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GOVERNMENT NOTICES

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

No. R. 993

8 December 2014

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)

NATIONAL APPEAL REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make the regulations pertaining to the processing, consideration of, and decision on appeals, under section 44(1)(a) read with section 43(4) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as set out in the Schedule hereto.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

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CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

Interpretation

1. (1) In these Regulations any word or expression to which a meaning has been assigned in the Act, and unless the context requires otherwise—

“appeal administrator” means a holder of an office in the Department or Provincial Department responsible for environmental affairs who administers the appeal on behalf of the appeal authority;

“appeal authority” is the Minister, the MEC or a person delegated the power to decide on appeals by the Minister or MEC, as the case may be;

“appellant” means any person who is entitled to submit an appeal in terms of the legislation referred to in regulation 3(1) of these Regulations;

“decision-maker” means an official who has been delegated the authority to make a decision in terms of the laws referred to in regulation 3(1) of these Regulations;

“applicant” means a person to whom a decision has been issued in terms of the Act or specific environmental management Act;

“independent”, in relation to a person appointed as a member of an appeal panel or a person providing an appeal authority with expert advice as contemplated in regulation 6 of these Regulations, means—

- (a) that such a person has no business, financial, personal or other interest in the appeal in respect of which that person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that appeal; and
- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work;

“the Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

- (2) When a period of days must be reckoned in terms of these Regulations, the period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday, and the period of 15 December to 5 January must be excluded from the reckoning of days.
- (3) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.

Purpose of Regulations

2. The purpose of these Regulations is to regulate the procedure contemplated in section 43(4) of the Act relating to the submission, processing and consideration of, a decision on an appeal.

Application of Regulations

3. (1) These Regulations are applicable to an appeal in terms of section 43 of the Act to the Minister or MEC against a decision taken in terms of the:

- (a) Environment Conservation Act, 1989 (Act No. 73 of 1989);
- (b) National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (c) National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
- (d) National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004); or
- (e) National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

and subordinate legislation made in terms of any of these Acts.

- (2) No appeal is available if the Minister or MEC took the decision himself or herself in his or her capacity as the competent authority, issuing authority or licensing authority.
- (3) An appeal against a decision by an official or municipal manager acting under delegated authority from a metropolitan, district or local municipality must be submitted, processed and considered in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

CHAPTER 2

ADMINISTRATION AND PROCESSING OF APPEALS

Appeal submission

4. (1) An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:

- (a) the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or
 - (b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a).
- (2) An appeal submission must be—
- (a) submitted in writing in the form obtainable from the appeal administrator; and
 - (b) accompanied by—
 - (i) a statement setting out the grounds of appeal;
 - (ii) supporting documentation which is referred to in the appeal submission; and
 - (iii) a statement, including supporting documentation, by the appellant to confirm compliance with regulation 4(1) of these Regulations.

Responding statement

5. The applicant, the decision-maker, interested and affected parties and organ of state must submit their responding statement, if any, to the appeal authority and the appellant within 20 days from the date of receipt of the appeal submission.

Appeal panel

6. (1) If the appeal authority reasonably believes that expert advice must be sought or that an appeal panel must be appointed, the appeal administrator must source an independent expert or constitute an independent appeal panel, or both, within 10 days from the date of receipt of an instruction from the appeal authority.
- (2) The appeal panel contemplated in subregulation (1) may consist of such number of independent experts and with such expertise as the Appeal Authority may deem necessary under the circumstances;
- (3) The expert or appeal panel must provide advice to the appeal administrator within 10 days from the receipt of an instruction from the appeal administrator.

Recommendations and decisions on appeals

7. (1) The appeal administrator must make a recommendation on the appeal to the appeal authority within 30 days of receipt of the responding statement referred to in regulation 5 of these Regulations, in the event that an independent expert has not been sourced or an independent appeal panel has not been constituted.
- (2) The appeal administrator must make a recommendation on the appeal to the appeal authority within 10 days of receipt of the advice referred to in regulation 6(2) of these Regulations, in the event that an independent expert has been sourced or an independent appeal panel has been constituted.
- (3) The appeal authority must reach a decision on an appeal, and notify the appellant, applicant, and any registered interested and affected party, within 20 days of the recommendation on the appeal by the appeal administrator.
- (4) The decision contemplated in subregulation (3) must contain written reasons for the decision.

Communication

8. (1) A person may deliver documents in terms of these regulations by using one of the delivery methods referred to in section 47D of the Act.
- (2) In order to meet the time periods determined in these regulations, the person referred to in subregulation (1), must also email, fax or hand deliver the document to the recipient, if the document is delivered by ordinary mail or registered mail.

CHAPTER 3

GENERAL MATTERS

Repeal of regulations

9. The regulations mentioned in the Table in Annexure 1 to these Regulations are hereby repealed or amended to the extent set out in the third column of the Table.

