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 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 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.