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Contents

<i>No.</i>		<i>Gazette</i>	<i>Page</i>
		<i>No.</i>	<i>No.</i>
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS			
Environment, Forestry and Fisheries, Department of/ Omgewingsake, Bosbou en Visserye, Departement van			
1224	National Environmental Management Act (107/1998): Consultation on proposed amendments to the Environmental Impact Assessment Regulations.....	43904	3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES

NO. 1224

13 NOVEMBER 2020

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)****CONSULTATION ON PROPOSED AMENDMENTS TO THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, LISTING NOTICE 1, LISTING NOTICE 2 AND LISTING NOTICE 3 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 FOR ACTIVITIES IDENTIFIED IN TERMS OF SECTION 24(2) AND 24D OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby, under sections 24(2), 24(5) and 44, read with section 47 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) consult on my intention to amend the Environmental Impact Assessment Regulations, 2014, as amended, the Environmental Impact Assessment Regulations Listing Notice 1, Listing Notice 2, and Listing Notice 3 of 2014, as amended, as set out in the Schedule.

Activity 21E of Listing Notice 1 will come into effect 6 months after the publication of the final amendments in the Government Gazette.

Activity 21F of Listing Notice 1 of 2014 will come into effect on a date to be published by Notice in the Government Gazette.

Members of the public are invited to submit written comments or input, within 30 days from the date of the publication of this Notice in the Government Gazette, to the following address:

By post to: The Director-General
Department of Environment, Forestry and Fisheries
Attention: Dr Dee Fischer
Private Bag X447
PRETORIA
0001
By hand at: Environment House, 473 Steve Biko Road
ARCADIA
0083

By email: dfischer@environment.gov.za

Please note that due to the COVID-19 pandemic, delivering comments by hand at the Department is being discouraged. Anyone entering the Department's buildings will be subjected to COVID-19 procedures.

Comments or inputs received after the closing date may not be considered.



BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

Definitions

1. In this Schedule unless the context indicates otherwise—

“the Regulations” means the Environmental Impact Assessment Regulations, 2014, published under Government Notice No. R. 982 in *Government Gazette* No. 38282 of 4 December 2014, as amended by Government Notice No. 326 in *Government Gazette* No. 40772 of 7 April 2017, Government Notice No. 706 in *Government Gazette* No. 41766 of 13 July 2018 and Government Notice No. 599 in *Government Gazette* No. 43358 of 29 May 2020;

“Listing Notice 1” means the notice published under Government Notice No. R. 983 in *Government Gazette* No. 38282 of 4 December 2014, as amended by Government Notice No. 327 in *Government Gazette* No. 40772 of 7 April 2017 and Government Notice No. 706 in *Government Gazette* 41766 of 13 July 2018;

“Listing Notice 2” means the notice published under Government Notice No. R. 984 in *Government Gazette* No. 38282 of 4 December 2014 as amended by Government Notice No. 325 in *Government Gazette* No 40772 of 7 April 2017; and

“Listing Notice 3” means the notice published under Government Notice No. R. 985 in *Government Gazette* No. 38282 of 4 December 2014 as amended by Government Notice No. 324 in *Government Gazette* No. 40772 of 7 April 2017 and Government Notice No. 706 in *Government Gazette* No. 41766 of 13 July 2018.

Amendment of index of the Regulations

2. The index is hereby amended—

(a) by the substitution for the heading of regulation 19 of the following heading:

“19. Submission of basic assessment report and supporting documents to competent authority”;

(b) by the substitution for the heading of regulation 23 of the following heading:

“23. Submission and consideration of environmental impact assessment reports and supporting documents to competent authority”; and

(c) by the substitution for the heading of Chapter 5 of the following heading:

“AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING OF COMPLIANCE WITH ENVIRONMENTAL AUTHORISATION, ENVIRONMENTAL MANAGEMENT PROGRAMME OR CLOSURE PLAN”

Amendment of regulation 1 of the Regulations

3. Regulation 1 of the Regulations is hereby amended—

(a) by the insertion after the definition of “**environmental impact assessment report**” of the following definition:

““**Financial Provisioning Regulations**” means the Financial Provisioning Regulations published in terms of section 44(aE), (aF), (aG), (aH) read with sections 24(5)(b)(ix), 24(5)(d), 24N, 24P and 24R of the Act;”

