

# **Tutorial Letter 201/1/2018**

## **Legal Aspects of Environmental Management**

### **LEG2601**

#### **Semester 1**

#### **Department of Public Law, Constitutional Law and International Law**

**IMPORTANT INFORMATION:**

This tutorial letter contains important information  
about your module.

Dear Student,

You should have received the following thus far:

The study guide	The text of this module's tutorial matter
Tutorial Letter 101	The general information tutorial letter
Tutorial Letter 201	This tutorial letter (online under Additional Resources)

THIS IS YOUR FINAL TUTORIAL LETTER FOR THE FIRST SEMESTER OF 2018. It contains the following:

- 1 ASSIGNMENT 01: COMMENTARY**
- 2 ASSIGNMENT 02: COMMENTARY**
- 3 SELF-EVALUATION ASSIGNMENT: COMMENTARY**
- 4 THE OCTOBER/NOVEMBER 2017 EXAMINATION PAPER**
- 5 THE EXAMINATION: FORMAT, PREPARATION AND WRITING**

**EXAMINATION DATE**

ONLY PROVISIONAL DATES ARE PRESENTLY AVAILABLE. PLEASE MAKE SURE THAT YOU HAVE RECEIVED THE **FINAL EXAMINATION TIMETABLE** BY THE END OF **APRIL** (FOR THE **FIRST SEMESTER**).

**1 ASSIGNMENT 01: COMMENTARY**

**Question 1**

What is the role of international and regional conventions (treaties) in South African environmental law?

[10]

**Suggested answer**

- Environmental deterioration or damage do not only affect individual states but also the entire world. In other words it is a cross border issue and not limited to man-made borders.
- It includes, for example, ozone depletion, global warming, loss of biodiversity, air and marine pollution, extinction of species and nuclear damage.
- To solve these environmental issues international cooperation is essential. Therefore the role of international law in environmental issues is important.

- In the sense South Africa also forms part of the international environmental law community.
- The United Nations (UN) has been at the forefront for many years in international discussions and legal instruments on managing environment matters. Examples include: The Convention on Biodiversity (CBD), the UN Framework Convention on Climate Change (UNFCCC), the Basel Convention on Control of Movement of Transboundary Waste, etc.
- South Africa is party to many international and regional environment treaties e.g. CITES, CBD, the Paris Agreement on Climate Change, the Kyoto Protocol, etc. (there are many other examples of environmental treaties).
- A treaty is written agreement between states and is a source of international law. In other words states are bound by signing up to treaties.
- Section 39 of Constitution of South Africa deals with the interpretation of the Bill of Rights and states that international law must be considered and foreign law may be considered.
- South African courts must look for guidance to international sources (such as international environmental principles), particularly regarding cases of fields of law that are new – in other words issues that have not been before any court in South Africa before. This could for example include the issue of climate change etc.
- Section 233 of the Constitution of South Africa provides that when interpreting any legislation, courts must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

## Question 2

Indicate how the term “environment” can be explained both in a broad and in a narrow context.

[10]

### Suggested answer

- It is a dynamic concept. It can and does change over time and may even differ from one country to the next depending on the context in which it is used e.g. in a socio-economic, cultural or political context.
- In South Africa the term “environment” is viewed both in a broad and narrow context:
- The broader context includes the natural, spatial and social environment.
- However, a wide (broad) interpretation may prove to be too broad, because it includes virtually everything that influences human existence or quality of life.
- A broad approach also means that all laws and policy could be classified as environment law and policy, because all laws and policy deal with an aspect of human existence.
- On the other hand, the limited or narrow approach includes the natural environment, but excludes the social environment.

- Since the natural environment usually refers to natural resources, this approach is too narrow, because much of the purely natural environment (i.e. wilderness area) has been changed by human beings (to form the artificial environment).
- In South Africa the meaning of environment is also a policy question on which opinions may differ because:
- Although the scope of the meaning of environment still evolving, there is sufficient clarity as far as the essential meaning of the term is concerned
- The concept (environment) is regarded as being open-ended and therefore still evolving.
- The meaning and scope of the “environment” will be influenced by the interpretation the courts will give to it particularly in terms of the right enshrined in section 24 of Bill of Rights.
- The most recent definition of “environment” in South Africa can be found in section 1 of NEMA
  - \* The definition of “environment” per NEMA states:
  - the land, water and the atmosphere of the earth;
  - micro-organisms, plant and animal life;
  - any part or combination of (i) and (ii) and the interrelationship among and between them; and
  - the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing.

