

WHEN MINES BREAK ENVIRONMENTAL LAWS: HOW TO USE CRIMINAL PROSECUTION TO ENFORCE ENVIRONMENTAL RIGHTS
A publication by the Centre for Environmental Rights
SCHEDULES AS AT JANUARY 2013

Note: Because offences and penalties change from time to time, these schedules of offences and penalties related to the environmental impacts of mining will be updated and republished from time to time. Visit www.cer.org.za or email mining@cer.org.za to ensure that you are consulting the latest version of the schedules.

SCHEDULE 1: OFFENCES UNDER THE MINERALS AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002

The Minerals and Petroleum Resources Development Act covers both land-based and offshore mining.

Table 1: OFFENCES UNDER THE MINERALS AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002

Offence	Section	Penalty	Section
Contravening or failing to comply with section 5(4) , which provides that no person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without – (a) an approved environmental management programme or approved environmental management plan, as the case may be; (b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and (c) notifying and consulting with the land owner or lawful occupier of the land in question	98(a)(i)	Fine not exceeding R100 000, or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment ¹	99(1)(a)
Contravening or failing to comply with section 19 , which provides that the holder of a prospecting right must (a) lodge any right for registration at the Mining Titles Office within 30 days of the prospecting right becomes effective or is renewed; (b) commence with prospecting activities within 120 days from the date on which the prospecting right becomes effective or such an extended period as the Minister may authorise; (c) continuously and actively conduct prospecting operations in accordance with the prospecting work programme; (d) comply with the terms and conditions of the prospecting right, relevant provisions of this Act or any other relevant law; (e) comply with the requirements of an approved environmental management programme; (f) pay the prescribed prospecting fees to the State; and (g) pay the State royalties in respect of any mineral removed and disposed of during the course of the	98(a)(i)	Fine not exceeding R100 000, or imprisonment for a period not exceeding two years, or both such fine and such imprisonment	99(1)(a)

¹ Note, however, the exemptions in section 106 of the Act, especially in relation to organs of state and limited mining for non-commercial purposes by landowners and lawful occupiers

Offence	Section	Penalty	Section
prospecting operations			
Contravening or failing to comply with section 20(2) , which provides that the holder of a prospecting right must obtain the Minister's written permission to remove and dispose of bulk samples of any minerals found by such holder in the course of prospecting operations conducted pursuant to such prospecting right	98(a)(i)	Fine not exceeding R100 000 or imprisonment for a period not exceeding two years, or both such fine and such imprisonment	99(1)(a)
Contravening or failing to comply with section 28(1) , which provides that the holder of a mining right or mining permit must, at its registered office or place of business, keep proper records of mining activities and proper financial records in connection with the mining activities. Section 28(2) provides that the holder of a mining right or permit, or the manager of any mineral processing plant operating separately from a mine must submit to the Director-General certain data and information as set out in section 28(2)(a)-(c).	98(a)(i)	Fine not exceeding R100 000 or imprisonment for a period not exceeding two years, or both such fine and such imprisonment	99(1)(a)
Contravening or failing to comply with section 38(1)(c) , which provides that the holder of a reconnaissance permission, prospecting right, mining right, mining permit or retention permit must manage all environmental impacts in accordance with the approved environmental management plan or programme and as an integral part of the reconnaissance, prospecting or mining operation, unless the Minister directs otherwise	98(a)(iii)	Fine not exceeding R500 000, or imprisonment for a period not exceeding a period of ten years, or both such fine and such imprisonment	99(1)(c)
Contravening or failing to comply with section 94 , which provides that no person may obstruct, hinder or oppose any authorised person or any other person in the performance of his or her duties or the exercise of his or her powers and functions in the MPRDA	98(a)(ii)	The equivalent of the penalty that may be imposed for perjury	99(1)(b)
Contravening or failing to comply with section 95(1) , which provides that a holder of a right, permit or permission may not subject any of his or her employees to an occupational detriment on account, or partly on account of any such employee disclosing information to the Minister, the Director-General or any authorised person; (a) regarding the failure by such holder to comply with any provision of this Act; (b) to the effect that such holder is conducting his or her prospecting or mining operation as the case may be in a manner which is contrary to the objects contemplated in section 2(e) and (f) and contrary to the social and labour plan; or (c) that any activity or operation which is being conducted by such holder does not comply with any provision of his Act, any term or condition of such right or any other law	98(a)(ii)	The equivalent of the penalty that may be imposed for perjury	99(1)(b)
Contravening or failing to comply with section 44(1) , which provides that when a prospecting right, mining right retention permit or mining permit lapses, is cancelled or is abandoned or when any prospecting or mining operation ceases, the holder of any such right or permit may not demolish or remove any building structure or object (a) which may not be demolished or removed in terms of any other law; (b) which has been identified in writing by the Minister for purposes of this section; or (c) which is to be retained in terms of an agreement between the holder and the owner or occupier of the	98(a)(v)	The penalty that may be imposed in a Magistrates' Court for a similar offence	99(1)(d)

