DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

PROGRAMME FOR THE IMPLEMENTATION OF THE NATIONAL WASTE MANAGEMENT STRATEGY

Starter Document
for
Integrated Waste Management Planning

REVIEW OF CURRENT LEGISLATION

Final Draft

May 2000

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Ref No.	Review of Current Legislation	**Comp.**	RS & MV
Draft	Final Draft	**Contr.**	JH & HW
Date	24 May 2000	**Appd.**	W. Scott

EXECUTIVE SUMMARY

Legislation regulating the waste management function is currently characterised by fragmentation, overlapping and duplication of functions, occurring at national, provincial and local levels of governments and between government departments. Not only are there a range of national statutes and regulations, provincial statutes, regulations and ordinances and local by-laws which deal directly or indirectly with waste management issues, but when coupled with planning related policy and legislation, the legal position becomes even more complex. The various law reform processes under way regarding planning, the environment and waste management are to be welcomed and care should be taken to avoid a duplication of strategies and instruments to resolve the situation.

This review of current South African legislation has endeavoured to define the duties, roles and responsibilities of all levels of government and, as far as possible, all relevant government departments. The review takes into account current legislation that is relevant to waste management planning, with an emphasis on national legislation. A complete analysis of every relevant item of legislation, from national statutes and regulations, through provincial statutes, regulations and ordinances to local government by-laws was not undertaken within the limited scope intended by this review.

The intention is stated in the Action Plan for Integrated Waste Management Planning (Version C - 15 October 1999) at page 14:

"Prior to drafting regulations for IWM planning, a review of existing local, provincial and national legislation relating to integrated waste management planning, including land use planning will be undertaken. This review will ensure that the IWM planning regulations do not duplicate or conflict with current legislation or regulations".

It appears that the latter intention will not be achievable and that duplication may be inevitable should new legislation be promulgated. Similarly, it is unlikely that conflicts arising from such legislation will be able to be entirely avoided. It is therefore advisable to ensure that the legislation which is drafted as a result of the Integrated Waste Management Planning (IWMP) process endeavours to harmonise with the most relevant aspects of legislation relating to waste management and planning as far as is practically possible. In other words, it would be preferable to ensure that the proposed regulations dealing with IWMP which are to be drafted accord with major environmental and planning instruments which themselves reflect current policy, rather than attempting to adapt the regulations to comply with all legal instruments concerned with waste which have accumulated over the past decades. Such an approach should be coupled to an appropriate repeal and amendment of redundant legislation or provisions of legislation, or may simply be approached by providing in the proposed IWMP regulations to be drafted that such legislation overrides all other appropriate prevailing legislation to the extent that it is inconsistent therewith.

The review of current legislation also endeavours to address the requirements of the National Environmental Management Act 107 of 1998 in terms of Environmental Implementation Plans and Environmental Management Plans and, to this end, some reliance has been placed on the Guidelines for Preparation of the First Edition

Environmental Implementation Plans and Environmental Management Plans, produced by the Department of Environmental Affairs and Tourism in November 1999.

Arising from the process of reviewing the relevant legislation, a proposed framework of legislation that will support the implementation of waste management planning is put forward.

The review of current legislation extracts from prevailing legislation those provisions which have a bearing on waste management issues, specifically in the context of planning. A broad interpretation of "waste" has been adopted for the purposes of the review in an attempt to convey the complexity of the current legal position and the potential difficulty in achieving “integration”. The obligations concerning Integrated Waste Management derive primarily from the Constitution of the Republic of South Africa Act 108 of 1996, specifically through the fundamental rights concerning the environment. Furthermore, the provisions of the Constitution dealing with the spheres of government and the functional areas of legislative competence and executive authority are relevant, particularly in the planning context. All spheres of government, the national sphere, the provincial sphere and the local sphere have legislative, executive or administrative roles to play which are associated with waste management issues and to waste management planning specifically.

The constitutional obligations are to some extent captured in a range of policy documents, certain of which are still in the formulation process. These include :

- The White Paper on Environmental Management;
- The White Paper on Integrated Pollution and Waste Management for South Africa: A Policy on Prevention, Waste Minimisation, Impact Control and Remediation;
- The Draft Green Paper on Development and Planning.

Furthermore, statutes enacted subsequent to the interim Constitution coming into effect set certain principles, which apply throughout the Republic to the actions of all organs of state, amongst others. These include:

- The National Environmental Management Principles in terms of the National Environmental Management Act;
- The Principles in terms of the Development Facilitation Act 67 of 1995.

Such principles provide, amongst others, organs of state with clear direction as to government policy on issues which broadly relate to waste management planning and the integration of waste management planning. It appears however that there may still be inadequate communication within government departments as to the appropriate mechanisms to achieve the integration of issues such as waste management in the planning context.

In addition to the obligations imposed by the Constitution, government policy and principles contained in relevant statutes, international conventions are relevant to Integrated Waste Management Planning issues. In this regard, the Basel Convention is of particular importance, not only in the context of transboundary movement of wastes, but also regarding internal national obligations concerning issues such as waste generation, disposal options, and the collection and transmission of information.

In the context of Integrated Waste Management Planning, legislation dealing with local government is particularly relevant. The Local Government Transition Act 209 of 1993 defines the powers and duties at local government level, many of which powers and duties are directly or indirectly concerned with Integrated Waste Management Planning. The production of Integrated Development Plans ("IDP's") at local government level appears to provide a potentially valuable mechanism for integration, including of waste management issues. Care must however be taken to harmonise such IDPs with the Environmental Implementation Plans and Environmental Management Plans required in terms of the National Environmental Management Act and Land Development Objectives ("LDOs") in terms of the Development Facilitation Act. Further to the Local Government Transition Act, other legislation of particular importance includes the Local Government: Municipal Structures Act and a pending statute, currently the Local Government: Municipal Systems Bill. The importance of Integrated Development Planning is recognised and provided for in this pending legislation.

Of central importance to issues concerning Integrated Waste Management Planning is the National Environmental Management Act 107 of 1998 which puts into effect many components of government policy concerning environmental issues. Of specific relevance from the perspective of IWMP are the provisions concerning co-operative governance, in particular the production of Environmental Implementation Plans and Management Plans by certain national government departments and the preparation of Environmental Implementation Plans by every province. The recently produced Guideline represents a step in the process of bringing the co-operative governance provisions of the National Environmental Management Act to fruition and it is clear that the process involved in the preparation of such plans will be refined over time.

South African planning and development legislation is similarly complex at present with the Development Facilitation Act being intended to improve this situation. It appears that the DFA has not entirely fulfilled this intention and that amendments may be necessary in order to further improve the current legal complexity. The harmonisation of the DFA amendment process and the Integrated Waste Management process is necessary to avoid further duplication and a lost opportunity for achieving integration.

Of relevance in the planning context are the LDOs set by local government in terms of the DFA. Similar to the comments set out previously, the harmonisation of the IWMP process with not only LDOs but also Environmental Implementation Plans and Environmental Management Plans in terms of the National Environmental Management Act, and Integrated Development Plans in terms of the Local Government Transition Act (or, in due course, the Local Government Municipal Systems Act) must be pursued in as a means to meet the intention of achieving Integrating Waste Management Planning. There is a range of legislation with appropriate mechanisms currently in place, which can assist in implementing Integrated Waste Management Planning, at least, in the interim phase until the proposed Integrated Waste Management Act is enacted. It would be preferable to avoid a later wholesale revision of the legislation and ideally the interim Integrated Waste Management Planning measures, which are to be put in place, should be adaptable to be included in or under the intended Integrated Waste Management Act. As far as the planning context is concerned, it is important that Integrated Waste Management Planning components are harmonised with current legislation and mechanisms concerned with planning as early as possible in the process.

An opportunity would be lost should it be necessary to adapt the Integrated Waste Management Act to planning legislation and guidelines, rather than allowing such legislation and guidelines and Integrated Waste Management Planning principles to develop side by side.

There is also a range of additional national legislation, which relates to waste management and waste management planning issues. Such legislation includes the Minerals Act 50 of 1991, the Atmospheric Pollution Prevention Act 45 of 1965, the Hazardous Substances Act 15 of 1973, and, of particular importance, the Environmental Conservation Act 73 of 1989.

In addition to national legislation, provincial legislation dealing with waste management and planning issues is similarly common, ranging from provincial statutes (such as the Western Cape Planning and Development Act 7 of 1999) to ordinances assigned to the provinces (such as the Gauteng Local Government Ordinance 17 of 1939). At the local government level, there are a multitude of by-laws which deal with waste management related issues and planning issues.

Arising from the review of current legislation, a framework of legislation that will support the implementation of waste management planning is set out. This is contained in a separate document.

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1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT 108 OF 1996

The South African Constitution (the Constitution of the Republic of South Africa Act 108 of 1996) ("the Constitution"), is the supreme law of the land. All law, including environmental, waste management and planning laws, must comply with the Constitution.

1.1 The Bill of Rights

1.1.1 The Constitution contains a Bill of Rights, which enshrines certain fundamental rights, with environmental rights being guaranteed in section 24 of the Bill of Rights. The Bill of Rights also enshrines other relevant fundamental rights, such as the rights of access to information and administrative justice. These rights bolster or strengthen the environmental rights guaranteed in the Constitution.

1.1.2 Section 24 of the Constitution, guarantees everyone the right:

a) to an environment that is not harmful to their health or well-being; and

b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:

i) prevent pollution and ecological degradation;

ii) promote conservation; and

iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

1.1.3 Section 24(a) of the Constitution guarantees the right of every person to an environment that is not harmful to human health or well-being. Section 24(b) enshrines the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures which, among other things, prevent pollution and ecological degradation. Of importance in the context of waste management is the provision that requires legislative and other measures to "secure ecologically sustainable development ... while promoting justifiable economic and social development." These provisions of section 24 bind the legislature, the executive, the judiciary and all organs of State. In other words, government at the national, provincial and local spheres are obliged to take reasonable legislative and other measures to ensure the rights contained in section 24 (b) are fulfilled. All departments of state or administration in the national, provincial or local spheres of government have similar obligations.

1.1.4 To the best of our knowledge, the term "environment" as it is used in the Constitution has not yet been defined by South African Courts, but is likely to embrace a number of concepts, including the natural environment (i.e. the natural world of renewable and non-renewable natural resources; for example - air, water, soil, plants, animals); the spatial environment (i.e. person-made and natural resource areas; for example - suburbs, towns, cities, landscapes,

wetlands, mountains, seashores); as well as the social or sociological environment (i.e. human beings individually and collectively such as families and civil society). Under the National Environmental Management Act 107 of 1998, the environment is defined as:

"the surroundings within which humans exist and that are made up of -

iv) the land, water and atmosphere of the earth;

v) micro-organisms, plant and animal life;

vi) any part or combination of (i) and (ii) and the interrelationships among and between them; and

vii) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being."

1.1.5 Under the Constitution, the definition of the "environment" is therefore likely to be interpreted widely or expansively and not be confined to only the "natural" environment nor to pollution or conservation and protection concepts.

1.1.6 Amongst other things, the Constitution of the Republic of South Africa also deals with matters of governance.

1.2 Spheres of Government

1.2.1 In terms of section 40, government is constituted as national, provincial and local spheres of government. These spheres are distinctive, interdependent and interrelated and must observe and adhere to the principles of co-operative governance set out in Chapter 3 of the Constitution and conduct their activities within the parameters that the Chapter sets out.

1.2.2 Section 41, in Chapter 3 of the Constitution, provides that all spheres of government and all organs of state within each sphere must :

- preserve the peace, national unity and the indivisibility of the Republic;
- secure the well-being of the people of the Republic;
- provide effective, transparent, accountable and coherent government;
- be loyal to the Constitution, the Republic and its people;
- respect the constitutional status, institutions, powers and functions of government in the other spheres;
- not assume any power or function except those conferred on it in terms of the Constitution;
- exercise its powers and perform its functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and

- co-operate with other spheres of government in mutual trust and good faith, including by informing one another of, and consulting one another on, matters of common interest and co-ordinating their actions and legislation with one another.

1.2.3 In terms of section 43 of the Constitution, the legislative authority of the national sphere of government vests in Parliament, the legislative authority of the provincial sphere vests in the provincial legislatures and the legislative authority of the local sphere vests in the Municipal Councils.

1.2.1 National Sphere

1.2.1.1 The provisions relating to national legislative authority are contained in section 44 of the Constitution. The Constitution confers on the National Assembly the power to:

- amend the Constitution;
- pass legislation with regard to any matter including a matter within a functional area listed in Schedule 4, but excluding (subject to certain exceptions as set out in the following paragraphs) a matter within a functional area listed in Schedule 5 (see Appendix A and B to this document); and
- assign any of its legislative powers, excluding the power to amend the Constitution, to any legislative body in another sphere of government.

1.2.1.2 Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4 is, for all purposes, legislation with regard to a matter listed in Schedule 4.

1.2.1.3 Parliament may, however, intervene by passing legislation with regard to a matter falling within a functional area listed in Schedule 5 (see Appendix B to this document), when it is necessary to:

- maintain national security;
- maintain economic unity;
- maintain essential national standards;
- establish minimum standards required for the rendering of services; or
- prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.

Other than in the above circumstances, Parliament cannot pass legislation with regard to any matter within a functional area listed in Schedule 5.

1.2.1.4 The national executive may intervene in the executive affairs of a province where the province cannot or does not fulfil an obligation imposed in terms of legislation or in terms of the Constitution (section 100). The national executive may in these circumstances issue a directive to the provincial executive requiring it to take stated steps to meet its obligations within a stated

time, or it may assume responsibility for that obligation where such action is necessary for:

- maintaining essential national standards or meeting established minimum standards for the rendering of a service;
- maintaining economic unity;
- maintaining national security; or
- preventing the province from taking unreasonable action that is prejudicial to the rights and interests of another province or the country as a whole.

Therefore where national government has, for example, set norms and standards, and provincial or local government fails to comply with such norms and standards, national government may intervene to ensure compliance.

1.2.1.5 The normal exercise of executive authority by the President and other members of the Cabinet is dealt with in section 85 of the Constitution. Such executive authority is exercised by:

- implementing national legislation, except where the Constitution or an Act of Parliament provides otherwise;
- developing and implementing national policy;
- co-ordinating the functions of state departments and administrations;
- preparing and initiating legislation; and
- performing any other executive function provided for in the Constitution or in national legislation.

1.2.2 Provincial Sphere

1.2.2.1 The functional areas listed in Schedule 5 (Appendix B to this document) are those over which provincial government has exclusive competence (subject to the exception set out above). In terms of section 104, the provincial legislatures have the power to:

- pass a constitution for the province and to amend that constitution;
- pass legislation for the province with regard to :
  - any matter within a functional area listed in Schedule 4 or Schedule 5 (see Appendix A and Appendix B respectively to this document);
  - any matter outside those functional areas that is expressly assigned to the province by national legislation; and
  - any matter for which the provisions of the Constitution envisages the enactment of provincial legislation; and
- assign any of its legislative powers to a Municipal Council in the province.

1.2.2.2 As indicated previously, national government is not competent to legislate on matters within the functional areas listed in Schedule 5 unless intervention in the province's area of competence is necessary under specific circumstances, including to maintain essential national standards and to establish minimum

standards required for the rendering of services. In the context of integrated waste management planning, national government may therefore legislate to maintain essential national standards, or to set minimum standards in respect of functional areas over which provincial government has exclusive competence.

1.2.2.3 The exercise of executive authority by the provincial Premiers and the Members of the Executive Council is in terms of Section 125 of the Constitution. Such exercise of executive authority is by:

- implementing provincial legislation in the province;
- implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise;
- administering in the province, national legislation outside the functional areas listed in Schedules 4 and 5, the administration of which has been assigned to the provincial executive in terms of an Act of Parliament;
- developing and implementing provincial policy;
- co-ordinating the functions of the provincial administration and its departments;
- preparing and initiating provincial legislation; and
- performing any other function assigned to the provincial executive in terms of the Constitution or an Act of Parliament.

1.2.2.4 A province has executive authority only to the extent that the province has the administrative capacity to assume effective responsibility. The national government is required to, by legislative and other measures, assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions. Subject to the provisions of section 100, set out previously, the implementation of provincial legislation in a province is an exclusive provincial executive power:

1.2.3 Local Sphere

1.2.3.1 Chapter 7 of the Constitution deals with local government (municipalities), the executive and legislative authority of which are vested in the municipalities' Municipal Councils. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation.

1.2.3.2 In terms of section 152 of the Constitution the objects of local government are to:

- provide democratic and accountable government for the local community;
- ensure the provision of services to communities in a sustainable manner;
- promote social and economic development;
- promote a safe and healthy environment; and

- encourage the involvement of communities and community organisations in the matters of local government.

1.2.3.3 A municipality must in terms of section 153 structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and participate in national and provincial development programmes.

1.2.3.4 In terms of section 155 of the Constitution, three categories of municipality are established:

a) **Category A**: A municipality that has exclusive municipal executive and legislative authority in its area.

b) **Category B**: A municipality that shares municipal executive and legislative authority in its area with a Category C municipality within whose area it falls.

c) **Category C**: A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.

1.2.3.5 The section provides that national legislation must define the different types of municipality that may be established within each category. The section also provides that national legislation must establish the criteria for determining when an area should have a single Category A municipality and when it should have municipalities of both Category B and Category C. Furthermore, such legislation should establish criteria and procedures for determining municipal boundaries and make provision for an appropriate division of powers and functions between municipalities when an area has both Category B and Category C municipalities. Such national legislation must take into account the need to provide municipal services in an equitable and sustainable manner.

1.2.3.6 Parts B of Schedules 4 and 5 of the Constitution (see Appendix A and B respectively) refer to the provisions of section 155 (6) (a) and (7) in the context of local government matters. Section 155(6) provides that provincial government must by legislative or other means provide for the monitoring and support of local government in the province. Section 155(7) provides that the national government (subject to section 44) and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise of municipalities of their executive authority referred to in section 156 of the Constitution.

1.2.3.7 The powers and functions of municipalities are governed by section 156 of the Constitution. A municipality has executive authority in respect of, and the right to administer:

- the local government matters listed in Part B of Schedules 4 and 5 of the Constitution (see Annexure A and B respectively to this document); or
- any other matter assigned to it by national or provincial legislation.

A municipality may make and administer by-laws for the effective administration of matters, which it has the right to administer. A by-law that conflicts with national or provincial legislation would generally be invalid.

1.2.3.8 Section 139 of the Constitution provides for provincial government to have the power to intervene in the affairs of local government where a municipality cannot or does not fulfil an executive obligation imposed by legislation. The provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including issuing a directive to the Municipal Council, and assuming responsibility for the obligation to the extent necessary to:

- maintain essential national standards or meet established minimum standards for the rendering of a service;
- maintain economic unity; or
- prevent the Municipal Council from taking unreasonable action that is prejudicial to the rights and interests of another municipality, or to the province as a whole.

1.2.4 Concurrent Legislative Competence

1.2.4.1 The functional areas listed in Schedule 4 are those over which national and provincial government have concurrent legislative competence. A full list of the functions over which national and provincial government have concurrent jurisdiction is set out in Appendix "A" to this document. National and provincial government have concurrent powers to legislate on these functional areas. In the event of a conflict between national and provincial legislation falling within a functional area set out in Schedule 4 of the Constitution, section 146 provides that national legislation that applies uniformly to the Republic as a whole will prevail if:

- it deals with a matter that cannot be regulated effectively by the provinces individually;
- it deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing:
  - norms and standards;
  - frameworks; or
  - national policies; or
- it is necessary for, amongst other things, the protection of the environment.

1.2.4.2 National legislation also prevails over provincial legislation if the former is aimed at preventing unreasonable action by a province that:

- is prejudicial to the economic, health or security interests of another province or the country as a whole, or
- impedes the implementation of national economic policy.

1.2.4.3 Therefore, national legislation on matters such as protection of the environment, health services, industrial promotion, nature conservation (subject to exceptions), pollution control, regional planning and development, soil conservation, urban and rural development, etc. will always trump provincial legislation if the above requirements are met. If these requirements (and certain others which are not listed above) do not apply, provincial legislation prevails over national legislation.

1.2.5 Inter-governmental Relations

1.2.5.1 Section 41(2) of the Constitution provides that an Act of Parliament must establish or provide for structures and institutions to promote and facilitate inter-governmental relations and provide for appropriate mechanisms and procedures to facilitate settlement of inter-governmental disputes. Organs of state involved in inter-governmental disputes are obliged to take every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose. All other remedies must be exhausted before an organ of state approaches a court to resolve a dispute.

1.2.5.2 In terms of section 114 of the Constitution, a Provincial Legislature must provide for mechanisms to ensure that all provincial executive organs of state in the province are accountable to it and to maintain oversight of the exercise of provincial executive authority in the province and any provincial organ of state. When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation (section 139 of the Constitution). It may issue a directive to the municipal council describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations.

1.2.6 Obligations of National and Provincial Government in respect of Local Government

1.2.6.1 In terms of section 154 of the Constitution, national and provincial governments must, by legislative and other measures, support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and to perform their functions. Draft national or provincial legislation that affects the status, institutions powers or functions of local government must be published for public comment before being introduced, in such a manner that allows organised local government municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

1.2.6.2 Section 156 provides that national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of any matter listed in Part A of Schedule 4 or Part A of Schedule 5 (set out in Appendix A and Appendix B respectively to this document) which necessarily relates to local government if that matter would be most effectively administered locally and the municipality has the capacity to administer it.

1.2.6.3 Each provincial government must, by legislative or other means, promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs. The national government (subject to section 44) and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5 by regulating the exercise by municipalities of their executive authority.

1.2.7 Transitional Arrangements

1.2.7.1 In terms of section 14 (1) of Schedule 6 to the Constitution, legislation with regard to a matter within a functional area listed in Schedule 4 or 5 to the Constitution which, when the Constitution took effect was administered by an authority within the national executive, may be assigned by the President to an authority within a provincial executive.

1.2.7.2 To the extent that it is necessary for assignment of legislation to be carried out, the President may amend or adapt the legislation, repeal and re-enact those provisions to which the assignment applies or regulate any other matter necessary as a result of the assignment. The provisions of the Local Government Transition Act 209 of 1993 remain in force until 30 April 1999 or until repealed, whichever is sooner (section 26(1)(a) of Schedule 6 to the Constitution).

1.2.8 Waste Management Planning – Functional Areas

1.2.8.1 It is evident that there is extensive overlap between the levels of government with regard to legislative functional areas and executive/administrative responsibilities associated with waste management, specifically in the context of planning. This situation is exacerbated by the fact that "waste management" *per se* does not appear within Schedules 4 and 5, whereas a range of other functional areas do appear which are to varying degrees related to waste management and/or planning. These include:

Schedule 4: Concurrent National and Provincial Legislative Competence

- agriculture;
- disaster management;
- environment;
- health services;
- housing;
- industrial promotion;
- nature conservation (subject to limited exceptions)
- pollution control;
- regional planning and development;
- road traffic regulation;
- soil conservation;

- urban and rural development;
- with regard to the following local government matters, to the extent set out in section 155(6)(a) and (7):
  - air pollution;
  - building regulations;
  - municipal planning;
  - municipal health services;
  - water and sanitation services limited to potable water supply systems and domestic waste – water and sewage disposal systems;

Schedule 5: Exclusive Provincial Legislative Competence

- abattoirs;
- provincial planning;
- with regard to the following local government matters to the extent set out in section 155(6)(a) and (7):
  - cleansing;
  - control of public nuisances;
  - facilities for, amongst others, the burial of animals;
  - municipal abattoirs;
  - noise pollution;
  - refuse removal, refuse dumps and solid waste disposal.

1.2.8.2 Powers which are not covered by a concurrent functional area of Schedule 4 or are not, in terms of Section 44, reasonably necessary for, or incidental to, the effective exercise of such a power, or are not covered by Schedule 5, will be areas of exclusive national competence.

2. GOVERNMENT POLICY AND PRINCIPLES

2.1 White Paper on Environmental Management

2.1.1 Introduction

2.1.1.1 On 15 May 1998, the Department of Environmental Affairs and Tourism (DEAT) published the White Paper on Environmental Management ("the Policy Document") being the government's national policy on environmental management. The Policy Document was published in Notice 749 of 1998 (Government Gazette No. 18894 of 15 May 1998). The purpose of the Policy Document is to inform the public of government's objectives in relation to environmental management; how it intends to achieve its objectives; to inform government agencies and state organs what their objectives are and to guide them in developing strategies to achieve those objectives. The word "environment" as it is used in the Policy Document refers to the biosphere in which people and other organisms live. The environment consists of:

- renewable and non-renewable natural resources such as air, water, land and all forms of life;
- natural ecosystems and habitats and
- ecosystems, habitats and spatial surroundings modified or constructed by people, including urbanised areas, agricultural and rural landscapes, places of cultural significance and the qualities that contribute to their value.

2.1.1.2 The Policy Document is an overarching policy framework. The framework refers to all government institutions and to all activities that impact on the environment. It gives effect to many rights in the Constitution that relate to the environment and defines the essential nature of sustainable development as the combination of social, economic and environmental factors.

2.1.1.3 The Policy Document recognises that development and the environment are not in opposition to each other but are closely linked. To achieve environmentally sustainable development is regarded as essential for government to give effect to people's environmental rights (for example, those rights enshrined in Section 24 of the Constitution) and to meet their development requirements.

2.1.2 Key Features of the Policy Document

2.2.2.1 *Sustainable development*

The Policy Document endorses the definition adopted by the United Nations in 1987 namely: sustainable development is development, which meets the needs of the present, without compromising the ability of future generations to meet their own needs. It contains two key concepts:

- the concept of needs, in particular the essential needs of the world's poor to which overriding priority should be given, and
- the idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.

The Policy Document seeks to ensure that environmental sustainability, health and safety are not compromised, and that natural and cultural resources are not endangered.

2.2.2.2 *Growth development and the environment*

The need to grow and develop South Africa and to improve the quality of life enjoyed by South Africans must be integrated with the sustainable use of environmental resources. Growth refers specifically to increasing the size of the economy and development focuses on the quality of life rather than the quantity of economic activity.

2.2.2.3 *Opportunities and constraints*

The Policy Document seeks to maintain natural life sustaining processes, by ensuring that the carrying capacity of the environment is not exceeded, and recognises that constraints can lead to innovation.

2.2.2.4 *People-centred development*

Government needs to give attention to integrating population concerns into all development strategies, planning, decision making and resource allocation to meet the needs and to improve the quality of life of future and present generations as well as promoting social justice and reducing unsustainable consumption and negative environmental impact.

2.2.2.5 *Sustainable use*

If government fails to address the sustainable use of natural resources, it will degrade the resource base on which we all depend. Consequently, environmental policy must set a course that will achieve the goal of sustainable use that will meet present and future needs.

2.2.2.6 *An environmentally sustainable economy*

Environmentally sustainable growth and development must take precedence by addressing the needs of society in an equitable fashion, taking into account population dynamics while remaining in balance with ecological cycles.

2.2.2.7 Focus of environmental policy

In conclusion of the abovementioned visions, it is essential that a policy of *integrated and sustainable management of the environment,* now and in the future, provides the basis of sustainable development in all areas of human activity.

2.1.3 Mandate for environmental management policy

The Constitution places government under a legal obligation to act as a responsible custodian of the nation's environment. It is the Constitution which provides government in all the three spheres with the mandate for the new policy on environmental management as contained in the Policy Document.

2.1.4 Mission statement

In the Policy Document, Government commits itself to:

- use government resources in the most effective way to implement policy; and

- integrate and co-ordinate its approach to environmental management across departments and all state organs in all spheres of government.

In order to attain this mission, the Policy Document states that government will embody a shift in its approach to environmental management and introduce an *integrated and co-ordinated_management regime*. Government has accepted its duty to manage the environment, in a sustainable way for the public good and benefit while protecting our environmental heritage. The DEAT is the lead agent responsible for ensuring the integrated and co-ordinated implementation of the policy on environmental management.

2.1.5 Principles

The principles will guide government in achieving the vision set out in the Policy Document and the overarching goal of sustainable development. It is these principles that government will use to apply, develop and test policies, subsequent actions (including decision making), legislation, regulation and enforcement.

