

# **HEALTH, SAFETY AND ENVIRONMENTAL LEGISLATION IN SOUTH AFRICAN MINING AND MINERALS INDUSTRY**

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## **Introduction**

Today the owners and operators of many factories and mines recognize that productive work environments are safe and free from health hazards and have no major sustained impact on the environment. South African chemical and mining companies that compete in the global market have recognized that high standards of health and safety are vital for staying in business. These companies use the local legislation, as the minimum standard that they comply with and they strive towards best international practices as far as is practical. For example local legislation requires all manganese operations to keep all exposures longer than an 8 hour per day below  $1 \text{ mg/m}^3$  – responsible companies are working towards levels of  $0.2 \text{ mg/m}^3$ . Nonetheless, available occupational injury and disease data illustrate that South African workplaces are far from ideal. Much more must be done to protect the health and safety of workers as well as communities and the environment exposed to hazards emanating from the workplaces. In the mining sector, despite gaps in the data, it is widely accepted that the burden of occupational diseases on workers and their communities is now greater than injuries. This assessment is astounding given that the rate and severity of injuries in our mines are unacceptably high.

## **Occupational Health and Safety Legislation**

The Mine Health and Safety Act (MHSA) came into effect on 15 January 1997 replacing the Minerals Act 50 of 1991 as the basis for regulating occupational

health and safety in South African mines. It has been said, “the MHSA will substantially alter the culture and politics of health and safety in the mining industry. It can be regarded as a new Constitution for the mining industry.” The MHSA replaces those sections of the Occupational Diseases and Mines and Works Act 78 of 1973, which regulated the control of occupational health hazards in the mines thereby consolidating the provisions dealing with the control of occupational health into a single statute.

MHSA was enacted after extensive policy review undertaken by the Commission of Enquiry into Health and Safety in the Mines (“the Leon Commission”) which published its report and recommendations in 1995. The Act, as well as the subsequent Mine Health and Safety Amendment Act of 1997, was developed through a tri-partite consultation process involving representatives of government, employers and trade unions. As a result of the high level of participation in its drafting, the Act enjoys substantial legitimacy among employers and workers in the industry.

The Leon Commission concluded that the mining industry had taken inadequate steps to protect workers from work related health conditions. There was no evidence indicating a decline in the prevalence or severity of the major occupational diseases in the mining industry during the past 20 years. Legislation had been inadequately enforced and the State’s enforcement agencies had not been able to control occupational health problems. This led to the Commission to recommend a major legislative restructuring coupled with the devotion of greater resources to enforcing of mine health and safety standards. Other recommendations include:

- Mine management must establish health and safety management systems incorporating the principles of risk assessment
- Urgent action must be taken to upgrade the standards of practice for measuring workplace exposures and conducting medical surveillance so that workplaces giving rise to disease and injury could be identified and targeted

- All mines should implement an expert occupational health programme as part of their risk assessment system
- The law should entrench basic worker's rights, promote active worker participation in health and safety and create institutions for tri-partite consultation on health and safety law and policy

The principle features of the MHSA are:

- The primary responsibility for ensuring a health and safe working environment in mines is placed on the mine owner. The Act sets out in detail the steps that employers must take to identify, assess records and control health and safety hazards in the mine
- The Act entrenches basic worker rights, most notably, the right of workers to participate in health and safety decisions, the right to receive health and safety information, the right to training and the right to withdraw from the workplace in face of danger
- The Act establishes representative tri-partite institutions to promote a culture of health and safety and develop policy, legislation and regulations
- The responsibility for enforcing MHSA lies with the Mine Health and Safety Inspectorate. The Inspectorate's powers are recast and include the power to impose administrative fines upon employers who contravene the MHSA. The Act also contains innovative approaches to the investigation of accidents, diseases and other occurrences that threaten health and safety.