[20]

## 2 ASSIGNMENT 02: COMMENTARY

06 April 2018 (multiple choice)

Unique assignment number: 689054

There are ten (10) questions. Each question is provided with a number of options as possible answers. Only one option or statement in each question is correct. You must identify the correct option (a, b, c or d). [10]

### Question 1

A public law relationship is ... .

- (a) where the parties act in their own capacity
- (b) less complex than a private law relationship
- (c) an unequal (vertical) relationship**
- (d) based on a voluntary agreement between the subjects

**Question 2**

Part A of Schedule 4 of the Constitution outlines ....

- (a) cooperative government.
- (b) functional areas of concurrent national and provincial power**
- (c) functional areas in respect of which provinces have exclusive legislative competence.
- (d) intergovernmental relations.

**Question 3**

In *Director, Mineral Development, Gauteng Region and Another v Save the Vaal Environment and Others* 1999 2 SA 709 (HHA) the court held that ... .

- (a) public participation and transparency **do** impose unnecessary and costly burdens on developers
- (b) land-use planning and management **do not** take place within the framework of the Constitution and the right to the environment
- (c) land-use planning and management take place within the framework of the Constitution and the right to the environment
- (d) public participation and transparency do not impose unnecessary and costly burdens on developers**

**Question 4**

In *Fuel retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 10 BCLR 105 (CC) it was ruled that the building of a filling station requires an application for: ... .

- (a) a basic assessment only
- (b) an environmental authorisation only
- (c) rezoning only
- (d) rezoning and an application for environmental authorisation**

**Question 5**

The ... are the most important sources of environmental management in South Africa.

- (a) Constitution
- (b) Case law and provincial legislation
- (c) Constitution and legislation**
- (d) Parliamentary legislation

### Question 6

A basic assessment must be carried out if the authorisation applied for is in respect of an activity listed in Government Notice ... .

- (a) R 982
- (b) R 983**
- (c) R 984
- (d) R 985

### Question 7

An environment assessment practitioner (EAP) must ... .

- (a) comply with regulation 15 of the Environmental Impact Assessment Regulations
- (b) comply with regulation 18 of the Environmental Impact Assessment Regulations
- (c) be independent**
- (d) be subjective

### Question 8

A heritage resource is ... .

- (a) a place or object of cultural significance**
- (b) a place or object of economic significance
- (c) the Provincial Heritage Resources Authority
- (d) the National Heritage Resources Authority

### Question 9

If a specified development impacts on a heritage resource, ... .

- (a) public participation must be waived
- (b) an evaluation of sustainable social and economic benefits is irrelevant
- (c) the responsible heritage resources authority must be notified**
- (d) an assessment of the impact of the development on the heritage resource is unnecessary

**Question 10**

*A mandamus ...*

- (a) compels a person who transgresses environmental law to pay a fine
- (b) is the same as the Aquilian action
- (c) **compels an administrative body to perform its statutory duty**
- (d) stipulates how an administrative body should exercise its power

**3 SELF-EVALUATION ASSIGNMENT**

Describe the procedure that has to be followed where the existence of a historic building will be threatened by the building of a 900 m<sup>2</sup> shopping centre. **[15]**

**Suggested answer:**

A “heritage resource” means any place or object of cultural significance. This could include an historic or cultural building, a piece of land where an historic battle took place, an area where special artefacts are to be found, historic grave sites, caves where there are San paintings, and so forth.

A person who wishes to undertake certain types of development that will have an impact on a heritage resource must include an assessment of the impact on the heritage resource in question in his or her application. This procedure is set out in, section 38 of the Act. What follows is a summary of the procedure to be followed when planning a development that will affect a heritage resource.

A person who intends to undertake a specified development must, at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details of the location, the nature and the extent of the proposed development.