Offence	Section	Penalty	Section
land, which agreement has been approved by the Minister in writing (Note that section 44(2) provides that 44(1) does not apply to mining equipment, which may be removed lawfully)			
Contravening or failing to comply with any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of the Act	98(a)(vi)	Fine not exceeding R10 000	99(1)(e)
Contravening or failing to comply with any directive by the Minister issued in terms of section 29	98(a)(vii)	Fine not exceeding R10 000	99(1)(e)
Contravening or failing to comply with any other provision of the MPRDA and its regulations as well as the conditions of any right or licence issued under the MPRDA	98(a)(viii)	Fine not exceeding R10 000, ² or imprisonment for a period not exceeding six months, or both such fine and such imprisonment	99(1)(g)
Submitting inaccurate, incorrect or misleading information in connection with any matter required to be submitted under the MPRDA	98(b)	Fine not exceeding R10 000 ³ , or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment	99(1)(g)
Contravening or failing to comply with section 26(3) , which provides that any person, who intends to benefit from any mineral mined inside South Africa outside of the country, may only do so after written notice and in consultation with the Minister	98(c)	Fine not exceeding R500 000 for each day that this section is contravened	99(1)(f)

OFFENCES UNDER REGULATIONS ISSUED IN TERMS OF THE MPRDA

The Mineral and Petroleum Resources Development Regulations were published as Government Notice R 527 in Government Gazette 26275 of 23 April 2004. While these Regulations do not create offences, this aspect is covered by section 98(a)(vii) of the Act which determines that a person is guilty of an offence if he or she contravenes or fails to comply with any other provision of “this Act”. In terms of section 99(1)(e) the maximum fine is only R10 000 and no term of imprisonment is prescribed. This means that the term of imprisonment is left to the discretion of the court.⁴

SCHEDULE 2: OFFENCES UNDER THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998 RELEVANT TO THE MINING ENVIRONMENT

Various offences under NEMA can find application in the mining environment. This is the framework or “umbrella” Act that deals with environmental management in South Africa.

Table 2: OFFENCES UNDER THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

² Adjustment of Fines Act, No. 101 of 1991

³ Ibid

⁴ See section 287 of the CPA

Offence	Section	Penalty	Section
Failing to comply with or contravening section 24F(1)(a) , which provides that a person may not commence with a listed activity specified in terms of section 24(2)(a) or (b) without having been granted an environmental authorisation for the activity by the competent authority or the Minister of Minerals and Energy, as the case may be	24F(2)(a)	Fine not exceeding R5 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	24F(4)
Failing to comply with or contravening section 24F(1)(b) , which provides that a person may not commence or continue with an activity listed in terms of section 24(2)(d), without doing so in terms of an applicable norm or standard	24F(2)(b)	Fine not exceeding R5 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	24F(4)
Failing to comply with or contravening the conditions applicable to any environmental authorisation granted for a listed activity or specified activity	24F(2)(c)	Fine not exceeding R5 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	24F(4)
Failing to comply with or contravening any condition applicable to an exemption granted in terms of section 24M	24F(2)(d)	Fine not exceeding R5 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	24F(4)
Failing to comply with or contravening an approved environmental management programme [Note that any activity that contravenes sections 24F(2)(a) - (e) , is legally justified if it can be shown that the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment]	24F(2)(e)	Fine not exceeding R5 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	24F(4)
Failing to comply with or contravening a directive contemplated in section 24G(2)(a) , which provides that the MEC or the Minister may direct any person from ceasing an activity, either wholly or in part, or to rehabilitate the environment within such time and subject to such conditions as may deem necessary	24G(3)	Fine not exceeding R5 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	24F(4)
Failing to comply with or contravening a condition contained in an environmental authorisation granted by the Minister or the MEC in terms of section 24G(3)(b)			
Failing to comply with or contravening section 28(14)⁵ , which provides that no person may (a) unlawfully and intentionally or negligently commits any act or omission which causes significant pollution or degradation of the environment (b) unlawfully and intentionally or negligently commit any act or omission which detrimentally	28(15)	Fine not exceeding R1 million, or imprisonment for a period not exceeding one year, or both such fine and such imprisonment	28(15)

⁵ Section 28(4) also authorises the (national) Director-General, as well as provincial heads of environmental departments, to issue a directive to persons who fail to take the measures described in section 28(1), and is further elaborated on in sections 28(2) and (3). Such a directive may include conducting of an impact assessment and other specific measures within a specified time. Section 28(15) provides that non-compliance with such a directive is a criminal offence punishable with a maximum penalty of R1 million and/or 1 year of imprisonment. Failure to comply with such a directive further provides the Director General or provincial head with the option of taking the necessary measures to remedy the situation and to recover the costs from the offender. It is important to note that the taking of an administrative action aimed at enforcement, such as the issuing of such a directive, does not preclude a prosecution, and that there is no reason why both the administrative and criminal enforcement measures should not be taken simultaneously.

