



ICCL
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Introducing mandatory public participation in site assessment and remediation projects

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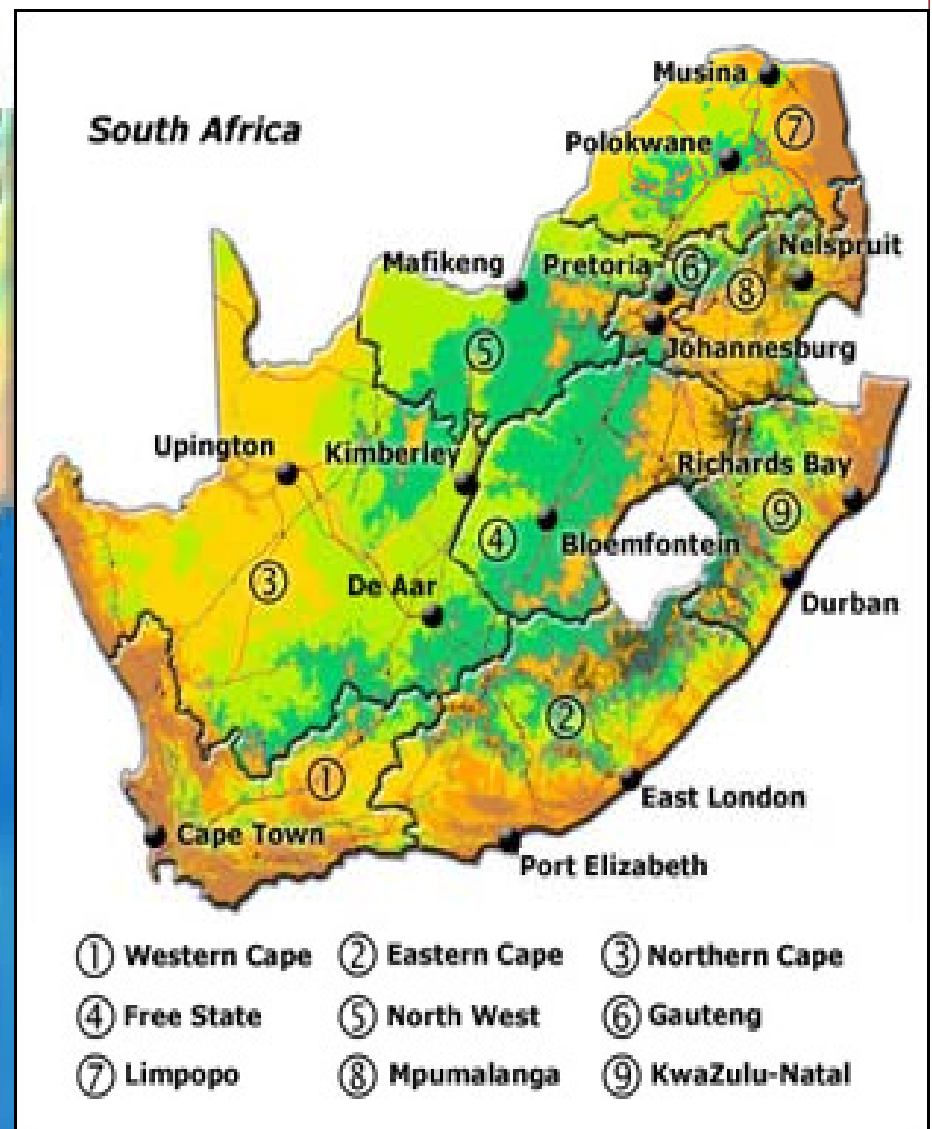
environmental affairs
Department
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Presentation Outline



- ◆ South Africa
- ◆ Legislative Background
- ◆ Waste Act
- ◆ Historical practices
- ◆ New Regulations
- ◆ Case studies

South Africa



South Africa

- ◆ **Size:** a total land area around 1.2-million square kilometres, measures some 1 600km from north to south, and roughly the same from east to west.
- ◆ **Coastline:** long coastline stretching more than 2 500km
- ◆ **Population:** Estimated at 50.5 million
- ◆ **Industries:** Mining, Agriculture, Manufacturing, Steel, Petroleum
- ◆ **Waste Management Facilities:** more than 1200

Legislative background

Constitution, 1996

National Environmental Management Act (1998)

White Paper on IP&WM (2000)

NEM: Waste Act, 2008

**Waste Regulations, EIA Regulations,
Norms and Standards**

Legislative Background

- **RSA Constitution** states that ‘Everyone has a right to an environment that is not harmful to their health and well being’
- National Environmental Management Act (NEMA) (1998)- framework legislation for environmental management
- National Environmental Management: **Waste Act** (2008) – came into effect on 1 July 2009
- National Water Act, and other legislation