The responsible heritage resources authority must, within 14 days of receipt of a notification – if there is reason to believe that heritage resources will be affected by such development – notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management. The responsible heritage resources authority must specify the information to be provided in the report it requires. However, the following information must be included:

- the identification and mapping of all heritage resources in the area affected
- an assessment of the significance of such resources in terms of the heritage assessment criteria
- an assessment of the impact of the development on such heritage resources

- an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development
- the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources
- if heritage resources will be adversely affected by the proposed development, the consideration of alternatives
- plans for mitigation of any adverse effects during and after the completion of the proposed development
- The report is submitted to the heritage resources authority, which must make a decision on the matter.

#### 4 THE OCTOBER/NOVEMBER 2017 EXAMINATION PAPER

(Please take note that the answers we provide for the questions in the examination paper are suggested answers. They are meant to guide and assist you in preparing for the examination. Furthermore, they provide guidelines on how you should answer a question using only essential points rather than re-writing the study guide. Pay careful attention to the general comments below on how to formulate your answers to the questions in the examination.)

##### Question 1

- 1.1 List any 5 (five) sources of the law and indicate which source or sources are the most commonly used source in environmental matters. (5)

the Constitution;

Parliamentary/national legislation;

Provincial legislation (provincial ordinances);

Legislation by municipal councils/municipalities (bylaws);

Delegated legislation (such as regulations GN R 983 and 984);

common law;

case law;

customary law;

international law.

Environmental concerns are relatively modern concerns and therefore the Constitution and legislation are taken as the most important sources of environmental management.

- 1.2 The right of access to information is one of the fundamental rights that either support or have an impact on the environmental right. Name **another two (2) fundamental rights** that either support or have an impact on the environmental right. Briefly explain how these two rights support or have an impact on the environmental right. (10)

The answer consist of two main parts namely the right to just administrative action; and the right to approach a competent court (*locus standi* etc).

**Right to just administrative action** (brief discussion - Max 5 marks)

Administrative justice or “just administrative action” lies at the heart of any democratic state that strives for justification, fairness and accountability, as well as public participation in the administration of government affairs. Administrative justice, therefore, encapsulates the democratic values and principles that underpin the public administration in terms of section 195 of the Constitution. NEMA, in section 2, echoes these values and principles by providing that development must meet the requirements of public participation and transparency. These principles apply to the actions of all the organs of the state and serve as guidelines when an organ of state exercises its functions and takes decisions. These principles are contained in section 33 of the Bill of Rights, which reads as follows:

- (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights, and must
  - (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
  - (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
  - (c) promote efficient administration.

**Any decisions made concerning environmental and planning matters, and the implementation of the rules and regulations, are classified as administrative action;** in other words, it is action by government bodies or officials who are empowered to take such action in terms of legislation. In terms of section 33 of the Bill of Rights, all administrative action must be **lawful, reasonable and procedurally fair**. The Promotion of Administrative Justice Act 3 of 2000 (PAJA) has given effect to this right to ensure lawful, reasonable and procedurally fair administrative action against individuals

To be performed “**lawfully**”, the action must comply with all the requirements of the law. This means that the relevant prescriptions of the Constitution, other legislation and case law (e.g. the sources of law) must be complied with.

A “**reasonable**” administrative action is a decision based on the consideration of all the relevant and objective facts and circumstances. A reasonable decision is therefore a decision based on reason and not based on, for example, subjective opinion.

The obligation to comply with “**fair**” **procedures** requires that both parties involved in the case have the opportunity to present their side of the story to the presiding officer.

**Right to approach a competent court** plus brief discussion (Max 5 below)

**Locus standi (legal standing) is the capacity to take a matter to court and to be a party in a case.**

It is a basic rule of all legal systems that a party may take a matter to court only if he or she has an “**identifiable interest** in the outcome” of the case.

However, the **Constitution has broadened the scope of the legal standing of individuals and groups to seek relief in matters involving fundamental rights (e.g. the environmental right)**; this means that more people with identifiable interests in the outcome of a case may now approach the court.

Section 38 of the Constitution provides that anyone listed in the section has the right to approach a competent court in a case where a right in the Bill of Rights has been infringed or is threatened. The court may grant appropriate relief (a remedy) in such a case.