Offence	Section	Penalty	Section
affects or is likely to affect the environment in a significant manner (c) Refuses to comply with a directive issued under this section			
Failing to comply with or contravening section 30(3) , which provides that a person responsible for creating an emergency incident (defined in section 30) or his/her employer (where the incident occurred in the course of that person's employment) must report (a) The nature of the incident; (b) Any risks posed by the incident to public health, safety and property; (c) The toxicity of substances or by-products released by the incident; (d) Any steps that should be taken in order to avoid or minimise the effects of the incident on public health and the environment	30(11)	Fine not exceeding R1 million, or imprisonment for a period not exceeding one year, or both such a fine and such imprisonment	30(11)
Contravening or failing to comply with section 30(4) , which provides that a person responsible for creating an emergency incident or his/her employer, must (a) Take all measures to contain and minimise the effects of the incident; (b) Undertake clean-up procedures; (c) Remedy the effects of the incident; (d) Assess the immediate and long-term effects of the incident on the environment and public health	30(11)	Fine not exceeding R1 million, or imprisonment for a period not exceeding one year, or both such fine and such imprisonment	30(11)
Failing to comply or contravening section 30(5) , which provides that a person responsible for creating an emergency incident or his/her employer must report to the Director-General, provincial head of department and municipality, within 14 days, such information as is available to enable an initial evaluation of the incident	30(11)	Fine not exceeding R1 million, or imprisonment for a period not exceeding one year, or to both such fine and such imprisonment	30(11)
Failing to comply with or contravening section 30(6) , which provides that a person responsible for creating an emergency incident or his or her employer must undertake specific measures directed by the responsible authority to fulfil his or her obligations under sub-sections (4) and (5) (above)	30(11)	Fine not exceeding R1 million, or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment	30(11)
Failing to comply with or contravening a compliance notice	31N	Fine not exceeding R5 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	31N(3)
(a) Hindering or interfering with an environmental management inspector in the execution of that inspector's official duties (b) Pretending to be an environmental management inspector, or the interpreter or assistant of such an inspector (c) Furnishing false or misleading information when complying with a request of an environmental management inspector (d) Failing to comply with a request of an environmental management inspector	34A(1)	Fine not exceeding R10 000, or imprisonment for a period not exceeding one year, or both such fine and such imprisonment	34A(2)

SCHEDULE 3: OFFENCES IN THE NATIONAL WATER ACT RELEVANT TO THE MINING ENVIRONMENT

The National Water Act deals with fresh water resources (therefore excluding the sea, but including estuaries). A water resource includes rivers, streams, some dams, wetlands, estuaries and groundwater.

Table 3: OFFENCES IN THE NATIONAL WATER ACT 36 OF 1998

Offence	Section	Penalty	Section
Using water in way not permitted under the Act	151(1)(a)		
Failing to provide access to any books, accounts, documents or assets when required to do so under the Act	151(1)(b)		
Failing to comply with any condition attached to a permitted water use under the Act	151(1)(c)		
Failing to comply with a directive issued under: <ul style="list-style-type: none"> • Section 19, which directive is issued by a catchment management agency in relation to an activity or situation which causes, has caused or is likely to cause pollution of water in terms of section 19(3) • Section 20, which directive is issued by a catchment management agency in relation to an emergency incident in terms of section 20(4)(d) • Section 53, which directive is issued by a responsible authority in relation to a contravention of a provision in Chapter 10, contravention of a requirement set or directive given by the responsible authority under Chapter 10 or a condition which applies to any authority to use water, issued under section 53(1) • Section 118, which directive is issued by the Minister in relation to dam safety in terms of section 118(3) 	151(1)(d)	<u>First Conviction:</u> Fine not exceeding R100 000 ⁶ , or imprisonment for a period not exceeding five years, or both such fine and such imprisonment <u>Second or subsequent Conviction:</u> Fine not exceeding R200 000 ⁷ , or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	151(2)
Tampering or interfering in an unlawful manner, either intentionally or negligently, with any waterwork or any seal or measuring device attached to a waterwork ⁸	151(1)(e)		
Failing or refusing to give data or information, or giving false or misleading data or information when required to give information under this Act	151(1)(f)		
Failing to register an existing lawful water use when required by the responsible authority to do so, provided for in section 34(2)	151(1)(g)		
Refusing intentionally to perform a duty, or obstructing any other person in the exercise of any power or performance of any of that person's duties in terms of the Act	151(1)(h)		
Unlawfully and intentionally or negligently committing any act or omission which pollutes or is likely to pollute a water resource	151(1)(i)		
Unlawfully and intentionally or negligently committing any act or omission, which detrimentally affects or is likely to affect a water resource	151(1)(j)		
Failing to register a dam with a safety risk, as is required under section 120	151(1)(k)		
Failing to comply with a temporary restriction on the use of water, which may entail requiring a person to release	151(1)(l)		