Transitional arrangements

10. (1) An appeal lodged prior to the commencement of these Regulations, and which is still pending when these Regulations takes effect, must be finalised in terms of the legislation that applied at the time when the appeal was lodged.
- (2) An appeal lodged after the commencement of the Environmental Impact Assessment Regulations, 2014 must be submitted, processed and considered in terms of these Regulations.

Short title and commencement

11. These Regulations are called the National Appeal Regulations, 2014, and take effect on the date of publication in the *Gazette*.

ANNEXURE 1

| REGULATIONS REPEALED | | |
|--|--|------------------|
| Date and year of publication | Short title | Extent of repeal |
| Government Notice No. R.543, <i>Gazette No. 33306</i> of 18 June 2010. | Environmental Impact Assessment Regulations, 2010. | Chapter 7. |

No. R. 994

8 December 2014

DEPARTMENT OF ENVIRONMENTAL AFFAIRS**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)****NATIONAL EXEMPTION REGULATIONS**

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make the regulations pertaining to the process to be followed for the lodging and processing of an application for exemption, under Section 44(1)(a) read with Section 24M(3) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.



**BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS**

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10. Short title and commencement

Interpretation

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, unless the context requires otherwise—

“**applicant**” means a person applying for an exemption in terms of these Regulations;

“**environmental impact assessment**” has the meaning assigned to it in regulation 1 of the Environmental Impact Assessment Regulations;

“**Environmental Impact Assessment Regulations**” means the regulations pertaining to environmental impact assessment made in terms of section 24(5)(a) of the Act;

“**MEC**” has the meaning assigned to it in section 1 of the Act;

“**Minister**” has the meaning assigned to it in section 1 of the Act;

“**the Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Purpose of Regulations

2. The purpose of these Regulations is to regulate the process contemplated in section 24M (3) of the Act relating to the lodging and processing of an application for exemption in terms of the Act.

Application for exemption

3. Subject to section 24M(1) and (2) of the Act, a person may apply in writing to the Minister, the Minister responsible for mineral resources, or the MEC, as the case may be, for exemption from a provision of the Act, the regulations or any notice issued under the Act.

Submission of application

4. (1) A written application contemplated in regulation 3 must be accompanied by—
 - (a) the name, address and telephone number of the person applying for the exemption;
 - (b) a document explaining of the reasons for the application and addressing the issues contemplated in section 24M(4) of the Act;
 - (c) details of the specific provision from which the person is requesting exemption; and
 - (d) any applicable supporting documents;
 - (e) a declaration by the applicant that the information in the application is correct and accurate; and
 - (f) the applicable application fee.
- (2) The Minister, Minister responsible for mineral resources or MEC must, within 14 calendar days from the receipt of the application for exemption, acknowledge receipt in writing.
- (3) A person applying for an exemption from a provision of the Act that relates to an application for an environmental authorisation or from a provision of the Environmental Impact Assessment Regulations must communicate his or her notice of intention to apply for exemption by

conducting a public participation process in the manner prescribed in the Environmental Impact Assessment Regulations.

- (4) The written notice contemplated in sub-regulation (3) must contain the following information—
- (a) the name, address and telephone number of the person applying for the exemption;
 - (b) the provisions from which the exemption is applied for;
 - (c) a brief description of the exemption applied for and where the application can be viewed or a copy can be obtained from;
 - (d) the postal address, e-mail address, fax number, contact details of the person applying for the exemption to whom comments must be submitted;
 - (e) the date on which comments on the exemption application must be submitted, provided that a minimum of 30 calendar days must be allowed for the submission of comments; and
- (5) A person applying for exemption from a provision of this Act, other than contemplated in subregulation (3), must give notice to all potential interested and affected parties of an application by—
- (a) fixing a notice board at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of the site which will be affected by the exemption;
 - (b) giving written notice, in any of the manners provided for in section 47D of the Act, to—
 - (i) the occupiers of the site and, if the applicant is not the owner or person in control of the site which will be affected by the exemption, the owner or person in control of the site which will be affected by the exemption;
 - (ii) owners, persons in control of, and occupiers of land adjacent to the site contemplated in (a);
 - (iii) the municipal councillor of the ward in which the site contemplated in (a) is situated and any organisation of ratepayers that represent the community in the area;
 - (iv) the municipality which has jurisdiction in the area;
 - (v) any organ of state that may have an interest in the matter; and
 - (vi) any other party as required by the Minister or MEC;
 - (c) placing an advertisement in one local newspaper;
 - (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the exemption will have an impact that extends beyond the boundaries of the metropolitan or district municipality in which it will be granted; and
 - (e) using reasonable alternative methods, as agreed to by the Minister or MEC, in those instances where a person is desirous of but unable to participate in the process due to—
 - (i) illiteracy;
 - (ii) disability; or
 - (iii) any other disadvantage.
- (6) The notice, notice board and advertisement contemplated in sub-regulation (5) must contain the information set out in subregulation (4).