The policy on environmental management will be applied as follows:

- national government will be accountable for policy formulation, monitoring and enforcement;
- government will allocate functions to the institutions and spheres of government that can most effectively achieve the objective of a function within the context of the environmental policy contained in the Policy Document. This would include allocation of certain functions to the municipal sphere of government;
- government will have to ensure that the ownership and use of renewable and non-renewable natural resources, cultural resources and land promotes sustainable development for the benefit of all South Africans;
- all people are to be educated in understanding and obtaining the necessary skills for effective participation in achieving sustainable development;
- any conflicts of interest between responsibilities for resource exploitation and any powers affecting environmental quality must be resolved through agreed conflict resolution procedures;
- environmental concerns must be integrated into the work of all government institutions and would require inter-governmental harmonisation of policies, legislation, monitoring, regulation and other environmental functions in accordance with the policy embodied in the Policy Document;
- responsibility for the environmental and health and safety consequences of any activity, product, service, programme or project will be throughout its life cycle. It starts with the conceptualisation and planning and runs through all stages of implementation to reuse, recycling and ultimate disposal of products and waste or decommissioning of installations;
- the government accepts all responsibility and duties implied by the doctrine of public trust and will enact legislation to give effect to this principle;

- the price of goods and services will include the environmental costs of sustaining the rate of supply over time or otherwise the costs of replacing the good or service as it is depleted by another good or service at a similar rate of supply;
- all environmental management activities will apply due process;
- equitable access to meet basic needs and ensure human well being will be entrenched;
- government will integrate environmental considerations for social, political and economic justice in addressing the needs and rights of all communities and sectors and individuals;
- any decision of sustainable development must be based on an assessment of full social and environmental costs and benefits of such activity on the environment;
- government will have to act with due regard for the principles contained in the Policy as well as regional and international agreements;
- government is to enhance mutual trust and reciprocal relations by fulfilment of its constitutional, legislative and executive obligations;
- the interests, needs and values of all interested and affected parties in decision making must be considered in securing sustainable development;
- management must take into account the policy of an integrated environment in any decisions made. The White Paper lists the following as priority areas for environmental governance:
  - integrating environmental, social and economic considerations into development and land use planning processes and structures. This requires assessment of environmental impact at policy, planning, programme and project levels.
  - an integrated approach to environmental management addressing all environmental media, all social, cultural and natural resources and pollution control and waste management;
  - an integrated approach to government's environmental functions, including organisational and institutional arrangements, legislation and all policies in all spheres of government.
- a policy of open information is to be followed;
- the inclusion of all interested and affected parties in environmental governance will be encouraged;
- a risk averse and cautious approach that recognises the limits of current knowledge about the environmental consequences of decisions or actions will be applied;
- government is obliged to anticipate problems and prevent negative impacts on the environment and people;

- a "polluter-pays" Policy will be adhered to; and
- government will encourage the minimisation and avoidance of waste at source (especially in the case of toxic and hazardous waste), waste recycling, separation of waste at source and safe disposal of unavoidable waste.

2.1.6 Strategic goals and objectives

2.1.6.1 The DEAT, as lead agent, will prioritise the development of the National Environmental Strategy and Action Plans ("NES & AP") in consultation with other departments with environmental responsibilities. The strategy will focus and prioritise Government's goals and objectives requiring action by Government and other parties within the next five to ten years. The intention is to aim for an environmentally sustainable economy in balance with ecological processes. The plans will also take into account any international obligations. The NES & AP will develop implementation strategies and action plans that address institutional arrangements and issues.

2.1.6.2 Seven strategic goals for achieving environmental sustainability and integrated environment management have been identified:

- effective institutional frameworks and legislation;
- sustainable resource use and impact management;
- holistic and integrated planning and management – this entails the development of mechanisms where necessary, and building on existing mechanisms, to ensure that environmental considerations are effectively integrated into existing and new government policies, legislation and programmes, all spatial and economic development planning processes, and all economic activity. Supporting objectives include the achievement of integrated environmental management by:
  - the incorporation of IEM principles and methodologies in spatial development planning, including Integrated Development Plans and Land Development Objectives, and in plans for the use of natural and cultural resources;
  - the development of management instruments and mechanisms for the integration of environmental concerns in development planning and land allocation;
  - the development of standards for environmental management systems, environmental impact assessments, monitoring and audit procedures and reporting for all activities including government activities that impact on the environment;
  - the development of agreed, appropriate indicators to measure performance in all areas of national, provincial and local environmental policies;
  - the setting of general and specific targets for the control and, where necessary, reduction of environmental impacts;

- the development of transparent review processes for all aspects of environmental management;
- the development of mechanisms to ensure disclosure of information needed to protect people's environmental rights;
- integrate environmental considerations in all activities;
- ensure effective integrated and holistic environmental management;
- ensure the harmonisation and prioritisation of subsidiary environmental policies; and
- the development of guidelines or other instruments for local government on the integration of environmental considerations into integrated development plans and land development objectives; -furthermore, the supporting objective of co-ordination and integration is directed at a review of policies, government responsibilities and decision making processes and the co-ordination of appropriate measures within and between departments and other organs of state in all spheres;
- participation and partnership in environmental governance;
- empowerment and environmental education;
- information management for sustainable development; and
- international co-operation;

2.1.7 Governance and Lead Agent

2.1.7.1 All national government departments and other organs of state must comply with government's national policy on environmental management to achieve an integrated and holistic approach to environmental management.

2.1.7.2 Effective environmental management within the framework of co-operative governance and concurrent competencies requires that government:

- ensure clarity regarding environmental jurisdiction;
- eliminate duplication of functions in different spheres of government;
- provide for executive and administrative capacity in all spheres of government.

2.1.7.3 As has been seen, the primary allocation of functions is made by the Constitution, which allocates lawmaking and administrative functions between national, provincial and/or local governments. The present allocation of functions gives a wide range of government agencies responsibilities for "environmental management". Agencies with specific law-making or executive functions, can assign or delegate those functions to another government institution. It is clear that in the case of numerous environment-related functions, more than one sphere of government has legislative and/or executive and administrative authority and that this authority is often exercised concurrently by different government agencies. Relevant to this Review, the White Paper highlights the following:

"Functions relating to refuse dumps and solid waste disposal present another example [of concurrent competency]. In terms of the Constitution, provincial and local government have concurrent competence in these areas, to the exclusion of national government. The Environment Conservation Act (73 of 1989) provides that no-one may establish or operate a refuse dump without a permit from the Minister of Water Affairs. The Act also authorises the Minister of Environmental Affairs and Tourism to make regulations with regard to waste management".

2.1.7.4 The lead agent for this Policy is the DEAT which is responsible and accountable for:

- developing and implementing an integrated and holistic environmental management system;
- co-ordinating and supervising environmental functions in all spheres of government;
- developing and enforcing an integrated and comprehensive management system; and
- enforcing compliance with this policy.

The lead agent will have the necessary enforcement powers to ensure compliance with national policy by the public and will also generally be able to bind all spheres of government (including the municipal sphere) and organs of state to comply with and give effect to national environmental legislation. The DEAT will also be able to enact legislation allowing the department the power of intervention to protect the environment in cases of conflict between national and provincial law as well as being able to intervene in instances where provincial or local governments fail to fulfil any executive obligation in respect of an environmental function. The Minister of Environmental Affairs and Tourism will also, in terms of the Policy, investigate the implications of establishing a Committee for Environmental Co-ordination ("CEC"). This has already been done and legislated in the National Environmental Management Act which is discussed elsewhere in this document. In terms of the policy, the committee will provide executive and strategic guidance on environmental management as well as sustainable development across departments and spheres of government. All government agencies and organs are obliged to implement government's national policy on environmental management. The DEAT will co-ordinate the environmental management activities of government departments and other state organs to achieve integrated environmental management of all environmental resources and media. The DEAT will also involve interested and affected parties in developing and implementing environmental policy, developing legislation and regulations, setting norms and standards, and monitoring and assessing environmental impacts.

2.1.7.5 Where appropriate, provincial and local government will develop their own legislation and implementation strategies to address their specific needs and conditions within the framework of the policy contained in the Policy

Document and will have to operate within the national framework of sustainable development and integrated environmental management. Management of environmental impacts should be carried out in the sphere of government that will most effectively manage the impact and it is important to note that local authorities or the municipal sphere of government will play a key role in monitoring compliance with environmental norms and standards where they have the capacity to do so.

2.1.7.6 The DEAT has to pass domestic legislation to give effect to any international obligation. The Policy Document states that South Africa is to adopt a pro-active approach in international relations dealing with environmental issues. Government must ensure that there is no confusion about areas of environmental jurisdiction and that there is no duplication of functions between different departments and spheres of government. The capacity of all government institutions to implement environmental policy effectively will be developed and where capacity does not exist, transitional measures will be provided for.

2.1.8 Management system

2.1.8.1 To ensure compliance and to secure co-operation in meeting policy objectives, to enhance the quality of the environment and to control environmental impacts, government will have to create management measures, mechanisms and instruments. These measures, mechanisms and instruments can be grouped into three general categories based on government's intention and vision.

- *Direct measures*

  These measures will take the form of laws, regulations and directives prescribing behaviour and will be designed to prevent or pre-empt environmental impacts (pro-active measures), or to deal with impacts that have already occurred (reactive measures).

- *Indirect measures*

  Indirect measures are measures designed to encourage people to change their behaviour in return for the benefits derived from sustainable development. Proactive measures include:

  - a register of hazardous substances and processes;
  - permitting conditions
  - environmental charges and incentives; and
  - integrated planning regulations.

- *Supportive measures*

  These measures will be in the form of facilitating informed decision-making as well as facilitating feedback management to enable effective environmental management and achievement of sustainable development. Such measures include integrated environmental planning and integrated resource planning.

2.1.8.2 *Mechanisms and instruments*

As part of the environmental management system, specific measures, mechanisms and instruments will be introduced and may be developed further and incorporated in Government's management system. Framework legislation will provide a basis for subsidiary regulation by the lead agent, other departments and other spheres of government. An example of such framework legislation is the National Environmental Management Act which has important management implications for municipal government The lead agent will co-ordinate affected government agencies to provide accessible, uniform, "one-stop" permitting and the review of environmental impact assessments and audits.

2.1.8.3 *Integrated environmental management (IEM) and planning*

Any person wishing to conduct an activity with potentially adverse environmental impacts will have to submit an Environmental Impact Assessment ("EIA") before government approves such activity. The EIA will provide adequate information on possible adverse environmental effects of the activity so as to enable decision-makers to make informed decisions on possible alternatives in order to mitigate impacts, or to adopt the "no-go" option. Local governments will be required to incorporate IEM into Integrated Development Plans and Land Development Objectives. Spatial development plans will have to be dealt with in the context of IEM.

2.1.8.4 *Enforcement*

Administrative control procedures will be developed by government to provide for good administration and to ensure effective enforcement.

2.1.8.5 *Punishment of environmental transgressions*

The gravity and the extent of degradation and abuse of the environment will be reflected in the punishment of environmental crimes. Methods for determining fines and prison sentences linked to the cost of living and to the environmental costs of the offence will be investigated. The feasibility and desirability of alternative sanctions, for example community service, seizure of assets used to cause environmental harm, penalties based on the value of benefits accruing to the accused as a result of the transgression, withdrawal of permits, and/or *licences, will be investigated.*

2.1.8.6 *Liability for environmentally harmful actions*

Actions which cause harm and cost to the environment should attract legal liability in the form of fines, compensation claims and restitution and rehabilitation orders.

2.1.8.7 *Reviews, conflicts and appeals*

Government will have to develop appropriate processes and procedures to give effect to the common law and constitutional requirements for review of government decisions on authorisations for appropriate land use, environmental rehabilitation, pollution control, waste management, exploitation of natural resources, zoning, EIA's and other decisions with

significant environmental impacts. Government will establish a system to manage conflicts to achieve this and the system will be integrated into all environmental management processes.

2.1.8.8 *Information management*

The right of access to information will be governed by new legislation developed in terms of section 32(2) of the Constitution (the recently enacted Promotion of Access to Information Act 2 of 2000). It will be policy for government to collect, analyse and disseminate information and to provide resources to meet these needs. This information must be accessible to the particular user group concerned and special attention must be given to the content and the form of media used for transmitting information.

2.1.8.9 *Research and development*

Government will support both basic and applied research in searching for solutions to identify and prioritise issues confronting policy development and environmental management.

2.1.8.10 Partnerships and participation

In accordance with international trends and Agenda 21, government will affirm, strengthen and establish partnerships with interested and affected parties and will establish national, provincial and local advisory structures, mechanisms and processes to foster public participation in defining environmental problems and seeking solutions.

2.1.8.11 *Agreements*

Agreements may be concluded between government and private enterprises to promote environmental performance that exceed minimum standards. This will be achieved by encouraging innovation and the development of best practise. government may furthermore enter into agreements in accordance with the principles of open information and participation.

2.2 White Paper on Integrated Pollution and Waste Management for South Africa: A Policy on Prevention, Waste Minimisation, Impact Control and Remediation.

2.2.1 This White Paper was published in General Notice 227 of 2000 (17 March 2000). The policy represents formal government policy regarding integrated pollution and waste management.

2.2.2 Integrated pollution and waste management is defined as a holistic and integrated system and process of management aimed at pollution prevention and minimisation at source, managing the impact of pollution and waste on the receiving environment and remediating damaged environments. The integrated pollution and waste management policy represents a subsidiary policy of the overarching environmental management policy. It will apply to all government institutions and to society at large and to all activities that impact on pollution and waste management. One of the fundamental approaches in the policy is the prevention of pollution, minimisation of waste, control of impacts and remediation. The management of waste is intended to

be implemented in a holistic and integrated manner which will extend over the entire waste cycle, from cradle to grave, and will include the generation, storage, collection, transportation, treatment as well as the final disposal of waste.

2.2.3 The overarching goal reflected in the policy is integrated pollution and waste management, with the intention being to move away from fragmented and uncoordinated pollution control and waste management towards integrated pollution and waste management as well as waste minimisation. Within this framework of the overarching goal, the following strategic goals apply:

- effective institutional framework and legislation;
- pollution and waste minimisation, impact management and remediation;
- holistic and integrated planning – the intention is to develop mechanisms to ensure that integrated pollution and waste management considerations are integrated into the development of government policies, strategies and programmes as well as all spatial and economic development planning processes and in all economic activity. The strategy mechanisms include the following:
  - the incorporation of integrated environmental management principles and methodologies in spatial development planning as it relates to pollution and waste management;
  - making timeous and appropriate provision for adequate waste disposal facilities;
  - developing management instruments and mechanisms for the integration of pollution and waste management concerns in development planning and land allocation;
  - to develop agreed appropriate indicators to measure performance for inclusion in EIPs and EMPs as provided for in the National Environmental Management Act;
- participation and partnerships in integrated pollution and waste management governance;
- empowerment and education in integrated pollution and waste management;
- information management; and
- international co-operation.

2.3 The National Environmental Management Principles in terms of the National Environmental Management Act

2.3.1 The principles set out in section 2 of the Natural Environmental Management Act apply throughout the Republic to the actions of all organs of state (this would include local or municipal government) that may significantly affect the environment and:

- apply alongside all other appropriate and relevant considerations;

- serve as the general framework within which the integrated environmental management and implementation plans, referred to in Chapter 5 of the Act, must be formulated;
- serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of the National Environmental Management Act or any statutory provision concerning the protection of the environment;
- serve as principles by reference to which a conciliator appointed under the Act must make recommendations; and
- guide the interpretation, administration and implementation of the Act and any other law concerned with the protection and management of the environment.

2.3.2 The principles include the following:

- environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and their social interests equitably;
- development must be socially, environmentally and economically sustainable.
- sustainable development requires the consideration of all relevant factors, including the following:
  - that disturbance of ecosystems and loss of biological diversity are avoided or where they cannot be altogether avoided, are minimised and remedied;
  - that pollution and degradation of the environment are avoided or, where they cannot be altogether avoided, are minimised or remedied;
  - that disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided or where it cannot be altogether avoided, is minimised and remedied;
  - that waste is avoided or, where it cannot be altogether avoided, is minimised or re-used and recycled where possible and otherwise disposed of in a responsible manner;
  - that the use and exploitation of non-renewable natural resources is responsible and equitable and takes into account the consequences of the depletion of the resource;
  - that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
  - that a risk averse and cautious approach is applied which takes into account the limits of current knowledge about the consequences of decisions and actions; and

- that negative impacts on the environment and on people's environmental rights must be anticipated and prevented and where they cannot be altogether prevented, are minimised and remedied.

2.3.3 In brief, the remaining principles provide as follows:

- environmental management must be integrated;
- environmental justice must be pursued;
- equitable access to environmental resources to meet basic human needs must be pursued;
- responsibility for the environmental health and safety consequences of a policy programme exists throughout its life cycle;
- participation of all interested and affected parties in environmental governance must be promoted;
- decisions must take into account the interests, needs and values of all interested and affected parties;
- community well being and empowerment must be promoted;
- the social, economic and environmental impacts of activities must be considered;
- the right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected;
- decisions must be taken in an open and transparent manner and access to information must be provided in accordance with the law;
- there must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures;
- global and international responsibilities relating to the environment must be discharged in the national interest;
- the environment is held in public trust for the people
- the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment;
- the vital role of woman and youth in environmental management and development must be recognised; and
- sensitive, vulnerable, highly dynamic or stressed ecosystems require special attention in management and planning procedures.

2.4 Principles in terms of the Development Facilitation Act

2.4.1 In terms of section 2 of the Development Facilitation Act 67 of 1995, the general principles which are set out in section 3 of the Act apply throughout the Republic and:

- also apply to the actions of the state and a local government body (as defined);
- serve to guide the administration of any physical plan, transport plan, guide plan, structure plan, zoning scheme or any like plan or scheme administered by the competent authority in terms of any law;
- serve as guidelines by reference to which any competent authority shall exercise any discretion or take any decision in terms of the Act or any other law dealing with land development, including any such law dealing with the subdivision, use and planning of or in respect of land; and
- for the purposes of the various chapters within the Act shall, amongst others, serve as principles by reference to which a tribunal shall reach decisions, shall provide the guidelines with which the formulation and implementation of land development objectives of local government bodies and the carrying out of land development projects shall be consistent, guide the consideration of land development applications and the performance of functions in relation to land development, etc.

2.4.2 A "land development" means any procedure aimed at changing the use of land for the purpose of using the land mainly for residential, industrial, business, small scale farming, community or similar purposes, excluding a procedure in terms of any other law relating exclusively to prospecting or mining. Amongst others, the following principles apply:

- policy, administrative practice and the laws should promote efficient and integrated land development in that they:
  - promote the integration of the social, economic, institutional and physical aspects of land development;
  - promote integrated land development in rural and urban areas in support of each other; and
  - encourage environmentally sustainable land development practices and processes;
- members of communities affected by land development should actively participate in the process of land development;
- policy, administrative practice and laws should encourage and optimise the contributions of all sectors of the economy (government and non-government) to land development so as to maximise the Republic's capacity to undertake land development;
- laws, procedures and administrative practice relating to land development should:

- be clear and generally available to those likely to be affected thereby;
- in addition to serving as regulatory measures, also provide guidance and information to those affected thereby;
- be calculated to promote trust and acceptance on the part of those likely to be affected thereby; and
- give further content to the fundamental rights set out in the Constitution;

- policy, administrative practice and laws should promote sustainable land development at the required scale, in that they should, *inter alia*, promote sustained protection of the environment;
- policy, administrative practice and laws should promote speedy land development;
- each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservation, industrial, community facility, mining, agricultural or public use, should in advance or in general, be regarded as being less important or desirable than any other use of land;
- a competent authority at national, provincial and local government level should co-ordinate the interests of the various sectors involved in or affected by land development so as to minimise conflicting demands on scarce resources.

2.4.3 In addition to the above, the Minister may by notice in the *Gazette* prescribe further principles for land development or prescribe any principle set out above in greater detail. Furthermore, the Premier of a province may by proclamation in the *Provincial Gazette* prescribe additional principles for land development or prescribe principles in greater detail (as long as such principles are not in conflict with the principles contained in section 3), and may publish for general information, a provincial policy relating to land development or any aspect thereof which is consistent with published principles.

2.5 Draft Green Paper: Development and Planning

2.5.1 As this policy document published on 22 April 1999 is still in the draft Green Paper stage, we will not devote detailed attention to its content for the purposes of this Review. Nevertheless, the document does provide some indication of policy direction.

2.5.2 The executive summary to the draft Green Paper provides some background to the planning situation in South Africa. It points out that the fragmented, unequal and "incoherent" planning systems which developed under apartheid were to some extent addressed by the Development Facilitation Act No 67 of 1995 ("DFA") which was passed to provide a coherent framework for land development, according to a set of binding principles, to speed up the approval of development projects and to provide for the overhaul of the existing planning framework. The intention is to produce a White Paper which will

spell out the programme for land development planning into the future. The executive summary highlights the fact that many problems remain despite the advent of the DFA and other new legislation, with such problems including:

- a lack of shared vision about what spatial development should be;
- a lack of co-ordination between different spheres of Government and between different departments;
- a lack of capacity;
- a high degree of legal and procedural complexity; and
- a very slow pace of land development approvals.

2.5.3 The draft Green Paper recommends, *inter alia*, that the DFA and its principles be used in an amended form as the basis of national enabling legislation for integrated development planning. Furthermore, it is proposed that the legal framework be rationalised by assisting provinces to repeal all existing provincial planning legislation and by enacting a single piece of planning legislation within a national framework. The further requirement that all spheres of government produce Integrated Development Plans and develop land development management systems which support these plans is, to some extent already captured in national legislation. Similarly, the further decentralisation of decision-making to local government, within a broader framework of national and provincial Integrated Development Plans, is to some extent already reflected in legislation.

2.5.4 The draft Green Paper is of value in identifying certain characteristics of South Africa's planning system, including fragmentation - across geographic areas, provinces, jurisdictional boundaries, sectoral uses and in terms of jurisdictional instruments, etc.

2.5.5 The draft Green Paper is particularly useful in setting out a summary of the legal context of planning since 1994. Relevant aspects include:

- **The Constitution** – the influence of the Constitution on the planning system has already been set out, *inter alia*, regarding co-operative governance, procedural and participatory rights to ensure accountability for decision making, the protection of the environment, etc. Furthermore, it is pointed out that provincial planning is a functional area of exclusive provincial legislative competence, meaning that the National Assembly may not pass a law on provincial planning unless it is for the purpose of essential national standards or minimum standards. The implication of the Constitution which is highlighted in the draft Green Paper is that national law can set norms and standards, frameworks and policies in respect of municipal planning and land development management, but cannot regulate the details. As far as provincial planning is concerned, the national power to legislate is very circumscribed.
- **The Development Facilitation Act** - The intention of the DFA was, *inter alia*, to introduce substantive principles (norms) that must guide land development and decision making, and the introduction of the concept of

Land Development Objectives which are plans approved by political decision makers that set their objectives and targets for development and which inform the spatial and developmental imperatives of an area.

- **Provincial Planning and Development Laws** – Several provinces have been reformulating their planning and development laws in an attempt to create legal uniformity and address the apartheid legal and administrative chaos, with several provinces already having passed new laws. The problem which is highlighted in the draft Green Paper is that provincially led law reform has resulted in gaps and inconsistencies creeping in, in the absence of national guidelines, other than the DFA in its current form.
- **Sectoral Laws** – The range of new laws with major implications for planning will be mentioned later in this Review. These include the Local Government Transition Act, the National Environmental Management Act, regulations in terms of the Environment Conservation Act, amongst others.

2.5.6 With regard to the institutional context since 1994, the draft Green Paper highlights that there is confusion around the level of exclusivity of jurisdiction of municipalities with regard to local planning. A significant problem for local government is apparently the lack of clear definition of roles and responsibilities of different government actors. Furthermore, DFA Tribunals have not yet been established in every province. The DFA Tribunal system is only required in the provinces that have adopted the DFA and, merely, by way of example, the Western Cape did not adopt any aspects of the DFA. Furthermore, even in provinces where DFA Tribunals exist, developers can choose whether or not to use them over and above any other route for approval of a development application.

2.5.7 The point is highlighted in the draft Green Paper that the practice of spatial planning is in considerable disarray due to a number of major interrelated problem areas, including:

- a lack of shared vision;
- a lack of intergovernmental co-ordination, with the relationship between national and provincial planning in particular being unclear. By way of example, the DFA is criticised as failing to provide a clear framework within which provinces can draw up legislation which is provincially specific, but still in principle, nationally unified;
- intergovernmental relations have also led to problems and the separation between spatial development (in the form of Integrated Development Plans, or LDO's), transport, water and environmental issues is regarded as particularly worrying. The point is made in the draft Green Paper, that a danger exists that if environmental issues are considered independently by an environmental agency (considering the issues on narrow sectoral grounds), environmental issues will no longer be considered a factor when town planning approval is sought.
- issues of capacity;

- legal and procedural complexity – this issue is particularly relevant for the purposes of this Review and the paragraph in question in the draft Green Paper provides an excellent outline of the status as at April 1999. For that reason, we have included below an extract from the relevant Chapter.

  "Many national laws relating to planning are still in existence and the new national sectoral laws ... also deal with planning matters.

  In many provinces the legal complexity is even greater. In each of the pre-1994 provinces ....a town planning ordinance existed which governed land use management and new land development in the 'white' areas. In the former homelands.... and the TBVC states ... R188 of 1969 and R293 of 1962 regulated land use and ownership. R188 dealt with land allocation and other related matters in the rural areas and R293 was used for planning and land use management in the urban areas of the former homelands. After the independence of the Transkei, Ciskei, Venda and Bophuthatswana (TBVC), application of R293 and R188 became very complex. As each of these territories obtained 'independence', they acquired legislative powers in respect of land and other matters. From the date of 'independence' they were entitled to amend and repeal planning laws inherited from South Africa and to promulgate their own laws. Each of the TBVC states developed their own versions of R293 and R288 while South Africa amended R293, so that a different version of it applied to the self-governing territories. The situations are so complex that in parts of the country it is almost impossible to know what land related laws take precedence.

  The confusion caused by the multiplicity of legislation is also considerable in peripheral areas of the former white South Africa, where the absence of town planning schemes and the applicability of the relevant ordinances resulted in little effective land use planning control. Similarly, different laws applied in areas reserved for "coloured" people. The system also resulted in considerable administrative and procedural confusion. After 1994, when the boundaries of the new provinces came into effect, the administration of these laws changed. From 1 July 1994 the power to administer the former TBVC states and self-governing territories resided in the President who delegated some of the powers to the Minister of Land Affairs. The Minister, in turn, reassigned some of the powers ... to the provinces. However, historical laws of the former independent states (for example, Proclamation R293) contained aspects relating to planning and local governance which have different Ministers in the new dispensation, requiring different Ministers to assign parts of laws to lower spheres of government. The process has not been even, resulting in confusion.

  Similarly, in local government, there is legal confusion. For example, a number of the major tools of management and control (such as zoning, the removal of title deed restrictions and building regulations)

derive their powers from different legislation. Procedurally, many of the complexities created through national and provincial legislation are played out in this sphere. Only a few of these are mentioned here.

Firstly, there are a range of planning instruments created historically (such as guide plans, master plans, structure plans and town planning schemes) which are still in existence and which have a different legal status. The distinction between these has become increasingly blurred. This confusion has been compounded in recent years by the introduction of LDO's in terms of the DFA and IDP's in terms of the Transitional Local Government Act. This has caused great confusion and many local authorities are unsure of the distinction between them.

In addition, transportation plans, environmental plans and water plans have independent reporting routes and, in the case of environmental legislation, different approval processes from the processes established in terms of the ordinances.

In terms of the DFA, it is no longer necessary for developers to follow the approval route laid down in the Ordinances. An alternative route exists in terms of Tribunals.

In some of the ex homelands areas, perhaps the most powerful arena of procedural and approval confusion lies in the (unresolved) relationship between traditional and tribal leaders and the newly established local authorities".

2.5.8 The draft Green Paper proposes a spatial planning system for South Africa. It is proposed that the current three sphere spatial planning system should be continued, with provincial, local and, to a much lesser extent, national spheres of government all being legitimate and important arenas of spatial decision making. Terminological standardisation is also proposed and confusion has been compounded recently by the introduction of LDO's under the DFA and IDP's under the Local Government Transition Act. The draft Green Paper highlights the fact that although there is an overlap between the strategic, proactive intentions of these two types of plans, they are not the same. The draft Green Paper proposes that a single comprehensive term be adopted to describe plans produced by or for public authorities. The term "Integrated Development Plan" is proposed. The use of the term "integrated" implies that it pulls together social, economic, environmental, spatial, cultural and political concerns into a single set of processes in which the relationship between these concerns is considered. It also implies the integration of implementation and directional issues and the alignment of internal corporate management issues with external influences. The spatial dimension of Integrated Development Planning is the focus of the draft Green Paper.