(b) by the insertion after the definition of “**linear activity**” of the following definition:

“**“mineral”** has the meaning so assigned to it in terms of section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;

- (c) by the insertion after the definition of “**mineral**” of the following definition:

“**“mining application”** means an application for an environmental authorisation for a permission, right, permit or consent required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and includes hydraulic fracturing and reclamation;” and

- (d) by the insertion after the definition of “**National Appeal Regulations**” of the following definition:

“**“petroleum”** has the meaning so assigned to it in terms of section 1 of the Mineral and Petroleum Resources Development, 2002 (Act No. 28 of 2002);”.

Amendment of regulation 6 of the Regulations

4. Regulation 6 of the Regulations is hereby amended by the substitution for subregulation 5 of the following subregulation:

“(5) If the Minister responsible for mineral resources is the competent authority in respect of an application, the application must be submitted to—
(a) the relevant office of the Department responsible for mineral resources as identified by that Department where the application relates to a mineral resource; and
(b) the relevant office of the designated Agency where the application relates to a petroleum resource.”.

Amendment of regulation 16 of the Regulations

5. Regulations 16 is hereby amended—

- (a) by the substitution for subparagraph (ix) of paragraph (b) of subregulation (1) of the following subparagraph:
“(ix) proof of acceptance of an application for any right, permission, permit or consent in terms of the Mineral and Petroleum Resources Development Act, 2002, where the application is a mining application.”; and
(b) by the substitution for paragraph (a) of subregulation (2) of the following paragraph:
“(a) where applicable, only be submitted after the acceptance of an application for any right, permission, permit or consent in terms of the Mineral and Petroleum Resources Development Act, 2002;”.

Amendment of regulation 19 of the Regulations

6. Regulation 19 is hereby amended—

- (a) by the substitution for the heading of the following heading:
“**Submission of basic assessment report and supporting documents to competent authority**”;
(b) by the substitution for subregulation 1 of the following subregulation:
“(1) Where basic assessment must be applied to an application, the applicant must, within 90 days of receipt of the application by the competent authority, submit to the competent authority—

- (a) a basic assessment report, inclusive of any specialist reports, an EMPr, a closure plan in the case of a closure activity and where the application is a mining application, the plans, report and calculations contemplated in the Financial Provisioning Regulations, which have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority; or
 - (b) a notification in writing that the documents contemplated in subregulation 1(a) will be submitted within 140 days of receipt of the application by the competent authority, as significant changes have been made or significant new information has been added to the documents which changes or information was not contained in the original documents consulted on during the initial public participation process contemplated in subregulation (1)(a) and that the revised documents will be subjected to another public participation process of at least 30 days.”;
- (c) by the substitution for subregulation (2) of the following subregulation:
- “(2) In the event where subregulation (1)(b) applies, the documents contemplated in subregulation 1(a), which reflects the incorporation of comments received, including any comments of the competent authority, must be submitted to the competent authority within 140 days of receipt of the application by the competent authority.”;
- (d) by the deletion in subregulation (3) of the words “, and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including primary processing, or activities directly related thereto, the basic assessment report must address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act”;
- (e) by the deletion in subregulation (4) of the words “and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including primary processing, or activities directly related thereto, the EMPr must contain attachments that address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act”;
- (f) by the deletion in subregulation (5) of the words “decommissioning or”;
- (g) by the deletion in subregulation (6) of the words “, and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including primary processing, or activities directly related thereto, the closure plan must address the requirements as set in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act”; and
- (h) by the deletion of subregulation 7A.

Amendment of regulation 20

7. Regulation 20 is hereby amended—

- (a) by the substitution for subregulation (1) of the following subregulation:
- “(1) The competent authority must within 107 days of receipt of the basic assessment report and the documents contemplated in regulation 19(1)(a), in writing—
- (a) grant environmental authorisation in respect of all or part of the activity applied for; or

- (b) refuse environmental authorisation.”; and
- (b) by the deletion of subregulation (4).

Amendment of regulation 21

8. Regulation 21 is hereby amended by the substitution for paragraph (d) of subregulation (2) of the following paragraph:

“(d) if an environmental impact assessment report and documents contemplated in regulation 23(1)(a), which must have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority, is submitted within a period of two years from the date of the acceptance of the scoping report contemplated in paragraph (a).”.

