unlawful commencement of a listed activity; to provide for monitoring, evaluation and reporting on the implementation of an approved pollution prevention plan; to empower the MEC or Minister to take a decision in the place of the licensing authority under certain circumstances; to provide for the Minister as licensing authorities in situations where the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission licence, where the applications are trans-boundary, where the air activity forms part of national priority project, where the activity is also related to the environmental impact and waste management activities authorised by the Minister, where the air activity relates to a prospecting, mining, exploration or production activity; to delete cross references to the Environmental Conservation Act, 1989; to clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission licence; to create an offence for non-compliance with controlled fuels standards; to provide for the development of regulations on climate change matters and the procedure and criteria for administrative fines; to delete certain obsolete provisions; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## **Amendment of section 1 of Act 39 of 2004**

1. Section 1 of the National Environmental Management: Air Quality Act, 2004 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “Atmospheric Pollution Prevention Act”, of the following definition:

“ **‘commissioning’** means the commencement of a listed activity;”;

**INCAZELO EJWAYELEKILE:**

[ ] Amagama acasiswe ngombhalo ogqamile akubakaki abayisikwele abonisa okukhiswayo/okususiwe emthethweni osebenzayo.

Amagama adwetshele ngomugqa ogqamile akhombisa okufakelwayo emthethweni osebenzayo.

*(English text signed by the President)  
(Assented to 16 May 2014)*

**UMTHETHO**

Uchibiyela ukuPhathwa kwezeMvelo kaZwelonke: uMthetho weZinga loMoya, wezi-2004, ukuze ushintshe izigaba ezithile; ukuhlinzekela ngokusungulwa kweKomidi Eliluleka ngamaZinga oMoya kazwelonke; ukuhlinzekela ngezinyathelo zokusebenzisa ngokungekho semthethweni imisebenzi esohlwini; ukuhlinzekela ngokuqapha nangokuhlola futhi nangokubika ngokusebenza kohlelo lokunqanda ukungcola; ukukhuthaza u-MEC noma uNgqongqoshe ukuba athathe isinqumo njengomkhandlu okhipha ilayisensi ngaphansi kwezimo eizthile; ukuhlinzekela uNgqongqoshe ukuba abe umkhandlu egunyazayo eizimweni lapho isifundazwe, esinikezwe amandla okukhipha ilayisensi umasipala, sizoba ofake isicelo selayisensi yokunukubeza umoya, uma izicelo zishayisana, futhi umsebenzi womoya uyingxenye yomsebenzi kazwelonke osemqoka, futhi lowo msebenzi uhambisana nemisebenzi yezemvelo neyokusingatha inkunkuma egunyazwe uNgqongqoshe, futhi ukungcoliswa komoya kuwumsebenzi osemqoka kazwelonke, futhi lowo msebenzi uhambisana nomthelela kwezemvelo nemisebenzi yokusingathwa kwenkunkuma egunyazwe uNgqongqoshe, lapho umsebenzi womoya uhambisana nomsebenzi wokuhlwaya, izimayini, ukuhlaziya noma ukukhiqiza; ukususa okuqondiswe futhi ku-*Environmental Conservation Act, 1989*; ukucasisa ukuthi izicelo kufanele ziqondiswe ezinhlangothini ezinentshisekelo noma ezichaphazelekayo ngemuva kokuthunyelwa emkhandlwini okhipha ilayisensi; ukuhlinzekela ngesikhathi sokusebenza semvume yesikhashana yokunukubeza umoya; ukubeka isigwebo kulabo abangawalandeli amazinga alawula izinto ezingokheleka; ukuhlinzekela ngokumisa izimiso zomthetho ngezindaba zokuguququka kwesimo sezulu kanye nenqubo nendlela yokukhokha inhlawulo; ukususa imibandela engasebenzi; kanye nokuhlinzekela izindaba ezihambisana nawo.

**NGAKHO-KE** UZOMISWA iPhalamende laseRiphabhuliki, ngale ndlela elandelayo:—

**Ukuchibiyela isigaba 1 soMthetho 39 wezi-2004**

1. Isigaba soku-1 soMthetho oChibiyela ukuPhathwa kweMvelo kaZwelonke: iZinga loMoya, 2004 (kulokhu esaziwa ngoMthethongqangi), siyachitshiyelwa—

(a) ngokushutheka ngemuva kwencazelo “uMthetho Wokuvikela Ukunukubezwa Komoya”, le ncazelo elandelayo:

“**ukuzwa umsebenzi**’ kuchaza ukuqala umsebenzi osohlwini;”.

- (b) by the substitution for the definition of “Department” of the following definition:  
“**‘Department’** means the Department [**of Environmental Affairs and Tourism**] responsible for environmental affairs;”;
- (c) by the deletion of the definition of “Environment Conservation Act”; and 5
- (d) by the substitution for the definition of “licensing authority” of the following definition:  
“**‘licensing authority’** means an authority referred to in section 36(1), (2), [**(3) or 3A**, (4) or (5) responsible for implementing the licensing system set out in Chapter 5;”;
- (e) by the substitution for the definition of “Minister” of the following definition:  
“**‘Minister’** means the Minister [**of Environmental Affairs and Tourism**] responsible for environmental affairs.”. 10

**Amendment of section 13 of Act 39 of 2004**

- 2. Section 13 of the principal Act is hereby amended— 15
  - (a) by the substitution for subsection (1) of the following subsection:  
“(1) The Minister [**may**] must, by notice in the *Gazette*, establish [**a**] the National Air Quality Advisory Committee [**as a subcommittee of the National Environmental Advisory Forum, established in terms of the National Environmental Management Act, to advise the Minister on the implementation of this Act**] in terms of this Act.”. 20
  - (b) by the substitution in subsection (2) for paragraph (d) of the paragraph:  
“(d) may [**determine**] prescribe any other matter relating to the Committee.”; and
  - (c) by the addition of the following subsection: 25  
“(3) The object of the Committee is to advise the Minister on any air quality related matter as the Minister may determine from time to time.”.