2.5.9 The draft Green Paper sets out a broadly common direction for formal planning in South Africa. The Development Facilitation Act is perceived as the appropriate legislation, with appropriate amendments, to ultimately be the only planning and development laws in the country, when coupled with the nine provincial Acts that will eventually be passed by the provinces. In other words, the DFA is perceived as the one national planning law that will set

norms and standards that are to be applicable across the country and throughout the spheres. The draft Green Paper proposes that a period of consolidation and the incremental alignment of different parts of the planning system is required in order to achieve synergy. The concept of minimalism is also advocated. By this it is meant that spatial plans should not attempt to be comprehensive but should take the form of frameworks of public actions and investments which define the minimum public actions necessary to achieve the goals and objectives of the plan. The intention is to thereby create maximum space for the "energy and initiative" of NGO's, communities and the private sector. The draft Green Paper states that "a single law, which incorporates all dimensions of spatial planning and which, particularly, integrates spatial planning, the environment and transport, remains first prize." It is concluded, however, that this is not the appropriate time to proceed with such legislation and that a period of consolidation is required. In the short term, ways should be sought to achieve greater integration between existing laws, particularly by evaluating whether to use amendments to the DFA as a tool.

2.5.10 The draft Green Paper attempts to clarify the planning functions of the three spheres of government. These are as follows:

- **National functions:**
  - the establishment of an enabling legislative framework;
  - co-ordination of the spatial decisions of different national departments;
  - the establishment of norms and standards;
  - support and advice;
  - co-ordination with other spheres;
  - monitoring; and
  - a national spatial planning function;
- **Provincial functions:**
  - co-ordination of line function activities;
  - co-ordination with national government;
  - enabling legislation;
  - establishing norms and standards;
  - local government support and co-ordination;
  - monitoring;
  - a spatial planning function; and
  - regional planning;
- **Local Government functions:**
  - metropolitan and district councils, in particular the obligation to undertake Integrated Development Planning; and

- traditional and tribal authorities, in particular in rural areas.

2.5.11 The draft Green Paper also devotes attention to the proactive spatial planning system in local government, issues relating to capacity and other aspects of peripheral importance. The draft Green Paper furthermore deals with land development and the management of land development as an aspect distinct from planning.

2.5.12 The draft Green Paper puts forward a proposed means of rationalising the legal system for planning, using the DFA as the basis of a national legislative framework. For this purpose, certain changes will be required to the DFA. The draft Green Paper sets out how the recommendations should be implemented, in a level of detail which, while relevant to the spatial planning component of integrated waste management planning, will not be set out in this Review.

3. INTERNATIONAL CONVENTIONS

In terms of section 231 of the Constitution, an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, except in certain specific circumstances. Any international agreement becomes law in the Republic when it is enacted by national legislation, but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. The White Paper on integrated pollution and waste management indicates that of the 20 international agreements pertaining to integrated pollution and waste management, 19 have been acceded to or ratified by South Africa.

3.1 Basel Convention

The convention was concluded at Basel on 22nd March 1989 and South Africa acceded thereto on 5 May 1994. It was published for general information in GN 1051 on 21 August 1998. This convention has not yet been enacted as domestic legislation but is envisaged that it will shortly form part of our legislation in terms of the NWMS.

3.1.1 Scope of the convention (Article 1)

3.1.1.1 The wastes which are subject to transboundary movement are be considered to be "hazardous wastes" for the purposes of this Convention:

- wastes that belong to any category contained in Annex I of the Convention unless they do not possess any of the characteristics contained in Annex III; and
- wastes that are not covered under the abovementioned but are defined as or are considered to be hazardous waste by the domestic legislation of the Party of export, import or transit.

3.1.1.2 Wastes that belong to any category contained in Annex II to the Convention that are subject to transboundary movement shall be "other wastes" for the purposes of this Convention.

3.1.1.3 Wastes which as a result of being radioactive are subject to other international control systems, including international instruments applying specifically to radioactive materials, are excluded from the scope of this Convention.

3.1.1.4 Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

3.1.2 Definitions (Article 2)

3.1.2.1 "Wastes" are defined as substances or objects which are disposed of or are intended to be disposed of by the provisions of national law.

3.1.2.2 "Transboundary movement" means any movement of hazardous wastes from an area under the national jurisdiction of one State to or through an area of the national jurisdiction of another State, provided at least two States are involved in the movement.

3.1.2.3 "Competent authority" means one governmental authority designated by a Party to be responsible for *inter alia* receiving the notification of a transboundary movement of hazardous waste.

3.1.3 National definitions of hazardous waste (Article 3)

Each Party to the Convention must inform the Secretariat of any wastes other than those contained in Annex I and II to the Convention which are considered a hazardous wastes under its national legislation, and of any requirements concerning transboundary movement procedures applicable to such wastes.

3.1.4 General obligations (Article 4)

3.1.4.1 This Article places numerous obligations on Parties subscribing to the Convention and a short summary of these obligations is set out below.

3.1.4.2 In the event of a Party exercising its right to prohibit the import of hazardous waste, it should inform all the other Parties and such Party shall prohibit the export of hazardous waste to the Parties who have exercised the right. Furthermore the Parties shall prohibit the export of hazardous waste and other wastes if the State of import has not given its consent in writing.

3.1.4.3 Each Party is obliged ensure that the generation of hazardous wastes and other wastes within its own country is reduced to a minimum. The Parties to the Convention are also to ensure that the availability of adequate disposal facilities for the environmentally sound management of hazardous wastes and other wastes as far as it is possible are established within its own country. The parties also have an obligation to ensure that the persons involved in the management of hazardous wastes and other waste take the necessary steps to prevent pollution and, should pollution occur, to minimise the consequences thereof for human health and the environment. The Parties are to ensure that the transboundary movement of hazardous wastes and other wastes is reduced to a minimum and is conducted in a manner which will protect human health and the environment against adverse effects. Parties shall not allow the export of hazardous wastes or other wastes to a State belonging to an economic and/or political development organisation that are Parties and particularly to developing countries which have prohibited by legislation all imports, or if such a Party has reason to believe the waste in question will not be managed in an environmentally sound manner. The Parties are obliged to ensure that all information about a proposed transboundary movement be provided to the States concerned and to prevent the import of hazardous wastes and other wastes if there is reason to believe the waste in question will not be managed in an environmentally sound manner. All the Parties to the Convention are obliged to co-operate in activities with other Parties and interested organisations.

3.1.4.4 The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal. Each Party to the Convention is obliged to take the necessary legal, administrative and other steps to implement and enforce the provisions of the Convention. No Party shall permit the export of hazardous waste to a non-Party or accept imports from such a non-Party.

3.1.4.5 Each Party shall provide national constraints prohibiting all persons under its jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such a person is authorised to exercise these activities. Each Party shall require that hazardous wastes or other wastes, which are the subject of transboundary movement, be packaged, labelled and transported according to accepted and recognised international practices. It shall be a requirement that all hazardous wastes and other wastes be accompanied by a movement document from the point of where the movement commences to the point of disposal. Each Party to the Convention has an obligation to ensure that hazardous wastes and other wastes are managed in an environmentally sound manner in the State of import. The Parties to the Convention shall ensure that transboundary movement of hazardous wastes and other wastes takes place only if:

- the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the waste in question in an environmentally sound and efficient manner;
- the wastes in question are acquired as a raw material for recycling or recovery industries in the State of import; or
- the transboundary movement is in accordance with any other criteria to be decided between the Parties.

3.1.4.6 The obligation of those States under this Convention in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the state of import or transfer. Any Party may impose additional requirements that are consistent with the provision of the Convention and in accordance with the rules of international law. The sovereignty of States over their territorial sea establish in accordance with international law shall not be affected. Each Party has to undertake to review from time to time the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States.

3.1.5 Designation of competent authorities and focal point (Article 5)

Each Party to the Convention has to establish one or more competent authority and one focal point for the processing of any application for the transboundary movement of hazardous waste. In South Africa, the DEAT is the competent authority.

3.1.6 Transboundary movement between parties (Article 6)

3.1.6.1 The State of export is obliged to notify, or shall require the generator or exporter to notify, via the competent authority, the competent authority of the State concerned of any proposed transboundary movement and such notice shall contain all the information required in terms of the Convention.

3.1.6.2 The State of import has to respond to the notifier by consenting to such proposed movement with or without conditions, or denying the permission for the movement, or by requesting additional information.

3.1.6.3 The State of export is not permitted to allow the commencement of any transboundary movement until it has received written confirmation that the State of import has consented thereto in writing and that the person exporting the hazardous waste has received confirmation of an existing contract between the exporter and the disposer and specifying environmentally sound management of the wastes in question.

3.1.6.4 Each State of transit, which is a Party, has to acknowledge the receipt of any notification within 60 days and has to consent to the movement, with or without conditions. Any State of export shall not allow the commencement of transboundary movement until it has received the written consent of the State of transit.

3.1.6.5 In the instance where any wastes are legally defined as, or considered to be, hazardous wastes only by the State of export, by the State of import or by the States of import and transit, or by any State of transit, specific provisions then apply.

3.1.6.6 The State of export may, provided it has the written consent of the States concerned, allow a generator or exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export and via the same custom office of the entry of the State of import. The States concerned may make their written consent to the use of general notification subject to the supply of certain information. Such general notification and written consent may cover multiple shipments of hazardous waste during a maximum period of twelve months.

3.1.6.7 The Parties to any transboundary movement shall, *inter alia,* require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or upon receipt of the wastes in question. Due notice by the disposer has to be given by the exporter and the State of export. The notification and responses shall be transmitted to the competent authority of the Parties concerned. The State of import or any State of transit which is a Party may require suitable insurance, bond or other guarantee.

3.1.7 Duty to re-import (Article 8)

In the event of a transboundary movement of hazardous waste not being able to be completed in accordance with the terms of the Convention, the State of export has the obligation to ensure that the waste in question is taken back into the State of export by the exporter if alternative arrangements cannot be made within 90 days from the time of the importing State having informed the State of export. The State of export and the Party of transit shall not oppose or prevent the return of such wastes.

3.1.8 Illegal traffic (Article 9)

3.1.8.1 Any transboundary movement of hazardous wastes without due notification, without consent in terms of the Convention, with consent obtained from States concerned through falsification, misrepresentation or fraud, or that does not conform in a material way with the documents, or that results in the deliberate

disposal of hazardous waste in contravention of this Convention, shall be deemed to be illegal traffic.

3.1.8.2 In the case of an exporter or generator dealing in illegal traffic the State of export has the obligation to ensure that the waste in question:

- is taken back by the exporter or generator, or if necessary by the State of export, or
- is otherwise disposed of in accordance with the provisions of the Convention within 30 days of a State of export being informed of the illegal traffic.

3.1.8.3 If the illegal traffic is caused as a result of the conduct on the part of importer or disposer, the State of import shall have the obligation to ensure that the waste in question is disposed of in an environmentally sound manner within 30 days of the illegal traffic coming to the attention of such State.

3.1.8.4 In the event of the responsibility for the illegal traffic not being able to be assigned to a specific party, the Parties concerned shall ensure that through co-operation the waste is disposed of as soon as possible in an environmentally sound manner.

3.1.8.5 Each Party to the Convention has the obligation to introduce appropriate national legislation to prevent and punish illegal traffic.

3.1.9 International co-operation (Article 10)

All Parties to the Convention have the obligation to co-operate with each other to improve and achieve environmentally sound management of hazardous wastes and other wastes and for these purposes the Parties shall:

- make information available with the view of promoting the environmentally sound management of hazardous wastes and other wastes;
- co-operate in monitoring the effects of management of hazardous waste on human health and the environment;
- subject to national laws, regulations and policies, co-operate in the development of new environmentally sound low waste technologies and the improvement of existing technologies with the purpose of eliminating, as far as practicable, generation of hazardous wastes and other wastes and achieving more effective methods of ensuring management thereof;
- subject to national laws, co-operate in the transfer of technology and management systems in respect of management of hazardous wastes and other wastes; and
- co-operate in any development appropriate technical guidelines and/or codes of practice.

3.1.10 Bilateral, multilateral and regional agreements (Article 11)

The Parties to the Convention may enter into further bilateral, multilateral or regional agreements regarding transboundary movement of hazardous wastes provided such agreements are consistent with the provisions of the Convention.

3.1.11 Consultations on liability (Article 12)

The Parties to the Convention are to co-operate regarding the adoption of a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from transboundary movement and disposal of hazardous wastes and other wastes.

3.1.12 Transmission of information (Article 13)

This article makes provision for any Party to the Convention to give information to other Parties regarding any knowledge of any case of an accident occurring during transboundary movement of hazardous waste, the designation of competent authorities or focal points, any changes in national definition of hazardous wastes, and various other relevant information in compliance with the Convention.

3.2 Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of hazardous waste within Africa, 29 January 1991 (Bamako).

The Bamako Convention on the ban of import into Africa and the control of transboundary movement and management of hazardous wastes within Africa was signed in 1991. In terms of Article 4 of the Convention, parties are obliged to take appropriate legal, administrative and other measures within the area under their jurisdiction to *prohibit* the import of all hazardous wastes, for any reason, into Africa from non-contracting parties. The parties are obliged to make such import an illegal and criminal act. Furthermore, parties to the Convention are obliged to ensure that hazardous waste generators submit to the Secretariat reports regarding any waste that they generate. The parties must impose strict, unlimited, joint and several liability on hazardous waste generators and ensure that the generation of hazardous wastes within the area under their jurisdiction is reduced. They are also obliged to ensure the availability of adequate treatment and disposal facilities. As stated above, South Africa is a signatory to the Basel Convention which deals with substantially the same subject matter, however, the Basel Convention is not as stringent on its control of the transboundary movement of hazardous wastes. In this regard, the Basel Convention permits, under certain conditions, the movement of hazardous waste. For this reason, South Africa is not a signatory to the Bamako Convention.

4. NATIONAL LEGISLATION DEALING WITH LOCAL GOVERNMENT

4.1 Local Government Transition Act

4.1.1 The Local Government Transition Act 209 of 1993 provides for interim measures with a view to restructuring local government. It applies throughout South Africa and effectively alters pre-existing local authority demarcations and sets out interim measures for local government prior to final arrangements being implemented by a competent legislative body. Proclamation R160 in Government Gazette 16049 of 31 October 1994 deals with the extent of the assignment of the administration of this Act to the provinces.

4.1.2 Part V deals with Transitional Councils, established by the Transitional Executive Council Act 151 of 1993, in the interim phase. In terms of Section 8, a distinction is drawn between "metropolitan" and "non-metropolitan" areas. Metropolitan areas are areas:

- comprising areas of jurisdiction of multiple local governments;
- which are densely populated, with an intense movement of people, goods and services within the area;
- which are extensively developed or urbanised;
- with more than one central business district, industrial area, and concentration of employment; and
- which form an economic functional unit comprising smaller units which are economically and in respect of services, interdependent.

4.1.3 Transitional Councils for metropolitan areas are, in terms of section 8, known as Transitional Metropolitan Councils with Transitional Metropolitan Substructures whilst transitional councils for non-metropolitan areas are known as Transitional Local Councils.

4.1.4 In terms of section 8(2)(b), the MEC for local government must, after considering the stipulated representations, delimit or re-delimit the areas of jurisdiction of transitional councils and transitional Metropolitan Substructures, determine or redetermine the powers and duties of Transitional Metropolitan Councils and Transitional Metropolitan Substructures and determine or re-determine the number of seats in a Transitional Local Council, a Transitional Metropolitan Council or a Transitional Metropolitan Substructure.

4.1.5 The MEC may also make arrangements relating to the establishment of district councils, which are service councils, sub-regional councils, regional councils or district councils, transitional representative councils and transitional rural councils (which are dealt with in Sections 9B and 10 respectively of the Act).

4.1.6 Part VI of the Act deals with transitional measures for the "pre-interim" and "interim" phases. In terms of section 10(1), the MEC may:

- make enactments for transitional regulation of any matter relating to local government;
- repeal or amend a law in force in or in a part of that province, including an Act of Parliament, insofar as it relates to any such matter and applies in that province; and
- make any law, including an Act of Parliament pertaining to local government affairs apply to any local government body, Transitional Council or Transitional Metropolitan Substructure.

4.1.7 The "interim phase" is the time period ending with the implementation of final arrangements enacted by a competent legislative authority (in terms of the Constitution, legislation must have been enacted prior to 30 April 1999). Such final arrangements are in the process of being made (see discussion of Municipal Demarcation Act and Local Government Municipal Structures Bill below).

4.1.8 Section 10C sets out the powers and duties of Metropolitan Councils and Metropolitan Local Councils. A Metropolitan Council has the duty to promote:

- integrated economic development;
- the equitable redistribution of municipal resources; and
- equitable delivery of services;

so as to ensure that imbalances that exist are addressed. Metropolitan Councils have the powers and duties listed in Schedule 2 to the Act.

4.1.9 Many of these powers and duties of Metropolitan Councils are of clear relevance to integrated waste management planning. In particular, the Metropolitan Councils are empowered to produce an Integrated Development Plan, which is a plan aimed at the integrated development and management of the area of jurisdiction of the municipality concerned in terms of its powers and duties, which has been compiled having regard to the general principles contained in Chapter 1 of the Development Facilitation Act No 67 of 1995 and, where applicable, having regard to the subject matter of a Land Development Objective contemplated in terms of that Act. Other potentially relevant powers and duties include:

- matters concerning the bulk supply of water;
- matters concerning sewerage, including, policy formulation and implementation, the planning of bulk conveyance of sewage and industrial effluent and the treatment thereof at treatment plants, the determination and maintenance of a local development guide plan or master plan for bulk conveyance and treatment of sewage and industrial effluent, the implementation of a master plan of bulk conveyance and treatment of sewage and industrial effluent, the establishment and management of a co-ordinating system for the bulk sewerage system, etc;

- aspects concerning waste disposal facilities, including the determination of a waste disposal strategy, the identification of sites for the placing of waste disposal facilities and the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one Metropolitan Local Council;
- aspects concerning municipal health services, including the planning, evaluation, monitoring and co-ordination of municipal health services;
- aspects concerning abattoirs, including the establishment, management and control of Metropolitan abattoirs; and
- general environment management, specifically the co-ordination of environmental affairs.

4.1.10 In addition to these powers, a Metropolitan Council may exercise any power and may be required to discharge any duty which is assigned to Metropolitan Councils generally or to a specific Metropolitan Council by or under any law. Metropolitan Councils may also exercise any power or perform any duty which is reasonably necessary for, or incidental to, the exercise of its powers or the performance of its duties.

4.1.11 In terms of section 10C(6), if a Metropolitan Local Council cannot or does not exercise a public power or perform a duty conferred or imposed upon such a council, the Metropolitan Council may intervene by assuming the responsibility for the relevant power provided the MEC has requested such intervention. The Metropolitan Council will not incur any financial liability as a result of such intervention and must be refunded for any expenditure incurred in respect of the exercise of the power or performance of the duty.

4.1.12 In terms of section 10C(7), a Metropolitan Council and Metropolitan Local Council may enter into agreements with each other or with any other person, body or institution in terms of which one party undertakes, on behalf of the other, to exercise a power or perform a duty which the party may exercise or perform, subject to such conditions as may be agreed upon. This statement is subject to the proviso that a Metropolitan Council or Metropolitan Local Council may not delegate its power to legislate or expropriate to another person, body or institution.

4.1.13 In terms of section 15, the provisions of laws applying to local authorities apply to anybody performing local government functions. Therefore, if a local authority delegates any of its powers to another person, body or functionary, such person, body or functionary is required to comply with any law which the local authority would be required to comply with.

4.1.14 A metropolitan local council (meaning a transitional metropolitan sub-structure) shall have the powers and duties listed in Schedule 2(A) to the Act. These powers and duties included:

- the formulation and implementation of a local integrated development plan, incorporating local land use planning, transport planning, infrastructure planning and the promotion of integrated local economic

development, in accordance with the metropolitan integrated development plan;

- sewage disposal and the provision of a sewerage system;
- the disposal of waste;
- the control of public nuisances;
- the management and control of environmental affairs;
- the provision of municipal health services;
- the provision of cleansing services in streets and public places;
- the licensing and control of animals as well as the provision and control of facilities for, *inter alia*, the burial of animals.

4.1.15 In terms of section 10C(8), if there is a dispute between a Metropolitan Council and a Metropolitan Local Council, such dispute will be dealt with in terms of the provisions of Schedule 8 to the Act.

4.1.16 Section 10D sets out the powers and duties of District, Local and Rural Councils. These councils have the following powers:

- powers set out in Proclamations establishing the councils;
- powers conferred, imposed, delegated or assigned by law; and
- powers that are reasonably necessary or incidental to the exercise of any of the aforementioned powers.

4.1.17 In terms of section 10G, a municipality must conduct its affairs in an effective, economical and efficient manner. It must, *inter alia*:

- prepare a financial plan in accordance with the Integrated Development Plan in respect of all its powers, duties and objectives;
- give priority to the basic needs of the community;
- monitor and assess its performance against its Integrated Development Plan; and
- report to and receive comments from its community regarding the objectives set in its Integrated Development Plan.

4.1.18 Any existing laws which applied to local authorities apply to Transitional Councils and Transitional Metropolitan Substructures (section 16).

4.2 Municipal Demarcation Act

4.2.1 The Municipal Demarcation Act 27 of 1998 provides criteria and procedures for the determination of municipal boundaries by an independent authority. In terms of the Act, the Municipal Demarcation Board ("the Board") is established to determine municipal boundaries. The Board may do all that is necessary or expedient to perform its function effectively.

4.2.2 In terms of section 21 of the Municipal Demarcation Act, the Board must determine the municipal boundaries in South Africa and may re-determine any

municipal boundaries determined by it. Section 21(2) provides that any determination or redetermination of a municipal boundary must be consistent with the provisions of the Act and any other appropriate legislation enacted.

4.2.3 Section 24 provides that when demarcating a municipal boundary, the Board must aim to establish an area that would:

- enable the municipality for that area to fulfil its Constitutional obligations including the provision of services to the committees in an equitable and sustainable manner, the promotion of social and economic development and the promotion of a safe and healthy environment;
- enable effective local Government;
- enable integrated development; and
- have a tax base as inclusive as possible of users of municipal services in the municipality.

In order to attain these objectives the Board must take into account -

- the interdependence of people;
- the need for cohesive, integrated and unfragmented areas;
- the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
- the need to share and redistribute financial and administrative resources;
- provincial and municipal boundaries;
- areas of traditional rural communities;
- existing and proposed functional boundaries;
- existing and expected land use, social, economic and transport planning;
- the need for co-ordinated municipal, provincial and national programs and services, including the needs for the administration of justice and health care;
- topographical, environmental and physical characteristics of the area;
- the administrative consequences of its boundary determination; and
- the need to rationalise the number of municipalities.

4.2.4 Section 26 of the Municipal Demarcation Act sets out the procedure for re-determination of municipal boundaries. Before the Board considers any determination of a municipal boundary in terms of section 21, it must publish a notice in a newspaper circulating in the area concerned and convey by radio or other appropriate means of communication the contents of the notice in the area concerned. The Board must also send a copy of the notice to the MEC, each municipality which will be affected, and various other parties. Written representation must be invited and must be considered by the Board. When the period for written representation and views has expired, the Board must consider all the representations and may hold a public meeting, conduct a

formal investigation or do both prior to determining the municipal boundary if it so desires.

4.3 Organised Local Government Act

4.3.1 The Organised Local Government Act 52 of 1997 provides for the recognition of national and provincial organisations representing the different categories of municipalities, determines various procedures concerning local government, including procedures by which local government may consult with national and provincial government, and for other matters connected therewith. The Act arises from the obligation in the Constitution, which requires such an Act to provide for the recognition of national and provincial organisations representing municipalities.

4.3.2 For the purposes of the Act, and as long as item 26(1)(a) of Schedule 6 to the Constitution applies, the categories of municipalities are those as defined and contemplated in the Local Government Transition Act.

4.3.3 The Act puts into place the process for recognition of national and provincial organisations, the designation of representatives to participate in a National Council of Provinces and the consultation procedure to be followed.

4.3.4 Further than this, the Act has little direct relevance to Integrated Waste Management Planning, apart from the systems which are put into place for participation in the National Council of Provinces, and related matters.

4.4 Local Government: Municipal Structures Act

4.4.1 The main object of the Local Government : Municipal Structures Act 117 of 1998 is to provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality, to provide for an appropriate division of functions and powers between categories of municipality, to provide for appropriate electoral systems and to provide for matters connected therewith.

4.4.2 This Act will be followed by the Local Government: Municipal Systems Act. It is part of a package of legislation aimed at the transformation of local government into a more citizen-friendly, accountable, developmental, financially sustainable and performance orientated sphere of government. The Act is aimed at creating the permanent structures mandated by the Constitution, which will replace the transitional structures created by the Local Government Transition Act.

4.4.3 The Act refers to the three categories of municipalities envisaged in Section 155 of the Constitution. An area which can reasonably be regarded as a conurbation (areas of high population density, an intense movement of people, goods and services, extensive development, and multiple business districts and industrial areas), a centre of economic activity with a complex and diverse economy, a single area for which integrated development planning is desirable and having strong inter-dependent social and economic linkages between its constituent units must have a category A municipality (section 2). Such a municipality will, in terms of the Constitution, have exclusive municipal executive and legislative authority in its area.

4.4.4 Areas that do not comply with the criteria set out for a category A municipality must have municipalities of both category C and category B. Various types of municipality can be established within each category of municipality, with the varying types of municipality being set out in section 8 of the Act. Similarly, the various types of category B and category C municipalities are set out in sections 9 and 10 respectively. Section 11 provides that provincial legislation must determine for each category of municipality the different types of municipality that may be established in that category in the province.

4.4.5 In terms of section 14 of the Act, the establishment of a municipality in accordance with section 12 of the Act in the area of an existing municipality supersedes the existing municipality in that area and the new municipality becomes its successor-in-law with regard to that area. When a new municipality supersedes another municipality, the by-laws, regulations and resolutions of the existing municipality, to the extent that they continue to apply in the area or part of the area of the superseding municipality, must be reviewed and where necessary rationalised by the superseding municipality.

4.4.6 The Bill also provides details of Municipal Councils (Chapter 3), which Municipal Councils must strive within their capacity to achieve the objectives stipulated in section 152 of the Constitution. The Municipal Council is obliged to annually review:

- the needs of the community;
- its priorities to meet those needs;
- its processes for involving the community;
- its organisational and delivery mechanisms for meeting the needs of the community; and
- its overall performance in achieving the objectives stipulated in the Constitution.

4.4.7 Provision is also made in section 32 for the delegation to committees and other internal functionaries. The internal structures and functionaries of municipalities are dealt with in Chapter 4, including the establishment of Executive Committees for certain municipalities. Where a municipality has an Executive Committee that Committee must:

- identify the needs of the municipality;
- review and evaluate those needs in order of priority;
- recommend to the Municipal Council strategies, programmes and services to address priority needs through the Integrated Development Plan and estimates of revenue and expenditure taking into account any applicable national and provincial development plans; and
- recommend or determine the best methods, including partnership and other approaches, to deliver these strategies, programmes and services to the maximum benefit of the community.

In the context of the Act, an "Integrated Development Plan" means simply a plan aimed at the integrated development and management of a municipal area. Various obligations are placed on the Executive Committee in performing its duties.

4.4.8 Provision is made for other municipalities of certain types to elect executive Mayors, which Executive Mayors shall have similar functions and powers to the Executive Committee. Similarly, various obligations are placed on the Executive Mayor in the performance of his duties.

4.4.9 Certain other Metropolitan Municipalities of certain types may establish Metropolitan Sub-Councils. Certain further Metropolitan and Local Municipalities of certain types may have Ward Committees.

4.4.10 The functions and powers of municipalities are set out in Chapter 5 of the Act, with a municipality having the functions and powers assigned to it in terms of sections 156 and 229 (dealing with fiscal powers and functions) of the Constitution. In terms of section 83 of the Act, the functions and powers of a municipality must be divided in the case of a district municipality and the local municipalities within the area of the district municipality. A district municipality is a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155 of the Constitution as a category C municipality. A local municipality is a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155 of the Constitution as a category B municipality.

4.4.11 A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by:

- ensuring integrated development planning for the district as a whole;
- promoting bulk infrastructural development and services for the district as a whole;
- building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and
- promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.

4.4.12 Section 84 deals with the division of functions and powers between district and local municipalities. In terms of this section, the functions and powers of a district municipality include the following:

- integrated development planning for the district municipality as a whole, including a framework for Integrated Development Plans for the local municipalities within the area of the district municipality, taking into account the Integrated Development Plans of those local municipalities;
- bulk sewerage purification works and main sewage disposal that affects a significant proportion of municipalities in the district;

- solid waste disposal sites serving the area of the district municipality as a whole;
- municipal health services serving the area of the district municipality as a whole;
- the establishment, conduct and control of, *inter alia*, abattoirs serving the area of the district municipality as a whole; and
- municipal public works relating to any of the above functions or any other functions assigned to the district municipality.