Amendment of regulation 23

9. Regulation 23 of the Regulations is hereby amended—

- (a) by the substitution for the heading of the following heading:

“23 Submission and consideration of environmental impact assessment reports and supporting documents to competent authority”;

- (b) by the substitution for subregulation (1) of the following subregulation:

“(1) The applicant must within 106 days of the acceptance of the scoping report, or, where regulation 21(2) applies, within 106 days of the date of receipt of the application by the competent authority, submit to the competent authority—

- (a) an environmental impact assessment report inclusive of any specialist reports, an EMPr, and where the application is a mining application, the plans, report and calculations contemplated in the Financial Provisioning Regulations, which must have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority; or
- (b) a notification in writing that the documents contemplated in subregulation 1(a), will be submitted within 156 days of acceptance of the scoping report by the competent authority or where regulation 21(2) applies, within 156 days of receipt of the application by the competent authority, as significant changes have been made or significant new information has been added to the documents, which changes or information was not contained in the original documents consulted on during the initial public participation process contemplated in subregulation (1)(a), and that the revised documents contemplated in subregulation 1(a) will be subjected to another public participation process of at least 30 days.”.

- (c) by the substitution for subregulation (2) of the following subregulation:

“(2) In the event where subregulation (1)(b) applies, the environmental impact assessment report inclusive of the documents contemplated in subregulation (1)(a), which reflects the incorporation of comments received, including any comments of the competent authority, must be submitted to the competent authority within 156 days of the acceptance of the scoping report by the competent authority.”;

- (d) by the deletion in subregulation (3) of the following words “and, where the application is for an environmental authorisation for prospecting, exploration, extraction of a mineral or petroleum resource, including primary processing or activities directly related thereto, the environmental impact assessment report must contain attachments that address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act”; and
- (e) by the deletion in subregulation (4) of the following words “and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including primary processing or activities directly related thereto, the EMPr must contain attachments that address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act”.

Amendment of regulation 24

10. Regulation 24 of the Regulations is hereby amended by the substitution for subregulation (1) of the following subregulation:

“(1) The competent authority must within 107 days of receipt of the environmental impact assessment report and the documents contemplated in regulation 23(1)(a), in writing,—

- (a) grant environmental authorisation in respect of all or part of the activity applied for; or
- (b) refuse environmental authorisation.”.

Amendment of regulation 26

11. Regulation 26 of the Regulations is hereby amended—

- (a) by the substitution for subparagraph (iv) of paragraph (d) of the following subparagraph:

“requirements for the avoidance, management, mitigation, monitoring and reporting of the impacts of the activity on the environment throughout the life of the activity additional to those contained in the approved EMPr, and the closure plan in the case of a closure activity; and

- (b) by the substitution for paragraph (e) of the following paragraph:

“(e) the frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the approved EMPr, and in the case of a closure activity, the closure plan, in order to determine whether such EMPr and closure plan continuously meet mitigation requirements and addresses environmental impacts, taking into account processes for such auditing prescribed in terms of these Regulations: provided that the frequency of the auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr may not exceed intervals of 5 years;”;

- (c) by the substitution for paragraph (g) of the following paragraph:

“(g) the frequency of updating the approved EMPr, and in the case of a closure activity, the closure plan, and the manner in which such updated EMPr and closure plan will be approved, taking into account processes for such amendments prescribed in terms of these Regulations;”;

(d) by the substitution for paragraph (h) of the following paragraph:

- “(h) a requirement that the environmental authorisation, approved EMPr, and closure plan in the case of a closure activity, audit reports including the environmental audit report contemplated by regulation 34, and all compliance monitoring reports be made available for inspection and copying—
- (i) at the site of the authorised activity;
 - (ii) to anyone on request; and
 - (iii) where the holder of the environmental authorisation has a website, on such publicly accessible website; and”.