In NEMA, the scope of *locus standi* has been further extended:

1. The Act provides that any person (or group of persons) may now approach a court regarding an infringement, or threatened infringement, of **any provision of law** (e.g. not only in terms of rights in the Bill of Rights) concerned with the protection of the **environment** or the utilisation of **natural resources**.
2. Apart from the persons/bodies entitled to approach the court in terms of section 38 of the Constitution (above), **any person, or group of persons, may now, in terms of the Act, seek appropriate relief “in the interest of protecting the environment”.**

- 1.3 The public trust doctrine is found in one of the principles of NEMA, namely section 2(4)(o). Explain what the public trust entails with regard to the environment. (5)

The environment is held in public trust for the people,

the beneficial use of environmental resources must serve the public interest and

the environment must be protected as the people’s common heritage.

Kidd (Environmental law 2008 at 11) states that the public-trust doctrine adopted in South Africa resembles “trusteeship” rather than public trust.

Public trust refers to a state-held resource which must be held for the benefit of the general public, referring to the free use of, or access to, such a resource by the general public.

The principle of trusteeship, in contrast, entails that the trustee should protect the environment on behalf of future generations.

1.4 What is the role of international and regional conventions (treaties) in South African environmental law? Motivate your answer by referring to examples. (10)

- Environmental deterioration or damage do not only affect individual states but also the entire world. In other words it is a cross border issue and not limited to man-made borders.
- It includes, for example, ozone depletion, global warming, loss of biodiversity, air and marine pollution, extinction of species and nuclear damage.
- To solve these environmental issues international cooperation is essential. Therefore the role of international law in environmental issues is important.
- In the sense South Africa also forms part of the international environmental law community.
- The United Nations (UN) has been at the forefront for many years in international discussions and legal instruments on managing environment matters. Examples include: The Convention on Biodiversity (CBD), the UN Framework Convention on Climate Change (UNFCCC), the Basel Convention on Control of Movement of Transboundary Waste, etc.
- South Africa is party to many international and regional environment treaties e.g. CITES, CBD, the Paris Agreement on Climate Change, the Kyoto Protocol, etc. (there are many other examples of environmental treaties).
- A treaty is written agreement between states and is a source of international law. In other words states are bound by signing up to treaties.
- Section 39 of Constitution of South Africa deals with the interpretation of the Bill of Rights and states that international law must be considered and foreign law may be considered.
- South African courts must look for guidance to international sources (such as international environmental principles), particularly regarding cases of fields of law that are new – in other words issues that have not been before any court in South Africa before. This could for example include the issue of climate change etc.

- Section 233 of the Constitution of South Africa provides that when interpreting any legislation, courts must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

[30]

## Question 2

2.1 There are ten (10) questions. Each question is provided with a number of options as possible answers. Only one option or statement in each question is correct. You must identify the correct option and write down the **option (a,b,c or d)** next to the question number. (10)

2.1.1 Part A of Schedule 4 of the Constitution outlines ....

- (a) cooperative government.
- (b) functional areas of concurrent national and provincial power**
- (c) functional areas in respect of which provinces have exclusive legislative competence.
- (d) intergovernmental relations.

2.1.2 An “organ of state” as per section 239 of the Constitution excludes ...

- (a) a court or a judicial officer**
- (b) the Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs
- (c) the Department of Correctional Services
- (d) the Department of Environmental Affairs

2.1.3 A public law relationship is ... .

- (a) where the parties act in their own capacity
- (b) less complex than a private law relationship
- (c) an unequal (vertical) relationship**
- (d) based on a voluntary agreement between the subjects

2.1.4 In *Director, Mineral Development, Gauteng Region and Another v Save the Vaal Environment and Others* 1999 2 SA 709 (HHA) the court held that ... .

- (a) public participation and transparency **do** impose unnecessary and costly burdens on developers
- (b) land-use planning and management do **not** take place within the framework of the Constitution and the right to the environment
- (c) land-use planning and management take place within the framework of the Constitution and the right to the environment
- (d) public participation and transparency do not impose unnecessary and costly burdens on developers**

2.1.5 In *Fuel retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 10 BCLR 105 (CC) it was ruled that the building of a filling station requires an application for: ... .

