



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Ref:02/1/5/2

MINISTER

QUESTION NO. 261 FOR ORAL REPLY: NATIONAL COUNCIL OF PROVINCES

A draft reply to **Mr L V Magwebu (Eastern Cape: DA)** to the above-mentioned question is enclosed for your consideration.

**MS NOSIPHO NGCABA
DIRECTOR-GENERAL**

DATE:

DRAFT REPLY APPROVED/AMENDED

**DR B E E MOLEWA, MP
MINISTER OF ENVIRONMENTAL AFFAIRS**

DATE:

NATIONAL COUNCIL OF PROVINCES

(For oral reply)

QUESTION NO. 261 {CO382E}

INTERNAL QUESTION PAPER NO. 29 of 2017

DATE OF PUBLICATION: 10 October 2017

Mr L V Magwebu (Eastern Cape: DA) to ask the Minister of Environmental Affairs:

Whether her department monitors the mining activities nationally to ensure compliance with the applicable legal framework; if not, why not; if so, what are the relevant details?

261. THE MINISTER OF ENVIRONMENTAL AFFAIRS REPLIES:

The exclusive competence to undertake compliance and enforcement in relation to environmental concerns which emanate from mining activities was moved over to the Department of Mineral Resources (“DMR”) with the coming into effect of the One Environmental System that was passed by this Parliament in 2014. In order to execute the compliance monitoring and enforcement function effectively the legal framework further allows the Minister of Mineral Resources to appoint Environmental Mineral Resource Inspectors who have the same powers as Environmental Management Inspectors to enforce the provisions of the National Environmental Management Act (NEMA) and the regulations thereunder as far as they relate to mining and related activities.

In addition to the above, and as far as the NEMA is concerned, the Western Cape High Court in the matter of Mineral Sands Resources versus the Magistrate for the District of Vredendal and Others provided additional guidance in terms of the compliance and enforcement mandate relative to mining matters which trigger the NEMA and its regulations by providing in paragraph 110 of this judgment that the national inspectors from the Department of Environmental Affairs have no jurisdiction to conduct compliance inspections as a result of the legislative changes effected in 2014.

The amendments introduced to NEMA in 2014, did introduce a means for the Department of Environmental Affairs to become involved in compliance and enforcement in relation to matters involving prospecting, exploration, mining or operations. However, NEMA requires a strict statutory

procedure to be followed, which procedure is set out in section 31D(4) to 31D(9) of NEMA. These sections are about the Department acting only when Department of Minerals Resources and/or MEC fail to act. A clear procedure is spelt out on how and when it can be concluded that there is failure to act. The Department of Environmental Affairs cannot become involved in compliance and enforcement in relation to matters involving these operations, unless the correct procedures have been followed in terms of NEMA and both Ministers agree.

However, as far as Specific Environmental Management Acts are concerned, in particular the Integrated Coastal Management Act, (ICMA) (Act 24 of 2008) and the National Environmental Protected Areas Act, (NEM:PAA) (Act 57 of 2003), Environmental Management Inspectors from the national Department of Environmental Affairs and the provincial environmental departments retain the compliance and enforcement function and may therefore take the necessary action where illegal activities in terms of these pieces of legislation are taking place along the coast or within proclaimed protected areas. Further clarity in this regard was obtained in the Supreme Court of Appeal judgment in the matter Mpumalanga Tourism and Parks Agency and Another v Barberton Mines (Pty) Ltd and Others. To this extent, Environmental Management Inspectors continue to monitor and enforce the provisions of the ICMA through joint operations undertaken as part of Initiative 5 of Operation Phakisa and also attend to breaches of the NEM: PAA as and when required.

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