Amendment of the heading of Chapter 5

12. The heading of Chapter 5 is hereby amended by the substitution for the heading of the following heading:

“AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING OF COMPLIANCE WITH ENVIRONMENTAL AUTHORISATION, ENVIRONMENTAL MANAGEMENT PROGRAMME OR CLOSURE PLAN”

Amendment of regulation 34

13. Regulation 34 of the Regulations is hereby amended—

(a) by the substitution for subregulation (1) of the following subregulation:

“(1) The holder of an environmental authorisation must, after commencement of the activity or activities authorised in such environmental authorisation, for the period during which the environmental authorisation, EMPr, and in the case of a closure activity, the closure plan, remain valid—

- (a) ensure that the compliance with the conditions of the environmental authorisation, the EMPr and in the case of a closure activity, the closure plan, is audited; and
- (b) submit an environmental audit report to the relevant competent authority.”;

(b) by the substitution for paragraph (b) of subregulation (2) of the following paragraph:

“(b) provide verifiable findings, in a structured and systematic manner, on—

- (i) the level of performance against and compliance of an organisation or project with the provisions of the requisite environmental authorisation, EMPr or in the case of a closure activity, the closure plan; and
- (ii) the ability of the measures contained in such EMPr or closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity.”;

(c) by the substitution for subregulation 3 of the following subregulation:

“(3) The environmental audit report contemplated in subregulation (1) must determine—

- (a) the ability of the EMPr, or in the case of a closure activity, the closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity on an ongoing basis and to sufficiently provide for the

avoidance, management and mitigation of environmental impacts associated with the closure of the facility;

- (b) the level of compliance with the provisions of such environmental authorisation, EMPr, or closure plan.”;

- (d) by the substitution for subregulation (4) of the following subregulation:

“(4) Where the findings of the environmental audit report contemplated in subregulation 1 indicate—

- (a) insufficient mitigation of environmental impacts associated with the undertaking of the activity; or
- (b) insufficient levels of compliance with such environmental authorisation, EMPr or closure plan;”.

the holder must, when submitting the environmental audit report to the competent authority in terms of subregulation (1), submit recommendations to amend such EMPr or closure plan in order to rectify the shortcomings identified in the environmental audit report.”; and

- (e) by the deletion in subregulation (5) of the words “, where applicable the”.

Amendment of regulation 35

- 14. Regulation 35 is hereby amended—

- (a) by the substitution for subregulation (1) of the following subregulation:

“(1) The competent authority must consider the environmental audit report and amended documents contemplated in regulation 34 and approve such amended documents if it is satisfied that it sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity, or in the case of a closure activity, the closure of the facility, and that it has been subjected to an appropriate public participation process.”;

- (b) by the insertion in subregulation (2) of the words “in the case of a closure activity” at the end of the subregulation.

Amendment of regulation 36

- 15. Regulation 36 is hereby amended by the insertion in subregulation (2) of the words “, in the case of a closure activity,” between the words “of a closure plan” and “is required”.

Amendment of regulation 37

- 16. Regulation 37 is hereby amended—

- (a) by the insertion in subregulation (2) of the words “in the case of a closure activity,” between the words “the closure plan” and “from potentially”;

- (b) by the substitution for subregulation (5) of the following subregulation:

“(5) If no comments are received, the holder of the environmental authorisation may amend the EMPr or closure plan in the case of a closure activity, in accordance with its intention contemplated in

subregulation (2) and submit such amended EMPr or closure plan to the competent authority for approval within 60 days of inviting comments.”;

- (c) by the insertion in subregulation (7) of the words “in the case of a closure activity” at the end of the subregulation;
- (d) by the substitution for subregulation (8) of the following subregulation:
 - “(8) The competent authority must, within 30 days of receipt of the information contemplated in subregulation (7), consider such information and issue a decision to approve the amended EMPr or the closure plan in the case of a closure activity, or not.”; and
- (e) by the substitution for paragraph (a) of subregulation (9) of the following paragraph:
 - “(a) provide the holder of the environmental authorisation with its decision, including the amended EMPr or closure plan in the case of a closure activity, if the decision was to approve such amended EMPr or closure plan, as well as reasons for the decision.”.

Amendment of regulation 40

17. Regulation 40 is hereby amended by the substitution for subregulation (1) of the following subregulation:

- “(1) The public participation process to which the—
 - (a) basic assessment report and EMPr, and in the case of a closure activity, the closure plan, submitted in terms of regulation 19; and
 - (b) scoping report submitted in terms of regulation 21 and the environmental impact assessment report and EMPr submitted in terms of regulation 23;

was subjected to must give all potential or registered interested and affected parties, including the competent authority, a period of at least 30 days to submit comments on each of the basic assessment report, EMPr, scoping report and environmental impact assessment report, and in the case of a closure activity, the closure plan, as well as the report contemplated in regulation 32, if such reports or plans are submitted at different times.”.