**Insertion of section 22A of Act 39 of 2004**

- 3. The following section is hereby inserted in the principal Act after section 22:  
**“Consequences of unlawful conduct of listed activity resulting in atmospheric emission”** 30  
**22A.** (1) Section 24G of the National Environmental Management Act, 1998, as amended, applies to the commencement, without an environmental authorisation, of a listed activity or the activity specified in item 2 in Listing Notice 1 and items 5 and 26 in Listing Notice 2, relating to air quality in terms of Chapter 5 of the National Environmental Management Act, 1998. 35  
(2) Subsections (4) to (10) are applicable to the operating, without a provisional registration or registration certificate, of a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965, at any time prior to the commencement of this Act. 40  
(3) Subsections (4) to (10) are applicable to the conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, of an activity listed in terms of section 21 of this Act which results in atmospheric emission. 45  
(4) On application by a person who conducted an activity contemplated in subsection (2) or (3), the licensing authority may direct the applicant to—
  - (a) immediately cease the activity pending a decision on the application submitted in terms of this section;

- (b) ngokufaka endaweni yencazelo “uMnyango” le ncazelo elandelayo:  
 “**‘uMnyango’** uchaza uMnyango [**weziNdaba zeMvelo nezokuVakasha**] obhekele izindaba zemvelo;”;
- (c) ngokususa incazelo “i-*Environment Conservation Act*”; futhi
- (d) ngokufaka endaweni yencazelo “umkhandlu okhipha ilayisensi” kwafakwa le ncazelo elandelayo:  
 “**‘umkhandlu okhipha ilayisensi’** uchaza umkhandlu ovezwe esigabeni sama-36(1), (2), [(3) **noma**] 3A, (4) **noma** (5) obhekele uhlelo lokukhishwa kwemvume oluvezwe eSahlukweni sesi-5;”;
- (e) ngokuguqula incazelo “uNgqongqoshe” yale ncazelo elandelayo:  
 “**‘uNgqongqoshe’** uchaza uNgqongqoshe [**weziNdaba zeMvelo nezokuVakasha**] obhekele izindaba zemvelo.”.

### Ukuchibiyela isigaba 13 soMthetho 39 wezi-2004

#### 2. Ngakho-ke isigaba se-13 soMthethongqangi sichitshiyelwe—

- (a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:  
 “(1) UNgqongqoshe [**angasungula**] kufanele, asebenzise isaziso kuSomqulu, ukusungula iKomidi Eliluleka ngamaZinga oMoya kuZwelonke [**njengekomidi elingaphansi koMkhandlu Oluleka ngeMvelo kuZwelonke, osungulwe ngokwemigomo ye-National Environmental Management Act, ukuba ululeke uNgqongqoshe mayelana nokusetshenziswa kwalo Mthetho**] ngokwemigomo yalo Mthetho.”.
- (b) ngokufaka endaweni yesigatshana sesi-(2) sendima (d) le ndima:  
 “(d) [**angaqoka**] anganquma nolunye udaba oluhambisana neKomidi.”;
- (c) ngokwengeza lesi sigatshana esilandelayo:  
 “(3) Injongo yeKomidi ukululeka uNgqongqoshe ngodaba oluhambisana namazinga omoya uNgqongqoshe angalunquma ngokuhamba kwesikhathi.”.

### Ukushutheka isigaba 22A kuMthetho 39 wezi-2004

#### 3. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba sama-22:

#### “Umthelela wokungaziphathi ngendlela esemthethweni wezinto ezingaholela ekunukubezeni umoya

**22A.** (1) Isigaba sama-24G se-*National Environmental Management Act, 1998*, njengoba sichitshiyelwe, sisebenza ukuqala, ngaphandle kwemvume yezemvelo, umsebenzi osuhlwini noma umsebenzi ovezwe ohlamvini lwesi-2 oHlwini lweSaziso soku-1 nohlamvu lwesi-5 nolwama-26 oHlwini lweSaziso sesi-2, esihambisana nezinga lomoya ngokwemigomo yeSahluko sesi-5 se-*National Environmental Management Act, 1998*.

(2) Isigatshana sesi-(4) ukuya kwese-(10) zisebenza uma kusetshe-nziswa, ngaphandle kokubhaliswa okwesikhashana noma isitifiketi sokubhalisa, sohlelo olubekiwe ngokwemigomo ye-*Atmospheric Pollution Prevention Act, 1965*, noma nini ngaphambi kokuqala ukusebenza kwalo Mthetho.

(3) Isigatshana sesi-(4) ukuya kwese-(10) zisebenza uma kuqhutshwa, ngaphandle kwemvume yokunukubeza umoya noma kwemvume yokunukubeza umoya, emsebenzini osohlwini ngokwemigomo yesigaba sama-21 salo Mthetho eyimbangela yokunukubezwa komoya.