4.4.13 A local municipality has the functions and powers assigned to it in terms of section 156 and 229 of the Constitution, excluding those functions and powers specifically allocated to a district municipality (as partially set out above). However, this provision does not prevent a local municipality from performing functions in its area and exercising powers in its area of the nature partially set out above. The facility is created in section 85 for the MEC for local Government in a province to adjust the division of functions and powers between a district and a local municipality by allocating, within a prescribed policy framework, any of those powers or functions between the two types of municipalities. Section 88 of the Act enjoins a district municipality and the local municipalities within the area of that district municipality to co-operate with one another by assisting and supporting each other.

4.4.14 In terms of section 89, in district management areas the district municipality has all the municipal functions and powers. A district management area is a part of a district municipality, which, in terms of the Act, has no local municipality and is thus governed by that district municipality alone.

4.4.15 The Minister may make regulations prescribing any matter that may or must be prescribed in terms of the Act and any matter that may facilitate the application of this Act.

4.4.16 The provisions of the Act will only apply in respect of a municipality from the date contemplated in section 12 (that is, when the MEC for Local Government in a province, by notice in the *Provincial Gazette*, establishes the municipality), but this does not preclude the application of any provision of the Act for a purpose related to the demarcation of a municipal boundary, the establishment of a municipality or an election of a council. The first term of all Municipal Councils after the enactment of this Act expires not later than 1 November 2000.

4.5 Local Government: Municipal Systems Bill

4.5.1 We must at the outset emphasise that this Bill does not yet constitute law in South Africa. Accordingly, we will not detail all potentially relevant provisions but will rather focus on the intention behind the legislation in order to provide an indication of the likely impact of the legislation when enacted.

4.5.2 The Bill is designed to give effect to the vision of "developmental local government" as envisaged in the Local Government White Paper. The Bill elaborates the core principles, mechanisms, and processes that are necessary to enable municipalities to move progressively towards the social and economic

upliftment of communities and ensure access to quality services that are affordable to all. The definition of "municipality" is extended to include residents and communities within the municipal area, working in partnership with the municipality's political and administrative structures. This relationship is regarded as fundamental to sound and effective governance and to the long term sustainability of local government. The Bill establishes a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of development local government. By linking these processes into a single integrated cycle at local level, the Bill aims to undo the complex and fragmented top-down, over-regulated approaches of the past. The Bill attempts to create a bottom-up process of driving development, improving performance and facilitating change. The Bill also established a framework for support, monitoring and intervention by other spheres of Government in order to progressively build local government into an efficient development agency capable of integrating the activities of all spheres of Government for the overall social and economic upliftment of communities.

4.5.3 The Explanatory Memorandum of the Bill provides a useful outline of the intention behind the Bill and the other local government related legislation and the following paragraphs are largely extracted from this Memorandum. The Municipal Systems Bill is the third such piece of legislation aimed at giving effect to the Local Government White Paper, with the first two being the Municipal Demarcation Act and the Municipal Structures Act. While these two Acts deal with institutional and jurisdictional aspects of the local government transformation process, the Municipal Systems Bill seeks to establish the basic principles and mechanisms to give effect to the vision of "developmental government". Its focus is therefore primarily on the internal systems and administration of the municipality. This trilogy of legislation will complete the process of reviewing and reforming the overall regulatory system for local government and will enable government to repeal virtually the entire body of legislation and provincial ordinances inherited from the apartheid era. The proposal is to deal with the repeal process in a single Bill to be presented to Cabinet in early 2000.

4.5.4 The legislative approach adopted in the Municipal Systems Bill is broadly enabling and seeks to achieve a degree of equivalence and balance between the regulatory frameworks governing the three spheres of Government. The Bill is mandatory only to the extent that the fundamental elements of public sector reform, socio-economic development, delivery of basic services and public reporting and accountability need to be applied uniformly on a countrywide basis.

4.5.5 The Bill describes the core processes or elements that are essential to realising a truly developmental local government system. These include:

- participatory government;
- integrated development planning;
- performance management and reporting;

- resource allocation; and
- organisational change.

4.5.6 The Bill links these processes into a single cycle at local level, that will align various sectoral initiatives from national and provincial government departments with a municipality's own capacity and processes. The aim is to ensure better "synergy" between local, provincial and national initiatives, and a more effective system of intergovernmental relations.

4.5.7 As indicated in the explanatory memorandum, in summary, the Bill aims to:

- clarify the legal nature of a municipality and, by including the residents and communities within the municipal area in the definition of a municipality, establish a system of internal relationships for effective participatory governance, in which the different components of a municipality have certain key rights and responsibilities. This lays the foundation for the later chapters in the Bill in which participatory processes are regarded as critical to the success of initiatives such as planning and performance management.
- establish certain basic requirements for public accountability and participation which are regarded as essential to the long term sustainability of the municipality;
- assign powers of general competence to local Government, and manage the process of decentralising functions to local Government to ensure proper co-ordination of the decentralisation process and the prevention of unfunded mandates;
- regulate the promulgation of municipal by-laws to achieve greater symmetry between national, provincial and local legislative actions;
- clarify the nature of the executive power of municipalities and in particular, develop the notion of a separation between the roles of "service authority" and "service provider". It is proposed to extend this separation, which was initiated through the Water Services Act, to all municipal services. As "service authorities" municipalities remain responsible for and must see to the effective delivery of a particular service and provide a policy and regulatory framework within which that service is provided subject to any applicable national or provincial legislation. This lays the basis for the Bill to enable municipalities to choose the most appropriate service provider from a menu of options, ranging from internal departmental delivery to corporatisation and joint ventures to private sector delivery options.
- rationalise the system of municipal planning into a single comprehensive five yearly planning cycle, subject to annual monitoring and review, in which Integrated Development Plans (IDP's) are adopted by Municipal Councils as their core planning and management instrument. According to the explanatory memorandum, this system provides an important framework for integrating the more detailed sectoral planning requirements of various national departments. By linking their sectoral

planning requirements into the municipality's IDP and budget processes, line departments will achieve a better integration of initiatives, improved compliance as well as benefit from the alignment of IDP sectoral strategies with municipal budgets and human resource deployment in terms of legal obligations.

- establish a performance management system for local government, including a system of measuring and evaluating performance in priority areas, and reporting annually to citizens and other spheres of government, so that performance can be compared across the whole of local government, and underperformance in critical areas identified at an early stage. According to the explanatory memorandum, this will provide municipalities with a tool to evaluate progress with their IDP, as well as a more rational and informed basis for choosing appropriate service providers. It will also enable a far more appropriate and targeted system of capacity building and intervention to be put in place by national and provincial government.
- entrench what is referred to as the "Batho Pele" principles in local public administration, and synchronise local administrative reform with the system of performance contracts, performance evaluation, codes of conduct, job evaluation, performance incentives, managerial responsibilities and delegations being implemented in national and provincial government;
- provide a clear regulatory framework for municipal service partnerships;
- make provision for municipal service districts, including multi-jurisdictional service districts in which municipalities combine their regulatory powers in order to manage service delivery, and establish mechanisms for assisting indigent households;
- empower municipalities to implement tough and effective credit control and debt collection strategies;
- create a clear framework to guide provincial monitoring and capacity building in terms of the Constitution, which avoids duplication of existing monitoring systems, and aims over the longer term to build an effective, integrated, performance oriented service delivery system; and
- augment the legal capacity of municipalities to prosecute for contraventions of municipal by-laws.

4.5.8 The various provisions of the Bill will be implemented incrementally, with the bulk of the Bill's provisions becoming effective from the date of the next local government elections in late 2000.

4.5.9 While the outline set out above, largely extracted from the Explanatory Memorandum to the Bill, is generally adequate for the purposes of this Review, certain specific provisions of the Bill justify further attention. It goes without saying that these provisions may change in due course before the Bill is enacted.

4.5.10 Section 2 deals with the legal nature of a municipality, which is regarded as a juristic entity within the local sphere of government of South Africa, exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, and:

- has a separate legal personality;
- consists of –
  - the governing structures and administration of the municipality; and
  - the residents and communities in the municipality; and
- functions in its area in accordance with the political, statutory and other relationships between its governing structures and administration and its residents and communities.

A "resident", in relation to a municipality, means a person who is ordinarily resident in the municipality, or who is not so resident or is a juristic person and is liable for rates on property in the municipality or surcharges on fees for services provided either by the municipality or in terms of a service delivery agreement (as defined).

4.5.11 The rights and duties of governing structures are set out in section 4 of the Bill. The council of the municipality and, to the extent of their delegated authority, its committees and functionaries, must, within the municipality's financial and administrative capacity and having regard to practical considerations, *inter alia*:

- ensure the provision of municipal services to all residents and communities in a financially and environmentally sustainable manner; and
- promote a safe and healthy environment in the municipality.

4.5.12 The intention is clearly to develop a culture of public participation in order to achieve participatory governance. Requirements regarding consultation when additional sanctions and powers are assigned to municipalities are stipulated in section 13 of the Bill. This applies to the circumstances in which functions or powers are assigned to municipalities in terms of the Constitutional provisions.

4.5.13 In terms of section 15, a municipality exercises its executive authority by, *inter alia*:

- developing policy, plans, programmes and strategies, including setting targets for delivery;
- implementing legislation;
- providing for and regulating the provisioning of municipal services including the appointment of the appropriate service provider for any function listed in Part B of Schedule 4 or Part B of Schedule 5 of the Constitution; and
- monitoring the impact or effectiveness of any services, policies, programmes or plans including establishing and implementing performance management systems.

4.5.14 Section 18 of the Bill provides for the Minister, on request by organised local government (meaning the recognised organisation in terms of the Organised Local Government Act), or after consulting the MEC's for Local Government and organised local government, to:

- publish standard draft by-laws concerning any matter for which Municipal Councils may make by-laws that may be adopted by municipalities as enforceable by-laws in their areas; and
- amend any standard draft by-laws published in terms of this section.

4.5.15 An MEC for local government may, on request by organised local government, or after consulting the Minister and organised local government, by notice in the *Provincial Gazette*:

- publish standard draft by-laws concerning any matter for which Municipal Councils may make by-laws that may be adopted by municipalities in the province as enforceable by-laws in their areas; and
- amend any standard draft by-laws published in terms of the above.

4.5.16 A standard draft by-law or an amendment thereto is applicable in a municipality only if, and to the extent and subject to any modifications and qualifications, it is adopted by the council of that municipality. The repeal of a standard draft by-law after it has been adopted by a municipality does not affect the continuation of that by-law in that municipality.

4.5.17 Chapter 5 of the Bill deals with Integrated Development Planning, with "development" including integrated social, economical, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at improving the quality of life of its residents with specific reference to the poor and other disadvantaged sections of the community.

4.5.18 Section 21 provides that municipal planning must be developmentally oriented, while section 22 contains further provisions regarding co-operative governance. Section 23 deals with the adoption of Integrated Development Plans, with each Municipal Council being obliged within the first twelve months of its elected term, to adopt a single, inclusive plan for the development of the municipality which:

- links, integrates and co-ordinates plans, schemes and proposals for the development of the municipality;
- aligns the resources and capacity of the municipality for the implementation of the plan;
- forms the policy framework and general basis on which annual budgets must be based;
- complies with the provisions of Chapter 5; and
- is compatible with national and provincial development planning requirements binding on the municipality in terms of legislation.

4.5.19 The Integrated Development Plan must reflect certain core components as required by section 24 of the Bill and the Integrated Development Plan of a district municipality must contain the framework for the Integrated Development Plans of the local municipalities within the area of that district municipality. Further provisions of Chapter 5 deal with development priorities and objectives, development strategies, spatial framework development, operational strategies and financial planning. The Integrated Development Plan must be annually reviewed and integrated whenever necessary. Provision is also created for the Integrated Development Plan to be submitted to the MEC for Local Government in order to allow an assessment of compliance with the requirements of this Act, and whether or not it is in conflict with or is not aligned with or negates any of the development plans and strategies of adjacent municipalities, the province in which the municipality is located or national organs of state. In such case the MEC for local government may request that the Municipal Council adjust the plan. Further procedures are then created for the resolution of any disputes between the MEC and the municipality.

4.5.20 The process to be followed in planning, drafting and adopting the Integrated Development Plan is set out in Part 3 of the Bill and the legal consequences of an adopted Integrated Development Plan are dealt with in Part 4 of Chapter 5. An integrated development plan adopted by a municipality:

- is the principle planning instrument which guides and informs all planning and development, and all decisions with regard to planning and development, in the municipal area; and
- binds all persons except to the extent of any inconsistency between a municipality's Integrated Development Plan and national or provincial legislation, in which case such legislation prevails.

4.5.21 A spatial development framework contained in an Integrated Development Plan prevails over a plan as defined in section 1 of the Physical Planning Act, No. 125 of 1991 (discussed later). A Municipal Council must give effect to its Integrated Development Plan and conduct its affairs in a manner which is consistent with its Integrated Development Plan.

4.5.22 Chapter 6 deals with performance management and will not be discussed in any further detail for the purposes of this Review. This Chapter deals not only with the establishment of a performance management system, the core components thereof, key performance indicators and targets, monitoring, measurement, evaluation and improvement of performance, but also deals with performance reporting and annual performance management assessment.

4.5.23 Further provisions relate to local public administration and human resources (Chapter 7), municipal services (Chapter 8), including through service delivery agreements, which are agreements between a municipality and a third party in terms of which a municipal service is provided by that third party, either for own account or on behalf of or in partnership with the municipality, credit control and debt collection (Chapter 9), and provincial and national supervision (Chapter 10). The latter Chapter allows for provincial monitoring

of municipalities and national supervision, including (in section 122), an allowance for the Minister to establish essential national standards and minimum standards for, *inter alia*, any municipal service or function assigned in terms of section 156(1) of the Constitution. In other words, norms and standards can be set by the Minister for any of the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution and any other matter assigned to local government by national or provincial legislation.

5. PLANNING AND DEVELOPMENT LEGISLATION

5.1 The Development Facilitation Act

5.1.1 The Development Facilitation Act 67 of 1995 ("DFA") creates an accountable and accessible planning and land development system, which ensures that national, provincial, and local government policies are implemented and that final government decisions are reached in tribunals with the maximum feasible public participation.

5.1.2 Chapter V of the DFA sets out the land development procedures for applications not including small scale farming. These procedures set out the manner in which application is to be made for the establishment of a land development area. A "land development area" is defined in Section 1 as any land which is the subject of a land development. A "land development" means any procedure aimed at changing the use of land for the purpose of using the land mainly for residential, industrial, business, small scale farming, community or similar processes. The wide definition given to land development area in the DFA means that any application or procedure required in terms of any existing land use or zoning ordinance or regulation can instead be made as a land development application to the DFA tribunal.

5.1.3 Chapter VI sets out the land development procedures including procedures relating to the development of small scale farming. The procedures provided for in this chapter do not differ conceptually from those provided for in Chapter V and thus only Chapter V procedures shall be discussed.

5.1.4 The most obvious difference between the land development procedure established by the DFA and that previously existing is the nature of the decision making body to be established in each province to hear land development applications in terms of the DFA. The tribunals are to be constituted by the Premier of the relevant province, as far as possible, with 50 percent of its members appointed from appropriate officers in the service of the provincial administration and local government bodies and 50 percent from persons outside such service (Section 15(4)). It may have been appropriate for the DFA to set out the provincial departments that should be represented, and an official from an Environmental Department should have been included on this list. In addition, the DFA should ideally have specified the sectors that must be represented on the tribunal.

5.1.5 By following the land development application procedure, an applicant is able to have the provisions of most laws enacted with the purpose of controlling land use and development overridden. This is with the exception of protected or controlled nature conservation areas in respect of which no provision is made for their suspension. This provision is accompanied by extensive consultative procedures in charge of administering the relevant laws. The land development applicant is required to give notice to all government departments responsible for the administration of a law, which the land development applicant is requesting the tribunal to suspend, in relation the land development area and section 33 (2) states that a decision to suspend the application of a law shall only be taken after the tribunal has afforded the responsible authority an

opportunity to provide the tribunal with views on the expedience of such a decision in the circumstances. The manner in which this proviso is set out in the Act makes it unclear whether this proviso is intended to apply to a suspension in terms of 33(2)(j) or 33(2)(a)-(j).

5.1.6 Section 31 (3) of the DFA is viewed as an extremely important section, in that it provides for notice of the land application, to be given by the land development applicant, to the bodies and persons prescribed by regulation. The DFA Regulations require a land development applicant to notify (*inter alia*) any national government department which in the opinion of the designated officer may be affected by the application and in particular any government department which is responsible for the administration of any law, the operation of which the land development applicant will ask the tribunal to suspend, and/or any provincial road department, environmental affairs department, education department, agriculture department etc. which in the opinion of the designated officer may be interested in the application and in particular any provincial government department which is responsible for the administration of any law which the land development applicant will ask the tribunal to suspend (Regulation 17(6)(d)(i) and (ii)). Such a notice constitutes a subpoena and the relevant government department is required to respond with their comments on the application. This system will hopefully result in the establishment of formal procedures of co-operation and co-ordination of development and planning between these departments. Where the tribunal chooses to ignore the comments and concerns of the relevant government department they can only do so to the extent that their decision is in accordance with the Section 3 Principles and any approved LDO.

5.1.7 The subject matter of Land Development Objectives is set out in Section 28 of the DFA. Land Development Objectives are to be set in the manner, within the time limits and after following the procedures prescribed by the MEC in the Provincial Gazette (Section 27(3)). The Gauteng Regulations relating to Land Development Objectives (Notice 3004, Gauteng Gazette 257, 30 August 1996), for example, expand upon the subject matter of the Land Development Objectives and make further provision for environmental considerations to form part of the land development objectives by stating:

- one of the general purposes of LDO's set by any local authority shall be to create a new system of planning that encourages sustained utilisation of the environment (R3(c));
- land Development Objectives shall include provisions relating to the development framework for the area indicating major trends influencing development including the state of the environment (R19(2)(b)(vii));
- land Development Objectives shall include development strategies relating to the improvement and conservation of the natural environment to achieve environmentally sustainable development and the reform of land use control mechanisms to stimulate environmentally sustainable development (R19(3)(vii) and (x)).

5.1.8 Once a local government has set Land Development Objectives their effect on other formal planning documents is substantial. Section 29(2) sets out that if a land development objective set in terms of the DFA is expressly inconsistent or incompatible with any plan as defined in Section 1 of the Physical Planning Act 125 of 1991, the Land Development Objective shall prevail over the plan and shall for the purposes of that Act be deemed to be amended accordingly. In addition a tribunal or any other competent authority shall not approve a land development application in terms of the DFA or any other law dealing with the establishment of land developments areas, if such application is inconsistent with any Land Development Objective (Section 29(1) of the DFA).

5.1.9 Land Development Objectives set by a community are to pay considerable regard to the environmental consequences of developments. It is thus necessary to examine in detail exactly what effect these have on existing legislation, regulations and plans. The full effect of Land Development Objectives on existing planning legislation can be summarised as follows:

- Any tribunal set up in terms of the DFA, when considering a land development application in terms of the DFA shall not approve the application if it is inconsistent with any relevant Land Development Objective;
- Any other competent authority shall not approve an application for the development of land in terms of a law dealing with the establishment of land development areas if such application is inconsistent with any Land Development Objective;
- A Land Development Objective set in terms of the DFA which is inconsistent with any plan as defined in the Physical Planning Act overrides the plan and the Physical Planning Act is deemed to be amended accordingly. The implications of this for town planning schemes or zoning schemes published in terms of the various town planning ordinances is uncertain. Although these are not included in the definition of "plans" in the Physical Planning Act, the relationship between plans and town planning schemes is set out in Section 27 of the Physical Planning Act. Section 27(1)(a) states that, from the date of commencement of a regional or urban structure plan, no town planning scheme may be amended and no new town planning scheme may be introduced in which provision is made for the zoning of land for a purpose which is not consistent with the regional or urban structure plan. In addition Section 27(1)(b) states that no person may use land in an area to which a regional or urban structure plan relates for a purpose other than that for which it is zoned in terms of a town planning scheme. It is possible that the provisions of the DFA do not relate specifically to town planning or zoning schemes as the authority setting the LDO's will have the authority to amend the scheme accordingly. However, by reading the Physical Planning Act together with the DFA the effect on town planning schemes may be understood. Despite any ambiguity with regard to the effect of the LDO's on the town-planning scheme it is clear that it is the Land Development Objectives to which a competent authority would have to turn in making any land development

decision. If in a particular area, LDO's have the potential to substantially affect the provisions of a town-planning scheme and the scheme is not amended accordingly, an applicant on making application under a provision of the scheme must be properly informed of the relevant LDO's and the extent of their effect. This is to ensure that the applicant is aware of the standards she/he must meet and is aware of the basis for the evaluation of the application.

5.1.20 The intention of the DFA is that Land Development Objectives will be set by each local authority. However the DFA gives a number of powers to the relevant MEC in the event that this does not occur or in the event that the LDO's set by the local authority are inadequate.

5.1.21 The Constitutional imperatives set out in Chapter 3 of the Constitution with regard to co-operative governance will always regulate the relationship between the different tiers of government. In addition Section 10M of the Local Government Transition Act provides that:

- the MEC shall promote and support the development of local government in order to enable municipalities to exercise their powers and perform their duties in the management of their affairs; and
- the MEC and each Municipality shall promote and support co-operation between municipalities in order to develop the capacity of each municipality to exercise its powers and duties so as to manage its affairs.

5.2 The Physical Planning Act: 1991

5.2.1 The intention of the Physical Planning Act 125 of 1991 is to promote the orderly physical development of the Republic, and for that purpose to provide for the division of the Republic into regions, for the preparation of national development plans, regional development plans, regional structure plans and urban structure plans by the various authorities responsible for physical planning, and for matters connected therewith.

5.2.2 The Act allows the Minister of Regional and Land Affairs to cause the preparation of a national development plan and regional development plans, the objects of these policy plans being to promote the orderly physical development of the area to which that policy plan relates. Policy plans consist of broad guidelines for the future physical development of the area to which that policy plan relates and may provide that land shall be used only for a particular purpose or purposes.

5.2.3 The facility is also created for the preparation of urban structure plans for the area or areas of jurisdiction of one or more local authorities, or any portion of such area or areas of jurisdiction, or for the region of a regional authority, or any portion of such region, within a province. An urban structure plan consists of guidelines for the future physical development of the area to which that urban structure plan relates and may provide that land shall be used only for a particular purpose or purposes.

5.2.4 In terms of section 27, as from the date of commencement of a regional structure plan, or an urban structure plan:

- no town planning scheme which is binding on that date may be amended in such a way that, and no new town planning scheme may be introduced in which, provision is made for the zoning of land for a purpose which is not consistent with the plan;
- restrictions are placed on the use of land in the area to which the plan relates;
- no permission, approval or authorisation shall, in terms of any law or in terms of any town planning scheme, be given for the subdivision or use of land in the area to which the plan applies, for a purpose which is not consistent with the plan.

5.2.5 A range of further provisions apply under the Physical Planning Act and specifically with regard to the various categories of plans under that Act. These will not be covered for the purposes of this Review.

5.3 Physical Planning Act : 1967

5.3.1 The Physical Planning Act 88 of 1967 was initially intended to promote co-ordinated environment planning and the utilisation of the Republic's resources and for those purposes to provide for control of the zoning and subdivision of land for industrial purposes, for the reservation of land for use for specific purposes, for the establishment of controlled areas, for restrictions upon the subdivision and use of land in controlled areas, for the compilation and approval of guide plans and for restrictions upon the use of land for certain purposes, and for other matters incidental thereto.

5.3.2 Certain of the remaining provisions of this Act have been partially repealed by the Physical Planning Act, 125 of 1991, or will be repealed or partially repealed at the full commencement of Section 36 of that Act. Restrictions are placed on the use of land in controlled areas, subject to a range of exceptions.

5.4 Provincial Legislation

This Review does not incorporate all relevant provincial legislation dealing with planning and development. There is a multitude of such legislation, including a range of Ordinances and various Provincial Acts in terms of the Development Facilitation Act (an exception of the Western Cape Province).

5.4.1 Western Cape Planning and Development Act

5.4.1 The intention of the Western Cape Planning and Development Act 7 of 1999 includes the establishment of a system for development planning in the province and the consolidation of legislation in the province pertaining to provincial planning, regional planning and development and urban and rural development into one law and to provide frameworks, norms and standards, *inter alia*, with regard to areas where municipalities have legislative power, with a view to establishing and maintaining standards essential to orderly co-ordinated planning and development or to the promotion of integrated social and economic development where provincial or regional interests require. Furthermore, the intention is to provide for principles and to lay down policies, guidelines and parameters for planning and sustainable development where

provincial and regional interests require, including environmental protection and land development management.

5.4.2 The provincial Minister is empowered to establish a joint committee for the undertaking of matters of a planning nature with regard to the drafting of an integrated development framework for the province or a sectoral plan for a region thereof which affects more than one district council area or an area larger than a Metropolitan area. An "integrated development framework" means a development framework which deals with the integration of different strategies and sectoral plans relating to development, such as economic, spatial, social, infrastructural, housing, institutional, fiscal, land reform, transport, environmental and water plans, to attain the optimal allocation of scarce resources in a particular geographic area and includes an Integrated Development Plan as defined in the Local Government Transition Act 209 of 1993. A sectoral plan means any written strategy or plan which deals mainly with one of the sectors or elements or particular subjects that form part of an integrated development framework and which may be a spatial, economic, land reform, environmental, housing, water or transport plan. An environmental plan means a written strategy or sectoral plan, which deals with environmental, concerns in a particular area and includes an environmental strategy or environmental management plan as contemplated in other provincial and national legislation.

5.4.3 The Councils of two or more municipalities may enter into an agreement to provide for the joint undertaking of such matters of a planning nature as may be agreed upon.

5.4.4 The provincial Minister (meaning the member of the provincial cabinet responsible for planning) is obliged to prepare and submit to the Cabinet for approval, a provincial integrated development framework in respect of the province. Similarly, the provincial Minister may prepare and submit to the Cabinet for approval a provincial sectoral plan in respect of the province or region which affects more than one district council area. A metropolitan council or district council shall prepare and submit to the provincial Minister for approval an integrated development framework in respect of its area of jurisdiction. A local authority, shall prepare and submit to the provincial Minister for approval an integrated development framework in respect of its area of jurisdiction or may prepare, in conjunction with other local authorities, and submit to the provincial Minister for approval, an integrated development framework in respect of their respective areas of jurisdiction. When preparing, amending or reviewing an integrated development framework or sectoral plan, regard must be had to the natural and developed environment and ecologically sustainable development in general and all prescribed steps taken in this connection shall be specified in the integrated development framework or sectoral plan. The provisions regarding integrated development frameworks are intended to supplement the provisions of the Local Government Transition Act with regard to the formulation of Integrated Development Plans.

5.4.5 The general purpose of an integrated development framework shall be to lay down strategies, proposals and guidelines, including development objectives

and implementation plans, by means of development planning so that the general principles contained in Schedule 4 to the Act are promoted. These general principles deal with, *inter alia*:

- principles of planning and development legislation, policy, administrative practice, regulations and by-laws;
- principles of decision-making and dispute resolution;
- principles of role player participation and human resources development;
- principles of development in general;
- principles of spatial environment restructuring;
- principles of sustainable development; and
- principles of environmental protection.

The general purpose of a sectoral plan, as part of an integrated development framework, shall be to lay down detailed strategies, proposals and guidelines for the specific sector, element or subject for which it is prepared.

5.4.6 Provisions are made regarding land development management, including the creation of "zoning schemes", with zoning, when used as a noun, meaning a category of directives regulating the development of land and setting out the purposes for which land may be used and the development rules applicable in respect of that category of directions. Zoning scheme regulations and zoning scheme by-laws may be made by a local authority with the general purpose of a zoning scheme being to promote and implement the principles contained in Schedule 4 and the provisions of an integrated development framework or sectoral plan applicable to the area concerned. Furthermore, the scheme is intended to determine use rights with a view to managing growth and urban and rural land development. Zoning scheme regulations and zoning scheme by-laws may provide for a range of aspects, including:

- the imposition of development rules in respect of land uses, districts or zones which may include development rules applicable to a specific type of natural, environmentally sensitive environment;
- control over aesthetic aspects and design guidelines;
- control over earthworks preceding development, such as the filling up, draining or levelling of areas, the removal of vegetation and the demolition of buildings; and
- protective measures in respect of areas of the natural environment and environmentally sensitive areas.

5.4.7 assessments and may require that certain prescribed activities shall not be undertaken except in accordance with a written authorisation issued by the provincial Minister or the council of a responsible municipality. Such authorisation shall only be issued after considering an environmental impact assessment. Furthermore, the provincial Minister may declare any area in the province as an environmentally sensitive area and may prohibit any

development or activities in such area. The provincial Minister is also given extensive powers to make regulations in terms of the Act.