⁶ Adjustment of Fines Act, No. 101 of 1991

⁷ Ibid

⁸ 'waterwork' is defined in section 1 as including "...any borehole, structure, earthwork or equipment installed or used for or in connection with water use"

Offence	Section	Penalty	Section
stored water under such a person's control, prohibiting the use of any waterwork, or requiring specified water conservation measures to be taken, in terms of item 6 of schedule 3			
Committing contempt of the Water Tribunal in terms of schedule 6, item 8 , which provides that "contempt" shall entail failing to appear before the Tribunal without good cause after being subpoenaed; failing, without good reason, to provide a book, document or object specified in a subpoena; failing to remain in attendance until excused by the Tribunal after appearing on a subpoena; refusing to take the oath or make an affirmation as a witness when the Tribunal so requires; refusing to answer any question fully and to the best of their knowledge and belief (subject to privilege set out in item 7); behaving improperly during the proceedings; prejudicing or improperly influencing the proceedings of the Tribunal	151(1)(m)		
Where an act or omission by an employee or agent constitutes an offence in terms of the Act, and takes place with the express or implied permission of the employer or principal, the employer or principle is also liable to conviction for that offence	154(a)	Same penalty as employee (since they are guilty of the same offence)	
Where an act or omission by an employee or agent would constitute an offence by the employer or principal in terms of the Act, that employee or agent will, in addition to that employer or principal, be liable to conviction for that offence	154(b)	Same penalty as employer (since they are guilty of the same offence)	
Failing to comply with items 28 to 30 of schedule 4 , or obstructing a person appointed under item 29(2) to investigate the affairs or financial position of and when the Minister has issued a directive to this effect. (This provision is aimed at institutions, board members and employees of the board.) The directive may order the recipient thereof to: <ul style="list-style-type: none"> • hand over specific information (item 28 of schedule 4) • provide the Minister or any person authorized by the Minister with information on the affairs and financial position of the institution, or access to relevant books, accounts, documents and assets of the institution (item 29 of schedule 4) • entry to premises by the Minister in order to take possession of any book, record or asset of the institution which is necessary to obtain any information to which the Minister is entitled in terms of schedule 4, or for the purpose of investigation (item 30 of schedule 4) 	Item 31 of Schedule 4	<u>First Conviction:</u> Fine not exceeding R100 000 ⁹ , or imprisonment for a period not exceeding five years, or both such fine and such imprisonment <u>Second or subsequent Conviction:</u> Fine not exceeding R200 000 ¹⁰ , or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	151(2)

OFFENCES UNDER REGULATIONS ISSUED IN TERMS OF THE NWA

The Regulations on Use of Water for Mining and Related Activities Aimed at the Protection of Water Resources were published under GNR 704 in GG No. 20119, 4 June 1999.

⁹ Adjustment of Fines Act, No. 101 of 1991

¹⁰ Ibid

Table 4: Offences under the Regulations on Use of Water for Mining and Related Activities Aimed at the Protection of Water Resources