(4) Esicelweni somuntu owenze umsebenzi ovezwe esigatshaneni sesi-(2) noma sesi-(3), umkhandlu okhipha imvume ungayalela ofake isicelo ukuba—

- (a) ngokuphazima kweso ayeke ukwenza lokhu akwenzayo ngesikhathi kusalindwe isinqumo mayelana nesicelo esithunyelwe ngokwemigomo yalesi sigaba;

- (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;
  - (c) remedy any adverse effect of the activity on the environment, including the ambient air, and human health;
  - (d) cease, modify or control any act, activity, process or omission causing atmospheric emission; 5
  - (e) eliminate any source of atmospheric emission;
  - (f) compile a report containing—
    - (i) a description of the need and desirability of the activity;
    - (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity; 10
    - (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment, including the ambient air, and human health of the activity; 15
    - (iv) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed; 20
    - (v) an environmental management programme; or 25
  - (g) provide such other information or undertake such further studies as the licensing authority may deem necessary.
- (5) The licensing authority must consider any reports or information submitted in terms of subsection (4) and thereafter may—
- (a) refuse to issue an atmospheric emission licence; 30
  - (b) issue an atmospheric emission licence to such person to conduct the activity subject to such conditions as the licensing authority may deem necessary, which atmospheric emission licence shall only take effect from the date on which it has been issued; or
  - (c) direct the applicant to provide further information or take further steps prior to making a decision in terms of paragraphs (a) or (b). 35
- (6) The licensing authority may as part of the decision contemplated in subsection (5), direct a person to—
- (a) rehabilitate the environment within such time and subject to such conditions as the licensing authority may deem necessary; 40
  - (b) prevent or eliminate any source of atmospheric emission from the activity within such time and subject to such conditions as the licensing authority may deem necessary; or
  - (c) take any other steps necessary under the circumstances. 45
- (7) A person contemplated in subsection (4) must pay an administrative fine, which may not exceed R5 million and which must be determined by the licensing authority, before the licensing authority may act in terms of subsection 5(a) or (b).
- (8) In considering a decision contemplated in subsection (5)(a) or (b), the licensing authority may take into account whether or not the applicant complied with any directive issued in terms of subsections (4) or (5)(c). 50
- (9) The submission of an application in terms of subsection (4) or the issuing of an atmospheric emission licence in terms of subsection 5(b) or the payment of the administrative fine in terms of subsection (7) shall—
- (a) in no way derogate from the environmental management inspector's or the South African Police Services' authority to investigate any transgression of this Act; or 55
  - (b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; and

- (b) uphenye, uhlole futhi uvivinye umthelela waleso senzo kuleyo ndawo ezungezwe umoya nempilo yabantu;
- (c) alungise umthelela womsebenzi kuleyo ndawo, kubandakanya umoya ozungezile nezempilo;
- (d) uqede noma ulawule isenzo, okuqhubekayo, uhlelo noma okungenziwanga ukubangela ukunukubezeka komoya; 5
- (e) unqande ukunukutshezwa komoya kuleso senzo;
- (f) uhlanganise umbiko oqukethe—
- (i) incazelo yesidingo salokho okwenziwayo;
- (ii) ukuhlolwa komsuka, izinga, isikhathi nokuba semqoka komthelela noma ukuthinteka endaweni ezungezwe umoya kulokho okwenziwayo, kubandakanya nokwanda komthelela nendlela indawo, isimo, inhlalakahle, umnotho, imvelo namasiko endawo kungathikamezeka ngayo ileso senzo esiphakanyisiwe; 10 15
- (iii) incazelo yezinyathelo zokunqanda ezithathiwe noma ezizothathwa mayela nomphumela noma nomthelela wendawo ezunguzwe umoya kuleso senzo;
- (iv) incazelo yohlelo lokubandakanya umphakathi olulandelwe ngesikhathi kuhlanganiswa umbiko, kubandakanya yonke imibono eqhamuka ezinhlangothini ezinetshisekelo; noma ezithintekayo kanye nezinkomba zokuthi izinkinga eziveziwe zisonjululwe kanjani; 20
- (v) uhlelo lokusingathwa kwezemvelo; noma
- (g) uhlinzekele ngeminye imininingwane noma wenze olunye ucwaningo umkhandlu ogunyazayo ongabona ukuthi lufanele. 25
- (5) Umkhandlu okhipha amalayisensi kufanele ubheke imibiko noma imininingwane ethunyelwe ngokwemigomo yesigatshana sesi-(4) futhi ngemuva kwalokho unga—
- (a) nqaba ukukhipha imvume yokunukubeza umoya; 30
- (b) ungakhiphela umuntu imvume yokunqolisa umoya ukuze kuqhutshwe umsebenzi, ngokulandela imibandela umkhandlu okhipha amalayisensi obona ukuthi ifanele, leyo mvume yokunukubeza umoya okufanele iqale ukusebenza ngosuku ekhishwe ngalo; noma 35
- (c) ungayalela ofake isicelo ukuba anikeze eminye imininingwane noma athathe ezinye izinyathelo ngaphambi kokuthatha isinqumo ngokulandela indima (a) noma (b).
- (6) Umkhandlu okhipha ilayisensi njengengxenye yesinqumo esivezwe esigatshaneni sesi-(5), ungakhipha umyalelo wokuba umuntu— 40
- (a) alungise leyo ndawo kuleso sikhathi futhi ngokulandela imibandela umkhandlu okhipha imvume obona ukuthi ifanele;
- (b) anqande noma apheze umsuka wokunukubeza umoya kuleso sikhathi futhi ngokulandela imibandela umkhandlu okhipha ilayisensi ongabona ukuthi ifanele; noma 45
- (c) athathe ezinye izinyathelo ezifanele ngaphansi kwalezi zimo.
- (7) Umuntu ovezwe esigatshaneni sesi-(4) kufanele akhokhe inhlawulo, engeke idlule ezigidini ezingama-R5 okufanele sinqunywe umkhandlu okhipha amalayisensi, ngaphambi kokuba umkhandlu okhipha ilayisensi usebenzise isigatshana sesi-(5)(a) noma (b). 50
- (8) Uma kubhekwa isinqumo esivezwe esigatshaneni sesi-(5)(a) noma (b), umkhandlu okhipha ilayisensi ungabheka ukuthi ngabe ofake isicelo uwulandelile umyalelo okhishwe ngokwemigomo yesigatshana sesi-(4) noma sesi-(5)(c).
- (9) Ukuthumela isicelo ngokulandela isigatshana sesi-(1) noma ukukhipha imvume yokunukubeza umoya ngokulandela isigatshana sesi-5(b) noma ukukhokhwa kwenhlawulo ngokwemigomo yesigatshana sesi-7 kufanele— 55
- (a) kungajivazi igunya lokuhlola ukusingathwa kwemvelo noma igunya loMbutho wezamaPhoyisa waseNingizimu Afrika lokuphenya ukwapulwa kwalo Mthetho; noma 60
- (b) kungajivazi igunya lomthetho woPhiko lwezokuShushisa kaZwelonke lokuthatha izinyathelo zobulelesi; futhi

