

The disparate statutory regime for waste dumps and tailings

No.	Abbreviation /Acronym	Full Citation	BRIEF DESCRIPTION
1.	MPRDA	MINERALS & PETROLEUM RESOURCES DEVELOPMENT ACT 28 of 2002	The MPRDA regulates the mining and petroleum industries in South Africa. It vests the custodianship of mineral resources on the state and regulates mineral exploitation. The MPRDA has a lacuna. It does not deal with tailings and dumps. In May 2025 the draft MRD bill was published now providing for residue deposits and stockpiles and regulation of new mining or remining.
2.	NEMA	NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 of 1998.	The NEMA is the framework legislation for environmental management in South Africa. It sets out the environmental management principles and provides for the general duty of care for the environment, among others.
3.	NWA	NATIONAL WATER ACT 108 of 1997.	The NWA is the framework legislation for the management of water resources in South Africa.
3.	WASTE ACT	NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT 59 of 2008.	The Waste Act is the sector specific environmental management legislation, which mainly focuses on the regulation of waste management. It must be read together with NEMA. Tailings as a form of mining waste are subject to the Waste Act.
5.	AIR QUALITY ACT	NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 of 2004.	The Air Quality Act is the sector specific legislation that governs ambient air quality among others. It must always be read together with NEMA.
6.	MHSA	MINING HEALTH AND SAFETY ACT 29 of 1996.	The MHSA provides for the regulation of mining health and safety risk incidents for mine workers and communities affected by mining.
7.	NEMA EIA Regulations	Environmental Impact Assessment Regulations, 2014 (GN R982).	EIA Regulations set out the process for assessing the environmental effects of proposed activities prior to authorisation by the competent authority.
	Financial Provisioning Regulations	National Environmental Management Act: Regulations: Financial provision for prospecting, exploration, mining or production operations ¹	For mining rehabilitation
8.	MRR	Mining Residue Regulations 2014 National Environmental Management: Waste Act: Regulations: Planning and management of residue stockpiles and residue deposits from prospecting, mining, exploration or production operation ²	impact Management 8. The owner of the mine must determine and manage the impacts of the residue management and facilities in the following manner (a) Identify all residue materials and residue management practices with a potential to contaminate water, (b) Conduct statistical defensible and representative characterisation programme of relevant materials; and (c) Conduct an impact prediction study to assess the potential impacts of such actions or activities on the water resource over the full life cycle of the mining operations
9.	MHSA REGS	MINE HEALTH AND SAFETY ACT REGULATIONS ³ [Updated to 24 April 2015]	
10.	MRD GUIDE	Guideline for the Compilation of a Mandatory Code of Practice on Mine Residue Deposits 2000. ⁴	This guideline makes implementation of a code of practice mandatory for each tailings facility with compulsory adherence to the SANS 10286, Code of Practice for Mine Residue Deposits
11.	SANS 10286 2013	SANS 10286, Code of Practice for Mine Residue Deposits SANS 10286 ⁵	This is the SABS standard that provides for the code of practice for mine residue deposits and is also a key standard for tailings.
	COP 2025	MINE HEALTH AND SAFETY ACT, 1996 GUIDELINE FOR A MANDATORY CODE OF PRACTICE FOR CHANGE	Latest aspirational guideline Copies must be provided to safety representatives.

¹https://www.gov.za/sites/default/files/gcis_document/201511/39425rg10526gon1147.pdf

Government Notice No. 3841 in Government Gazette No. 49220 of 1 September 2023, extends the transitional arrangements in the Financial Provisioning Regulations, 2015

²<https://acrobat.adobe.com/id/urn:aaid:sc:EU:d5b91555-7fc8-44c7-ba08-5ef51358ddee>

²https://www.gov.za/sites/default/files/gcis_document/201507/39020rg10473gon632.pdf

³https://www.saflii.org/za/legis/consol_reg/aor229/v

<https://www.mhsc.org.za/sites/default/files/public/publications/Mine%20Health%20and%20Safety%20Act%2029%20of%201996%20and%20Regulations%20Final%20Booklet.pdf>

⁴https://www.ensafrica.com/uploads/newsarticles/0_20guide15.pdf

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This guideline covers the site selection, design, construction, operation, maintenance, modification, and decommissioning of all types of MRDs. The guideline is based on the fundamental requirement that hazard identification and risk assessment should play a major role in all of these phases. The guideline is applicable to planned, existing, and extensions to existing MRDs.

⁵SABS. 1998. SANS 10286. Code of Practice for Mine Residue Deposits. South African Bureau of Standards, Pretoria.