Offence	Section	Penalty	Section
▪ Regulation 2 , which provides that any person intending to operate a new mine or conduct any new activity must notify the Department of such intention not less than 14 days before the start of such operation or activity.	Regulation 14 of the Regulations on Use of Water for Mining and Related Activities, GN 704 in GG 20119, 4 June 1999	Fine not exceeding R100 000, or imprisonment for a period not exceeding five years ¹¹	Reg. 14
▪ Regulation 4 , which provides that no person in control of a mine or activity may-			
(a) locate or place any a residue deposit (includes any dump, tailings dam, slimes dam, ash dump, waste rock dump, in-pit deposit and any other heap, pile or accumulation of residue) dam, reservoir, together with any associated structure or any other facility within 100 metres from a watercourse (a river or spring: a natural channel in which water flows regularly or intermittently; a wetland; lake or dam into which, or from which water flows, including bed and banks) or estuary, borehole or well or on water-logged ground, or on ground likely to become water-logged, undermined, unstable or cracked;			
(b) carry on any underground or opencast mining, prospecting or any other operation or activity under or within the 1:50 year flood-line or within a horizontal distance of 100 metres from any watercourse or estuary, whichever is the greatest;			
(c) place or dispose of any residue or substance which causes or is likely to cause pollution of a water resource, in the workings of any underground or opencast mine excavation, prospecting diggings, pit or any other excavation;			
▪ Regulation 5 , which provides that no person in control of a mine or activity may use any residue or substance which causes or is likely to cause pollution of a water resource for the construction of any dam or other impoundment or any embankment, road or railway, or for any other purpose which is likely to cause pollution of a water resource			
▪ Regulation 6 , which provides that those in control of mines should keep the clean and dirty water systems separate. Clean water systems must be kept separate from dirty areas as well, and water collecting in dirty areas must be kept separate from clean water systems			
▪ Regulation 7 , which provides that the person in control of the mine must take reasonable measures to make sure that water systems are kept in a way that prevents the pollution of any water resource through the operation or use of them and that prevents the possibility of damage to the riparian or in-stream habitat			
▪ Regulation 8 , which provides that any person in control of a mine must restrict access to and manage areas containing toxic substances			
▪ Regulation 9 , which provides that any person in control of a mine must ensure water systems are properly designed and managed during a temporary closure of the mine			
▪ Regulation 10 , which provides that no person may extract sand, alluvial minerals or other materials from the channel of a watercourse or estuary, unless reasonable precautions are taken			
▪ Regulation 11 , which provides that any person mining or establishing coal residue deposits must rehabilitate residue deposits			
▪ Regulation 12 , which provides that any person in control of a mine or activity must arrange for a technical			

¹¹ Note that this is subject to regulation 3. In terms of regulation 3, if the Minister in writing authorises an exemption from the requirements of regulations 4, 5, 6, 7, 8, 10 or 11 on his or her own initiative or on application, then the following offences will not apply to such person with exception.

investigation or inspection, which may include an independent review after such person had been requested to do so in writing by the Minister			
▪ Regulation 13 , which provides that any person in control of a mine or activity must provide the manager with the means, and afford him or her every facility required, to enable the manager to comply with the provisions of these regulations			

SCHEDULE 4: OFFENCES IN OTHER LEGISLATION RELEVANT TO THE MINING ENVIRONMENT

A. THE AIR QUALITY ACT

Table 5: OFFENCES UNDER THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004

Offence	Section	Penalty	Section
Contravening section 22(a) , which provides that that no person may conduct an activity listed on the national list, anywhere in the Republic, without a provisional atmospheric emission licence or an atmospheric emission licence	51(1)(a)	<u>First conviction:</u> A fine not exceeding R5 million, or imprisonment not exceeding a period of five years, or both such fine and such imprisonment	52(1) – (3)
Contravening section 22(b) , which provides that no person may conduct an activity in a province which is listed on the applicable provincial list without a provisional atmospheric emission licence or an atmospheric emission licence	51(1)(a)	<u>Second or subsequent conviction:</u> A fine not exceeding R10 million, or imprisonment not exceeding a period of ten years or both such fine and such imprisonment	
Contravening section 25 , which provides that a person may not manufacture, sell or use any appliance or conduct an activity declared as a controlled emitter unless that appliance or activity complies with the standards established in terms of section 24	51(1)(a)	The fine must be determined with consideration of:- (a) the impact, or potential impact, on health, well-being, safety and the environment;	
Contravening section 35(2) , which provides that the occupier of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by an activity on the premises	51(1)(a)	(b) the monetary or other benefits accrued to the convicted person as a result; and	
Failing to submit or to implement a pollution prevention plan as required by section 29(1)(b) or (2)	51(1)(b)	(c) the extent of the convicted person's contribution to the overall pollution load of the area	
Failing to submit an atmospheric impact report by an air quality officer, required in terms of section 30(a)	51(1)(c)		
Failing to notify the Minister of the likelihood of cessation of mining activities in the following 5 years, as required by section 33	51(1)(d)		
Contravening or failing to comply with a condition or requirement of an atmospheric emission licence	51(1)(e)		
Supplying false or misleading information in any application for an atmospheric emission licence, or for the transfer, variation or renewal of such a licence	51(1)(f)		
Supplying false or misleading information to an air quality officer	51(1)(g)		
Contravening or failing to comply with a condition subject to which exemption from a provision of the Act was granted in	51(1)(h)		

Offence	Section	Penalty	Section
terms of section 59			
Failing to comply with the standards applicable to controlled emitters, established in terms of section 24(1)	51(2)	A Magistrates' Court has jurisdiction to impose any penalty prescribed by this Act	
Performing a listed activity resulting in emission of air pollutants at concentrations above emission limits specified in an atmospheric emission licence	51(3)		