(c) not indemnify the applicant from liability in terms of section 51(1)(a) for having contravened section 22.

(10) If, at any stage after the submission of an application in terms of subsection (4), it comes to the attention of the licensing authority, that the applicant is under criminal investigation for the contravention of or failure to comply with section 22, the licensing authority may defer a decision to issue an atmospheric emission licence until such time that the investigation is concluded and—

(a) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure;

(b) the applicant concerned is acquitted or found not guilty after prosecution in respect of such contravention or failure has been instituted; or

(c) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.”.

#### Amendment of section 29 of Act 39 of 2004

4. Section 29 of the principal Act is hereby amended by the addition of the following subsection:

“(4) A notice contemplated in subsection (1)(b) or (2) must contain a requirement that the person indicated in the notice monitors, evaluates and reports on the implementation of the pollution prevention plan that has been approved in terms of subsection (1) or (2).”.

#### Amendment of section 36 of Act 39 of 2004

5. Section 36 of the principal Act is hereby amended—

(a) by the deletion of subsection (3);

(b) by the insertion of the following subsections after subsection (3):

“(3A) (a) In accordance with sections 125(2)(b) and 156(1)(b) of the Constitution whenever a licensing authority fails to take a decision on an application for an atmospheric emission licence within the time period set out in section 40(3) or (3A) of this Act, the person that applied for an atmospheric emission licence may apply to the Minister or MEC, as the case may be, to take the decision.

(b) The person contemplated in paragraph (a) must notify the licensing authority in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.

(c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the licensing authority in order to enable the Minister or MEC, as the case may be, to take a decision.

(d) Before taking a decision as contemplated in paragraph (a), the Minister or MEC must request the licensing authority to provide him or her with a report within a specified time period on the status and causes of delay in the application.

(e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactorily response or cooperation is received from the licensing authority within the specified time period the Minister or MEC, as the case may be, must, where appropriate—

(i) inform the person that applied for an atmospheric emission licence in the event that the licensing authority has complied with the relevant prescripts;

(ii) assist the licensing authority in accordance with sections 125(3) and 155(7) of the Constitution to fulfil its obligations under this Act; or



- (c) Kusule icala lofake isicelo ngokwemigomo yesigaba sama-51(1)(a) ngokwaphula isigaba sama-22.
- (10) Uma, noma nini ngemuva kokuthumela isicelo ngokwemigomo yesigatshana sesi-(4), kuvela emkhandlwini okhipha ilayisensi ukuthi ofake isicelo uphenywa ngezobulelesi ngokwaphula noma ukuhluleka ukulandela isigaba sama-22, umkhandlu okhipha ilayisensi ungamisa isinqumo sokukhipha ilayisensi egunyaza ukunukubeza umoya kuze kuphothulwe uphenyo futhi—
- (a) uPhiko lwezokuShushisa lukaZwelonke luthathe isinqumo sokungaphenyi lokho kwaphula noma ukuhluleka;
- (b) ofake isicelo oqondene ephume phambili ecaleni noma etholwa engenalo icala uma eseshushiselwe ukuwuphula noma ukuhluleka; noma
- (c) ofake isicelo oqondene inkantolo yomthetho imlahle ngecala lokwaphula noma lokuhluleka futhi ofake isicelo mayelana nokuhlahlwa kwakhe icala esebenzise zonke izindlela zomthetho ezisemthethweni zokubuyekeza noma zokudlulisa icala.”

#### Ukuchibiyela isigaba 29 soMthetho 39 wezi-2004

4. Ngakho-ke isigaba sama-29 soMthethongqangi sichitshiyelwe ngokungeza lesi sigatshana esilandelayo:

- “(4) Isaziso esivezwe esigatshaneni soku-(1)(b) noma (2) singaqukatha izimfanelo zokuthi lowo muntu ovezwe esazisweni aqaphe, ahlole futhi abike ngokusetshenziswa kohlelo lokunqanda ukungcoliswa komoya oselugunyaziwe ngokwemigomo yesigatshana soku-(1) noma (2).”

