

Grade 9 Life Orientation Worksheet

Environmental law

1. Write a summary of environmental law (individual activity)

14. ENVIRONMENTAL LAW

14.1 Introduction

The three fundamentally important pieces of South African environmental legislation are:

- The Constitution of the Republic of South Africa Act, 1996
- The National Environmental Management Act, 1998
- The Environment Conservation Act, 1989

14.2 The Constitution

14.2.1 The Constitution entrenches the fundamental right of every person to an environment "..... which is not detrimental to his/her health or wellbeing".

14.2.2 Section 24 affords to everyone a right:

14.2.2.1 to an environment that is not harmful to their health or wellbeing

14.2.2.2 to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that:

14.2.2.2.1 prevent pollution and economical degradation

14.2.2.2.2 promote conservation

14.2.2.2.3 secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

14.3 The National Environmental Management Act

14.3.1 The National Environmental Management Act is intended to integrate environmental management countrywide, by establishing principles to serve as a general framework for environmental matters and providing guidelines for the interpretation, administration and implementation of the National Environmental Management Act and any other environmental law.

14.3.2 Each identified organ of state exercising environmental functions is required to prepare an environmental implementation and management plan and thereafter to exercise its functions in accordance with the plan. The plan is submitted to the Committee for Environmental Co-ordination and the Director General of Environmental Affairs and Tourism (and in turn to the Minister of Environmental Affairs and Tourism) followed by annual reports.

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- 14.3.3 The National Environmental Management Act creates a duty on any person who causes, has caused or may cause significant pollution or degradation to take reasonable measures to prevent, minimise and rectify significant pollution and environmental degradation. There is no stipulated threshold limit of pollution that triggers the obligation to remediate and no legislated standards to which contamination must be remediated; what is required is the taking of reasonable measures. Non-compliance with the duty of care allows a competent authority to require that specified measures be taken (and if not taken, the competent authority may take those steps itself and recover the costs from various parties). Liability is potentially retrospective (although a recent judgment held that it does not operate in respect of pollution caused prior to its coming into effect (in January 1999)). Proposed legislative amendments do aim to make the duty of care retrospective and therefore applicable to pollution or degradation which occurred at any time.
- 14.3.4 The creation of a "cradle to grave" obligation for pollution or degradation of the environment is extremely important, together with methods of enforcement. The National Environmental Management Act also creates the possibility of a class action against any entity for potential or actual adverse consequences of a particular activity on the environment.
- 14.3.5 Amendments to the National Environmental Management Act have introduced significant provisions relating to enforcement and compliance with the introduction of a dedicated environmental enforcement team. Environmental Management Inspectors have wide powers comparable to police officers and may conduct routine or other search and seizure operations.
- 14.3.6 The Minister (at national level) and the MEC (at provincial level) are empowered to identify activities that require environmental authorisation prior to commencement and/or geographical areas in which listed activities may not be commenced without pre-authorisation which may not be granted without compliance with or exemption from environmental impact assessment (EIA) regulations.
- 14.3.7 During 2006, new EIA regulations were promulgated. These list the activities that would trigger the need for environmental authorisation from the relevant environmental regulatory authority, usually the provincial environmental department but in some cases in particular, the national Department of Environmental Affairs and Tourism.
- 14.3.8 The new regulations repeal those made under the Environment Conservation Act and significantly add to them. The new regulations were enacted to streamline the EIA procedure as well as to shorten time periods from date of application to date of authorisation. Draft amendments to the new regulations and their listed activities are presently under review.

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14.4 The Environment Conservation Act

14.4.1 The Environment Conservation Act ECA was, prior to the enactment of the National Environmental Management Act, the primary legislation governing protection and control of the environment, but the enactment of the National Environmental Management Act and its repeal of parts of the has substantially eroded the powers of the ECA. The provisions that have survived deal with, amongst other incidental issues, protected natural environments, waste management provisions (which will shortly be repealed), limited development areas, regulations on noise, vibration and shock, general regulatory powers and various provisions relating to offences and penalties.

14.4.2 The original listed activities that would trigger an EIA investigation have been repealed by the new EIA regulations that have been promulgated under the National Environmental Management Act.

