A Different Standard of Environmental Regulation in Gauteng?

By Peggy Schoeman
Associate, Warburton Attorneys
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Before conducting certain environmentally-impactful activities, such as building a road or storing hazardous chemicals, one must obtain an environmental authorisation in terms of the National Environmental Management Act ("**NEMA**") – the umbrella environmental Act in South Africa. On 2 March 2018, the Department of Environmental Affairs brought into effect the Gauteng Environmental Management Framework Standard ("**Standard"**), which removes this authorisation requirement in the case of certain activities in Gauteng. This article considers the ins and outs of this new Standard.

Under NEMA there are three Schedules, referred to as 'Listing Notices', of 'listed activities' for which an environmental authorisation must be obtained. In applying for an environmental authorisation, a developer is obliged to undertake an environmental impact assessment (referred to as an "**EIA**"). Depending on the nature of the listed activity, NEMA prescribes two kinds of impact assessments: firstly, a basic assessment in the case of 'less impactful' activities listed in Listing Notices 1 and 3, and secondly a full impact assessment for 'more impactful' activities listed in Listing Notice 2. Naturally the basic assessment is a less involved process, and one can generally expect to receive an environmental authorisation within about 7 months, while the full impact assessment is a longer and more detailed process and takes about a year. In both assessment processes, specialists are required to assess the various anticipated impacts of the development, whether on water, air or biodiversity, and there is a 30-day public commenting period in which interested and affected parties (such as landowners, lawful occupiers and neighbours) are entitled to comment on the proposed development. EIAs informed by appropriate specialist studies, as well as proper consultation with affected stakeholders, are two cornerstones of environmental regulation in South Africa. That is why the new Gauteng Standard, which has been promulgated under NEMA, is so significant – it does away with both of these processes in certain cases.

In short, the Standard excludes a number of the listed activities under Listing Notice 1 as well as handful of the listed activities under Listing Notice 2 from the ordinary NEMA EIA authorisation process, provided these activities take place within certain demarcated urban, industrial or commercial 'zones' in Gauteng (Zones 1 and 5). In terms of the kinds of listed activities which are

excluded, the general theme is essential service delivery, namely infrastructure related to the conveyance of water, electricity transmission and distribution, sewage treatment and transportation and the expansion of existing facilities. If a developer intends to undertake one or more of these excluded listed activities within Zones 1 and 5 in Gauteng, what is now prescribed in terms of the Standard is a 30-day registration process. In this way, one fills out a fairly straightforward form, and within 30 days, you should be lawfully entitled to proceed after receipt of a registration number. Notably, there is no prerequisite to undertake an EIA inclusive of various specialist studies on the potential impacts of the proposed activities, and there is no obligation to inform and consult with affected parties (the Standard only indirectly mandates consultation with the landowner (one of many affected stakeholders) in the registration form).

There are three critical points to note though *if* the Standard applies. Firstly, the Standard does not absolve a developer from other authorisation requirements, whether a water use licence, atmospheric emissions licence, waste management licence or rezoning approval; the Standard only excludes the NEMA environmental authorisation requirement for certain NEMA listed activities provided these take place in Zones 1 and 5 in Gauteng. Secondly, there are various conditions which will *automatically* apply to a development falling within the ambit of the Standard, which the developer must comply with. This includes management measures related to various environmental impacts, from air quality control to waste management, to the protection of water resources and biodiversity conservation. Lastly, it is important to bear in mind that section 28 of NEMA provides for an overarching environmental duty of care which applies to all developments and activities undertaken within South Africa. In this way, one must at all times adopt reasonable measures to prevent the pollution and degradation of the environment. Developments, irrespective of what approvals are required or have been obtained, may not simply go ahead unabated at the environment's expense. Notably the failure to adhere to this duty of care constitutes a criminal offence under NEMA which carries significant penalties.

The intention of the Standard is no doubt to reduce red tape and encourage development in already built-up areas in Gauteng – something which is laudable in light of South Africa's current economic climate. Having said that, developments must be sustainable in accordance with section 24 of our Constitution in that social, economic and environmental factors should be taken into consideration so as to ensure that development serves both present and future generations. While certain adjustments to the NEMA authorisation process may be warranted so as to facilitate quicker development, the Standard's wholesale removal of development-specific EIAs,

particularly for the ‘more impactful’ activities in Listing Notice 2, as well as its exclusion of public participation, may be steps too far along an unsustainable path.