The principle management guidance document for tailings facilities in South Africa is the Code of Practice for Mine Residue Deposits published by the South African Bureau of Standards in 1998. The standard referred to as SABS 0286:1998 (later renamed to SANS 10286) contains fundamental objectives, the principles and minimum requirements for best practice, all aimed at ensuring that no unavoidable risks, problems and/or legacies are left to future generations

MANAGEMENT IN THE SOUTH AFRICAN MINING INDUSTRY ⁶		
GN 704	Government Notice R704 of the National Water Act dated June 1999 ⁷	<p>a mine must:</p> <p>Ensure that contaminated water must be kept separate from clean water and must not be allowed to spill into a clean water system more than once every fifty years</p> <p>Operate any dam or tailings dam that forms part of a dirty water system to have a minimum freeboard of 0.8 metres above full supply level</p> <p>Prevent water containing any substance which is likely to cause pollution of a water resource from entering any water resource</p> <p>Ensure that water used in any process at a mine or activity is recycled as far as practicable</p>

THE dMRDBill

Issues for debate about scope and definition

- Community: we now have two categories of community under the act, the one requiring consultation and the 2nd category requiring “meaningful consultation.” [The draft bill does not deal with our category of certain IPILRA / Maledu / Baleni / RTSN communities clearly defined in jurisprudence. Some commentators talk about the FPIC requirement without telling us to what land or what communities they demand it should be applied to.]
- Section 9A and invitations to mine “abandoned and derelict mines” by the four categories of authorisation: mining and prospecting rights, small scale and artisanal permits.
- Small scale and artisanal: large industrial mining companies can apply and simply use smaller scales or appoint contractors.
- Ancillary minerals and metals: huge confusion and opportunity for existing rights holders to exploit and enlarge their monopolies. [although I feel that they shall have to do s102 MWP and EIA amendments if there are new impacts]

Consistency issues: [gaps in the MPRDA inconsistent to its own strategy and implementation]

- Waste, dumps, tailings, stockpiles, residue deposits... the category of land has been left out of the MPRDA and is not brought into the regulatory regime through section 42A Management of historic residue stockpiles and residue deposits. The question is whether we are using the lessons learnt in the conversion process of 2004 to this category. This waste category is ironically the opportunity for certain IPILRA communities to assert their rights to conditionally allow remining of dumps and tailings on their land for critical / transition minerals.
- Land use planning conditionality by SPLUMA, planning for housing, just like water and environmental authorisations are conditional before mining can commence.

Gaps and inconsistency with the RSA constitution, constitutional gaps

- Customary law consent, R2SN... certain IPILRA / Maledu / Baleni / RTSN communities clearly defined in jurisprudence about customary law consent.

Gaps compared to other land and resource related statute law in the RSA

- Dispute resolution,
- Grievance mechanisms for individuals and communities including recourse eg section 29 of NEMA
- Shortcomings of section 10 consultation and objection,

Other anomalies

- Consent for disposal to the CPA act set at 60% of membership of association.

Implementation challenges: stuff for the sandpit and regulations

- Access to information
- SLPs

WULAS

⁶ <https://acrobat.adobe.com/id/urn:aid:sc:EU:a4c04bed-912f-4697-9779-107a2f0ffdff>

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⁷ <https://water.cer.org.za/wp-content/uploads/2018/01/GN-704.pdf>

1)		
2)	The water use license application process in South Africa, often referred to as a WULA, involves a series of steps to ensure responsible water resource management. The process begins with a pre-application consultation with the Department of Water and Sanitation (DWS), followed by the submission of a detailed application, including a technical report and supporting documentation. The DWS then assesses the application, potentially involving public participation and specialist studies ⁸	
3)	Regulations regarding the Procedural Requirements for Water Use Licence Applications and Appeals (Gazette No. 40713, GoR. 267, 24 March 2017)	77
4)	"water use licence application technical report" includes water use registration forms, public participation report, and specialist studies.	
5)	Procedure for public participation 17. (1) A procedure for public participation must be conducted as contemplated in section 41(4) of the Act, as part of the water use licence application process. (2) Where a public participation process has already been undertaken through the Environment Impact Assessment processes or any other public consultation process, and that public participation process contains and covers all issues pertaining to water use activities, then that public participation process report may, subject to approval by the responsible authority, be submitted for the requirements of the water use licence application.	12
6)		

⁸ <https://ewulaas.dws.gov.za/ewulaas/WUL.aspx>