#### Ukuchibiyela isigaba 36 soMthetho 39 wezi-2004

5. Ngakho-ke isigaba sama-36 soMthethongqangi sichitshiyelwe:

- (a) ngokususa isigatshana sesi-(3);
- (b) ngokushutheka lezi zigatshana ezilandelayo ngemuva kwesigatshana sesi-(3):
- “(3A)(a) Ngokulandela isigaba se-125(2)(b) nese-156(1)(b) zoMthethosisekelo uma umkhandlu okhipha imvume uhluleka ukuthatha isinqumo ngokusetshenziswa kwemvume yokunukubeza umoya esikhathini esivezwe esigabeni sama-40(3) noma (3A) salo Mthetho, umuntu ofake isicelo semvume yokunukubeza umoya angafaka isicelo kuNgqongqoshe noma ku-MEC, noma komunye wabo, ukuba athathe isinqumo.
- (b) Umuntu ovezwe endimeni (a) kufanele azise umkhandlu okhipha imvume ngencwadi mayelana nenhloso yokusebenzisa indima (a) okungenani ezinsukwini ezingama-30 ngaphambi kokuba asebenzise leyo ndima.
- (c) Isicelo esivezwe endimeni (a) kufanele, okungenani sibe nayo yonke imiqulu ethunyelwe umkhandlu okhipha imvume ukuze usize uNgqongqoshe noma u-MEC, noma omunye wabo, ekuthatheni isinqumo.
- (d) Ngaphambi kokuthatha isinqumo esivezwe endimeni (a), uNgqongqoshe noma u-MEC kufanele acele umkhandlu okhipha imvume ukuba umnike umbiko esikhathini esibekiwe mayelana nezinga nezimbangela zokubambeleleka kwesicelo.
- (e) Uma esewamukele umbiko ovezwe endimeni (d) noma uma ingatholakalanga impendulo noma ingatholakalanga impendulo egculisayo noma ukubambisana nomkhandlu okhipha imvume esikhathini esibekiwe uNgqongqoshe noma u-MEC, noma omunye wabo, kufanele, uma kunesidingo—
- (i) azise umuntu ofake isicelo semvume yokunukubeza umoya uma umkhandlu okhipha imvume usulandele okunqunyawe;
- (ii) asize umkhandlu okhipha imvume ngokulandela isigaba se-125(3) kanye ne-155(7) soMthethosisekelo ukugcwalisa izibophezelo ngaphansi kwalo Mthetho; noma

(iii) direct the licensing authority to take the decision and such other steps as the Minister or MEC, as the case may be, may deem necessary, within a specified time period.

(f) In the event that the licensing authority fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in paragraph (e)(iii), the Minister or MEC, as the case may be, must take the decision within a reasonable period of time.

(g) The Minister or MEC, as the case may be, must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament or Provincial Legislature, as the case may be, setting out the details regarding the exercise of the power referred to in this section during the previous financial year.

(3B) The MEC or Minister, as the case may be, must make a decision on the application contemplated in subsection (3A)(a), within a reasonable period of time from the date of receipt of the application.

(3C) In the event that the MEC fails to make a decision on the application, within a reasonable period of time, as contemplated in subsection (3B), the applicant may submit the application to the Minister for a decision in terms of subsection (3A)(a).

(3D) In the event that the MEC does not have capacity to exercise the power, or for any good reason is unable to do so or to do so within a reasonable period of time, the MEC may request, in writing, the Minister to exercise the power in terms of subsection (3A)(a)."; and

(c) by the addition of the following subsections:

“(5) Notwithstanding subsections (1) to (4), the Minister is the licensing authority and must perform the functions of the licensing authority if—

(a) a provincial organ of state, which has been delegated the power to perform the licensing authority function in terms of subsection (2) by the metropolitan or district municipality, applies for an atmospheric emission licence;

(b) the listed activity falls within the boundaries of more than one province;

(c) the listed activity forms part of a matter declared as a national priority in terms of a Cabinet decision and notice referred to in section 24C(2B) of the National Environmental Management Act, 1998, as amended by the National Environmental Management Laws Second Amendment Act, 2013;

(d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, or the Minister has been identified as the competent authority; or

(e) the listed activity relates to a prospecting, mining, exploration or production activity as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998.

(6) For the purposes of subsection (5)(d), the Minister, as the competent authority empowered under section 24C(2) of the National Environmental Management Act, 1998 and as the licensing authority empowered under section 43(1) of the National Environmental Management: Waste Act, 2008, may issue an integrated environmental authorisation for the activities listed under section 24(2) of the National Environmental Management Act, 1998 and section 19(1) of the National Environmental Management: Waste Act, 2008.