Waste Act

- ◆ National Environmental Management: Waste Act (Act 59 of 2008) came into effect on 1 July 2009
- ◆ Delayed provisions dealing with site assessments and remediation of contaminated land section (s); Part 8 (section 35-41)

Contaminated Land

- Identifies the status and risk of contaminated sites and provides a legal mechanism for remediation activities to be instigated and controlled
- The Minister may declare investigation areas- where high risk activities have been undertaken or suspected
- Development of contaminated land register
- Linked to Polluter Pays principle
- The site owner will be ordered to undertake a site assessment
- Where contaminated occurred- remediate at own cost
- Government will need to remediate contaminated land in areas where the polluter cannot be traced- Funding might be challenge

Historical Practices

- ◆ Remediation of contaminated was informed by a need to protect water resources
- ◆ Directives issued by the Water Affairs Department
- ◆ Mainly based on voluntary applications by polluters
- ◆ Private affair between the Regulator and Polluter
- ◆ Set authorization requirements and conditions
- ◆ **Public participation not mandatory**

Historical Practices

- ◆ Environmental protection is a basic human right
-Constitution
- ◆ Right and access to information is legislated
- ◆ Environmental Laws mandates public participation (Central focus of the Environmental Impact Assessments reports)
- ◆ Public view informs the decision of the Regulator
- ◆ Number of cases where development was stopped due to public pressure

Historical Practices

- ◆ Remediation technologies and methods has been to a large extent :
 - excavation and disposal methods although to some degree (dig and dump)
 - new technologies including phyto-remediation, biological and other methods are slowly being introduced
- Mining sector- required to make provision for rehabilitation before authorisation is issued

New Regulations

- ◆ Department of Environmental Affairs busy developing Regulations for site assessments and reports
- ◆ Norms and Standards for the remediation of contaminated land and soil quality
- ◆ Need to take into account the affected communities
- ◆ Challenge: balance the anxiety of Industry and threat of law suits, mis-conceptions and undue public pressure
- ◆ To what extent must PP be conducted
- ◆ Threshold or distance from affected communities

New Regulations

- ◆ Currently: voluntary remediation from responsible industries
- ◆ Pollution containment measures through licensing of activities, compliance monitoring and enforcement
- ◆ Important to note: Waste Act provisions on contaminated land apply retrospectively

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Framework

- ◆ Regulations and Norms and Standards- informed by the Framework for the Management of Contaminated Land (2010)
- ◆ Approach- holistic and tiered, risk-based approach founded on international best practice, to address remediation in a uniform manner across the country.
- ◆ Relevant irrespective of the sector of occurrence to safeguard both human health and the natural environment.

Framework

- ◆ The Framework consists of the following components:
 - Protocol for Site Risk Assessment
 - Reporting Norms and Standards for Contaminated Land
 - The Derivation and Use of Soil Screening Values
 - Application of Site Specific Risk Assessment
 - Quality Control and Quality Assurance of Field Sampling and Laboratory Analysis
- Based on source-pathway-receptor model
- 1 km radius for ground water users, but also covers off site contamination
- Necessitates wider public consultation

Case Studies-Asbestos

- ◆ Between 1800s – 2001 asbestos was mined in SA
- ◆ SA ceased to be a supplier of raw milled asbestos fibre in June 2003
- ◆ The health implications of exposure to airborne asbestos fibers has been known since the 1930s with specific links to certain cancers being made in SA in the early 1960s
- ◆ Chrysotile asbestos is still mined in Zimbabwe our land locked neighbor
- ◆ Required; Eradication of asbestos buildings
- ◆ Severely affected three provinces
- ◆ Costs of complete eradication enormous
- ◆ Regulations prohibiting the use of asbestos and asbestos products were promulgated in March 2008
- ◆ The remediation plan and costing model has been developed to deal with Secondary Asbestos Contamination



Case Studies

- ◆ Mercury recycling plant in Durban, KwaZulu-Natal province, made international headlines- death of workers and lawsuits
- ◆ Import of hazardous waste for recycling, improper management practices leading to leakage and contamination
- ◆ Leaking Storage tanks

Unauthorised waste disposal



In Conclusion

- ◆ SA has successfully promulgated legislation to deal with remediation of contaminated land
- ◆ Polluters will have to remediate at own cost
- ◆ Legislation provides a system for identification, assessment and remediation
- ◆ Need to introduce mandatory public participation to ensure the public is informed of the potential impacts and extent of contamination and be part of the solution
- ◆ Promote transparency
- ◆ ***Question remains on the extent of public participation, km radius where it will apply, costs, time factor and potential risks***

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Thank you