Consideration of application

5. (1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may upon receipt of the application for exemption, request the person applying for an exemption to furnish additional information within 15 calendar days where such information is necessary for the purposes of informing the Minister, Minister responsible for mineral resources or MEC's decision.
- (2) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may in appropriate circumstances, allow a member of the public to make oral representations to the Minister, Minister responsible for mineral resources or MEC, or to a person designated by the Minister, Minister responsible for mineral resources or MEC.
- (3) The Minister, Minister responsible for mineral resources or MEC must consider the application for exemption, additional information, if such information was submitted in terms of subregulation (1), and all comments, objections or oral representations submitted in terms of regulation 4(4)(e) and subregulation (2) and must reach a decision within 30 calendar days from the date that all information was received.

Decision on application

6. (1) Subject to section 24M(4) of the Act, the Minister, Minister responsible for mineral resources or MEC, as case may be, may grant or refuse to grant an exemption.
- (2) If an application for exemption is granted, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must issue a written exemption notice to the person applying for exemption stating the—
 - (a) name, address and telephone number of the person to whom the exemption is granted;
 - (b) provision of the legislation from which exemption is granted;
 - (c) conditions subject to which exemption is granted, including conditions relating to the transfer of the written exemption notice; and
 - (d) period for which exemption is granted.
- (3) After the Minister, Minister responsible for mineral resources or MEC has reached a decision on an application for exemption, the Minister, Minister responsible for mineral resources or MEC must, in writing and within eight calendar days—
 - (a) notify and make available to the applicant the decision on the application for exemption; and
 - (b) give written reasons for the decision.
- (4) The applicant must in writing and within 12 calendar days of being notified of the decision, notify, using any of the communication methods set out in section 47D of the Act, any person that submitted comments, objections or oral submissions in relation to the exemption application of—
 - (a) the outcome of the application and the reasons for the decision; and
 - (b) draw the attention of any person that submitted comments, objections or oral submissions to the fact that an appeal may be lodged against the decision in terms of section 43 of the Act, if such appeal is available in the circumstances of the decision.

Review of exemption

7. (1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may—
- (a) from time to time review any exemption granted in terms of these Regulations; and
 - (b) on good grounds suspend, withdraw or amend the exemption, or any part thereof.
- (2) Before suspending, withdrawing or amending an exemption granted in terms of these Regulations, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must give notice of such intention to the person to whom the exemption was granted and must provide the person with an opportunity to make written representations within a specified period.
- (3) The Minister, Minister responsible for mineral resources or MEC must consider any comments submitted in terms of sub-regulation (2) before making a decision on the suspension, withdrawal or amendment of any exemption granted in terms of these Regulations.
- (4) The Minister, Minister responsible for mineral resources or MEC must reach a decision on the suspension, withdrawal or amendment of any exemption granted in terms of these Regulations within 30 calendar days after receipt of any comments submitted in terms of sub-regulation (2).
- (5) The Minister, Minister responsible for mineral resources or MEC must in writing and within 12 calendar days, using any of the communication methods set out in section 47D of the Act—
- (a) notify the holder of the relevant exemption granted in terms of these Regulations; and
 - (b) draw the attention of the holder of the relevant exemption granted in terms of these Regulations to the fact that an appeal may be lodged against the decision in terms of section 43 of the Act.

Repeal of regulations

8. The regulations mentioned in the Table in Annexure 1 to these Regulations are hereby repealed or amended to the extent set out in the third column of the Table.

Transitional arrangements

9. (1) An application for exemption submitted in terms of chapter 5 of the Environmental Impact Assessment Regulations, 2010, and which is pending when these Regulations take effect, must despite the repeal of chapter 5 of the Environmental Impact Assessment Regulations, 2010, be dispensed with in terms of those regulations as if those regulations were not repealed and a decision taken in terms of chapter 5 of the Environmental Impact Assessment Regulations, 2010 must be deemed as a decision taken in terms of these Regulations.
- (2) An application for exemption submitted after the commencement of the Environmental Impact Assessment Regulations, 2014 must be processed in terms of these Regulations.

Short title and commencement

10. These Regulations are called the National Exemption Regulations, 2014, and takes effect on the date of publication in the *Gazette*.

ANNEXURE 1

| REGULATIONS REPEALED | | |
|--|--|------------------|
| Date and year of publication | Short title | Extent of repeal |
| Government Notice No. R.543, <i>Gazette No. 33306</i> of 18 June 2010. | Environmental Impact Assessment Regulations, 2010. | Chapter 5. |

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