14.5 Other legislation

In addition to these three important Acts, there is an abundance of legislation dealing with various aspects of environmental law the most relevant being:

14.5.1 The National Water Act, 1998: The National Water Act controls pollution of water sources, regulates water use, water use charges, the protection of water resources and the granting of licences to use water. The National Water Act is important, as water is a limited resource in South Africa. The National Water Act creates a hierarchy of water requirements, the first being the maintenance of a reserve needed to maintain the natural environment. Water users are invited to apply for licences in respect of a particular water use and the procedures for this application are set out in the National Water Act. The licence then may or may not be issued or may be issued subject to conditions, including conditions governing permissible levels of chemicals in discharged wastewater. This Act also creates a duty of care similar to that imposed by NEMA regarding water resources with similar consequences for non-compliance.

14.5.2 The National Environment Management: Air Quality Act, 2004: Ultimately, all sections of the 1965 Atmospheric Pollution Prevention Act will be repealed by section 60 of the National Environmental Management: Air Quality Act. At present, various provisions in the 1965 Act relating to, for example, the regulation of atmospheric emissions, have not yet been repealed. The Act, which came into effect on 11 September 2005, entrusts the Department of Environmental Affairs and Tourism with the task of preventing pollution and ecological degradation, while at the same time promoting justifiable economic and social development. Metropolitan and district municipalities are charged with issuing atmospheric emission licenses for certain listed activities. It must be shown that the best practical means are being employed to limit air pollution before these certificates will be issued. Penalties and criminal

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- sanction are imposed for non-compliance with the National Management: Air Quality Act.
- 14.5.3 The National Environmental Management: Biodiversity Act, 2004: The Act seeks amongst other things, to manage and conserve biological diversity, to protect certain species and ecosystems, to ensure the sustainable use of biological resources and to promote the fair and equitable sharing of benefits arising from bio-prospecting involving those resources. It also establishes the South African National Biodiversity Institute.
- 14.5.4 The National Environmental Management: Protected Areas Act, 2003: Protected areas such as nature reserves and special nature reserves are declared and managed in terms of this Act. Depending on the nature of the protected area, certain activities (such as mining) may require Ministerial consent or be prohibited outright. The Act also aims to promote the sustainable use of protected areas and the participation of local communities in such areas. In addition, it provides for the continued existence of the South African National Parks.
- 14.5.5 The National Environmental Management: Waste Act, 2008: The Act seeks to regulate waste management in South Africa by introducing a number of measures such as national norms and standard, a national waste information system, compliance and enforcement and more specific waste management measures. Waste management related activities will be authorised in terms of this Act. Ultimately it will also introduce far reaching provisions relating to the declaration and remediation of contaminated land. Save for various provisions (including those relating to contaminated land), the Act will come into effect on 1 July 2009.
- 14.5.6 The Mineral and Petroleum Resources Development Act, 2002: The Minerals and Petroleum Resources Development Act (the MPRDA) repeals the 1991 Minerals Act with effect from 31 April 2004 in its entirety, and significantly changes the operating framework of the mining and petroleum industries with effect from 1 May 2004. The new Act vests significant control of the South African resources in the hands of the National Minister of Minerals and Energy, with the state becoming custodian of all mineral and petroleum resources. There is added focus on environmental issues, with regulations promulgated to deal with the requirements for an environmental management program report, which is required to be approved by the Minister of Minerals and Energy prior to the issue of new prospecting or mining rights and certainly prior to the commencement of any mining activity. There is also significant focus on mine closure from an environmental standpoint. In terms of a number of recent amendments to the MPRDA and the NEMA, environmental matters relating to mining will soon be regulated under NEMA instead of the MPRDA. The proposed amendments to the EIA Regulations will also include, amongst others, prospecting and mining as a

