

# 2nd draft of Proposed Financial Provisioning Regulations published for comment

By [Garyn Rapson](#)

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The minister of environmental affairs has published the long-awaited second draft of the *Proposed Regulations Pertaining to the Financial Provision for the Rehabilitation and Remediation of Environmental Damage caused by Reconnaissance, Prospecting, Exploration, Mining or Production Operations* (2nd Draft FP Regulations) for comment.



Source: Environment News South Africa

Originally promised before the end of December 2018, the mining and oil & gas industries have now been afforded a final opportunity to submit representations or objections on the 2nd Draft FP Regulations. The deadline for submissions is 1 July 2019.

These regulations seek to entirely replace the Nema Financial Provisioning Regulations, published on 20 November 2015, as amended (Financial Provisioning Regulations, 2015).

## Highlights of the 2nd Draft FP Regulations

### 1. Focus on facilitating environmentally sustainable mining

For the first time, the 2nd Draft FP Regulations highlight that the purpose of setting aside financial provisioning is to ensure that operations can be brought to the approved sustainable end state at closure.

Companies have the scope to define a credible sustainable end state in the final rehabilitation, decommissioning and mine closure plan (Appendix 2) which is to be submitted. Appendix 2 says that the sustainable end state must reflect local conditions, regulatory complexities, stakeholder expectations, environmental opportunities and technical solutions for the infrastructure and facilities to support the sustainable end state.

The mind shift from classic mine closure (returning the land to its pre-mining state) to thinking focussing on a transitional economy is hugely encouraging. Opportunities for agri-processing, water reclamation plants and power-plants on mined out areas are abundant and will become a legislative imperative.

### 2. Financial vehicles

The previous restrictions on the use of trust fund contributions have been removed and contributions to 'closure rehabilitation companies' continue to be recognised as a permissible financial vehicle.

Companies will have the leeway to structure their financial provisioning to best suit their needs.

The founding documents of a trust deed or closure rehabilitation company will need to be aligned to the minimum requirements set out in Appendix 6 and financial guarantees will need to be aligned with the template provided for in Appendix 7.

### **3. Section 11 and 102 applications**

The 2nd Draft FP Regulations continue to propose that applications for section 11 consent or section 102 amendments under the MPRDA will be formally regulated i.e. updated financial provisioning reviews and adjustments are likely to be required as a pre-requisite to obtaining these approvals.

### **4. Calculating financial provisioning**

The proposed methodologies for calculating financial provisioning for new (Appendix 4) versus existing (Appendix 5) operations have been revised and simplified.

The calculation for existing operations includes all current disturbed areas, areas to be disturbed over the next 12 months and residual and latent liability associated with the premature closure.

Funds for the costs required to implement the activities for annual rehabilitation must be funded out of the operational budget of the holder.

### **5. Early access to financial provisioning**

Withdrawal applications continue to be contemplated to access funds required to facilitate final rehabilitation and closure activities. Such applications will be strictly regulated i.e. can only be submitted within 10 year period before closure, one application per year, subject to ministerial approval etc.

### **6. Timing**

Holders of mining / prospecting rights or permits who applied for the right or permit before 20 November 2015 will be

expected to comply with the new regulations by no later than 3 months following the first FYE of the holder post 19 February 2020.

Depending of the holders FYE this will be a welcomed proposal.

## **7. Audit chain**

CEO sign-off; public access to financial provisioning documentation; and third party, independent specialist requirement to prepare financial provisioning reports and audits, remain applicable under 2nd Draft FP Regulations.

Industry has one final chance to influence the content of the 2nd Draft FP Regulations before they are published as final to replace the Financial Provisioning Regulations, 2015.

## **ABOUT THE AUTHOR**

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