B. THE PROTECTED AREAS ACT

Table 6: OFFENCES UNDER THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT 57 OF 2003

Offence	Section	Penalty	Section
Contravening or failing to comply with section 45(1) , which provides that no person may enter, reside in, or perform any activity in a special nature reserve without being exempted from this provision	89(1)(a)	<u>First Conviction:</u> A fine not exceeding R5 million, or imprisonment for a period not exceeding five years or to both such fine and such imprisonment	89(2)
Contravening or failing to comply with section 46(1) , which provides that no person may enter into or reside in a nature reserve, national park or world heritage site without the written permission of the management authority	89(1)(a)	<u>Second or subsequent conviction:</u> A fine not exceeding R10 million, or imprisonment for a period not exceeding ten years, or both such fine and such imprisonment	
Contravening or failing to comply with section 47(2) , which provides that a person or organ of state may not land in or take off in an aircraft in a special nature reserve, national park or world heritage site	89(1)(a)		
(a) other than from a designated landing field; or			
(b) without prior written permission from the management authority			
Contravening or failing to comply with section 47(3) , which provides that a person or organ of state may not fly over or cause an aircraft to fly over a special nature reserve, national park or world heritage site at a level of less than 2500 feet above its highest point, except when:-	89(1)(a)		
(1) it may be necessary for the purpose of authorised landing; or			
(2) in an authorised flight corridor (3A)			
Contravening or failing to comply with section 48(1) , which provides that no one may conduct commercial prospecting or mining activities in a	89(1)(a)		
(a) special nature reserve, national park or nature reserve;			
(b) protected environment without written permission of the Minister and the Cabinet member responsible for Mineral and Energy Affairs; or			
(c) protected area referred to in section 9(b) or (d)			
Contravening or failing to comply with a provision of section 50(5) , which provides that the development, construction or	89(1)(a)		

Offence	Section	Penalty	Section
farming in a national park, nature reserve or world heritage site without prior written approval of the management authority is prohibited			
Contravening a notice issued by the Minister or MEC under section 51 , restricting or regulating in a protected environment	89(1)(b)		
(a) any development inappropriate for the area, given its purpose; or			
(b) the carrying out of activities which may impede such purpose			
Hindering or interfering with a management authority or a member or staff member of a management authority in the performance of official duties	89(1)(c)		
Falsely professing to be a member of staff member of a management authority, or the interpreter or assistant of such an officer	89(1)(d)		

D. THE BIODIVERSITY ACT

Table 7: OFFENCES UNDER THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT 10 OF 2004

Offence	Section	Penalty	Section
Contravening or failing to comply with a provision of section 57(1) , which provides that no one may carry out restricted activities involving a specimen of a listed threatened or protected species without a permit	101(1)(a)	(1) A person convicted of an offence in terms of section 101 is liable to a fine not exceeding R200 000, ¹² or an imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment.	102
Contravening or failing to comply with a provision of section 65(1) , which prohibits carrying out a restricted activity involving a specimen of an alien species without a permit	101(1)(a)		
Contravening or failing to comply with a provision of section 67(2) , which prohibits the carrying out of a restricted activity involving a specimen of an alien species listed by the Minister, in terms of section 67(1), in respect of which a permit mentioned in section 65(1) may not be issued	101(1)(a)		
Contravening or failing to comply with a provision of section 71(1) , which prohibits the carrying out of a restricted activity involving a specimen of a listed invasive alien species without a permit	101(1)(a)	(2) If a person is convicted of an offence involving a specimen of a listed threatened or protected species, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the	
Contravening or failing to comply with a provision of section 81(1) , which provides that no person may, without a permit issued in terms of Chapter 7,	101(1)(a)		
(a) engage in the commercialisation phase of bioprospecting involving any indigenous biological resources without a permit; or			
(b) export any indigenous biological resources for the purpose of bioprospecting or any other kind of research without a permit			