6. NATIONAL ENVIRONMENTAL MANAGEMENT ACT

The National Environmental Management Act 107 of 1998 ("NEMA") was enacted to provide for, among other priorities, co-operative environmental governance by establishing:- principles for decision making on matters affecting the environment; institutions that will promote co-operative governance; procedures for co-ordinating environmental functions exercised by organs of state; and to provide for any matter connected to the aforegoing. Although the environment is a functional area of concurrent national and provincial legislative competence, all spheres of government (including local government) and all organs of state are enjoined by Chapter 3 of the Constitution to co-operate with, consult and support one another.

"Environment" is defined in NEMA to mean the surroundings within which humans exist and that are made up of:

- the land, water and atmosphere of the earth;
- micro-organisms, plant and animal life;
- any part or combination of the above and the interrelationships among and between them; and
- the physical, chemical, aesthetic and cultural properties and conditions of the aforegoing that influence human health and well-being.

6.1 Institutions – Chapter 2

6.1.1 National Environmental Advisory Forum (Section 3)

The object of the Forum is to inform the Minister of Environmental Affairs and Tourism ("the Minister") of the views of stakeholders in regard to the application of the principles set out in section 2 as well as to advise the Minister on matters concerning environmental management and governance and appropriate methods of monitoring and compliance.

6.1.2 Committee for Environmental Co-ordination (Section 7)

The object of the committee is to promote the integration and co-ordination of environmental functions by the relevant organs of state and in particular to promote the achievement of the purpose and objectives of environmental implementation plans and environmental management plans.

The committee for environmental co-ordination has quite clear implications from a integrated waste management planning perspective. It is assumed that the Committee will be substantially involved in the National Waste Management Strategy process and the specific functions as detailed in NEMA will not be repeated here.

6.2 Procedures for co-operative governance - Chapter 3

6.2.1 Environmental implementation plans and management plans

In terms of section 11 of NEMA, every National Government Department ("national department") listed in Schedule 1 to NEMA as exercising functions which may affect

the environment, and every province must prepare an environmental implementation plan within one year of the promulgation of the Act and at least every four years thereafter. Every national department listed in Schedule 2 to NEMA as exercising functions involving the management of the environment must prepare an environmental management plan within one year of promulgation of this Act and at least every four years thereafter. Every national department that is listed in both Schedule 1 and Schedule 2 may prepare a consolidated environmental implementation and management plan. Provision is made to achieve consistency among such plans between organs of state.

6.2.2 Purpose and Objectives of environmental implementation plans and environmental management plans (Section 12)

Section 12 of NEMA sets out the purpose of the environmental implementation and management plans. These include the following purposes:

- co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable environment, and of provincial and local spheres of government, in order to:
- minimise the duplication of procedures and functions; and
- to promote consistency in the exercise of functions that may affect the environment;
- give effect to the principle of co-operative government in Chapter 3 of the Constitution;
- secure the protection of the environment across the country as a whole;
- prevent unreasonable actions by provinces in respect of the environment; and
- enable the Minister to monitor the achievement, promotion and protection of a sustainable environment.

6.2.3 Content of environmental implementation plans (Section 13)

Every environmental implementation plan must contain:

- a description of policies, plans and programmes that may significantly effect the environment;
- a description of the manner in which the relevant national department or province will ensure that the policies, plans and programmes will comply with the principles set out in this Act, as well as any national norms and standards in terms of national legislation aimed at the promotion and protection of the environment;
- a description of the manner in which the relevant national department or province will ensure that its functions are exercised so as to ensure compliance with the relevant legislative provisions; and

- recommendations for the promotion of the objectives and plans for the implementation of the procedures and regulations concerning integrated environmental management (Chapter 5).

6.2.4 Content of environment management plans (Section 14)

Every environment management plan must contain:

- a description of the functions exercised by the relevant department in respect of the environment;
- a description of environmental norms and standards set or applied by the Department;
- a description of the policies, plans and programmes of the relevant department that are designed to ensure compliance with its policies by other organs of state and persons;
- a description of priorities regarding compliance with the relevant departments' policies by other organs of state;
- a description of the extent of compliance with the relevant departments' policies by other organs of state;
- a description of arrangements for co-operation with other national departments and other spheres of government with a bearing on environmental management; and
- proposals for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in Chapter 5.

6.2.5 Submission, scrutiny and adoption of environmental implementation plans and environmental management plans (Section 15)

Every environmental implementation plan and every environmental management plan must be submitted to the committee for environmental co-ordination which scrutinises every plan and either recommends adoption of such plan or reports on the extent to which the plan concerned fails to comply with:

- the principles in Section 2;
- the purpose and objectives of environmental implementation plans; or
- any relevant environmental management plan,

and specifies changes needed in the environmental implementation plan concerned.

6.2.6 Compliance with environmental implementation plans and environmental management plans (Section 16)

6.2.6.1 Every organ of state is obliged to exercise every function it may have, or that has been assigned or delegated to it by or under any law, that may significantly affect the protection of the environment, substantially in accordance with the environment implementation plan or the environmental management plan prepared, submitted and adopted by that organ of State.

6.2.6.2 Every organ of state must report annually within four months from the end of its financial year on implementation of its adopted environmental management

plan or environmental implementation plan. The Director-General of Environmental Affairs and Tourism ("the Director-General") monitors compliance with environmental implementation plans and environmental management plans.

6.2.6.3 Each provincial government must ensure that the relevant provincial environmental implementation plan is complied with by each municipality within its province and that municipalities adhere to the relevant environmental implementation and management plans, and the principles contained in section 2 in the preparation of any policy, programme or plan, including the establishment of Integrated Development Plans and Land Development Objectives.

6.3 Fair decision-making and conflict management (Chapter 4)

Chapter 4 of NEMA contains a range of provisions dealing with conciliation, arbitration and investigations aimed at fair decision-making and conflict management. Apart from mentioning that these provisions may provide an opportunity for resolving disputes concerning integrated waste management planning, further detail is unnecessary for the purposes of this Review.

6.4 Integrated Environmental Management

6.4.1 General objectives (Section 23)

Section 23 of the NEMA promotes the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities. The general objective of integrated environmental management is:

- to promote the integration of the principles of environmental management, set out in section 2, into the making of all decisions which may have a significant effect on the environment;
- to identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impact, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2;
- to ensure that the effects of the activities on the environment receive adequate consideration before actions are taken in connection with them;
- to ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment;
- to ensure the consideration of environmental attributes in management and decision-making which may have a significant effect on the environment; and
- to identify and employ the modes of environmental management best suited to ensuring that the particular activity is pursued in accordance with the principles of integrated environmental management.

6.4.2 Implementation (Section 24)

6.4.2.1 In order to give effect to the general objectives of integrated environmental management, the potential impact on the environment, socio-economic conditions and the cultural heritage, of activities that require authorisation or commission by law and which may significantly affect the environment, must be considered, investigated and assessed prior to implementation and must be reported to the organ of state charged by law with authorising, permitting or otherwise allowing the implementation of such activities.

6.4.2.2 The Minister may with the concurrence with the MEC, and every MEC may, with the concurrence of the Minister in the prescribed manner:

- identify activities which may not be commenced without prior authorisation from the Minister or MEC;
- identify geographical areas in which specified activities may not be commenced without prior authorisation from the Minister or MEC and specify such activities;
- make regulations in accordance with NEMA in respect of such authorisations;
- identify existing authorised and permitted activities which must be considered, assessed, evaluated and reported on; and
- prepare compilations of information and maps that specify the attributes of the environment - in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every organ of state charged by law with authorising, permitting or otherwise allowing the implementation of a new activity, or with considering, assessing and evaluating an existing activity.

6.4.2.3 For the purposes of this Review, it is not necessary to elaborate further on the implementation of integrated environmental management and the preparation of reports concerning potential impacts on the environment. These provisions clearly may have a bearing on integrated waste management planning.

6.4.2.4 Compliance with the procedure laid down by a Minister or MEC does not remove the need to obtain authorisation for that activity from any other organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity.

6.4.2.5 The Minister or MEC may make regulations in accordance with section 24 stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential impacts for the purpose of complying with this section where:

- the activity will affect the interest of more than one province or traverse international boundaries;
- the activity will affect the compliance with obligations resting on the Republic under customary or conventional international law; or

- an activity contemplated in section 24(1) is not dealt with in regulations.

6.4.2.6 Procedures for the investigation, assessment and communication of the potential impact activities must, as a minimum, ensure the following:

- investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;
- investigation of the potential impact, including cumulative effects of the activity and its alternatives on the environment, socio-economic conditions and cultural heritage, and assessment of the significance of that potential impact;
- investigation of mitigation measures to keep adverse impacts to a minimum as well as the option of not implementing the activity;
- public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts;
- reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainty encountered in compiling the required information;
- investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation;
- co-ordination and co-operation between organs of state in the consideration of assessments wherein an activity falls under the jurisdiction of more than one organ of state;
- that the findings and recommendations flowing from such investigation and the general objectives of integrated environmental management laid down in NEMA and the principles of environmental management set out in section 2 are taken into account in any decision made by any organ of state in relation to the proposed policy, programme, plan or project; and
- that environmental attributes identified in the compilation of information and maps as contemplated are considered.

6.4.2.7 It is pointed out that sections 21, 22 and 26 of the Environment Conservation Act 73 of 1989 and the notices and regulations issued pursuant to sections 21 and 22 of that Act remain in force. These sections deal with the need to obtain written authorisation (in terms of section 22) in order to undertake "identified activities" (identified under section 21) and the commensurate obligation to comply with an environmental impact assessment procedure (determined by Regulations made under section 26 and published in GNR 1183 of 5 September 1997). In terms of section 50(2) of NEMA, these sections (and notices and regulations published pursuant thereto) will be repealed with effect from a date to be published by the Minister in the Government Gazette. That date may not, in terms of section 50(2), be earlier than the date on which regulations or notices made or issued under section 24 of NEMA are promulgated and the Minister is satisfied that the regulations and notices made

under sections 21 and 22 of the Environment Conservation Act have become redundant.

6.5 International Obligations and Agreements – Chapter 6

6.5.1 Incorporation of international environmental instrument (Section 25)

6.5.1.1 Where the Republic is not yet bound by an international environmental instrument (i.e. an international agreement, declaration, resolution, convention or protocol which relates to management of the environment), the Minister may make a recommendation to Cabinet and Parliament regarding a accession to and ratification of an international environmental instrument.

6.5.1.2 Where the Republic is a party to an international environmental instrument, the Minister, after compliance with the provisions of the Constitution may publish the provisions of the international environmental instrument in the *Government Gazette*.

6.5.1.3 The Minister may introduce legislation in Parliament and make such regulations as may be necessary to give effect to an international environment instrument to which the Republic is a party. Certain environmental reporting obligations of the Minister are also created in terms of this Chapter.

6.6 Compliance, Enforcement and Protection - Chapter 7

6.6.1 Duty of care and remediation of environmental damages (Section 28)

6.6.1.1 Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or insofar as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

6.6.1.2 The persons on whom these obligations are imposed to take reasonable measures include an owner of land or premises, a person in control of land or premises or a person that has a right to the use the land or premises on which or in which any activity or process is or was performed or undertaken or any other situation exists which causes, has caused or is likely to cause significant pollution or degradation of the environment.

6.6.1.3 The measures required may include measures to:

- investigate, assess and evaluate the impact on the environment;
- inform and educate employees about environmental risks of the work and the manner in which the tasks must be performed in order to avoid significant pollution or degradation of the environment;
- cease, modify or control any act, activity or any process causing the pollution or degradation;
- contain or prevent the movement of pollutants or causant of degradation;
- eliminate any source of the pollution or degradation;
- remedy the effects of pollution or degradation.

6.6.1.4 Should a person fail to comply with a directive, the Director-General, or a provincial head of department may take reasonable measures to remedy the situation and may recover all costs incurred as a result thereof from any or all of the following persons:

- any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;
- the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner's successor in title;
- the person in control of the land or any person who has or had a right to use the land at the time when the activity or process is or was performed or undertaken or the situation came about;
- any person who negligently failed to prevent the activity or process being performed or undertaken or the situation from coming about.

6.6.15 The Director-General or provincial head of department may in respect of the recovery of costs claim proportionally from any other person who benefited from the measures undertaken by him or her. The costs claimed under this section must be reasonable and may include, without being limited to, labour, administrative and overhead costs. If more than one person is liable under section 28, the liability must be apportioned among the persons concerned according to the degree which each was responsible for the harm to the environment resulting from their respective failures to take the measures required.

6.6.2 Protection of workers refusing to do environmentally hazardous work (Section 29)

6.6.2.1 Section 29 states that no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having refused to perform any work if the person in good faith reasonably believed at the time of the refusal that the performance of the work would result in an imminent and serious threat to the environment.

6.6.2.2 An employee who has refused to perform work in terms of this section 29 must as soon thereafter as is reasonably practicable notify the employer either personally or through a representative that he or she has refused to perform work and give a reason for the refusal.

6.6.2.3 Section 29 applies whether or not the person refusing to work has used or exhausted any other applicable internal procedure or otherwise remedied the matter concerned. No person may advantage or promise to advantage any person for not exercising his or her right in terms of section 29. No person may threaten to take any action contemplated against the person because that person has exercised his or her right in terms of section 29.

6.6.3 Control of emergency incidents (Section 30)

6.6.3.1 Section 30 includes the following definitions:

"incident" means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment whether immediate or delayed.

"Responsible person" includes any person who is responsible for the incident; and any hazardous substance involved in the incident; or who was in control of any hazardous substance involved in the incident at the time of the incident.

"Relevant authority" means a municipality with jurisdiction over the area in which an incident occurs; a provincial head of department or any other provincial official designated for that purpose by the MEC in a province in which an incident occurs; the Director-General; any other Director-General of a national department.

6.6.3.2 Where this section authorises a relevant authority to take any steps, such steps may only be taken by:

- any other Director-General of a national department if no steps have been taken by any of the other persons listed;
- the Director-General if no steps have been taken by any municipality with jurisdiction or a provincial head of department;
- by a provincial head of department if no steps have been taken by a municipality with jurisdiction.

6.6.3.3 The responsible person or, where the incident occurred in the course of that persons employment, his or her employer must forthwith after acquiring knowledge of the incident, report through the most effective means reasonably available:

- the nature of the incident;
- any risks posed by the incident to public health safety and property;
- the toxicity of substances or by-products released by the incident;
- any steps that should be taken in order to avoid or minimise the effects of the incident of public health;
- undertake clean-up procedures;
- remedy the effects of the incident; and
- assess the immediate and long-term effects of the incident on the environment and public health.

6.6.3.4 The responsible person or, where the incident occurred in the course of that person's employment, his or her employer, must, within 14 days of the incident, report to the Director-General, provincial head of department and municipality such information as is available to enable and initial evaluation of the incident. A relevant authority may direct the responsible person to undertake specific measures within a specific time to fulfil his or her obligations. A verbal directive must be confirmed in writing at the earliest opportunity, no longer than 7 days.

6.6.3.5 If the responsible person fails to comply or inadequately complies with the directive; or there is uncertainty as to who the responsible person is; or there is an immediate risk of serious danger to the public or potentially serious detriment to the environment a relevant authority may take the measures it considers necessary to:

- contain and minimise the effect of the incident;
- undertake clean-up procedures;
- remedy the effects of the incident.

6.6.3.6 A relevant authority may claim re-imbursement of all reasonable costs in terms of this section from every responsible person jointly and severally.

6.6.3.7 A relevant authority which has taken steps under section 30 must, as soon as reasonably practicable, prepare comprehensive reports on the incident, which must be made available through the most effective means reasonably available.

6.6.4 *Access to environmental information and protection of whistle blowers (Section 31)*

6.6.4.1 NEMA contained interim provisions pending the promotion of Access to Information Act 95 of 2000 coming into effect

6.6.4.2 In regard to whistle-blower protection, section 31(4) provides that no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith, reasonably believed at the time of disclosure that he or she was disclosing evidence of an environmental risk. Such protection exists only if the person concerned disclosed the information to a committee of Parliament or of a provincial legislature; an organ of state responsible for protecting any aspect of the environment; the Public Protector; the Human Rights Commission; any Attorney-General; or more than one of the bodies referred above. The information may only be disclosed to one or more news media if such party believes that disclosure was necessary to avert an imminent and serious threat to the environment or giving due weight to the importance of open, accountable, and participatory administration that the public interest in the disclosure of the information clearly outweighed any need for non-disclosure.

6.6.5 Legal standing to enforce environmental laws (Section 32)

6.6.5.1 Any person or group of persons may seek appropriate relief in respect of any breach or threat of breach of any provisions of NEMA or any other statutory provision for the protection of the environment or the use of natural resources:

- in that person's or group of person's 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;
- in the interest of protecting the environment.

6.6.5.2 A Court may decide not to award costs against a person who fails to secure the relief sought in respect of any breach or threatened breach of any provision concerned with the protection of the environment or the use of natural resources if the court is of the opinion that the person acted reasonably out of concern for the public interest and had made due efforts to use other means reasonably available for obtaining the relief sought.

6.6.5.3 Where a person or group of persons secures the relief sought in respect of any breach or threatened breach concerned with the protection of the environment, a court may, on application:

- award costs on an appropriate scale to any person entitled to practice as advocate or attorney in the Republic who provided free legal assistance or representation to such person or group in the preparation for or conduct of the proceedings; and
- order that the party against whom the relief is granted must pay to the person or group concerned any reasonable costs incurred by such person or group in their investigation of the matter.

6.6.6 Private prosecution (Section 33)

Section 33 of the Act provides that any person may in the public interest or in the interest of the protection of the environment institute and conduct a prosecution in respect of any breach or threatened breach of any duty other than a public duty resting on an organ of state, in any national or provincial legislation or municipal by-law or any regulation, licence, permission or authorisation issued in terms of such legislation, where that duty is concerned with the protection of the environment and the breach of that duty is an offence. The procedure relating to private prosecutions under Section 33 constitutes a relaxation of the requirements in regard to private prosecutions in out in the Criminal Procedure Act 51 of 1977.

6.6.7 Criminal proceedings (Section 34)

6.6.7.1 Whenever any person is convicted of an offence under any provisions listed in Schedule 3 to NEMA and it appears that such person caused loss or damage to any organ of state or any other person, including the costs of rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings, at the written request of the Minister or other organ of State concerned, and in the presence of the convicted person, enquire summarily and without pleadings to the amount of loss or damage so caused.

6.6.7.2 Upon proof of such amount, the court may give judgement in favour of the organ of state or other person against the convicted person and such judgement is of the same force and effect as if it had been given in the civil court.

6.6.7.3 Wherever any person is convicted of an offence, the court convicting such person may summarily enquire into and assess the monetary value of any advantage claimed or likely to be gained by such person in consequence of that offence and in, addition to any other punishment imposed in respect of that offence, the court may order the award of damages or compensation or a fine equal to the amount so assessed.

6.6.7.4 Whenever any person is convicted of an offence under NEMA the court convicting such person may, upon application by the public prosecutor, order such person to pay the reasonable costs incurred by the public prosecutor and the organ of state concerned in their investigation and prosecution of the offence.

6.6.7.5 Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer, and which would be an offence under any provision listed in NEMA for the employer to do or omit to do and the act or omission of the manager, agent or employee occurred because the employer failed to take all reasonable steps to prevent the act or omission in question, then the employer will be guilty of the offence.

6.6.7.6 Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to or to refrain from doing on behalf of the employer, and which would be an offence under any provision listed in NEMA for the employer to do, or omit to do, he or she will be liable to be convicted and sentenced in respect thereof as if he or she were the employer.

6.6.7.7 Any person who, is or was a director of a firm at the time of the commission by that firm of an offence, shall himself or herself be guilty of said offence and liable, on conviction, to the penalty specified in the relevant law including an order, if the offence in question resulted from the failure from the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence, provided that proof of the said offence by the firm will constitute *prima facie* evidence that the director is guilty under this sub-section. Any manager, agent, employee or director may be so convicted and sentenced in addition to the employer or firm.

6.7 Environmental Management Co-operation Agreements - Chapter 8

6.7.1 Section 35 provides that the Minister and every MEC and municipality may enter into an environmental management co-operation agreement with any person or community for the purpose of promoting compliance with the principals laid down in NEMA. Environmental management co-operation agreements must:

- only be entered into with the agreement of:
  - every organ of State which has jurisdiction over any activity to which such environmental co-operation agreement relates;
  - the Minister and the MEC concerned;
- only be entered into after compliance with procedures for public participation prescribed by the Minister; and
- comply with such regulations as may be prescribed under NEMA.

6.7.1 Environmental co-operation agreements may contain:

- an undertaking by the person or community concerned to improve the standards laid down by law for the protection of the environment which are applicable to the subject matter of the agreement;

- a set of measurable targets for fulfilling the undertaking including dates for the achievements of such targets; and
- provision for:
  - periodic monitoring and reporting of performance against targets;
  - independent verification of reports;
  - regular independent monitoring and inspections;
  - verifiable indicators of compliance with any targets, norms and standards laid down in the agreements as well as any obligations laid down by law;
- the measures to be taken in the event of non-compliance with commitments in the agreement, including where appropriate penalties for non-compliance under provisions for incentives to the person or community.

6.8 Administration of Act - Chapter 9

6.8.1 Expropriation (Section 36)

6.8.1.1 Section 36 of NEMA provides that the Minister may purchase or, subject to payment of compensation, expropriate any property for environmental or any other purpose under this Act if that purpose is a public purpose or in the public interest, provided that the Minister must consult the Minister of Minerals and Energy before any mineral rights are expropriated. The Expropriation Act, 1975 applies to all expropriations under this Act.

6.8.1.2 The amount of compensation and the time and manner of payment must be determined in accordance with Section 25(3) of the Constitution and the owner of the property in question must be given a hearing before any property is expropriated.

6.8.2 Intervention in litigation (Section 38)

Section 38 of NEMA allows the Minister to intervene in litigation before a court in any matter under this Act.

6.8.3 Agreements (Section 39)

The Director-General may enter into agreements with organs of state in order to fulfil his or her responsibilities.

6.8.4 Appointment of employees of contract (Section 40)

The Director-General may appoint employees on contract outside the provisions of the Public Services Act when this is necessary to carry out the functions of the department and he may determine the conditions of employment of such employees. Such employees must be remunerated for money appropriated for that purpose by Parliament.

6.8.5 Assignment of powers and delegation (Sections 41 and 42)

An assignment of powers means an assignment as contemplated in Section 99 of the Constitution and the Minister must record all assignments. The Minister may delegate a

power, function or duty vested in him or her to a named officer of the DEAT or to a holder of an office in the DEAT or the holder of an office in any other national department, provincial administration or municipality. Such delegation does not prevent the exercise of the power, function or duty by the Minister himself or herself. The Director-General may also permit a person to whom a power, function or duty has been delegated by the Director-General to further delegate that power, function or duty.

6.8.6 Regulations (Sections 44 and 45)

In terms of Section 44 and 45 of NEMA, the Minister may make regulations dealing with any matter under this Act as well as for management co-operation agreements.

6.8.7 Model environment by-laws (Section 46)

The Minister may make model by-laws aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of the municipality, which may be adopted by the municipality as by-laws. Any municipality may request the Director-General to assist it with its preparation of by-laws on matters affecting the environment and the Director-General may not unreasonably refuse such a request. The Director-General may institute programmes to assist municipalities with the preparation of by-laws for the purposes of implementing this Act. The purpose of the model by-laws must be to:

- mitigate adverse environmental impacts;
- facilitate the implementation of decisions taken, and conditions imposed as a result of the authorisation of new activities and developments, or through the setting of norms and standards in respect of existing activities and developments; and
- ensure effective environmental management and conservation of resources and impacts within the jurisdiction of a municipality in co-operation with other organs of state. The model by-laws must include measures for environmental management which may include auditing, monitoring and ensuring compliance and reporting requirements and the furnishing of information.

6.8.8 Regulations (Section 47)

A procedure is set out for the making of regulations by the Minister or MEC. Such procedure involves an extensive process of consultation and public participation, both internally and externally to government structures.

6.9 General and Transitional Provisions - Chapter 10

6.9.1 State bound and liability (Sections 48 and 49)

NEMA is binding on the State except insofar as any criminal liabilities are concerned. Neither the State nor any other person is liable for any damage or loss caused by the exercise of any power or performance to any duty under this Act; or the failure to exercise any power, or perform any function or duty under this Act unless such act or non-act was unlawful, negligent or in bad faith.

6.9.2 Repeal of laws (Section 50)

Various sections of the Environment Conservation Act are repealed. As discussed, above sections 21, 22 and 26 of the Environment Conservation Act and regulations issued pursuant to these sections are repealed with effect from a date still to be published by the Minister.

6.9.3 Savings (Section 51)

Section 51 of NEMA provides that any thing done or deemed to have been done under a provision repealed by NEMA remains valid and is considered to have been made under NEMA to the extent that it is not inconsistent with NEMA and until anything done under NEMA overrides it.

7. ENVIRONMENT CONSERVATION ACT

The object of the Environment Conservation Act 73 of 1989 is to provide for the effective protection and controlled utilisation of the environment and for matters incidental thereto. Proclamation R29 in Government Gazette 16346 of 7 April 1995 and Proclamation R43 is Government Gazette 17354 of 8 August 1996 to some extent assign the administration of the Act to the provinces.

7.1 Prohibition on littering

Section 19 of the Environment Conservation Act provides for a general prohibition against littering. In terms of the Act, it is an offence to discard, dump or leave any litter on any land or water surface, street, road or site in or on any place to which the public has access, except in a container or a place which has been specially indicated, provided or set apart for such purpose. Furthermore, every person or authority in control of any place to which the public has access shall at all times ensure that containers or places are provided which will be adequate and suitable for the discarding of litter by the public.

7.2 Removal of litter

The provisions of Section 19A of the Environment Conservation Act provide that, notwithstanding the provisions of Section 19 of the Act, every person or authority in control of any place must within a reasonable time after litter has been discarded, dumped or left behind at such place remove the litter or cause it to be removed. Provision is made for the appointment of inspectors with authority to enter upon any land or premises to investigate compliance with the Act. In terms of Section 24A of the Environment Conservation Act, a competent authority may make regulations with regard to the control of the dumping of litter.

7.3 Waste management

7.3.1 Section 20 of the Environment Conservation Act deals with waste management, including with the establishment and operation of waste disposal sites. Such sites may only be operated under a permit issued by the Minister of Water Affairs and the Minister may issue a permit subject to such conditions as he may deem fit, alter or cancel any permit or condition in a permit or refuse to issue a permit. This is subject to the proviso that the Minister may exempt any person or category of persons from obtaining a permit, subject to such conditions as he may deem fit.

7.3.2 A disposal site is any site used for the accumulation of waste for the purpose of disposal or treatment of such waste. In terms of the Act, "waste" means any matter, whether gaseous, liquid or solid or any combination thereof, which is from time to time designated by the Minister by notice in the *Gazette* as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity. In GN 1986 of 24 August 1990, the Minister of Environment Affairs identified as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity, any matter, gaseous, liquid or solid or any combination thereof, originating from any residential, commercial or industrial area which:

- is discarded by any person; or
- is accumulated and stored by any person with the purpose of eventually discarding it with or without prior treatment connected with the discarding thereof; or]
- is stored by any person with the purpose of recycling, reusing or extracting a usable product from such matter, excluding:
  - water used for industrial purposes or any effluent produced by or resulting from such use which is discharged in compliance with the provisions of Section 21 of the Water Act, 54 of 1956 or on the authority of an exemption granted under Section 21(4) of that Act;
  - any matter discharged into a septic tank or french drain sewerage system and any water or effluent contemplated by Section 21(2) of the Water Act No. 54 of 1956;
  - building rubble used for filling or levelling purposes;
  - any radio-active substances discarded in compliance with the provisions of the Nuclear Energy Act No. 92 of 1982;
  - any minerals, tailings, waste rock or slimes produced by or resulting from activities at a mine or works as defined in Section 1 of the Mines and Works Act 27 of 1956; and
  - ash produced by or resulting from activities at an undertaking for the generation of electricity under the provisions of the Electricity Act No. 41 of 1987.

7.3.3 The above definition of waste and various exclusions is out of keeping with an integrated approach to waste management. This definition of waste requires attention not only to ensure that an integrated approach to waste can be followed in terms of the Environment Conservation Act, but also to remove current illegal uncertainty amongst generators of waste as to their legal obligations arising from Section 20 of the Environment Conservation Act. Even as an interim measure, such clarification necessary.