- (a) a basic assessment only
- (b) an environmental authorisation only
- (c) rezoning only
- (d) rezoning and an application for environmental authorisation**

2.1.6 Sustainable development as applied in South Africa ... .

- (a) integrates environmental protection and social upliftment
- (b) integrates environmental protection and economic development
- (c) integrates environmental protection and decision-making processes
- (d) integrates environmental protection, economic development and social upliftment**

2.1.7 If a specified development impacts on a heritage resource, ... .

- (a) public participation must be waived
- (b) an evaluation of sustainable social and economic benefits is irrelevant
- (c) the responsible heritage resources authority must be notified**
- (d) an assessment of the impact of the development on the heritage resource is unnecessary

2.1.8 A *mandamus* ... .

- (a) compels a person who transgresses environmental law to pay a fine
- (b) is the same as the Aquilian action
- (c) compels an administrative body to perform its statutory duty**
- (d) stipulates how an administrative body should exercise its power

2.1.9 A heritage resource is ... .

- (a) a place or object of cultural significance**
- (b) a place or object of economic significance
- (c) the Provincial Heritage Resources Authority
- (d) the National Heritage Resources Authority

2.1.10 When applying for an interim interdict a number of elements need to be shown. Which one of the below is **NOT** one of these.

- (a) that no other satisfactory remedy is available
- (b) a prima facie right
- (c) that an environmental permit or authorisation has already been granted**
- (d) that the balance of convenience favours the granting of the interim relief

[10]

**Question 3**

3.1 Discuss the following three environmental management principles: the 'polluter pays' principle, the precautionary principle and the preventative principle. (10)

The "polluter pays" principle:

The idea behind the "polluter pays" principle is that the **costs of pollution** should be **borne by the generator of the pollution rather than society** at large. In other words the person that polluted should be accountable.

This principle has been adopted in South Africa in a number of policy documents and has **been included in NEMA** in section 2(4)(p): *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.*

Precautionary principle

This principle calls for **the application of preventative measures** in **situations of scientific uncertainty** where a course of action (i.e. a certain development of land) **may cause harm to the environment**.

This principle has been **included** in section 2(4)(a)(vii) of **NEMA** as a relevant factor that **must** be considered to establish whether a **development** is socially, environmentally and economically **sustainable**. This means 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.

Preventative principle:

This principle requires that **environmental degradation should be prevented**.

**Since pollution often cannot be completely prevented**, this principle is not regarded as an absolute principle, as reflected in NEMA, section 2(4)(a)(viii):

*“[T]hat negative impacts on the environment and on people’s environmental rights **be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied”** (in other words mitigated).*

This principle has been **included** in section 2(4)(a)(viii) of **NEMA** as a relevant factor that **must be considered** to establish whether a development is socially, environmentally and economically **sustainable**.

3.2 Give a description of **environmental assessment** and **list** the two types of EIAs (assessment processes) that NEMA provides for in the Environmental Impact Assessment Regulations. (5)

The answer consist of two parts A & B

Part A:

- Essentially, environmental assessment is a **tool** or a **process** which **facilitates integrated decision-making** to manage change in which **environmental considerations are taken into account in the planning and development process**.
- More broadly, environmental assessment is a **process whereby information on the potential, capacities and functions of natural systems and resources is evaluated**

**and documented so as to facilitate sustainable development planning and decision-making and to anticipate and manage the adverse effects and consequences of proposed developments.**

- In other words it assess development's impact on the environmental.

Part B:

- A **basic assessment** must be carried out if the authorisation applied for is in respect of an activity listed in Government Notice **R 983**. (in other words where the activity will **not** have a severe impact on environment).
- A **scoping and environmental impact reporting** process (S&EIR) must be carried out if the authorisation applied for is in respect of an activity listed in Government Notice **R 984** (where the activity will have a severe impact on the environment).

3.3 Are people who live in the vicinity of a factory causing air pollution entitled to request the owner of the factory to disclose information on air pollution levels? Discuss with reference to the applicable constitutional provision and legislation. (10)

**Access to information** is viewed as a basic requirement in any democratic state that strives for **transparency, participation and accountability**.

The Bill of Rights sets out the right of access to information in **section 32**:

- (1) Everyone has the right of access to
  - (a) any information held by the state; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any rights.

The **Promotion of Access to Information Act 2 of 2000 (PAIA)** has been promulgated **to give effect to this right**.

Access to information is also a right that a **private** individual may enforce against other private persons.