¹² Adjustment of Fines Act, No. 101 of 1991

Offence	Section	Penalty	Section
Contravening or failing to comply with a provision of a notice published in terms of section 57(2) , which notice is published by the Minister and prohibits the carrying out of any activity (a) which is of a nature that may negatively impact on the survival of a listed threatened or protected species; or (b) which is specified in the notice	101(1)(b)	greater.	
Contravening or failing to comply with a provision of a directive issued by a competent authority in writing and in terms of section 69(2) , directing any person who has failed to comply with section 69(1), 65(1) or 67(2) (all relating to permitting and conditions) to take steps necessary to remedy any harm to biodiversity caused by their actions or as specified in the directive	101(1)(c)		
Contravening or failing to comply with a provision of a directive issued by a competent authority in terms of section 73(3) , directing any person who has failed to comply with (1) or (2) (relating to invasive species) to take steps (a) necessary to remedy harm to biodiversity caused by the action of that person or the occurrence of the listed invasive species on land of which that person is the owner; and (b) as may be specified in the directive	101(1)(c)		
Contravening or failing to comply with conditions set out in a permit issued to that permit holder in terms of section 69(1) or failing to take all required steps to prevent or minimise harm to biodiversity	101(2)(a)		
Failing to take the required steps to minimise harm to biodiversity on the part of a person who had been authorised by a permit to carry out a restricted activity involving a specimen of a listed invasive species (section 73(1))	101(2)(a)		
Carrying out an activity for which a permit was issued otherwise than in accordance with any conditions subject to which the permit was issued	101(2)(b)		
Permitting or allowing any other person to do, or to omit to do, anything which is an offence in terms of section 101(2)(a) or (b)	101(2)(c)		
Fraudulently altering any permit	101(3)(a)		
Fabricating or forging any document for the purpose of passing it as a permit	101(3)(b)		
Passing, using, altering or possessing any altered or false document purporting to be a permit	101(3)(c)		
Knowingly making any false statement or report for the purpose of obtaining a permit	101(3)(d)		

E. THE WASTE ACT

A *List of Waste Management Activities that have, or are likely to have a detrimental effect on the environment* ("the listing notice") was published on 3 July 2009.¹³ These regulations essentially comprise of a list of waste management activities, which require authorisation in terms of section 20 of the Act. The listed activities are divided into Category A and Category B activities.¹⁴ Typical activities deal with the storage, transfer, recycling, recovery, treatment and disposal of waste, and sets down certain thresholds depending on the type of waste above which an authorisation is required.

Where a mining company engages in any of these activities, it is required to have an authorisation. Failure to obtain such an authorisation is a criminal offence in terms of section 20, read with section 67(1)(a), and section 68(1) allows for a maximum penalty of R10 million or imprisonment of 10 years, or both, on conviction.

F. THE MINE HEALTH AND SAFETY ACT 29 of 1996

Note that the Mine Health and Safety Act 29 of 1996 contains a general offence of non-compliance with any provision thereof, in section 91. Section 92(7) provides that in the event of a conviction, the court may, in addition to imposing a sentence in respect of the offence and making an order, order the person convicted to repair any damage caused, to the satisfaction of the Chief Inspector of Mines; and comply with a provision of this Act within a specified period of time.

Note also that schedule 8 of the Act [provides for maximum sentences that can be prescribes on conviction of most of the provisions of the Act. Section 92(5) provides that any person convicted of an offence in terms of any section mentioned in Column 1 of Table 1 of Schedule 8 may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Table opposite the number of that section. Only the relevant maximum sentences for the offences highlighted below have been included below.

Table 8: Offences under the Mine Health and Safety Act, 29 of 1996

Offence	Section	Penalty	Section
Failing to ensure employees' safety (employer)	2	Fine not exceeding R1 000 000, or imprisonment not exceeding a period of five years	Schedule 8
Failing to perform certain functions (chief executive)	2A	Fine up to R1 000 000; or imprisonment for a period not exceeding five years	Schedule 8

¹³ See GN 718 in GG 32368.

¹⁴ The reason for the categorization is that if a person wishes to commence, undertake or conduct an activity listed under Category A, they must conduct a basic assessment process, which is set out in the environmental impact assessment regulations made in terms of section NEMA as part of a waste management license application. However, if a person wishes to commence, undertake or conduct a Category B activity, they must conduct an environmental impact assessment process, which is set out in terms of the same regulations, as part of a waste management license application.

Failing to appoint manager (employer)	3	Fine up to R1 000 000; or imprisonment for a period not exceeding five years	Schedule 8
Failing to maintain healthy and safe mine environment (employer)	5	Fine up to R1 000 000; or imprisonment for a period not exceeding five years	Schedule 8
Failing to ensure adequate supply of health and safety equipment (employer)	6	Fine up to R1 000 000; or imprisonment for a period not exceeding five years	Schedule 8
Failing to staff mine with due regard to health and safety (employer)	7(1)	Fine not exceeding R1 000 000 or imprisonment not exceeding a period of five years	Schedule 8
Failing to provide health and safety training to employees (employer)	10	Fine not exceeding R1 000 000 or imprisonment not exceeding a period of five years	Schedule 8
Failing to assess and respond to risk within the workplace (employer)	11	Fine not exceeding R1 000 000 or imprisonment not exceeding a period of five years	Schedule 8
Failing to keep record of medical surveillance confidential and in accordance with the provisions of the Act (employer)	15	Fine not exceeding R500 000, or imprisonment not exceeding a period of five years imprisonment	Schedule 8
Failing to compile an annual report covering employees at the mine (medical practitioner at a mine)	16	Fine not exceeding R500 000, or imprisonment not exceeding a period of five years imprisonment	Schedule 8
Failing to ensure that an article is safe and the use of which is without risk to health and safety when used properly (any person who designs, manufactures, repairs, imports or supplies any article for use at a mine)	21	Fine not exceeding R500 000, or imprisonment not exceeding a period of five years imprisonment	Schedule 8
Failing to take reasonable care for the health and safety of employees (employer)	22	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8