7.3.4 Section 20(2) stipulates that any application for a permit in terms of Section 20 shall be in the form and be accompanied by such information as the Minister may prescribe. In terms of Section 20(3), if the Minister of Water Affairs should require any further information to enable him to make a decision on the application, he may demand such information from the applicant. Furthermore, in terms of Section 20(4), the Minister of Water Affairs shall maintain a register in which details of every disposal site, for which a permit has been issued, shall be recorded. The Minister of Water Affairs may, from time to time by notice in the *Gazette*, issue directions with regard to:

- the control and management of disposal sites in general;
- the control and management of certain disposal sites or disposal sites handling particular types of waste; and

- the procedure to be followed before any disposal site may be withdrawn from use or utilised for another purpose.

7.3.5 Subject to the provisions of any other law, no person shall discard waste or dispose of it in any manner except:

- at a disposal site for which a permit has been issued;
- in a manner or by means of a facility or method and subject to such conditions as the Minister may prescribe.

7.4 Waste management Regulations

7.4.1 In terms of Section 24 of the Environmental Conservation Act, the Minister of Environmental Affairs and Tourism has made Regulations with regard to waste management (Government Notice R1196 of 8 July 1994 (hereinafter referred to as "R1196")). In terms of these Regulations any person who intends to establish, provide or operate a disposal site must apply for a permit by submitting a completed form in accordance with Schedule A of the Regulations. This application must be submitted to the Regional Director of DWAF in whose area the disposal site is situated.

7.4.2 R1196 make provision for a further requirement by the Department of Water Affairs and Forestry for additional information to accompany the application form. The same Department has published guidelines which set out the type of information that is required. These guidelines are made up of three volumes, referred to as The Minimum Requirements for Waste Disposal by Landfill, Minimum Requirements for the Handling and Disposal of Hazardous Waste, and Minimum Requirements for the Monitoring of Waste Management Facilities. While the Minimum Requirements documents do not constitute law, their provisions form the basis for the Section 20 permitting process and may be included as permit conditions, thereby becoming legally binding on the permit holder. We will not attempt to review the content of the Minimum Requirement documents, but they are important from the perspective of waste management and waste management planning.

7.4.3 Examples of the information that must accompany a permit application are as follows:

- Site classification - in terms of the Minimum Requirements waste disposal sites are very broadly divided into hazardous waste disposal sites and general waste disposal sites according to the waste types, the size of the waste streams to be disposed of therein as well as the potential for significant leachate generation and the need for leachate management;
- Geo-hydrological investigation and report;
- Environmental Impact Assessment and Environmental Impact Control Report;
- Technical design;
- Development plan;
- Operating plan, including a monitoring programme;

- Closure, rehabilitation and end use plan;
- Water quality monitoring plan.

7.4.4 The permit granted by the Minister of Water Affairs in terms of Section 20 of the Environment Conservation Act is made subject to a number of conditions which, *inter alia*, pertain to the design, construction, monitoring and closure of a waste disposal site. The permit holder is generally required to operate, maintain and attend to the closure of a waste disposal site in compliance with these conditions as well as in accordance with the guidelines set out in the Minimum Requirements documents.

7.4.5 In addition to the regulations already made by the Minister, the Minister may also make regulations with regard to a range or other matter concerning waste management, including:

- the submission of statistics on the quantity and types of waste produced;
- the classification of different types of waste and handling, storage, transport and disposal of such waste;
- the reduction of waste by modifications in the design and marketing of products, modifications to manufacturing processes and the use of alternative products;
- the utilisation of waste by way of recovery, reuse or processing of waste;
- the location, planning and design of disposal sites and sites used for waste disposal;
- control over the management of sites, installations and equipment used for waste disposal;
- the administrative arrangements for the effective disposal of waste;
- the dissemination of information to the public on effective waste disposal;
- control over the import and export of waste; and
- any other matter which the Minister may deem necessary or expedient in connection with the effective disposal of waste for the protection of the environment.

7.5 Activities having a detrimental effect on the environment

7.5.1 Section 21 of the Environmental Conservation Act provides that the Minister of Environmental Affairs and Tourism may, by notice in the *Government Gazette*, identify those activities, which in the Minister's opinion, may have a substantial detrimental effect on the environment, whether in general or in respect of certain areas. These activities may include; land use and transformation, water use and disposal, resource removal (including natural living resources), resource renewal, industrial processes, transportation, energy generation and distribution, waste and sewage disposal and chemical treatment.

7.5.2 In terms of Section 26 of the Environmental Conservation Act and Government Notice R1182 of 5 September 1997 (hereinafter referred to as "R1182"), the Minister of Environmental Affairs and Tourism identified the following activities (amongst others) as being activities in terms of Section 21 of the Environment Conservation Act which may have a substantial detrimental effect on the environment:

- The construction or upgrading of:
  - nuclear reactors and installations for the production, enrichment, reprocessing and disposal of nuclear fuels and wastes;
  - transportation routes and structures, and manufacturing storage, handling or processing facilities for any substance which is dangerous or hazardous and is controlled by national legislation;
  - sewage treatment plants and associated infrastructure;
- the disposal of waste in terms of Section 20 of the Environment Conservation Act 73 of 1989; and
- Scheduled Processes listed in the Second Schedule to the Atmospheric Pollution Protection Act 45 of 1965."

7.6 Prohibition of undertaking identified activities

7.6.1 In terms of Section 22 of the Environment Conservation Act, no person may undertake an activity identified in terms of Section 21 of the Act except by virtue of written authorisation issued by the Minister or another competent authority. Such authorisation will only be issued after consideration of reports concerning the impact of the proposed activity and of alternative proposed activities on the environment.

7.6.2 Environment Impact Assessment Regulations, regarding activities defined under Section 21(1) of the Environment Conservation Act, have been promulgated in Government Notice R1183 of 5 September 1997. The requirement that an environmental impact assessment be conducted prior to, *inter alia*, the disposal of waste in terms of Section 20 of the Act, represents a further complication in the integration of waste management planning issues. With the introduction of DEAT or other competent authorities into the permitting process through the EIA requirements, in addition to the involvement of DWAF, through Section 20, the permitting process is made more complex. While an EIA is no doubt a valid requirement prior to establishing a waste disposal site, the question must be asked whether the EIA process could not be more effectively integrated into the waste disposal site permitting process, rather than standing as a separate administrative requirement under a different government department?

8. MINING LEGISLATION

8.1 Minerals Act

8.1.1 Introduction

The object of the Minerals Act 50 of 1991 is to regulate the optimal exploitation, processing and utilisation of minerals and at the same time to regulate the rehabilitation of the surface of land during and after prospecting and mining operations and to provide for matters connected therewith. Mine waste presently falls outside the ambit of Section 20 of the Environment Conservation Act in practice, and is subject to the control of the Department of Minerals and Energy. Nevertheless, as will be seen, the Minerals Act carries many implications for integrated waste management planning, particularly considering the substantial rehabilitation planning obligations imposed by the Act.

8.1.2 Issuing of prospecting permit

8.1.2.1 Section 6 of the Minerals Act provides that prospecting permits are obtained by submitting an application in the prescribed form together with the prescribed fee to the Director: Mineral Development. The effect of such a permit is that it authorises the applicant to prospect for minerals in respect of which he is the holder of the mineral rights in question, or in respect of which he has written consent from the holder of the mineral rights in question.

8.1.2.2 All applications for prospecting permits must be lodged with the Director: Mineral Development concerned and in addition to other information and documents which he may require, be accompanied by:

- proof of the right to the mineral in respect of the land or tailings, as the case may be, comprising the subject of the application;
- particulars about the manner in which the applicant intends to prospect and rehabilitate disturbances of the surface which may be caused by his intended prospecting operations; and
- particulars about the applicants ability to make the necessary provisions to rehabilitate disturbances of the surface which may be caused by his intended prospecting operations,

acceptable to the Directors Mineral Development.

8.1.2.3 The renewal of prospecting permits must be attended to from time to time, at least one month prior to the expiration of the period for which the existing permit has been issued, and such renewal is at the discretion of the Director: Mineral Development in that he/she must be satisfied with the manner in which the permit holder rehabilitates surface disturbances caused by prospecting operations.

8.1.3 Prohibition on removal and disposal of minerals found during prospecting operations

8.1.3.1 Section 8 of the Minerals Act provides that the holder of a prospecting permit cannot remove minerals found during prospecting except where:

- samples are removed for testing and analysis; and
- where the holder of the mineral rights give express written consent together with written permission granted by the Director: Mineral Development, subject to such conditions in respect of optimal utilisation or rehabilitation as may be specified therein.

8.1.3.2 The consent given by the Director: Mineral Development can only be obtained by way of formal application accompanied by an application fee and this consent will lapse on the expiry of the prospecting permit.

8.1.4 Issuing of mining authorisation

8.1.4.1 Section 9(1) of the Minerals Act provides that the Director: Mineral Development shall, on application in the prescribed form and on payment of the prescribed fee, issue a mining authorisation in the prescribed form for a period determined by him authorising the applicant to mine for and dispose of a mineral in respect of which the applicant:

- is a holder of a right thereto; or
- has acquired the written consent of such holder to mine therefore on his own account;

in respect of the land or tailings comprising the subject of the application.

8.1.4.2 Section 9(3) of the Minerals Act provides that no mining authorisation shall be issued in terms of Section 9, unless the Director: Mineral Development is *inter alia* satisfied:

- with the manner in which the applicant intends to rehabilitate disturbances of the surface which may be caused by his mining operations;
- that the applicant has the ability and can make the necessary provision to mine the mineral optimally and to rehabilitate the disturbances of the surface.

8.1.4.3 Section 9(5) of the Minerals Act provides that any application for a mining authorisation must be lodged with the Director: Mineral and Development concerned and must, in addition to the other information and documents which may be required by him, be accompanied by *inter alia* :

- a sketch plan indicating the location of the intended mining area, the land comprising the subject of the application, the lay-out of the intended mining operations and the location of surface structures connected therewith;
- particulars about the manner in which and scale on which the applicant intends to mine the mineral under the mining authorisation optimally and to rehabilitate disturbances of the surface which may be caused by the intended mining operations;
- particulars about the mineralisation of the land or tailings, as the case may be, comprising the subject of the application;

- particulars about the applicant's ability to make the necessary provision to mine such mineral optimally and to rehabilitate the disturbances of the surfaces; and
- particulars about the applicant's ability to mine in a healthy and safe manner,

acceptable to the Director: Mineral Development.

8.1.4.4 Section 9(6) of the Mineral Act provides that the Director: Mineral Development may exempt any applicant for a mining authorisation from one or more of the provisions of Section 9(5)(b), subject to any conditions as may be determined by him.

8.1.4.5 Section 9(7) of the Minerals Act provides that the Director: Mineral Development will consult as to the issuing of a mining authorisation with the Chief Inspector of Mine Health and Safety ("Chief Inspector"), and no mining authorisation may be issued unless the Chief Inspector is satisfied that the applicant has the ability and can make the necessary provision to mine in a healthy and safe manner.

8.1.5 Continuation of liability until certificate is issued

8.1.5.1 Section 12(1) of the Minerals Act provides that if any prospecting permit or mining authorisation is suspended, cancelled or abandoned or if it lapses in terms of this Act, or if any portion of the land comprising the subject of the permit or authorisation is abandoned under Section 11(2) of the Minerals Act or the operations at the works cease, the person (including a company) who was the holder of the permit or authorisation immediately prior to the suspension, cancellation, abandonment or lapsing, or the holder of the permit or mining authorisation or the owner of the works, as the case may be, will remain liable for complying with the relevant provisions of this Act until the Director: Mineral Development concerned issues a certificate to the effect that the said provisions have been complied with. This certificate is known as a "closure certificate".

8.1.5.2 Section 12(2) of the Minerals Act provides that the Director: Mineral Development will consult the Chief Inspector and no such certificate shall be issued if the Chief Inspector is of the opinion that the provisions of the Mine, Health and Safety Act, 29 of 1996, have not been complied with.

8.1.6 Rehabilitation of surface of land

Section 38 of the Minerals Act provides that the responsibility of rehabilitating the surface of land concerned in any prospecting or mining operation is that of the holder of the prospecting permit or mining authorisation concerned. The rehabilitation must take place in accordance with the Environmental Management Programme approved in terms of Section 39 of the Minerals Act, as an integral part of the mining operations, simultaneously with such operations unless determined otherwise in writing by the Director: Mineral Development. If the Director: Mineral Development is of the opinion that, having regard to the known and disclosed mineral reserve within any mine, that mine is likely to cease mining operations within a period of five years, he will, in writing, give notice accordingly to the owner of that mine and the owner shall not

dispose of any of his assets in relation to the mine without a certificate furnished by the Director: Mineral Development to the effect that necessary steps have been taken or adequate provision has been made for the rehabilitation of the mining area concerned. These steps or this provision may change if any annual review reveals that the nature of mining operations has or will be changing.

8.1.7 Environmental management programme

Section 39 of the Minerals Act provides that the holder of the prospecting permit or the mining authorisation must submit to the Director: Mineral Development an Environmental Management Programme ("EMP") in respect of the surface of the land concerned in the mining operations. The Director General of Mineral and Energy Affairs, pending the approval of an Environmental Management Programme, may require that an environmental impact assessment be carried out in respect of the mining operations and any costs borne in respect of an environmental impact assessment shall be borne by the holder of the mining authorisation. The EMP has clear implications for waste management planning in the context of waste generated from mining activities.

8.1.8 Removal of buildings, structures and objects

Section 40 of the Minerals Act provides that when mining operations is suspended, cancelled, terminated or lapses, and prospecting or exploitation of minerals finally ceases, buildings, structures and objects on the relevant land must be demolished. Moreover, all debris must be removed, as well as any other object which the Director: Mineral Development may require and the surface area must be restored to its natural state as far as is reasonably practicable and to the satisfaction and within a period determined by the Director: Mineral Development; Provided that the demolition or removal will not be applicable in respect of buildings, structures or objects:

- which shall, in terms of any other law, not be demolished or removed;
- as may be determined by the Director: Mineral Development, or in respect of which he has granted exemption subject to such conditions as may be determined by him; or
- which the owner of the land wishes to retain and which has been agreed upon accordingly in writing with the former holder of the permit for authorisation.

8.1.9 Restrictions in relation to use of surface land

Section 41 of the Minerals Act provides that the Director: Mineral Development may issue directives and determine conditions in relation to the use of the surface of the land comprising the subject of a mining authorisation. These directives are aimed at limiting the damage to the land surface, vegetation, environment or water sources.

8.1.10 Regulations

8.1.10.1 Section 63 of the Minerals Act provides that the Minister of Mineral and Energy Affairs may by notice in the Government Gazette, make regulations regarding a variety of mine related issues.

8.1.10.2 Regulations which were made under the repealed Mines and Works Act and continue to apply in terms of the Minerals Act until repealed or amended (Government Notice R992 GG 2741 of 26 June 1970 as amended (hereinafter referred to as "R992")). The current Regulations comprise of 34 chapters

which deal with every aspect of a mine. For the purposes of this Review only the regulations relevant to waste (in the widest meaning of the word), are identified.

8.1.10.3 Responsibility for infrastructure

- Regulation 2.10.14 of R992 provides that the mine manager shall submit for approval to the Principal Inspector of Mines plans and specifications, approved and signed by an appropriate qualified professional engineer, giving details of the construction and catchment area of any dam to be constructed for the purpose of conserving water and of any coffer dam or other barricade which is to be constructed underground for keeping back water under a pressure exceeding 700 kilopascals.
- Regulation 2.10.15 requires the mine manager to ensure that in the construction of any dump or slimes dam in the neighbourhood of any building, thoroughfare or other public road, railway or public place, no danger to life or limb or damage to property can result therefrom.
- Regulation 2.11 of R992 provides that where operations at any mine or works are discontinued and such mine or works, or portion thereof, are abandoned, the owner or the person acting as manager of the mine or works at the time of the discontinuance or abandonment, will continue to be responsible for compliance with the provisions of these Regulations until a certificate of closure has been issued to him that the necessary provisions have been complied with.

8.1.10.4 Management of the environment

- In Chapter 3 Regulation 3.14 of R992 provides for safety precautions or measures relating to the management of the environment;
- Regulation 3.15.1 provides for the granting of exemptions from regulations. As a general rule such exemption will be considered where the circumstances at mines in general are such that any provision of any regulation cannot be applied or are unduly onerous to a mine or whenever it is necessary for the purpose of carrying out any experiment or tests as to the expediency of any regulation or proposed regulation.

8.1.10.5 Surface protection

Chapter 5 of R992 deals with surface protection, the safety of undermined ground and the prevention and combating of pollution.

- At coal mines specifically, Regulation 5.4 provides that coal debris shall not be allowed to accumulate on any ground where there exist, or where there are likely to occur surface fissures or cavities, the result of underground operations. Furthermore, no working of coal or any such like mineral beyond the necessary development drives may be carried on beneath any accumulation of unburnt, burning or smouldering coal or other similar debris except as is provided for in the Regulations. Broken ground which has finally subsided may be filled up with earth and then used as a site for depositing coal and other debris, provided the consent of

the principal Inspector of Mines has first been obtained. All coal debris and eituminous rock shall be deposited at such a distance from any shaft structure or building as to minimise danger from fire. The owner of a coal mine shall be responsible for all damage resulting from the combustion of his waste heaps;

- Regulation 5.6 of R992 provides for the making safe of undermined ground, subsidences, excavations etc. If in the opinion of the Principal Inspector of Mines the conditions of or the circumstances in undermined ground, and of slimes dams, waste dumps, ash dumps, shafts, holes, trenches or excavations of whatever nature made in the course of the prospecting or mining operations, whether abandoned or being worked, are dangerous to, life or health of persons, property or public traffic, he may order that it be safeguarded to his satisfaction by the owner or manager of the mine. If the owner or manager fails to comply with an order from the Inspector, the Inspector may have the dangerous situation concerned safeguarded at the expense of the owner or manager.
- Regulation 5.9 of R992 provides that water containing poisonous or injurious matter in suspension or solution must be isolated so as to prevent access to it. This water must not be permitted to escape without having been previously rendered innocuous.
- Regulation 5.10 of R992 provides that a manager must cover any dump with soil or sludge or otherwise deal with it in a manner satisfactory to the Principal Inspector of Mines, to prevent dissemination of any form of pollution such as dust, sand, smoke or fumes.
- Regulation 5.12 of R992 provides for the rehabilitation of the surface of a mine. Unless exemption is granted in writing by the Director: Mineral Development, all topsoil removed shall be deposited at a specially selected site for replacement as topsoil during rehabilitation of the disturbed surface. If the rehabilitation of the surface is done satisfactorily, the Director: Mineral Development may, in consultation with the Director of the Department of Water Affairs, issue a certificate to the manager of the mine to the effect that the provision of these regulations with regard to rehabilitation has been complied with.
- Regulation 5.13.1 of R992 provides that the dumping or impounding of rubble, litter, garbage, rubbish or discards of any description, whether solid or liquid, shall only take place at the site demarcated for such purpose by the manager of the mine with the approval of the Director: Mineral Development. Such sites shall be limited to a minimum and shall be controlled so as to ensure that the environment is, as far as practicable, not polluted.
- Regulation 5.13.2 of R992 provides that in every case where vegetation is disturbed in making access roads, clearing sites or stockpiles and erecting plant or other installations, such vegetation shall be re-established to the satisfaction of the Director: Mineral Development. The Director may introduce a programme according to which rehabilitation shall be done.

- Regulation 5.13.4 of R992 provides that wherever practicable, waste material from reduction works, beneficiation plants, screening and washing installations and generating stations at a mine must be disposed of in the workings of such mine. Provided that such disposal must only be carried out under written authority from the Director: Mineral Development who shall consult the Department of Water Affairs beforehand.
- Regulation 5.14.3 provides that no sand dump or slimes dam shall be established on the bank of any stream, river, dam, pan or lake without the written permission of the Director : Mineral Development and upon such conditions as he may prescribe.
- Regulation 5.16 of R992 provides that the holder of a mining authorisation must demonstrate in his environmental management programme that he has the financial means and has made sufficient and acceptable pecuniary provision to the satisfaction of the Director: Mineral Development to carry out such programme.
- Regulation 5.17 to 5.18 provides for the performance assessment and monitoring of the environmental management programme approved in terms of Section 39 of the Act.

8.1.10.6 Ventilation, gases, smoke and dust

Chapter 10 of R992 deals with issues of ventilation, gases, smoke and dust. In essence, no person shall enter or remain in, or cause or permit any other person to enter or remain in, any place in which the air contains harmful smoke, gas, fumes or dust perceptible by sight, smell or other senses unless such person or such other person is wearing effective apparatus, approved for the purpose by the Chief Inspector, to prevent the inhalation of such smoke, gas, fumes or dust. Moreover, whenever a process exists which may produce one of the abovementioned hazards, there is a duty on the owner or manager of a mine to, as far as practicable, utilise water, ventilation, fans or any other methods to prevent such hazards from endangering the health of both employees and members of the public.

8.2 Mine, Health and Safety Act

8.2.1 The Mine, Health and Safety Act 29 of 1996 provides for the protection of the health and safety of employees and other residents of mines.

8.2.2 In terms of Section 5, an employer is obliged to maintain a healthy and safe mine environment. In this regard, an employer must identify the relevant hazards and assess the related risks to which persons who are employees may be exposed; and ensure that the person who are not employees, but who may be directly affected by the activities that the mine, are not exposed to any such hazards.

8.2.3 In terms of Section 12, an employer must engage the part-time or full-time services of a person qualified in occupational hygiene techniques to measure levels of exposure to be hazards at the mine. Every system of occupational hygiene measurements must be designed so that it provides information that

the employer can use in determining measures to eliminate, control and minimise the health risk and hazards to which employees may be exposed.

8.2.4 The Minister of Minerals and Energy is empowered by Section 98 to make Regulations regarding, inter alia, the disposal of hazardous substances used in the mining process and waste produced at the mine, the making safe of tailings, waste dumps, and ash dumps made in the course of mining operations, the protection of water sources and the surface of land.

9. NUCLEAR LEGISLATION

9.1 Nuclear Energy Act.

9.1.1 The objects of the Nuclear Energy Act 131 of 1993 include to regulate the licensing of nuclear activities and to provide for various other matters connected with nuclear energy. The Act falls under the Minister of Mineral and Energy Affairs. The Nuclear Energy Act 46 of 1999 and the National Nuclear Regulator Act 47 of 1999 have both partially repealed the Act, as of 24 February 2000. The comments on the Act set out below are therefore merely for background purposes.

9.1.2 For the purposes of this Review, we will not attempt a thorough analysis of the Nuclear Energy Act, but will rather focus on aspects which may relate to waste management directly. The provisions of the Act are not applicable to:

- subject to the provisions of Section 28, in respect of Group IV Hazardous Substances as defined in Section 1 of the Hazardous Substances Act 15 of 1973; or
- in respect of radio-active material with a specific activity and a total activity below the levels determined in terms of the Act; or
- in respect of any other radio-active material exempted in terms of the Act.

9.1.3 The Act provides for the continuation of the Atomic Energy Corporation ("AEC"), the objects of which include the control over the discarding of radio-active waste. "Radio-active waste" means any radio-active material which is intended to be discarded as waste material. In terms of Section 6, the AEC may, *inter alia*, control the discarding of radio-active waste, discard radio-active waste and operate waste-disposal facilities for such purpose. A "waste-disposal facility" means a facility for the acceptance, handling and treatment of radio-active waste and irradiated fuel and the discarding of radio-active waste.

9.1.4 In terms of Section 21, restrictions are placed on the acquisition or possession of, and carrying out of certain activities in respect of, nuclear material, restricted material and nuclear-related equipment and material.

9.1.5 In terms of Section 27, the control of all source material and special nuclear material acquired by the State shall vest in the AEC. The AEC or a subsidiary company may, *inter alia*, dispose of any radio-active material. In terms of Section 29, subject to the provisions of Sections 34 and 51(1), the authority over discarding of radio-active waste shall vest in the AEC. Section 30 provides that, subject to authorities granted from time to time in terms of the Hazardous Substances Act 15 of 1973, no person may, except with proper written authority in terms of the Act, in any manner discard any radio-active waste or cause it to be discarded. An authority to discard of radio-active waste may, in addition to the conditions contained in a nuclear licence in terms of Section 51 or Section 52 of the Act, be granted on such conditions as the relevant chief executive officer (appointed in terms of the Act) may impose.

9.1.6 Provision is made in Section 33 for the condition of the Council for Nuclear Safety, the objects of which include exercising control, through the issue of

nuclear licences, over the disposal of radio-active material and the discarding of radio-active waste.

9.1.7 Section 51 deals with licences in respect of nuclear installations and activities involving radio-active material in terms of this section, no person shall, except under the authority of a nuclear licence granted by the CNS on application:

- construct or use a nuclear installation; or
- in any manner dispose of radio-active material or discard radio-active waste, subject to limited exceptions.

In terms of the Act "dispose of" means sell, exchange, donate, distribute, lend or in any other manner transfer. Of importance is the definition of "nuclear installation" which means a facility, installation, plant or structure (other than such facility etc at a mine as defined in Section 1 of the Minerals Act 50 of 1991) designed or adapted for, or which may involve the carrying out of, any process within the nuclear fuel cycle involving radio-active material and which is capable of causing nuclear damage; and includes a waste disposal facility. Section 52 deals with the licensing of certain vessels, which is not relevant for the purposes of this Review. Section 53 stipulates that nuclear licences shall not be granted to any person other than a juristic person and shall not be transferable. Section 54 provides that a nuclear licence shall be subject to such conditions as the CNS may deem necessary or desirable for the purpose of the safeguarding of persons against nuclear damage, and may include conditions relating to the discarding of radio-active waste.

9.18 Various additional provisions of the Nuclear Energy Act are of indirect relevance to integrated waste management planning (such as Section 61 dealing with liability of certain licensees in respect of nuclear damage and Section 62 dealing with the duties in the case of nuclear accidents). However, for the purposes of this Review, these remaining provisions will not be discussed.

9.2 Nuclear Energy Act

9.2.1 The Nuclear Energy Act 46 of 1999 partially repealed the Nuclear Energy Act 131 of 1993. The 1999 Act regulates a range of nuclear related issues, including the acquisition and possession of nuclear fuel, certain nuclear and related material and certain related equipment, as well as the importation and exportation of and certain other acts and activities relating to that fuel, material and equipment. The Act also prescribes measures regarding the discarding of radioactive waste and the storage of irradiated nuclear fuel.

9.2.2 For the purposes of this Review, we will not conduct a thorough analysis of the 1999 Nuclear Energy Act but will rather briefly highlight aspects which relate to waste issues. In terms of the Act, a "waste disposal facility" means a facility for the acceptance, handling, storage and treatment of radio active waste and irradiated fuel and the disposal of radio active waste. "Radio active waste" means any radio active material designed to be disposed of as waste material. In terms of Section 34 of the Act, except with the written authorisation of the Minister of Minerals and Energy, no person, institution, organisation or body may, *inter alia*, dispose of a range of nuclear materials, substances and

equipment as set out further in Section 34. For the purposes of the Act, "disposed of" used in the context of safe guards means sell, exchange, donate, distribute, lend or in any other manner transfer and "disposal of" has a corresponding meaning.

9.2.3 In terms of Section 45 of the Act, the authority over the management and discarding of radio active waste and the storage or irradiated nuclear fuel vests in the Minister of Minerals and Energy. The Minister, in consultation with the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry may make regulations prescribing the manner of management, storage and discarding of radio active waste and irradiated nuclear fuel, having due regard to the provisions of the National Nuclear Regulator Act. Except where authorised by a Ministerial Authority, issued under the Hazardous Substances Act No. 15 of 1973, no person may, without the written permission of the Minister, discard radio active waste in any manner or cause it to be so discarded. The required permission may be granted subject to any conditions that the Minister, in concurrence with the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry deem fit to impose. The conditions so imposed will be additional to any conditions contained in a nuclear authorisation as defined in Section 1 of the National Nuclear Regulator Act 1999.

9.2.4 The relevant chapter of the Act (Chapter IV) which sets out the Minister's responsibilities regarding source material, special nuclear material, restricted material, radio active waste and irradiated fuel, does not apply with regard to :

- Group IV Hazardous Substances as defined in Section 1 of the Hazardous Substances Act;
- Radio active material with a specific activity and a total activity below the levels determined in terms of Section 2 of the Act;
- Radioactive material exempted in terms of Section 2 of the Act.

9.3 National Nuclear Regulator Act

9.3.1 The National Nuclear Regulator Act provides, *inter alia*, for the establishment of a National Nuclear Regulator in order to regulate nuclear activities, for safety standards and regulatory practices for protection of persons, property and the environment against nuclear damage.

9.3.2 In terms of the Act, a "nuclear installation" means:

- a facility, installation, plant or structure designed or adapted for or which may involve the carrying out of any process, other than the mining and processing of ore, within the nuclear fuel cycle involving radio active material, including a facility specifically designed to handle, treat, condition, temporarily store or permanently dispose of any radio active material which is intended to be disposed of as waste material;
- any facility, installation, plant or structure declared to be a nuclear installation in terms of Section 2 of the Act.