Everyone has access to any information held by a private body **if it is required for the exercise or protection of any rights** (not only environmental rights).

There must also be compliance with the procedural requirements and there must not be a recognised ground for refusal of access to the record such as instances where a record contains

**trade secrets or financial, commercial, scientific or technical information of a third party that could harm that third party.**

The grounds for refusal recognised above may, **however, be trumped**, and the information requested will have to be made available, notwithstanding the various grounds for refusal.

In terms of PAIA, a request for a record (information) may **not** be refused if the disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with, the law and an imminent and serious public safety or environmental risk.

The **people** living in the vicinity of the factory may, as in the case mentioned above, **use** this right to request the owner of the factory **to disclose information on air pollution levels** so that these levels **may be compared** with legal requirements or standards.

3.4 List any five (5) specific environmental acts (SEMA). (5)

Any five of the below

- National Environmental Management: Protected Areas Act 57 of 2003 (NEM: PAA),
- National Environmental Management: Biodiversity Act 10 of 2004 (NEM: BA),
- National Environmental Management: Waste Act 59 of 2008 (NEM:WA),
- National Environmental Management: Air Quality Act 39 of 2004 (NEM:AQA),
- National Environmental Management: Integrated Coastal Management Act 24 of 2008 (NEM:ICMA),
- Environment Conservation Act 73 of 1989,
- National Water Act 36 of 1998 (NWA) and
- World Heritage Convention Act 49 of 1999.

[30]

#### Question 4

4.1 Criminal sanctions can be used as a direct (primary or independent) sanction or as an indirect (subsidiary or supporting) sanction to enforce environmental rules. Give an example of each (both a direct and an indirect criminal sanction) and indicate which sanction is to your mind more effective. (5)

In many cases, criminal sanctions are used mainly as an indirect (or subsidiary or supplementary) penalty. This means that an enforcement measure is used to ensure compliance.

Such an enforcement measure involves an administrative measure such as a permit, authorisation or a licence.

When a criminal penalty is used in a direct way, as a primary or independent sanction, it means that the environmentally harmful activity is outlawed directly.

Therefore, certain actions are illegal and are in contravention of the provisions of the relevant environmental legislation. In this case, the actual act of doing something constitutes an offence.

It is preferable to use an indirect sanction rather than a direct sanction because of the relative ease of proving the offence.

#### 4.2 Discuss the role of an environment practitioner (EAP) in the assessment procedure. (10)

Before conducting a basic assessment (BA) or a scoping and environmental impact reporting (S&EIR) in respect of a proposed activity, an applicant **must appoint an EAP at their own cost to manage the application.**

The applicant must **take all reasonable steps to verify** whether the EAP to be appointed complies with the general requirements for EAPs and must provide the EAP **with access to all information at the disposal of the applicant regarding the application, whether or not such information is favourable to the applicant.**

An EAP must comply with certain requirements in terms of regulation 13. An EAP must -

- be **independent**;
- have **expertise** in conducting EIAs,  
including **knowledge** of the Act, these Regulations and any guidelines that have relevance to the proposed activity;
- perform the work relating to the application in an **objective** manner **even** if this results in views and findings **that are not favourable to** the applicant;
- **ensure compliance with these Regulations**;
- **take into account**, to the extent possible, **all the relevant matters** when preparing the application and any report, plan or document relating to the application;
- **disclose** to the applicant, registered interested and affected parties and the competent authority = (writing of report) **all material information** in the possession of the EAP that **reasonably has, or potential of influencing any decision** to be taken with respect to the application by the competent authority in terms of these Regulations, or the objectivity of any

report, plan or document to be prepared by the EAP in terms of these Regulations for submission to the competent authority.

4.3 Environmental management inspectors (EMI's) are tasked with the enforcement of NEMA's provisions. Discuss the powers of an EMI. (10)

Besides their general powers, which include:

- Questioning suspects,
- Issuing written notices where people refuse to answer questions,
- Inspecting and copying any relevant book or document, as well as taking photographs and samples relevant to any investigation,

EMIs also have the following specific powers:

- may issue a compliance notice if a person has not complied with a term or condition of a permit, authorisation, licence or the provisions of environmental legislation.
- may give an offender an admission of guilt fine instead of being tried by a court for the offence.
- has the power to seize any item as well as to stop, enter and search vehicles, vessels and aircraft.
- can carry out routine inspections on buildings, land or premises to ascertain that there is compliance with the legislation or any permit or authorisation issued.