- (iii) akhiphele umkhandlu okhipha imvume umyalelo wokuba uthathe isinqumo neiznye izinyathelo uNgqongqoshe noma u-MEC, noma omunye wabo, angabona ukuthi zifanele, esikhathini esibekiwe.
- (f) Uma umkhandlu okhipha imvume uhluleka ukuthatha isinqumo esikhathini esibekiwe noma ngenye indlela uhluleka ukulandela umyalelo ovezwe endimeni (e)(iii), uNgqongqoshe noma u-MEC, noma omunye wabo, kufanele athathe isinqumo esikhathini esifanele. 5
- (g) UNgqongqoshe noma u-MEC, noma omunye wabo, kufanele athumele kanyekanye nombiko wonyaka ovezwe esigabeni sama-40(1)(d)(i) se-*Public Finance Management Act, 1999 (Act No. 1 of 1999)*, athumele umbiko ePhalamende noma kuSishayamthetho sesiFundazwe, noma omunye wabo, oveza imininingwane emayelana nokusetshenziswa kwamandla avezwe kulesi sigaba onyakeni wezimali odlule. 10
- (3B) U-MEC noma uNgqongqoshe, noma omunye wabo, kufanele athathe isinqumo mayelana nesicelo esivezwe esigatshaneni sesi-(3A)(a), esikhathini esifanele kusukela ngosuku okwatholwa ngalo isicelo. 15
- (3C) Uma u-MEC ehluleka ukuthatha isi isinqumo ngesicelo, esikhathini esibekiwe, njengoba kuveziwe esigatshaneni sesi-(3B), ofake isicelo angathumela isicelo kuNgqongqoshe ukuba kuthathwe isinqumo ngokwemigomo yesigatshana sesi-(3A)(a). 20
- (3D) Uma u-MEC engenawo amandla okusebenzisa amandla, noma engakwazi ukwenza lokho noma ukwenza lokho esikhathini esibekiwe, u-MEC angacela, ngokubhaliwe, ukuba uNgqongqoshe asebenzise lawo mandla ngokwemigomo yesigatshana sesi-(3A)(a).”; futhi 25
- (c) ngokufaka lezigatshana ezilandelayo:
- “(5) Nakuba kunezigatshana (1) kuya kwesesi- (4), uNgqongqoshe ungumkhandlu okhipha imvume futhi kufanele aqhube imisebenzi yomkhandlu okhipha ilayisensi uma— 30
- (a) igatsha lombuso lesifundazwe, elidluliselwe amandla okuqhuba umsebenzi wokukhipha ilayisensi ngokwemigomo yesigatshana sesi-(2) ngumasipala wedolobha elikhulu noma wesifunda, lifaka isicelo sokunukubeza umoya; 35
- (b) lokho okwenziwayo okusohlwini kuwela emingceleni yezifundazwe ezidlulile kwesisodwa; 40
- (c) okwenziwayo okusohlwini kuyingxenywe yodaba olumenyezelwe njengokusemqoka kazwelonke ngokwemigomo yesinqumo seKhabhinethi nesaziso esivezwe esigabeni sama-24C(2B) se-*National Environmental Management Act, 1998*, njengoba sichitshiyelwe nge-*National Environmental Management Laws Second Amendment Act, 2013*; 45
- (d) okwenziwayo okusohlwini kuhambisana nemisebenzi esohlwini ngokwemigomo yesigaba sama-24(2) se-*National Environmental Management Act, 1998*, noma ngokwemigomo yesigaba se-19(1) se-*National Environmental Management: Waste Act, 2008*, futhi uNgqongqoshe esevezwe njengomkhandlu ofanele; noma 50
- (e) umsebenzi osohlwini ohambisana nomsebenzi wokuhlwaya, izimayini, ukuhlaziya noma ukukhiqiza njengoba kuveziwe i-*Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)*, endaweni lapho kufakwe khona isicelo samalungelo, noNgqongqoshe obhekele amagugu okumbiwa phansi eseveziwe umkhandlu ofanele ngokwemigomo yesigaba sama-24C se-*National Environmental Management Act, 1998*.”. 55
- (6) Ngokwesigatshana sesi-(5)(d), uNgqongqoshe, njengomkhandlu ofanele ungunya ngaphansi kwesigaba sama-24C(2) se-*National Environmental Management Act, 1998*, futhi njengomkhandlu okhipha ilayisensi ogunyaziwe ngaphansi kwesigaba sama-43(1) se-*National Environmental Management: Waste Act, 2008*, angakhipha imvume edidiyelwe yezemvelo yemisebenzi evezwe ngaphansi kwesigaba sama-24(2) se-*National Environmental Management Act, 1998* nesigaba se-19(1) se-*National Environmental Management: Waste Act, 2008*. 60

(7) An integrated environmental authorisation contemplated in subsection (6) may be issued only if—

- (a) the relevant provisions of this Act, the National Environmental Management Act, 1998, and the National Environmental Management: Waste Act, 2008, have been complied with; and
- (b) the integrated environmental authorisation specifies the provisions in terms of which it has been issued.

(8) The Minister and the licensing authority contemplated in subsections (1) to (4) may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister or the relevant licensing authority contemplated in subsections (1) to (4).”.

#### Amendment of section 38 of Act 39 of 2004

6. Section 38 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) Section 24 of the National Environmental Management Act [**and section 22 of the Environment Conservation Act apply**] applies to all applications for atmospheric emission licences, which are subject to an environmental impact assessment in terms of section 24 of the National Environmental Management Act, and both an applicant and the licensing authority must comply with [**those sections**] that section and any applicable notice issued or regulation made in relation to [**those sections**] that section.”;

- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) An applicant must, immediately after the submission of the application to the licensing authority, take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.”; and

- (c) by the insertion in subsection (3)(b) of the following subparagraph after subparagraph (ii):

“(iiA) indicating where a copy of the application can be obtained.”.

#### Amendment of section 39 of Act 39 of 2004

7. Section 39 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) section 24 of the National Environmental Management Act [**and section 22 of the Environment Conservation Act**] and any applicable [**notice issued**] environmental impact assessment done, the decision taken on the application of the environmental authorisation, and any applicable notice issued or regulation made pursuant to [**those sections**] that section.”.

#### Amendment of section 40 of Act 39 of 2004

8. Section 40 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) section 24 of the National Environmental Management Act [**and section 22 of the Environment Conservation Act**] and any applicable environmental impact assessment done, the decision taken on the application for the environmental authorisation, and any applicable notice issued or regulation made pursuant to [**those sections**] that section.”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) If [**an authorisation notice is issued**] the decision on the relevant application for an environmental authorisation has been made in terms of section 24 of the National Environmental Management Act [**or section 22 of the Environment Conservation Act in respect of an application**], the licensing authority must decide the application within 60 days

- (7) invume edidiyelwe yezemvelo evezwe esigatshaneni sesi-(6) ingakhishwa kuphela uma—
- (a) umbandela osemqoka walo Mthetho, i-*National Environmental Management Act, 1998*, ne-*National Environmental Management: Waste Act, 2008*, sekulandeliwe; futhi
- (b) invume edidiyelwe yezemvelo iveza imibandela ngokwemigomo ekhishwe ngayo.
- (8) UNgqongqoshe nomkhandlu okhipha ilayisensi ovezwe esigasthaneni soku-(1) ukuya kwesesi-(4) bangavumelana ngokuthi isicelo selayisensi yokunukubeza umoya mayelana nokwenziwayo okuvezwe esigabeni sama-22 kungadingidwa uNgqongqoshe noma umkhandlu oqondene okhipha ilayisensi ovezwe esigatshaneni soku-(1) ukuya kwesesi-(4).”.