Most duties created by the MHSA are qualified by the term "reasonably practicable". This determines the standard of care required of employers, employees and Occupational Medical Practitioners. Determining what is "reasonably practicable" is a two-stage inquiry. A health and safety measure is practicable if it is feasible or can be implemented without practical difficulty. However, whether it is reasonable practicable for the employer to implement depends on an evaluation of the following factors:

The severity and scope of the hazard or risk concerned

The state of knowledge reasonably available concerning that hazard or risk and any means of removing or mitigating that hazard or risk

The availability and suitability of means to remove or mitigate that hazard or risk

The cost and the benefit of removing or mitigating that hazard or risk

There are few South African cases that offer practical guidance on interpreting this standard of care. However, assistance can be obtained from decisions in countries whose legislation uses similar terminology. For instance, the English courts have decided that the fact that particular safety precautions are applied universally in an industry does not always mean that they are reasonably practicable. The standard may require an employer to adopt safer methods. The provision of a healthy and safe working environment must take account of the imperfections of human nature.

## **Environmental Legislation**

Environmental legislation in South Africa has undergone a major revamp over the past 5 years. The following major environmental legislation is applicable to factories and mines in South Africa.

### **Minerals Act 50 of 1991**

- Regulation 992 (effective 2000) requires the annual submission of an Environmental Management Programme (EMPR) performance assessment report to track the compliance levels of mining operations to their commitments made in the EMPR.
- Minerals Development Bill (expected towards end 2002). Mining will no longer be allowed under a temporary mining authorization, an approved EMPR will be a pre-requisite for new ventures.

### **National Water Act 36 of 1998**

- Licensing / authorization of water imposes more control over water use.
- Section 19 refers to strict liability without negligence or intent. This implies that a company can be held responsible for pollution emanating from its property even if it can't be proven without a doubt that the company is directly responsible for the pollution.
- Section 153 & 154 provide for unlimited fines, clean-up costs and damages in the case of a successful prosecution under the Act.
- The introduction of the Waste Discharge Charge System (WDCS) by the Department of Water Affairs also includes a pricing strategy. The latter will mean that a significant levy will be imposed on polluted water leaving the property of a company.
- Regulation 704 (July 1999) refers to stringent measures in terms of pollution prevention in the Mining Sector such as restriction on location of waste sites, freeboard on dams, erosion protection, etc.
- White Paper on Integrated Pollution Control & Waste Management will eventually mean a separate document for mine waste management and hence more stringent and costly prescriptive measures.

### **Atmospheric Pollution Prevention Act 45 of 1965**

- More emphasis will be on ambient pollution levels, i.e. moving away from merely stack monitoring.
- Acceptable pollution levels will be determined per zone, i.e. expansions / development in certain areas will be subject to the assimilative capacity of the specific area.

### **Environmental Conservation Act 73 of 1989**

- Listed activities as well as scheduled processes defined in the act which requires environmental impact assessments prior to operation / construction by independent approved consultants;

- Speculation of including issue of closure financial provision for sites other than mining operations (covered under the Minerals Act)

#### **Promotion of Access to Information Act 2 of 2000**

- Compulsory disclosure of environmental records under certain conditions mentioned in section 70 of this Act, i.e. when the disclosure will reveal a violation of the law and/or revealing a significant threat to the environment or health of citizens.

#### **National Road Traffic Act 93 of 1996**

- New regulations on transport of hazardous substances;
- Receiving of listed goods if quantity exceeds specified volume requires special treatment.

#### **National Environmental Management Act 107 of 1998**

- Enables the public to institute private prosecutions for environmental violations.
- Provides for the personal liability of directors of a company who serves on the board of directors at a time when environmental violations.
- Provision is made for extensive penalties, including the cost of remediation and the legal cost incurred by the Applicant in a criminal or civil court case;

### **Conclusion**

There have been major structural and content changes to health safety and environmental legislation in South Africa over the past 5 years. Although the performance of industry is not up to world standards at the moment the trends are in the right direction and with a lot of hard work from all the stakeholders success will be inevitable.