9.3.3 In terms of Section 2, the Act applies to the citing, design, construction, operation, decontamination, decommissioning and closure of any nuclear installation, as well as, *inter alia*, any action which is capable of causing nuclear damage. "Nuclear damage" means any injury to or the death or any sickness or disease of a person or other damage, including any damage to or any loss of property or damage to the environment, which arises out of or results from or is attributable to the ironizing radiation associated with, *inter alia*, a nuclear installation or action. The Act does not apply to, *inter alia*, Group IV Hazardous Substances as defined in Section 1 of the Hazardous Substances Act No. 15 of 1973 or exposure to ironizing radiation emitted from equipment, declared to be a Group III Hazardous Substance in terms of the Hazardous Substances Act.

9.3.4 In terms of Section 20, no person may site, construct, operate, decontaminate or decommission a nuclear installation, except under the authority of a nuclear installation licence. Furthermore, no person may engage in any action which is capable of causing nuclear damage (except in the case of a nuclear installation or nuclear vessel) except under the authority of a certificate of registration or a certificate of exemption.

10. OTHER NATIONAL LEGISLATION

10.1 National Roads Act

10.1.1 The National Roads Act 54 of 1971 provides for the construction and control of national roads and incidental matters. The whole of this Act, with minor exceptions, has been repealed by the South African National Roads Agency Limited and National Roads Act 7 of 1998, which comes into operation on the date of incorporation of the South African National Roads Agency Limited. In terms of Section 16 the depositing or leaving of a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse on a national road is prohibited. Moreover, no person may deposit or leave, so as to be visible from a national road, any such vehicle, machine or part, or any rubbish or any other refuse on land situated outside an urban area and within 105 metres from the boundary of a national road; or on land situated in an urban area adjoining a national road or separated from a national road from any street, without the written permission of the Board (South African Roads Board) or contrary to any condition imposed by it and set out in such permission.

10.1.2 The Board is empowered to remove a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or any other refuse and it may recover the cost thereof from the person who deposited or left that article. The Board may also notify a person to remove such an article, in which case the removal must be done within the period stated in the notice.

10.1.3 A contravention of sub-section (1) is an offence unless it is proved that the person who deposited or left the disused vehicle, machine or part in question or the rubbish or other refuse on the road or land left it due to circumstances beyond his control and that that person has not had a reasonable opportunity to remove it from that road or land or to render it invisible from a national road.

10.2 National Building Regulations and Building Standards Act

The National Building Regulations and Building Standards Act 103 of 1977 aims to promote uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities and prescribed building standards.

In terms of Section 10, a building which is being erected in a way that it will not be in the interests of good health or hygiene, will be unsightly or objectionable, will probably be a nuisance to the occupiers of adjoining or neighbouring properties or will probably derogate from the value of adjoining or neighbouring properties, and/or is being erected on a site which is subject to flooding or on a site which, in the opinion of the local authority, does not drain properly or is filled up or covered with refuse or material impregnated with matter liable to decomposition, may be stopped from being completed by a local authority, except on such conditions as are determined by the local authority.

In terms of Section 12, where a local government in question is of the opinion that any building is dilapidated or in a state of disrepair or shows such signs; or that any building or the land on which a building was or is being or is to be erected or any earthwork is dangerous or is showing signs of becoming dangerous to life or property, the local

government may by notice in writing order the owner of such building, land or earthwork to demolish such building or change it or secure it in a way that will render it less dangerous to life or property. It is however provided, that where the local government is of the opinion that the condition of any building, land or earthwork is such that steps should be taken to protect life or property, it may take such steps without delivering the notice and recover the cost thereof from the owner.

10.3 Human Tissue Act

10.3.1 The Human Tissue Act 65 of 1983 provides for the donation of human bodies and tissue for the purpose of medical or dental training, research or therapy or the advancement of medicine or dentistry in general; for the post-mortem examination of certain human bodies and for the removal of tissue, blood and gametes from the bodies of living persons for the purpose of using them for medical or dental purposes.

10.3.2 In terms of Section 37 the Minister of Health may make regulations regarding the disposal of human bodies and tissue no longer required for any of these purposes.

10.4 Atmospheric Pollution Prevention Act

10.4.1 Introduction

The purpose of the Atmospheric Pollution Prevention Act 45 of 1965 ("the Atmospheric Pollution Prevention Act") is to provide for the prevention of the pollution of the atmosphere and for related matters. This is a fairly comprehensive clean air statute.

10.4.2 Controlled areas

10.4.2.1 Part II of the Atmospheric Pollution Prevention Act sets out requirements for the control of noxious or offensive gases resulting from the operation of "Scheduled Processes".

10.4.2.2 In terms of Section 8 of the Atmospheric Pollution Prevention Act, the Minister of Environmental Affairs and Tourism ("the Minister") may, by notice in the Government Gazette, declare an area to be a controlled area for the purpose of the Act. On 4 October 1968 (under Government Notice R.1776 of 4 October 1968) the whole of South Africa was declared a controlled area. As a result, no person may carry on a Scheduled Process in or on any premises in South Africa unless that person or company is the holder of a provisional or current registration certificate authorising the carrying on of the Scheduled Process in or on the premises concerned.

10.4.2.3 In terms of Section 1 of the Atmospheric Pollution Prevention Act a "noxious or offensive gas" is defined as follows:

> *"any of the following groups of compounds when in the form of gas, namely, hydrocarbons; alcohols; aldehydes; ketones; ethers; esters; phenols; organic acids and their derivatives; halogens, organic nitrogen, sulphur and halogen compounds; cyanides; cyanogens; ammonia and its compounds; inorganic acids; fumes containing antimony, arsenic, beryllium, chromium, cobalt, copper, lead,*

manganese, mercury, vanadium or zinc or their derivatives; cement works fumes and odours from purification plants, glue factories, cement works and meat, fish or whale processing factories; and any other gas, fumes or particulate matter which the Minister may by notice in the Gazette declare to be noxious or offensive gas for the purpose of this Act; and includes dust from asbestos treatment or mining in any controlled area which has not been declared a dust control area in terms of section 27;"

10.4.3 Procedure and requirements for registration

10.4.3.1 Part II of the Atmospheric Pollution Prevention Act sets out the procedure for the permitting of, what is referred to in the Act as, a "Scheduled Process". A Scheduled Process is defined under Section 1 of the Act to mean any works or processes specified in the Second Schedule to the Act. 72 Scheduled Processes are currently itemised under the Second Schedule including certain waste incineration processes, metal recovery processes, etc.

10.4.3.2 In the permitting of a Scheduled Process, two types of certificates are envisaged in the Atmospheric Pollution Prevention Act. The first type of certificate is a provisional registration certificate, which is ordinarily granted as a first step in formally permitting a Scheduled Process. It usually has a limited period of validity and is made subject to conditions. A registration certificate itself, also referred to as a current registration certificate, is a mandatory requirement in respect of all Scheduled Processes carried out within a controlled area. As indicated previously, the whole of South Africa has been declared a controlled area.

10.4.3.3 In practice a current registration certificate is granted after compliance with the conditions of a provisional registration certificate and the requirements of the Chief Air Pollution Control Officer ("CAPCO") or officials of the Air Pollution Control Directorate of the Department of Environmental Affairs and Tourism to whom this power has been delegated. The current registration certificate also is issued subject to conditions.

10.4.3.4 Section 9(1)(a) of the Atmospheric Pollution Prevention Act prohibits any person from carrying on a Scheduled Process in or on any premises unless that person is the holder of a current registration certificate.

10.4.3.5 Section 9(1)(b) provides that the alteration or extension of an existing building or plant in respect of which a registration certificate has been issued is also prohibited unless an application has been made to the CAPCO for provisional registration of the proposed alteration or extension.

10.4.3.6 In terms of Section 9(1)(c) a provisional registration certificate is not required where the alteration or extension will not affect the escape into the atmosphere of noxious or offensive gases.

10.4.3.7 Section 9(2) provides that any person who contravenes any provision of Section 9(1) will be guilty of a criminal offence.

10.4.3.8 Section 10 of the Atmospheric Pollution Prevention Act sets out the procedure for the application for and the issue of current registration

certificates and provisional registration certificates. An application for a current registration certificate and a provisional registration certificate must be lodged with the CAPCO on the prescribed form and must be accompanied by such information as may be prescribed.

10.4.3.9 In order to issue a provisional registration certificate, the CAPCO must be satisfied that the Scheduled Process in question may be reasonably permitted to be carried on and in the area concerned, having regard to the nature of the process, the character of the locality in question, the purposes for which the premises are used and any other relevant considerations. The CAPCO granting the certificate must be satisfied that the operation of the process on the premises will not conflict with any town planning scheme in operation or about to be put into operation (section 10(4) of the Atmospheric Pollution Prevention Act). In determining these aspects, and as a matter of practice, an inspection of the site on which a Scheduled Process is to be operated is conducted by the CAPCO or a member of his department and consultation with the Municipality concerned may take place.

10.4.3.10 A provisional registration certificate is valid for a period determined by the Chief Officer, who may extend the period of validity of the certificate. In terms of Section 11(2) of the Atmospheric Pollution Prevention Act every provisional registration certificate must specify:

- the situation and extent of the proposed building or plant to which the certificate relates;
- the nature of the Scheduled Process intended to be carried on;
- the raw materials intended to be used, the nature of the operations intended to be carried out and the products intended to be produced;
- the appliances intended to be installed and any other measures intended to be taken with a view to preventing or reducing to a minimum the escape into the atmosphere of any noxious or offensive gases likely to be produced by the operations intended to be carried on; and
- the proposed measures for the purification of effluents discharged from appliances installed for preventing or reducing to a minimum the escape into the atmosphere of any noxious or offensive gases from the processes that will be in operation as well as for the prevention of the release of noxious or offensive constituents from such effluents when they come into contact with other effluents in drains or drainage canals.

10.4.3.11 In the case of a building or plant in respect of which a provisional registration certificate has been issued and which has been completed to the satisfaction of the CAPCO in accordance with the particulars specified in that certificate, the CAPCO must, on application by the holder of that provisional certificate, issue the holder with a current registration certificate in the prescribed form authorising the carrying on of the Scheduled Process to which the provisional registration certificate relates. In those circumstances the provisional registration certificate lapses and is replaced by the current registration certificate.

10.4.4 Conditions of registration certificate

10.4.4.1 A current registration certificate has no restrictive period of validity and is issued subject to the condition that all parts and apparatus used in the scheduled process and all appliances used for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases shall be properly operated and maintained. Furthermore the holder of a certificate must take all other necessary measures to prevent the escape of noxious or offensive gases into the atmosphere (Section 12(1)). The CAPCO is also empowered to notify the holder of a current registration certificate to take steps to ensure the more effective operation of the appliances mentioned in the certificate and may at any time, by notice in writing, require the holder of any such certificate to take steps as may be reasonable, having regard to the costs involved, to ensure that more effective prevention of the escape into the atmosphere of noxious or offensive gases, produced by the Scheduled Process to which it specifically relates, by means of some other improved process or equipment specified in such notice.

10.4.4.2 In granting a provisional registration certificate or a current registration certificate the Chief Officer must be satisfied that the "best practicable means" are being adopted to prevent or reduce to a minimum the escape of noxious or offensive gases into the atmosphere (Section 10(1) and 10(2)(i)). "Best practicable means" is defined in the Atmospheric Pollution Prevention Act as:

> *"when used with reference to the prevention of the escape of noxious or offensive gases or the dispersal or suspension of dust in the atmosphere or the emission of fumes by vehicles, includes the provision and maintenance of the necessary appliances to that end, the effective care and operation of such appliances, and the adoption of any other methods which, having regard to local conditions and circumstances, the prevailing extent of technical knowledge and the cost likely to be involved, may be reasonably practicable and necessary for the protection of any section of the public against the emission of poisonous or noxious gases, dust or any such fumes;"*

10.4.4.3 If the CAPCO is not satisfied that the best practicable means are being adopted to prevent or reduce to a minimum the escape of noxious or offensive gases into the atmosphere he must notify the applicant to take the necessary steps to prevent or reduce air pollution. Once these steps have been taken the applicant is entitled to be issued with a certificate.

10.4.4.4 It is a criminal offence to carry on a Scheduled Process in the absence of a registration certificate or to erect or alter buildings intended to be operated as a scheduled process in the absence of a provisional registration certificate. The registration certificate or provisional registration certificate may be cancelled or suspended if the holder fails to comply with its conditions or if the holder fails to take steps laid down by the Chief Officer to ensure more effective operation of the appliances provided in the certificate or to ensure more effective prevention of air pollution.

10.4.5 Atmospheric pollution by smoke

10.4.5.1 Part III of the Atmospheric Pollution Prevention Act provides for the control and regulation of smoke pollution.

10.4.5.2 The provisions of the Atmospheric Pollution Prevention Act apply only in areas in which the Minister of Environmental Affairs and Tourism has, after consultation with the Minister of Trade and Industry, by notice in the Gazette declared them to be applicable, and with effect from such date in the case of any such area as may be specified in the relevant notice (section 14 of the Atmospheric Pollution Prevention Act).

10.4.6 Installation of Fuel Burning Appliances

10.4.6.1 Section 15(1) of the Atmospheric Pollution Prevention Act provides that no person shall install or cause or permit to be installed in or on any premises any fuel-burning appliance as defined in section 1 of the Atmospheric Pollution Prevention Act. "Fuel burning appliance means "any furnace, boiler or other appliance designed to burn or capable of burning liquid fuel or gaseous fuel or wood, coal, anthracite or other solid fuel, or used to dispose of any material by burning or to subject solid fuel to any process involving the application of heat. The above ruling shall not apply if:

- the appliance is as far as is reasonably practicable capable of being operated continuously without emitting dark smoke or smoke of a colour darker than may be prescribed by regulation. Allowance must be made for the unavoidable emission of dark smoke during the starting up of the appliance concerned or during the period of any breakdown or disturbance of the appliance; or
- unless the appliance is provided with effective appliances to limit the emission of grit and dust to the satisfaction of the local authority or the CAPCO.

10.4.6.2 Section 15(2) of the Atmospheric Pollution Prevention Act provides that no person shall install any fuel-burning appliance, in respect of which section 15(1) of the Atmospheric Pollution Prevention Act applies, unless prior written notice has been given to the local authority. Neither sections 15(1) nor 15(2) of the Atmospheric Pollution Prevention Act applies to any fuel-burning appliance if the installation of fuel burning appliance was commenced, or any agreement for its acquisition, was entered into prior to the "fixed date" (the fixed date in relation to any area in respect of which a notice has been issued under section 14(1) of the Atmospheric Pollution Prevention Act, means the date contemplated in that notice relating to that area).

10.4.7 Siting of fuel burning appliances and construction of chimneys

10.4.7.1 No local authority shall approve of any plan which provides for the construction of any chimney or other opening carrying smoke, gases, vapours, fumes, grit, dust or other final escapes from any building or from the installation of any fuel burning appliance, unless it is satisfied -

- in the case of any such chimney or other such opening, that the height thereof will as far as practicable be sufficient to prevent smoke or any other product of combustion from becoming prejudicial to health or a nuisance to occupiers on the premises or surrounding areas; or
- in the case of any such fuel burning appliance, that it is suitably sited in relation to other premises in surrounding areas."

10.4.7.2 For the purposes of the above paragraph, a local authority may have regard to -

- the purpose for which any chimney or other opening in question is intended;
- the provisions contained in any approved draft town-planning scheme or other requirements having the force of law relating to the use of land where any chimney is to be constructed;
- the position or nature of any other buildings in the surrounding areas;
- the levels of land in the surrounding areas; and
- any other matter which in the opinion of the local authority should be considered."

10.4.8 Procedure when smoke causes nuisance

Section 17 of the Atmospheric Pollution Prevention Act provides that a local authority may serve a notice on any person responsible for causing a smoke nuisance, calling upon that person to abate or cease the nuisance within a period determined by the local authority after consultation with the CAPCO and to take all steps that may be necessary to prevent a recurrence of the nuisance. In considering whether the smoke constitutes a nuisance, it is sufficient if any complainant makes representations to the local authority that the smoke or any other product of combustion is a nuisance to the complainant. Furthermore, section 17(2) of the Atmospheric Pollution Prevention Act provides that smoke which is prejudicial to health or which adversely affects the reasonable comfort of the occupier or occupiers of adjoining or nearby premises or which affects the use of the premises for the purposes for which they are normally permitted to be used, will be deemed to be a nuisance.

10.4.9 Provision for Regulations

10.4.9.1 Section 18 of the Atmospheric Pollution Prevention Act provides that a local authority may make smoke control regulations:

- prohibiting the emission or emanation from any premises of smoke which is of a darker colour or greater density or content than is specified in the regulations;
- prohibiting the installation in any premises or the alteration or extension of any fuel-burning appliance which does not comply with any requirements which may be specified in such regulations;

- requiring or authorising the removal of any fuel-burning appliance which has been installed, extended or altered in contravention of the regulations;
- prescribing the records to be kept and the returns to be rendered to the local authority by any person who has in his possession or under his control any fuel-burning appliance;
- providing for the inspection of fuel-burning appliances whether or not installed in any premises;
- requiring the owner or occupier of any premises in or on which any fuel-burning appliance is used to install, to maintain and use at that person's own expense such apparatus as may be specified in the regulations or determined by the local authority for the purpose of indicating or recording the colour, density or content of the smoke as may be emitted by the appliance concerned; and
- generally for the effective control of the emission or emanation of smoke from any premises.

10.4.9.2 In terms of section 18(5) of the Atmospheric Pollution Prevention Act the regulations will not have any force or effect unless they have been approved by the Minister of Environmental Affairs and Tourism on the recommendation of the National Air Pollution Advisory Committee. Furthermore the Regulations must be promulgated by the Minister of Environmental Affairs and Tourism by notice in the *Government Gazette.*

10.4.9.3 Section 19 of the Atmospheric Pollution Prevention Act outlines the procedure in the event of contravention of Regulations. This section empowers the local authority, after following due process, to cause to be served on the owner or occupier of the premises, a notice in writing calling upon the person or company concerned to bring about, within a week specified in the notice, the cessation of the emission or emanation of the smoke from those premises.

10.4.9.4 Section 19(6) of the Atmospheric Pollution Prevention Act provides that if after the expiration of a period of one month from the date of conviction of any person of an offence under section 19 of the Atmospheric Pollution Prevention Act, steps have not been taken to the satisfaction of the local authority concerned to comply with the relevant notice, that local authority may cause such works to be undertaken and such appliances to be installed and such other measures to be taken as it may consider necessary to bring about the cessation of the emission or emanation of the smoke which was the subject of the notice, and the local authority must recover the costs incurred from the person (including a company) upon whom the notice was served.

10.4.10 Smoke control zones

Section 20 of the Atmospheric Pollution Prevention Act provides that a local authority may, upon confirmation by the Minister of Environmental Affairs and Tourism after consultation with the National Air Pollution Advisory Committee, and after promulgation by the Minister by notice in the Government Gazette:

- determine the areas within the local authority's jurisdiction which are defined as smoke control zones; and
- prohibit the emanation or emission from any premises in that zone of smoke of a darker colour or greater density or content than is specified in the order.

10.4.11 Power to enter premises

Section 23 of the Atmospheric Pollution Prevention Act provides that a local authority may authorise any person to enter any premises, except the explosive area of an explosives factory, for the purpose of making any investigation in connection with smoke emissions or in connection with any fuel-burning appliance. Such person shall be provided with a certificate signed by an officer designated by the local authority and indicating that he has the abovementioned authority.

10.4.12 Information to be supplied to local authorities

Section 24 of the Atmospheric Pollution Prevention Act provides that a local authority may, by notice in writing, require the owner or occupier of a premises from which smoke is emitted or emanates to furnish the officer of the local authority, specified in the notice, with such information as the local authority may require.

10.4.13 Dust control areas

10.4.13.1 Part IV of the Atmospheric Pollution Prevention Act deals with dust control. Section 27 of the Atmospheric Pollution Prevention Act provides that the Minister of Environmental Affairs and Tourism may, by notice in the *Gazette*, declare any area to be a dust control area for the purpose of the Atmospheric Pollution Prevention Act and include any area in or exclude any area from a dust controlled area.

10.4.13.2 The effect of such a declaration is that whenever the CAPCO is of the opinion that dust originating on any land in a dust controlled area is causing a nuisance to persons residing or present in the vicinity of that land, he may by notice in writing require such owner or occupier to take the prescribed steps or (when those steps have not been prescribed) adopt the "best practicable means" for the abatement of such nuisance (section 29 of the Atmospheric Pollution Prevention Act).

10.4.13.3 Section 28 of the Atmospheric Pollution Prevention Act provides that any person who in a dust controlled area:

- carries on an industrial process which in the opinion of the chief officer causes or is liable to cause a nuisance to persons residing or present in the vicinity on account of dust originating from such process becoming dispersed in the atmosphere; or
- has at any time deposited or caused or permitted to be deposited on any land a quantity of matter which exceeds 20 000 cubic metres in volume, or such lessor quantity as may be prescribed, and which in the opinion of the CAPCO causes or is liable to cause a nuisance to persons residing or present in the vicinity of such land on account of dust originating from such process becoming dispersed in the atmosphere,

shall take the prescribed steps or (where no steps have been prescribed) adopt the best practicable means for preventing such dust from becoming so dispersed or causing such nuisance.

10.4.13.4 Part V of the Act deals with air pollution by fumes emitted by vehicles which will not be dealt with in this review. Similarly, various general provisions of Part VI are not covered in this review.

10.5 Animal Diseases Act

10.5.1 The Animal Diseases Act 35 of 1984 provides for the control of animal diseases and parasites and for measures to promote animal health.

10.5.2 A provision dealing with disposal of straying animals stipulates that where an owner or manager of land finds on the land, or where an animal owner finds among his animals, any animal that he knows has strayed thereto or has been unlawfully removed from a place outside the Republic, or which he reasonably suspects that it had so strayed or have been removed, the owner is obliged to isolate the animal and report the finding to the director of the Directorate of Animal Health and detain the animal in isolation pending the director's decision as to its disposal. After the presence of a foreign animal has been reported to the director, the director may seize the animal and destroy it, or dispose of it for the benefit of the State. These provisions are also applicable in respect of any animal found on land by the owner or manager of the land or by the owner of animals thereon.

10.5.3 In terms of section 17(3), any animal seized by the Minister may be destroyed or otherwise disposed of, or the owner concerned may be ordered to destroy it or dispose of it, where the director is of the opinion that any treatment or isolation of the animal will not promote the relevant controlled purpose or that the calculated cost of the performance in respect thereof exceeds the estimated value thereof or that no remedies or equipment is available to act in accordance with the aforementioned.

10.5.4 In terms of section 17(5), the carcass of any animal seized or which has been slaughtered, destroyed or disposed of, shall be forfeited to the State and the director is empowered to dispose of it in a manner beneficial to the State if he is able to do so.

10.5.5 In terms of section 31, the Minister is empowered to make regulations prescribing the way in which any controlled animal or thing required to be isolated under this Act by any owner in respect of animals, or by any owner or manager of land on that land, shall be isolated and cared for and treated in isolation; and for prescribing the manner in which any infectious or contaminated thing shall be cared for, treated, disinfected, destroyed or disposed of by an owner or by any owner or manager of land on which such thing is present.

10.6 Road Traffic Act

10.6.1 The Road Traffic Act 29 of 1989 consolidates and amends laws relating to the registration and licensing of motor vehicles and regulates traffic on public roads. The whole of this Act has been repealed by the National Road Traffic

Act 93 of 1996, the relevant repealing provision of which will come into operation on a date to be fixed by the President by proclamation in the *Gazette*. Proclamation R60 in *Government Gazette* 17485 of 11 October 1996 and R23 in *Government Gazette* 18711 of 25 February 1998 to some extent assign the administration of this Act to the provinces.

10.6.2 In terms of section 101 which deals with the general duties of drivers or passenger of vehicles on public roads, it is provided that a person driving a vehicle on a public road is prohibited from causing or allowing the engine thereof to run is such manner that it emits smoke or fumes which would not be emitted if the engine was in good condition; from negligently or wilfully depositing any petrol or other liquid fuel or any oil or grease or any other flammable, or offensive matter, ashes or other refuse from such vehicle upon or alongside such road; or from causing or allowing the engine to run while petrol or other flammable fuel is being delivered into the fuel tank of the vehicle, or from causing or allowing the engine to be started up before the delivery of the petrol or other flammable fuel into the fuel tank of the vehicle has been completed and the cover of the fuel tank has been replaced.

10.6.3 In terms of section 132, the Minister is empowered to make regulations regarding, *inter alia*, the emission of exhaust gas, smoke, fuel, oil, visible vapours, sparks, ash or grit from any vehicle operated on a public road.

10.7 Abattoir Hygiene Act

10.7.1 The Abattoir Hygiene Act 121 of 1992 provides for the maintenance of proper standards of hygiene in the slaughtering of animals for the purpose of obtaining suitable meat for human and animal consumption.

10.7.2 The Minister may, in terms of section 24, make regulation regarding the removal or disposal of remains and refuse from an approved abattoir.

10.8 Hazardous Substances Act

10.8.1 Introduction

The object of the Hazardous Substances Act 15 of 1973 ("the Hazardous Substances Act") is to provide for the control of substances which may cause injury or ill health to or death of human beings by reason of the toxic, corrosive, irritant, strongly sensitising or flammable nature or a generation of pressure thereby in certain circumstances, and for the control of certain electronic products.

10.8.2 Declaration of grouped hazardous substances

Section 2 of the Hazardous Substances Act provides that the Minister of National Health may, by notice in the *Gazette*, declare certain substances to be Group I, II, III or IV hazardous substances. Groups I and II relate to substances of a toxic, corrosive, irritant, strongly sensitising or flammable nature. Group III relates to electronic products and Group IV relate to radio-active materials.

10.8.3 Sale of Group I & III hazardous substances and letting, use, operation, application and installation of Group III hazardous substances

Section 3 of the Hazardous Substances Act provides that:

- No person shall sell any Group I hazardous substance unless he is the holder of a license issued to him in terms of section 4(a) of the Hazardous Substances Act and otherwise than subject to the conditions prescribed or determined by the Director-General;
- No person shall sell, let, operate, use or apply any Group III hazardous substance unless the license under section 4(b) of the Hazardous Substances Act is in force in respect thereof, and otherwise than subject to the conditions prescribed or determined by the Director-General; and
- No person shall install or keep installed any Group III hazardous substance on any premises unless a license under section 4(c) of the Hazardous Substances Act is in force in respect of such premises, and otherwise land subject to the conditions prescribed or determined by the Director-General.

10.8.4 Production, acquisition, disposal, and import and export of group IV hazardous substances

10.8.4.1 In terms of section 3A(1) of the Hazardous Substances Act, no person shall produce or otherwise acquire, or dispose of or import into the Republic or export from there or be in possession of, or use, or convey or cause to be conveyed any Group IV hazardous substances, except in terms of a written authority and in accordance with the prescribed conditions and such further conditions as the Director-General may in each case determine.

10.8.4.2 In terms of section 3A(2) of the Hazardous Substances Act, the Director may, on application by any person in the prescribed manner and on payment of the prescribed fee, and on such conditions as he may in each case determine in writing authorise the performance of any of or all of the activities mentioned in section 3A(1) of the Hazardous Substances Act in respect of any group IV hazardous substances.

10.8.5 Regulations

The Minister of Health may promulgate Regulations concerning a wide variety of aspects related to the control of any Group I, II, III and IV hazardous substances (section 29 of the Hazardous Substances Act).

- ***Group I hazardous substances Regulations***

  There are regulations that are in place to control the disposal and transportation of Group I hazardous substances. Regulations have been issued for the disposal of empty containers or any Group I hazardous substances (schedule to Government Notice R453 GG 5467 of 25 March 1977 as amended).

- ***Regulations for the transportation of Group I & II hazardous substances***

  Regulations promulgated in terms of the Hazardous Substances Act (Government Notice R73 of 11 January 1985 govern) the transportation of Group I and Group II hazardous substance, or mixtures thereof, by means of a road tanker. These Regulations principally govern the labelling of road tankers with hazard warning panels and the duties of drivers.

- ***Regulations for Group III hazardous substances***

Most of the regulations promulgated with regard to Group III substances deal with the obligations and duties of dealers who sell group III hazardous substances. In terms of Government Notice R2920 of 23 October 1992, regulations, with regard to electrical installation of Group III hazardous substances, are promulgated under the Occupational Health and Safety Act 85 of 1993.

- ***Group IV hazardous substances regulations***

  Regulations relating to Group IV Hazardous Substances were promulgated in GN R247 of 26 February 1993. They include provisions regarding the disposal (including by dumping) of Group IV Hazardous Substances.