#### Ukuchibiyela isigaba 38 soMthetho 39 wezi-2004

6. Ngakho-ke isigaba sama-38 soMthethongqangi sichitshiyelwe—
- (a) ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:
- “(2) Isigaba sama-24 se-*National Environmental Management Act* [nesigaba sama-22 se-*Environment Conservation Act zisebenza*] sisebenza kuzona zonke izicelo zelayisensi yokunukubeza umoya, ezihambisana nomthelela wokuhlolwa kwezemvelo ngokwemigomo yesigaba sama-24 se-*National Environmental Management Act*, futhi bobabili ofake isicelo nomkhandlu okhipha ilayisensi kufanele balandele [lezo zigaba] leso sigaba nesaziso esisebenzayo esikhishiwe noma nezimiso zomthetho ezimiswe mayelana [nalezo zigaba] naleso sigaba.”;
- (b) ngokufaka endaweni yesigatshana sesi-(3) sendima (a) le ndima elandelayo:
- “(a) Ofake isicelo kufanele, ngokushesha ngemuva kokuthumela isicelo emkhandlwini okhipha ilayisensi, athathe izinyathelo ezifanele zokuthumela isicelo igatsheni lombuso elifanele, kubantu abanentshisekelo nasemphakathini.”; futhi
- (c) ngokushutheka esigatshaneni sesi-(3)(b) le ndimana ngemuva kwendimana (ii):
- “(iiA) oveza indawo lapho kungatholwa khona ikhophi yesicelo;”.

#### Ukuchibiyela isigaba 39 soMthetho 39 wezi-2004

7. Ngakho-ke isigaba sama-39 soMthethongqangi sichitshiyelwe ngokufaka endaweni yendima (d) le ndima elandelayo:
- “(d) isigaba sama-24 se-*National Environmental Management Act* [nesigaba sama-22 se-*Environment Conservation Act*] kanye [nesaziso esikhishiwe] nesisebenzayo somthelela wemvelo ekuhlolweni okwenziwe, isinqumo esithathiwe ngesicelo semvume yezemvelo kanye, nesaziso esisebenzayo esikhishiwe noma izimiso zomthetho ezimiswe ngokulandela [lezo zigaba] leso sigaba;”.

#### Ukuchibiyela isigaba 40 soMthetho 39 wezi-2004

8. Ngakho-ke isigaba sama-40 soMthethongqangi sichitshiyelwe—
- (a) ngokufaka endaweni yesigatshana sesi-(2) sendima (c) le ndima elandelayo:
- “(c) isigaba sama-24 se-*National Environmental Management Act* [nesigaba sama-22 se-*Environment Conservation Act*] kanye nomthelela wokuhlola imvelo okwenziwe, isinqumo esithathiwe ngesikhathi kufakwa isicelo semvume yezemvelo kanye, nesaziso esisebenzayo esikhishiwe noma izimiso zomthetho emiswe ukulandela [lezo zigaba] lesi sigaba;”;
- (b) ngokufaka endaweni yesigatshana sesi-(3) lesi sigatshana esilandelayo:
- “(3) Uma [sekukhishwe isaziso semvume] sekwenziwe isinqumo sesicelo esithile semvume yezemvelo ngokulandela isigaba sama-24 se-*National Environmental Management Act* [noma isigaba sama-22 se-*Environment Conservation Act mayelana nesicelo*], umkhandlu okhipha ilayisensi kufanele unqume ngesicelo zingakapheli izinsuku

of the date on which the **[notice]** decision on the application for the environmental authorisation has been **[issued]** made.”; and

(c) by the insertion after subsection (3) of the following subsection:

“(3A) Where the listed activity relates to a prospecting, mining, exploration or production activity contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998, the Minister, after consultation with the licensing authority contemplated in section 36(1) and (2) of this Act, must decide the application within the timeframes set out in the National Environmental Management Act, 1998.”.

#### **Amendment of section 41 of Act 39 of 2004**

9. Section 41 of the principal Act is hereby amended by the addition of the following subsection:

“(3) A provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of the listed activity, and may be extended for an additional one year on good cause shown to the licensing authority.”.

#### **Amendment of section 49 of Act 39 of 2004**

10. Section 49 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) that person has been a director or senior manager who is or was a director or manager of a company, a juristic person or firm to whom paragraph (a) or (b) applies; **[and]** or”.

#### **Amendment of section 51 of Act 39 of 2004**

11. Section 51 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) contravenes a provision of section 22, 25, 28 or 35(2);”.

#### **Amendment of section 53 of Act 39 of 2004**

12. Section 53 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) any matter necessary to give effect to the Republic’s obligations in terms of an international agreement relating to air quality and climate change;”;

(b) by the insertion of the following paragraph after paragraph (a):

“(aA) information relating to energy that is required for compiling atmospheric emissions;”;

(c) by the insertion of the following paragraph after paragraph (l).