Making any deduction from an employee's wages, or permitting an employee to make any payment to any person, in respect of anything which the employer is obliged to provide or to do in terms of this Act in the interest of the health and safety of an employee (employer)	24	Fine not exceeding R500 000, or imprisonment not exceeding a period of five years imprisonment	Schedule 8
Failing to assist inspector and answer questions (employer or employee)	52	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8
Failing to produce a document issued in accordance with the Mine Health and Safety Act or the Mineral and Petroleum Resources Development Act when such document is requested by the Chief Inspector of Mines or any inspector (any person)	53	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8
Failing to answer questions during an investigation to the best of their ability (any person)	62	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8
Failing to give evidence at an inquiry that has been converted from an investigation and refusing to give such evidence on the grounds that a statement has been previously given, or documents previously been adduced, during the investigation (any person)	66(3)	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8
Failing to give evidence at an inquiry within the law applied in a court of law	71	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8
Removing personal protective equipment from a mine, or causing such equipment to be removed without authorisation from the employer (any person other than an inspector acting in terms of section 50)	84	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8
Causing or permitting an employee under the age of 18 years to work underground at a mine (any person)	85	Fine not exceeding R200 000, or imprisonment not exceeding a period of two years imprisonment	Schedule 8
Contravening or failing to comply with the provisions of this Act by an employer, chief executive officer, manager, agent or employee and thereby causing a) a person's death; or b) serious injury or illness to a person (See section 86A(2) and (3))	86A	Withdrawal or suspension of the permit; or a fine not exceeding R3 million or imprisonment not exceeding a period of five years, or both such fine or such imprisonment.	92(6)
Disclosing any information acquired in the performance of a function in terms of this Act and that relates to the financial and business affairs of an employer or any other person who employs employees (See section 87(2))	87	Fine or imprisonment to be determined by the Court	92(1)

Hindering, opposing, obstructing or unduly influencing of any person who is performing a function in terms of this Act	88	A fine not exceeding R10 000 ¹⁵ , or imprisonment for a period not exceeding six months	92(4)
Obtaining or attempting to obtain a prescribed certificate of competency by means of fraud, dishonesty, false pretences or the presentation or submission of a false or forged document	89	A fine not exceeding R10 000 ¹⁶ , or imprisonment for a period not exceeding six months	92(4)
Having been instructed or summoned to attend an inquiry— (a) failing, without sufficient cause— (i) to appear at the time and place specified; or (ii) to remain in attendance until excused by the person presiding at the inquiry; (b) attending as required, but without sufficient cause— (i) failing to comply with an instruction in terms of section 70(c)(i); or (Note: Section 70(c)(i) empowers a person presiding at an inquiry to instruct anyone to produce a document for the purposes of the inquiry) (ii) refusing to be sworn or to make an affirmation; or (c) attending as required and having been sworn or having made an affirmation— (i) failing, without sufficient cause, to answer any question fully and to the best of that person's ability; or (ii) giving evidence, knowing or believing it to be false	90(a), (b),(c)	<p>Penalty for 90(a) or (b) (i) is the penalty applicable to a similar offence in a Magistrates' Court.</p> <p>Penalty for 90(c)(ii), can be any penalty that may be imposed in law for perjury</p> <p>The remaining subsections not specified are punishable by a fine not exceeding R10 000¹⁷, or to imprisonment for a period not exceeding six months</p>	92(2) 92(3) 92(4)
Contravention/Failure by any person, including an employer to comply with any: a) provision of this Act; b) regulation; or c) condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, prescribed or granted by or under this Act by the Minister, Chief Inspector of Mines, inspector, any person authorised under section 49(4) or any person to whom any power has been delegated or the performance of any duty has been assigned under section 96, commits an offence and is liable to a fine or imprisonment as may be prescribed. Note additional provisions in 1B, 1C, and 91(3) and (4).	91	A fine not exceeding R10 000 ¹⁸ , or imprisonment for a period not exceeding six months	92(4)

END

¹⁵ Adjustment of Fines Act, No. 101 of 1991

¹⁶ Ibid

¹⁷ Adjustment of Fines Act, No. 101 of 1991

¹⁸ Ibid