10.8.6 Penalties

In terms of section 19 of the Hazardous Substances Act, any person convicted of an offence under this Act will be, subject to the provisions of section 19(2) of the Hazardous Substances Act, liable for a fine or imprisonment ranging from 6 months to 6 years or a combination of the above depending on which section of the Act is contravened. In terms of section 19(2) of the Hazardous Substances Act, where a penalty is prescribed by Regulation for a contravention or failure to comply with any Regulation, the person convicted of any such contravention or failure shall be liable only for the penalty so prescribed.

10.9 Health Act

10.9.1 The Health Act 63 of 1977 provides measures for the promotion of health, for the rendering of health services and defines duties of certain authorities which render health services in the Republic. Proclamation R152 in Government Gazette 16049 of 31 October 1994 to some extent of the administration of this Act to the provinces.

10.9.2 Section 20 sets out the duties and powers of local authorities. It provides that every local government is obliged to take measures to maintain its district in a clean and hygienic condition and to prevent the occurrence of any nuisance, unhygienic or offensive condition or any other condition which could be of danger to the health of any person. A "nuisance" included any accumulation of refuse or other matter which is offensive or is injurious or dangerous to health. Where a nuisance or a condition referred to has occurred, the local government is obliged to abate the nuisance or remedy the condition. The local government is further obliged to prevent the pollution of any water intended for the use of the inhabitants of its district as well as to render in its district primary health care services.

10.9.3 In terms of section 27, where, in the opinion of the local authority, a condition has arisen in the district which is offensive or likely to constitute a danger to health unless immediately remedied and to which the Atmospheric Pollution Prevention Act 45 of 1965 is not applicable, the local authority may serve a notice calling upon the responsible person to remedy the condition within such period as may be specified in the notice. Any person failing to comply with the notice shall be guilty of an offence and the local government is empowered to remedy the condition and to claim the costs thereof from the responsible person.

10.9.4 Section 30(1) provides that the Director-general will be the local authority in areas where there is no local authority, provided that he shall not be obliged to provide any rubbish removal, night-soil removal or sewerage service or a service for the supply of pure water or to establish works for the purification, processing or disposal of rubbish, night-soil, sewerage or other solid or liquid waste or works for the purification of water. The term "Director-General" refers, in so far as the administration of a provision of this Act has under section 235(8) of the Constitution been assigned to a competent authority within a provincial government and the provision is applied with reference to the province concerned, to the Director-General of the provincial administration of a province ; or to the Director-General of Health in so far as the administration of a provision of this Act has not been so assigned.

10.9.5 Section 31 provides that where a local government deems it necessary for the proper performance of any function under this Act, it may authorise a committee of its members or its medical officer of health or any of its officers to perform such function on its behalf.

10.9.6 In terms of section 33, the Minister of Health may make regulations relating to, *inter alia*, the disposal of any refuse, waste matter or any other matter or thing which is in such a condition that it is likely to cause a development of a communicable disease.

10.9.7 The Minister is empowered by section 34 to make regulations relating to conditions which are dangerous to health. He may make regulations relating to, *inter alia*:

- the prevention and remedying of over-crowded, dirty, unsanitary or verminous conditions in any dwelling or other building;
- the control, restriction or prohibition of the erection of new buildings, and to the provisions of sewerage and drainage systems for buildings, the fitting, construction and repair of buildings and the provision of water, washing and sanitary conveniences, lighting and ventilation in buildings;
- the approval, regulation, restriction or prohibition of the use of any place for public gatherings, and the standards which shall be conformed to in respect of the provision of water and washing and sanitary conveniences, and the serving of food and disposal of waste at, and the provision of sewerage and draining systems for, such place and such other measures as are necessary to prevent the development of conditions dangerous to health; and
- the periodical cleansing of premises, the removal from premises of rubbish, waste or spillage, the evacuation of any premises in which the condition exists which constitutes a danger to health, the prohibition of entrance upon such premises and the remedying of such conditions; and

generally relating to the measures which shall be taken with a view to preventing the occurrence of any condition which is likely to constitute a danger to health or to remedying or removing any such condition.

10.9.8 The Minister is further empowered to make regulations relating to water intended for human use (section 37). In this regard, the Minister may make regulations relating to, inter alia:

- the approval, control, regulation, restriction or prohibition of the construction and the registration of water purification works and of persons employed at such works;
- the regulation, control, approval, restriction or prohibition of methods of disposal of sludge or other waste products of water purification or water treatment;
- the reporting of the pollution or suspected pollution of such water; and
- generally, relating to the measures which are to be taken with a view to preventing the pollution of water intended for human consumption for drinking or domestic purposes or for food processing, or to purifying such water which has been so polluted.

10.9.9 The Minister may, in terms of section 38(1), also make regulations relating to rubbish, night-soil, sewerage or other waste and reclaimed products. These regulations are to be made in consultation with the Minister of Water Affairs and Forestry and Environmental Affairs and Tourism and in some cases, also in consultation with the Minister of Finance. The regulations may be made relating to, inter alia:

- night-soil removal, rubbish removal, sewerage, sewage purification works, the treatment, purification or disposal of night-soil, rubbish, sewerage or other solid or liquid waste, the systems, methods or processes applied in such treatment, purification or disposal, the reclaiming of any product from night-soil, rubbish, sewerage or other solid or liquid waste and the utilisation of such product;
- the requirements in respect of quality to which treated or purified waste, any product reclaimed from waste or the effluents, sludge or other by-products resulting from any process or treatment or purification of waste shall conform before its disposal or utilisation;
- the measures which shall be taken with a view to preventing the pollution of any water or of any soil surfaces with any waste referred to above or the causing by means of such waste of any nuisance or any condition which may be dangerous to health, and to removing such pollution or nuisance or remedying the condition where it already exists, and the reporting of such pollution, nuisance or condition;
- the inspection of the activities referred to above and of any waste or product referred to before or after its treatment, purification, utilisation or disposal, the keeping of records in connection with such inspections and the powers of and reports to be submitted by the inspectors; and
- the measures which are to be taken with a view to removing a nuisance caused by any of the activities referred to above.

10.9.10 In terms of section 38(2), the regulations made under section 38(1) are not applicable in respect of the disposal of sludge, waste or tailings; the utilisation of land for the purposes of such disposal; or the conferring of surface rights to land for the purpose of such disposal or the withdrawal of such rights, in terms of the provisions of, *inter alia*, the Mines and Works Act 1956 (now replaced by the Minerals Act 50 of 1991).

10.9.11 In terms of Section 39, the Minister may make regulations regulating, controlling, restricting or prohibiting any activity, condition or thing which constitutes a nuisance in terms of this Act. The Minister may also declare any activity, condition or thing specified in such notice to be a nuisance for the purposes of this Act.

10.9.12 Proposed regulations for the control of environmental conditions constituting a danger to health or a nuisance have been published for comment in GNR21 of 14 January 2000. In terms of the proposed regulations, registration is required to carry on, *inter alia*, a scheduled trade, with a scheduled trade including:

- asbestos mining or processing;
- chemicals manufacturing or processing;
- industrial container washing or reconditioning;
- sewerage treatment, transport or disposal abattoirs;
- vehicle or general scrapyards; and
- waste incineration, waste (including medical waste) disposal sites and waste collecting, sorting, treating or processing sites.

The proposed regulations also deal with the handling and disposal of medical waste as well as duties of generators, transporters and disposers of medical waste. It is clear that these proposed regulations in their present format will add yet further complexity to the legal position regarding waste disposal.

10.10 Housing Act

The Housing Act 107 of 1997 obliges, in terms of section 9(1)(b), every municipality to take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that conditions not conducive to the health and safety of its inhabitants of its area of jurisdiction are prevented or removed and that services in respect of water, sanitation, electricity, roads, storm water drainage and transport are provided in a manner which is economically efficient.

10.11 National Water Act

10.11.1 The National Water Act 36 of 1998 also contains a range of provisions which have a bearing on waste issues, with a "water use" in terms of section 21 including:

- discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- disposing of waste in a manner which detrimentally impacts on a water resource; and

- disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process.

Waste in the context of the Act includes any solid material or material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into a water resource in such volume, composition or manner as to cause or to be reasonably likely to cause, the water resource to be polluted.

10.11.2 The provisions of the National Water Act dealing with general authorisations (Section 39) allow the responsible authority to, subject to the permissible uses of water contained in Schedule 1:

- generally:
- in relation to a specific water resource; or
- within an area specified in the notice,

authorise all or any category of persons to use water subject to the regulations on use of water and subject to the conditions stipulated in section 29 for the issue of general authorisations and licences. In terms of Government Notice 1191 of 8 October 1999, certain general authorisations have been promulgated. These include:

- engaging in a controlled activity, identified as such in section 37(1): irrigation of any land with waste or water containing waste generated through any industrial activity or by a water-works;
- discharge of waste or water containing waste into a water resource through a pipe, canal, sewer or other conduit;
- disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process; and
- disposing of waste in a manner which may detrimentally impact on a water resource.

Without going into detail on the general authorisations set out above, it is clear that the facility for general authorisations in the context of the Act, and the specific general authorisations authorised thus far, will have a bearing on the integration of waste management planning issues.

10.11.3 Similarly, the provisions of the National Water Act pertaining to licensing of water users are relevant to the issues associated with integrated waste management planning bearing in mind that waste disposal in some instances constitutes a water use which must be licensed. This is particularly true from a planning perspective considering the various bodies created in terms of the Act which contribute to the licensing process, such as Catchment Management Agencies, and the establishment of a national information.

10.11.4 Furthermore, the Schedule 1 permissible uses of water, for which no licence is required, include the discharge of waste or water containing waste, or run-off water (including storm-water from any residential, recreational, commercial or industrial site) into a canal, sea outfall or other conduit controlled by another

person authorised to undertake the purification, treatment or disposal of waste or water containing waste, subject to the approval of the person controlling the canal, sea outfall or other conduit.

10.11.5 Section 26 of the Act allows the Minister to make regulations concerning a wide range of matters, including:

- prescribing waste standards which specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource;
- prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource; and
- requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis.

10.11.6 Regulations on the use of water for mining and related activities aimed at the protection of water resources were promulgated in Government Notice 704 of 4 June 1999. These regulations impose a range of obligations on relevant persons regarding waste ("residue") which includes, in terms of the regulations, any debris, discard, tailings, slimes, screenings, slurry, waste rock, foundry sand, beneficiation plant waste, ash and any other waste product derived from or incidental to the operation of a mine or activity and which is stockpiled, stored or accumulated for potential re-use or recycling or which is disposed of. Further provisions also relate to the protection of water resources directly.

10.12 Water Services Act

10.12.1 The Water Services Act 108 of 1997 provides for range of matters, including for the rights of access to basic water supply and basic sanitation.

10.12.2 In terms of section 7 of the Act, no person may dispose of industrial effluent in any manner other than approved by the water services provider nominated by the water services authority having jurisdiction in the area in question. A person who, at the commencement of the Act, obtained water for industrial use or disposed of industrial effluent from a source or in a manner requiring the approval of a water services authority, may continue to do so for periods stipulated within the Act. No approval given by a water services authority under this section relieves anyone from complying with any other law relating to the conservation of water and water resources or the disposal of effluent. For the purposes of the Act, a "water services authority" means any municipality, including a district or rural council as defined in the Local Government Transition Act 209 of 1993 responsible for ensuring access to water services. "industrial use" means the use of water for mining, manufacturing, generating electricity, land-based transport, construction or any related purpose.

10.13 Advertising on Roads and Ribbon Development Act

10.13.1 This Act regulates the display of advertisements outside certain urban areas at places visible from public roads, and the depositing or leaving of disused machinery or refuse and the erection, construction or laying of structures and other things near certain public roads, and the access to certain land from such roads. To the extent as outlined in Proclamation 23 in *Government Gazette* 16340 of 31 March 1995, the administration of this Act has been assigned to the provinces.

10.13.2 In terms of section 8 of the Act, no person shall, within a distance of 200 metres of the centre line of a public road deposit or leave outside an urban area, so as to be visible from that road, a disused vehicle or machine or a disused part of a vehicle or machine or any rubbish or other refuse, except in accordance with the permission in writing granted by the controlling authority concerned. The controlling authority may remove any object or substance referred to found on a public road and may recover the cost of the removal from the person who deposited or left such object or substance there.

10.13.3 When any person has deposited or has left any object or substance in contravention of the above, but not on a public road, the controlling authority concerned may direct the person in writing to remove or destroy that object or substance within such period as may be specified in the direction. If the person fails to comply with that direction, the controlling authority may cause the object or substance to be removed or destroyed and may recover from the said person the cost of the removal or destruction. The preceding provisions do not apply to any object or material which has been or is being used for or in connection with farming, or to soil excavated in the course of alluvial digging: provided that this sub-section shall not permit the deposit or leaving of any article or material on a road.

10.14 Seashore Act

10.14.1 The Seashore Act 21 of 1935 provides for the grant of rights in respect of the seashore and the sea and other matters. In terms of Proclamation R27 in *Government Gazette* 16346 of 7 April 1995, the administration of this Act has, to a certain extent, been assigned to the provinces.

10.14.2 In terms of section 10, the Minister may make regulations, or by notice in the provincial gazette authorise any local authority to make regulations, *inter alia*, for the prevention or the regulation of the depositing or the discharging upon the seashore or in the sea of offal, rubbish or anything liable to be a nuisance or danger to health.

10.15 Fertilizers, Farm Feeds and Agricultural Remedies Act

10.15.1 The Fertilisers, Farm Feeds and Agricultural Remedies Act 36 of 1947 provides for a range of matters including the regulation or prohibition of importation, sale, acquisition, disposal or use of fertilisers, farm feeds and agricultural remedies.

10.15.2 The provisions of this Act will not be dealt with in detail in this Review, save to mention that there are various implications insofar as the disposal of

fertilisers, farm feeds and agricultural remedies are concerned. In particular, the Minister of Agriculture may, in terms of Section 23, prohibit the disposal, acquisition or use of any farm feed as a fertiliser.

11. PROVINCIAL LEGISLATION

11.1 Gauteng Local Government Ordinance

11.1.1 The Gauteng Local Government Ordinance 17 of 1939 deals with municipal government in the Gauteng Province. The Ordinance creates a system of City, Town and Village Councils. The designation of the council in question depends on the number of people in the area in question.

11.1.2 The powers and duties of all forms of Municipal Council are set out in Part VI of the Ordinance. Some of the relevant powers and duties are set out below.

- In terms of section 63 of the Ordinance, Municipal Councils are responsible for the control and management of all public places which have been set apart and appropriated for the use and benefit of the public or to which the Municipal Council has acquired a common right.
- A Municipal Council may, in terms of section 73 of the Ordinance, inspect wells, boreholes, tanks and cisterns provided the water therein is used or is likely to be used for human consumption. If it found that the water is polluted or injurious to health or that any by-laws are not being complied with, the Municipal Council may close the well, borehole, tank or cistern as the case may be.
- Municipal Councils may, without notice, enter upon and inspect any source of water supply, storage or distribution situated within its jurisdiction provided the water in question is used or likely to be used for human consumption.
- In terms of section 79(2)(a), a Municipal Council may establish, maintain and carry out services for the removal, destruction or disposal of night-soil, urine, slops, rubbish, carcasses of animals, any refuse or anything of whatever nature which it suspects to have been abandoned.

11.1.3 Municipal Councils have powers to make, alter and revoke by-laws in terms of section 80 of the Ordinance. Municipal Councils may make by-laws relating to, *inter alia*, the following:

- regulation of any of the things which the Municipal Council is entitled in terms of the Ordinance to regulate (section 80(1));
- keeping any public place, vacant stand, vacant erf, stream or water-course clean and to this end to prohibit any person from littering or allowing any liquid to flow into or onto such place and to regulate or prohibit bathing and washing in such place. Furthermore, for compelling owners and occupiers to keep their premises clean and free from filth, debris, rubbish, glass, paper, rags, tins, lumber, weeds or undergrowth which in the opinion of the Council is unsightly or is likely to become a nuisance or injurious to health or to cause annoyance to inhabitants of the neighbourhood. (section 80(4));
- the prohibition, removal or abatement and the prevention of recurrence of nuisances (section 80(6));

- preserving and safeguarding public health (section 80(10));
- preventing the outbreak and spread of infectious diseases (section 80(11));
- regulating, inspecting and supervising the carrying on of noisome and offensive trades (section 80(15));
- regulating the carrying on of any trade, business or calling which may, in the opinion of the Municipal Council cause, be or likely to be a source of serious nuisance, discomfort or annoyance (section 80(18));
- regulating the supply and distribution of any water under the control or management of the Municipal Council and preventing the waste, undue consumption, misuse or contamination of such water (section 80(35));
- preventing the pollution of any water which inhabitants of the Municipal Council have a right to use (section 80(37));
- preventing the pollution of catchment areas, rivers, canals, springs, wells, reservoirs, filter beds, water purification or pumping works, tanks, cisterns or other sources of water supply or storage which is used or likely to be used for human consumption or for domestic purposes (section 80(38);
- preventing the discharge of any guttering or down-pipes onto any footway, pavement or sidewalk and securing, regulating, and controlling the laying down of pipes to carry any outflow to a gutter or drain (section 80(45));
- preventing the erection of building on ground contaminated by faecal, animal or vegetable matter section 80(47));
- generally for the good rule and government of the municipality (section 80(126));
- for prohibiting buildings or lands being put to uses calculated to depreciate neighbouring property or to interfere with the convenience or comfort of neighbouring occupiers (section 80(54)); and
- dealing with livestock and dead, diseased, or injured animals found in any public place (section 80(69));

11.1.4 In terms of section 81 of the Ordinance, Municipal Councils may establish, acquire, construct and equip works for supplying water to its inhabitants.

11.1.5 Town Councils have, in addition to the powers set out above, certain special powers. These include the power to:

- divert, straighten, define and canalise the course of any stream. (section 131(12)); and
- erect, construct and equip sewerage and drainage works (section 133).

11.2 Eastern Cape Province Municipal Ordinance

11.2.1 The Eastern Cape Province Municipal Ordinance 20 of 1974 ("the Ordinance") deals with municipalities, village management boards and local boards within the Eastern Cape Province. The administration of the whole of this ordinance

has been assigned to the province of the Eastern Cape with effect from 17 June 1994.

11.2.2 Section 141 deals with the protection of municipal service works. In terms of this section, no person shall, inter alia, except with the consent of the Council and subject to such conditions as it may impose:

- discharge, permit to enter or put into any sewer, inter alia:
  - any storm water;
  - any gas or steam;
  - any liquid (not being domestic waste water) of a temperature higher than 43º Celsius;
  - any liquid refuse from an abattoir;
  - any petrol or oil or substance containing petrol or oil;
  - any refuse or waste resulting from any industrial, trade, manufacturing or chemical process;
  - any liquid which has a pH value of less than 5, or greater than 12;
  - any volatile inflammable solvent or organic solvent immiscible with water;
  - any substance which has an open flash point of less than 93º Celsius;
  - any explosives, inflammable, poisonous or other dangerous or noxious substance;
  - any substance which gives off or produces or is likely to give off or produce any explosive, inflammable, poisonous or other dangerous or noxious gas or vapour, or any substance or thing which, whether alone or in a combination with other matter may constitute or create a nuisance to the public;
  - injure or endanger the health of persons;
  - interfere with the free flow of sewage in such sewer;
  - damage any sewer or any land or municipal service works used for or in connection with the treatment or disposal of sewerage, or affect injuriously the re-use of treated sewerage or any process whereby sewerage is treated;
- discharge, permit to enter or put anything other than stormwater into a public drain;
- discharge, permit to enter or put into any sewer or public drain any substance or thing likely to damage it or interfere with the free flow of sewerage or water therein; or
- discharge, permit to enter or put into any natural water course into which stormwater is drained or water from municipal service works is discharged, or from which water is taken for the purposes of any municipal service, any substance or thing likely to damage it, to interfere with the

free flow of water therein or to contaminate or impair the quality of water therein.

11.2.3 In terms of section 181, every Council shall take all lawful, necessary and reasonably practicable measures for maintaining its municipal area in a clean and sanitary condition and for preventing the occurrence of or for abating or causing to be abated any public nuisance. In terms of section 186, a Council may, *inter alia,* establish, provide, maintain and improve, a system for the collection, removal and disposal of night soil, slopwater or household and other refuse from premises within its municipal area (section 186(22)(h)).

11.2.4 A Council may, in terms of section 188, by special resolution, make by-laws not inconsistent with the provisions of this Ordinance or any other law, generally for the better carrying out of the objects and provisions of this Ordinance, the maintenance of good rule and government and the convenience, safety and comfort of the inhabitants of its municipal area, including relating to:

- buildings, structures and earth works which are or are showing signs of becoming dangerous, unhealthy, unsanitary, ruinous, dilapidated, unsightly, objectionable or unsuitable or which are calculated to depreciate the properties in the locality or to cause annoyance to inhabitants of the neighbourhood;
- cemeteries;
- drainage, sewerage and sanitation, including the removal or disposal of:
  - night-soil;
  - domestic refuse;
  - kitchen and bedroom slopwater;
  - garden and stable litter; and
  - other offensive or unhealthy matter,
- and the use to be made of any municipal service or other system or undertaking therefore or in connection therewith;
- the type of container to be used for the storage of domestic refuse pending the removal thereof and the supply of such containers;
- the drainage and sewerage of premises;
- the slaughtering of animals, birds and poultry and the disposal of the waste products of such slaughtering;
- the prevention, abatement and suppression of nuisances;
- the accumulation, dumping, storing and depositing of any material, article, substance or thing of whatsoever nature which is waste material, is unsightly or is likely to constitute an obstruction and the disposal, destruction or removal thereof. (section 188).

11.2.5 In terms of section 189, a Council may, in any by-laws made in terms of section 188 provide for any matter which is necessary for or incidental, supplementary or ancillary to the proper and effectual exercise of the powers contemplated by that section and in particular may, inter alia:

- prohibit, restrict, regulate and control any act, conduct or thing;
- prescribe requirements and standards to be complied with;
- impose duties and obligations;
- require the registration of persons, premises, activities and things;
- provide for the imposition of conditions; and
- require the provision of security.

11.3 Gauteng Planning and Township Ordinance

The Gauteng Town Planning and Township Ordinance 15 of 1986 provides for the consolidation and amendment of laws relating to town planning and the establishment of townships. The administration of the whole of this Ordinance has been assigned to the Province of Gauteng with effect from 31 October 1994. The Ordinance is relevant not only for its town planning provisions, which will not be dealt with in this review. Section 119 of the Ordinance provides that where engineering services are installed, they must be provided to the satisfaction of the local government concerned. The local government must have regard to such standards as the Administrator may determine for streets and stormwater drainage, water, electricity and sewerage disposal services.

12. LOCAL GOVERNMENT

12.1 Johannesburg By-laws

12.1.1 Collection and removal of business and domestic refuse

12.1.1.1 In terms of section 101 of the Local Government Ordinance, 1939, the following by-laws have been adopted by the Council.

12.1.1.2 The Council shall provide a service for the collection and removal of business and domestic refuse from premises at the tariff charge. The occupier of premises on which business or domestic refuse is generated shall use the Council's service for the collection and removal of all such refuse. The owner of the premises on which the business or domestic refuse is generated shall be liable to the Council for the tariff charge in respect of the collection, removal and disposal of business and domestic refuse from such premises.

12.1.1.3 The by-laws provide for the delivery of bins or containers; the placing of bins, bin liners and the use and care of bins and containers.

12.1.1.4 Should the quantity of business refuse generated on premises be such as to require the daily removal of more than the equivalent of eight 240 litre bins and should, in the opinion of the Council, the major portion of such refuse be compactable, or should the occupier of premises wish to compact any volume of such refuse, such occupier, shall compact that portion of such refuse and put it into an approved container or wrapper.

12.1.2 Industrial refuse

12.1.2.1 The occupier of premises may use services of a person authorised in writing by the Council to remove industrial refuse if the Council is advised in writing to this effect by the owner or occupier before such service is commenced, and has given its written permission therefore. In laying down conditions the Council may have regard to:

- ensuring that no bin, container or other approved receptacle, used for the storage and removal of industrial refuse from premises, shall be kept on a public place;
- the equipment that is intended to be used; the containment of the industrial refuse in transit;
- ensuring that the industrial refuse is deposited within the Council's area of jurisdiction or control, at a disposal site approved by the Council;
- ensuring that the service rendered by the person authorised shall be in respect of industrial refuse only.

12.1.2.2 The occupier of premises on which industrial refuse is generated shall ensure that, until such time as such refuse is removed from then premises on which it was generated, such refuse be stored in the bins or containers delivered by the Council for such purpose or, if the Council's service is not made use of, in receptacles approved by the Council if such refuse can by its nature conveniently be stored in the bins or containers.

12.1.2.3 The occupier of such premises, shall ensure that no dust or other nuisance is caused by industrial refuse generated on the premises.

12.1.2.4 A person authorised by the Council to remove industrial refuse shall be deposit such refuse at a disposal site designed by the Council for that purpose.

12.1.2.5 The occupier of the premises on which garden, special domestic or bulky refuse is generated shall ensure that such refuse is disposed of in terms of the by-law within a time considered reasonable by the Executive Director: Water Waste after the generation thereof: Provided that garden refuse may be retained on the premises for the making of compost.

12.1.2.6 At the request of the occupier of premises and after payment of the tariff charge the Council may remove garden, special domestic, builders and bulky refuse from premises: Provided that the Council is able to do so with its refuse removal equipment.

12.1.3 Builders refuse

12.1.3.1 The occupier of premises on which builders refuse is generated shall ensure that:

- such refuse is disposed of in terms of the By-law within a time considered reasonable by the Executive Director: Water and Waste after the generation thereof;
- until such time as builders refuse is disposed of such refuse together with the containers used for the storing or removal thereof, shall be kept on the premises on which it was generated.

12.1.3.2 No person may, without the Council's written permission on such conditions as it deems fit, use the services of any other person for the removal of builders refuse, unless such other person has been authorised by the Council on such conditions as the Council may impose, to remove builders refuse.

12.1.4 Special industrial, hazardous, medical and infectious refuse

12.1.4.1 A person engaged in an activity which causes special industrial, hazardous, medical or infectious refuse to be generated, shall notify the Council within 7 days of such generation of the composition thereof, the quantity generated, method of storage, the proposed duration of storage, and the manner in which it will be removed.

12.1.4.2 Special industrial, hazardous, medical or infectious refuse stored on premises shall be stored in such a manner that it cannot become a nuisance, safety hazard or pollute the environment.

12.1.4.3 Hazardous, medical or infectious refuse shall be stored in a container approved by the Executive Director: Health and Housing, and such container shall be kept in an approved storage area for a period not exceeding the maximum period to be stipulated by the Executive Director.

12.1.4.4 No person shall remove special industrial, hazardous, medical or infectious refuse from the premises on which it was generated without, or otherwise

than in terms of the written consent of the Council on such terms as it may deem fit.

12.1.4.5 No person shall dispose of any infectious refuse other than by incinerating it at the Council's incinerator facility, unless the Executive Director: Water and Waste's prior written permission has been given to incinerate such refuse at another facility.

12.1.5 Disposal sites

12.1.5.1 Every person who, for the purpose of disposing of refuse enters a refuse disposal site controlled by the Council, shall –

- enter the disposal site at an authorised access point;
- present the refuse for weighing in the manner required by the Council;
- give the Council all the particulars required in regard to the composition of the refuse;
- follow all instructions given to him in regard to access to the actual disposal point, the place where and the manner in which the refuse should be deposited;
- before leaving the disposal site, pay the relevant tariff charge in respect of the refuse deposited or comply with any prior arrangements made with the City Treasurer;
- ensure that any container brought on to the site shall have its correct tare legibly displayed on both sides;

12.1.5.2 Provided that certain of the above provisions shall not apply to a person who has entered a refuse disposal site for the purpose of disposing of garden, or special domestic refuse.

12.1.5.3 No person shall bring any intoxicating liquor onto a disposal site or free garden refuse site controlled by the Council, or enter the site in an intoxicated state.

12.1.6 Littering, dumping and ancillary matters

12.1.6.1 No person shall:

- throw, let fall, deposit, spill or in any other way discard, any refuse into or onto any public place, vacant erf, farm portion, stream or water course, other than into a container provided for the purpose or onto a refuse disposal site controlled by the Council;
- sweep any refuse into a gutter, on a road reserve or any other public place;
- allow any person under his control to do any of the facts contemplated above.

12.1.6.2 No person shall leave anything or allow anything under his control to be left at a place to which such thing has been brought with the intention of abandoning it.

12.1.7 General provisions

The by-law provides provisions for fishmongers and fish-fryers; incineration of refuse; charges; offences and penalties and the revocation of by-laws.