“(lA) the procedure and criteria to be followed in the determination of an administrative fine in terms of section 22A.”.

#### **Repeal of section 62 of Act 39 of 2004**

13. Section 62 of the principal Act is hereby repealed.

#### **Repeal of section 63 of Act 39 of 2004**

14. Section 63 of the principal Act is hereby repealed.

#### **Repeal of Schedule 2 to Act 39 of 2004**

15. Schedule 2 to the principal Act is hereby repealed.

ezingama-60 lapho [isaziso] isinqumo sesicelo sokugunyazwa kwe-mvelo [esakhishwa ngalo] esenziwe ngalo.”; futhi

(c) ngokushutheka ngemuva kwesigatshana sesi-(3) lesi sigatshana esilandelayo:

“(3A) Uma umsebenzi osohlwini uhambisana nomsebenzi woku-hlwaya, izimayini, ukuhlaziya noma ukukhiqiza ovezwe i-*Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)*, endaweni lapho kufakwe khona isicelo samalungelo, futhi uNgaongqoshe oqondene namagugu okumbiwa phansi eseveze umkhandlu ofanele ngokwemigomo yesigaba sama-24C se-*National Environmental Management Act, 1998*, uNgqongqoshe, ngemuva kokuxoxisana nomkhandlu okhipha imvume ovezwe esigabeni sama-36(1) nesesi-(2) salo Mthetho, kufanele anqume ngesicelo esikhathini esibekiwe i-*National Environmental Management Act, 1998*.”

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#### Ukuchibiyela isigaba 41 soMthetho 39 wezi-2004

9. Ngakho-ke isigaba sama-41 soMthethongqangi sichitshiyelwe ngokwengeza lesi sigatshana esilandelayo:

“(3) Ilayisensi yesikhashana yokunukubeza umoya isebenza isikhathiesingunya owodwa kusukela ngosuku okwagunyazwa ngalo umsebenzi osohlwini, futhi inganwetsywa omunye unyaka owodwa uma kunezizathu ezizwakalayo ezibekwe umkhandlu okhipha imvume.”

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#### Ukuchibiyela isigaba 49 soMthetho 39 wezi-2004

10. Ngakho-ke isigaba sama-49 soMthethongqangi sichitshiyelwe ngokufaka endaweni yendima (c) le ndima elandelayo:

“(c) lowo muntu enomqondisi wayengumqondisi noma umphathi osesikhundleni esiphezulu ongumqondisi noma owayengumqondisi noma umphathi wenkampani, igatsha noma inkampani okusebenza kuyona indima (a) noma (b); **[futhi] noma**”.

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#### Ukuchibiyela isigaba 51 soMthetho 39 wezi-2004

11. Ngakho-ke isigaba sama-51 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) sendima (a) le ndima elandelayo:

“(a) ukwaphula umbandela wesigaba sama-22, 25, 28 noma sama-35(2);”.

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#### Ukuchibiyela isigaba 53 soMthetho 39 wezi-2004

12. Ngakho-ke isigaba sama-53 soMthethongqangi sichitshiyelwe:

(a) ngokufaka endaweni yendima (a) le ndima elandelayo:

“(a) udaba olufanele okufanele lubophezele iRiphabhuliki ngokwemigomo yezivumelwane zamazwe ngamazwe ezihambisana nama-zinga omoya kanye nokuguquguquka kwesimo sezulu;”;

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(b) ngokushutheka le ndima elandelayo ngemuva kwendima (a):

“(aA) imininingwane ehambisana namandla adingekayo ukuze kulandelwe ukunukubezwa komoya;”; futhi

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(c) ngokushutheka le ndima elandelayo ngemuva kwendima (l).

“(lA) inqubo nendlela ezolandelwa ukunquma inhlawulo ngokwemigomo yesigaba sama-22A.”.

#### Ukuchithwa kwesigaba 62 soMthetho 39 wezi-2004

13. Ngakho-ke isigaba sama-62 soMthethongqangi sichithiwe.

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#### Ukuchitha isigaba 63 soMthetho 39 wezi-2004

14. Ngakho-ke isigaba sama-63 soMthethongqangi sichithiwe.

#### Ukuchitha isiThasiselo 2 soMthetho 39 wezi-2004

15. IsiThasiselo sesi-2 soMthethongqangi sichithiwe.

**Amendment of Table of Contents of Act 39 of 2004**

16. The Table of Contents of the principal Act is hereby amended by the insertion after item 22 of the following item:

“22A. Consequences of unlawful conduct of listed activity resulting in atmospheric emission.”

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**Short title and commencement**

17. This Act is called the National Environmental Management: Air Quality Amendment Act, 2014, and takes effect on the date of publication in the *Gazette* as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996.”.



**Ukuchibiyela Okuqukethwe uMthetho 39 wezi-2004**

16. Ngakho-ke okuqukethwe uMthethongqangi kuchitshiyelwe ngokushutheka ngemuva kohlamvu lwama-22 lolu hlamvu olulandelayo:

“22A. Umthelela wokungaziphathi ngendlela esemthethweni wezinto ezingaholela ekunukubezeni umoya.”

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**Isihloko esifingqiwe nokuqala kwawo ukusebenza**

17. Lo Mthetho ubizwa ngokuthi uMthetho Wokusingathwa kwezeMvelo kuZwelonke: uMthetho oChibiyela izinga loMoya, wezi-2014, futhi uzoqala ukusebenza ngosuku oyoshicilelwa ngalo kuSomqulu njengoba kuveziwe esigabeni sama-81 soMthethosisekelo waseRiphabhuliki yaseNingizimu Afrika, 1996.”

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