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- listed activity which requires an environmental authorisation.
- 14.5.7 The Conservation of Agricultural Resources Act, 1993: The Conservation of Agricultural Resources Act aims to ensure that the production potential of the land is retained. To this end, it provides for control over utilisation of the natural agricultural resources to promote conservation of soil, water sources and vegetation and combat weeds and invader plants. The Minister of Agriculture may prescribe control measures which land users must observe.
- 14.5.8 The Maritime Zones Act, 1994: The determination of the territorial jurisdiction of South Africa impacts on the management of marine resources and pollution. There is in addition a plethora of legislation pertaining to maritime pollution, predominantly related to dumping at sea.
- 14.5.9 The Marine Living Resources Act, 1998: Provision is made for conservation of the marine Eco-system, the long-term utilisation of marine resources and control of marine resources in a fair and controlled manner. Licensing, rights of access, seasons, fishing and other matters are dealt with in terms of regulations made under the Marine Living Resources Act.
- 14.5.10 The Nuclear Energy Act, 1999: The South African Energy Corporation Limited was established under the Nuclear Energy Act to oversee the implementation of the Safeguards Agreement relating to the Nuclear Non-Proliferation Treaty, to regulate nuclear fuel, nuclear material and equipment, and to prescribe measures governing the discarding of radioactive waste and the storage of irradiated fuel.
- 14.5.11 The National Nuclear Regulator Act, 1999: The objects of the National Nuclear Regulator Act are to establish a National Nuclear Regulator to regulate nuclear activities and to provide for safety standards and regulatory practices for protection of persons, property and the environment against nuclear damage.
- 14.5.12 The National Radioactive Waste Disposal Institute Act, 2008: The Act establishes the National Radioactive Waste Disposal Institute, the function of which will be to manage radioactive waste disposal on a national basis. The Act also provides that generators of radioactive waste are responsible for all liabilities associated with that waste until the Institute has received and accepted it in writing. The Act will commence on a date to be proclaimed.
- 14.6 Summary
- South Africa's fragmented environmental legislation has resulted in problems of comprehension and enforcement. Although there remains much to be accomplished in educating the private and public sectors in their responsibilities to the environment and in creating a policing and enforcement procedure, the National Environmental Management Act and the specific legislation promulgated under it is a significant and positive step forward.
- Certainly the trend in South Africa has turned towards environmental

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awareness and planning and environmental issues are increasingly under the spotlight. Given the consequences of a historically *laissez faire* attitude towards environmental matters, few transactions in South Africa do not require environmental expertise.

The National Environmental Management Act places the responsibility of environmental degradation firmly at the door of directors of companies in certain instances, which goes a long way towards heightening the profile of the conservation of the environment. Transgressors of environmental laws are being identified and exposed through the media, and now, increasingly the implementation of the National Environmental Management Act's objectives and policing of transgressors is being secured by the Department of Environmental Affairs and Tourism's Enforcement Directorate, colloquially termed the "*green scorpions*".

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Read through the above text, detailing the Environmental Law of South Africa.

Write a short summary of the laws that protect environmental health in South Africa.

Your teacher will assess your summary using the rubric below.

	8–10	5–7	3–4	1–2
Content (10 marks)	Excellent, detailed, and factually accurate.	Content is informative and sufficient to achieve purpose.	Content is not totally adequate. Does not achieve purpose.	There is too little content. Content is inaccurate.
	4, 5	3	2	1
Language and vocabulary (5 marks)	Wide range of vocabulary used, fewer than three minor language errors.	Vocabulary sufficient for task. Fewer than five minor language errors.	Vocabulary only fair. Ten or more language errors.	Very limited vocabulary. Student is unable to use the correct language structures.
	4, 5	3	2	1
Style (5 marks)	Student writes well and produces an excellent summary.	Student's summary and style of writing are adequate.	Summary rambles and misses the point.	Summary is incoherent and inadequate.

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Suggested Solutions

Task number	Possible marks	Solution
1	20	See rubric in Appendix of Assessment Tools.

Rubric to assess summary

	8–10	5–7	3–4	1–2
Content (10 marks)	Excellent, detailed, and factually accurate.	Content is informative and sufficient to achieve purpose.	Content is not totally adequate. Does not achieve purpose.	There is too little content. Content is inaccurate.
Language and vocabulary (5 marks)	4, 5 Wide range of vocabulary used, fewer than three minor language errors.	3 Vocabulary sufficient for task. Fewer than five minor language errors.	2 Vocabulary only fair. Ten or more language errors.	1 Very limited vocabulary. Student is unable to use the correct language structures.
Style (5 marks)	4, 5 Student writes well and produces an excellent summary.	3 Student's summary and style of writing are adequate.	2 Summary rambles and misses the point.	1 Summary is incoherent and inadequate.