To sum up: EMIs are organs of state and perform administrative action when, for example, issuing a compliance notice. Their actions are therefore subject to the scrutiny of senior officials who will check that they exercise their powers as set out in the Constitution (s 33) and the relevant legislation.

4.4 What is environmental justice? (5)

\*This is an open ended question based on the interpretation of section 2(4)(c) of NEMA

The National Environmental Management Act 107 Of 1998 (**NEMA**) includes the notion of environmental **justice** by stating:

“environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons” ((s 2(4)(c) of NEMA).

Environmental justice is about social transformation directed toward meeting human need and enhancing the quality of life – economic equality, health care, shelter, human rights, species preservation, and democracy – using resources sustainably.

A central principle of environmental justice stresses equal access to natural resources and the right to clean air and water, adequate health care, affordable shelter, and a safe workplace.

Environmental problems therefore remain inseparable from other social injustices such as poverty, racism, sexism, unemployment, urban deterioration etc.

It includes all of the following elements and aspects such as:

- Accountability = sanctions (criminal etc.)
- Responsibility
- Future generations – inter and intra-generational equity.
- Sustainability (principles of sustainable development)
- Right to environment that is not harmful etc.
- The implementation of rules, regulations and legislation that manage the environment (such as precautionary, polluter pays, preventative etc.)
- Ethical and moral values.

[30]

## 5 THE EXAMINATION: FORMAT, PREPARATION AND WRITING

### Format of the examination paper

- (1) The format of the examination paper will be similar to the format of the October/November 2017 examination paper.
- (2) There will be FOUR (4) questions with sub-questions in the examination and they will count a total of 100 marks.
- (3) The questions in the examination (both short and long questions) will test your knowledge, your insight and your ability to apply theory to practice. Multiple-choice questions form part of the examination paper, similar to those given in your second assignment.
- (4) You do not have to study any additional study material. However, make sure that you study the court cases and the relevant legal principles pertaining to them, as they are discussed in the guide.

### Answering the examination questions

~ As mentioned above, you will write a two-hour examination paper consisting of four (4) (compulsory) questions, counting a total of 100 marks. You must answer all four questions.

~ Read attentively through all the questions in your examination paper in order to gain an idea of what the questions are about. Make sure that you understand the instructions before you start answering the questions. Identify key words and terms.

~ Do not separate subsections of questions, for example, 2(a), then 1(b), then 3(a), by answering them in different places in your examination answer book. If you wish to return to a particular question, simply leave enough space to return to it.

~ Number your answers correctly.

~ Plan your answer roughly before starting to write. You may think that this will take up too much time, but you will in fact gain time by avoiding repetition, irrelevant discussion and confusion.

~ Divide your time according to the number of questions and pay attention to the marks allocated to each question.

~ Avoid repetition and irrelevancies. You will not receive any marks for repeating a fact. Answer questions concisely but not superficially. Include every step in the legal argument in your answer, starting with the first step, no matter how obvious it may seem to you.

~ Distinguish between instructions such as explain, compare, list and analyse. List means just that – no discussion or embellishment is necessary. Make sure that you understand what is expected of you.

~ Give reasons for all your answers (briefly, or fully, depending on what is required). In fact, it is quite a good idea to write as if you are explaining the legal position to an intelligent layperson who knows nothing about the law.

~ When referring to case law, limit your discussion of the facts to the absolute minimum, and concentrate on the legal aspects of the issue. What has happened is of less importance than the reason on which the judgment is based.

~ It is in your own interest to write legibly and intelligibly. Even if your handwriting is a problem, there are still a few things you can do about it: write with dark ink, write on every second line, space your work by

leaving lines open between questions, et cetera. Remember: it is to your advantage if we can read what you have written.

~ Finally, please do not contact us after you have written the examination paper. We are not allowed to discuss the paper with students or to divulge examination results. However, we will be only too happy to discuss the course and any difficulties you may experience before the examination.

All that remains is for us to wish you success in the examination.

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