Amendment of regulation 41

18. Regulation 41 is hereby amended by the substitution for paragraph (b) of subregulation (5) of the following paragraph:

- “(b) written notice is given to registered interested and affected parties regarding where the—
 - (i) revised documents as contemplated in regulation 19(1)(b);
 - (ii) revised documents contemplated in regulation 23(1)(b); or
 - (iii) environmental impact assessment report and documents contemplated in regulation 21(2)(d);

may be obtained, the manner in which and the person to whom representations on these reports or plans may be made and the date on which such representations are due.”.

Amendment of regulation 54A

19. Regulation 54A is hereby amended by the substitution for subregulation (2) of the following subregulation:

“(2) Where a right or permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and the associated environmental management programme or environmental management plan approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) is still in effect after 8 December 2014, the requirements contained in Part 3 of Chapter 5 of these Regulations apply to the environmental management programme or environmental management plan, and where—

- (a) the audit cycle of the environmental management programme or environmental management plan exceeds five years, an audit report will be required to be submitted at least every five years commencing from the date of submission of the last audit, for the period during which the right or permit remains in effect; or
- (b) no audit requirement was set in the environmental management programme or environmental management plan, an audit report will be required to be submitted to the competent authority no later than 7 December 2021 and at least every 5 years thereafter for the period during which the right or permit remains in effect.”.

Amendment of Appendix 1

20. Appendix 1 of the Regulations is hereby amended by the deletion of subparagraph (1)(s) of paragraph 3.

Amendment of Appendix 3

21. Appendix 3 of the Regulations is hereby amended by the deletion of subparagraph 1(t) of paragraph 3.

Amendment of Appendix 4

22. Appendix 4 of the Regulations is hereby amended—

- (a) by the substitution for subparagraph 1(d)(iv) of paragraph 1 of the following subparagraph:

“(iv) rehabilitation of the environment after construction and in the case of a closure activity, closure; and”;

- (b) by the substitution in subparagraph 1(f)(iii) of paragraph 1 for the words “, where applicable” with the words “in the case of a closure activity”; and
- (c) by the deletion of subparagraph 1(f)(iv) of paragraph (1).

Amendment of Appendix 5

23. Appendix 5 of the Regulations is hereby amended—

- (a) by the insertion in subparagraph (1)(i)(iii) of paragraph 1 after the word “participants;” of the word “and”;
- (b) by the substitution in subparagraph (1)(i)(iv) of paragraph 1 for the word “; and” of the following “.”; and
- (c) by the deletion of subparagraph (1)(j) of paragraph 1.

Amendment of Appendix 6 of the Regulations

24. Appendix 6 of the Regulations is hereby amended by the substitution in subparagraph (1)(n)(ii) in paragraph 1 for the words “where applicable” of the words “in the case of a closure activity”.

Amendment of Appendix 7 of the Regulations

25. Appendix 7 of the Regulations is hereby amended—

- (a) by the substitution in paragraph 1 for the words “where applicable” of the words “in the case of a closure activity”;
- (b) by the substitution for paragraph 2 of the following paragraph:

“(2) The objective of the environmental audit report is to—

- (a) report on—
 - (i) the level of compliance with the conditions of the environmental authorisation and the EMPr, and in the case of a closure activity, the closure plan; and
 - (ii) the extent to which the avoidance, management and mitigation measures provided for in such EMPr or closure plan achieves the objectives and outcomes of the EMPr, and closure plan;
 - (b) identify and assess any new impacts and risks as a result of undertaking the activity;
 - (c) evaluate the effectiveness of the EMPr, and in the case of a closure activity, the closure plan;
 - (d) identify shortcomings in the EMPr, and in the case of a closure activity, the closure plan; and
 - (e) identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr, and in the case of a closure activity, the closure plan.”; and
- (c) by the substitution for subparagraph (e) of paragraph (3) of the following subparagraph:
- “(e) an indication of the ability of the EMPr, and in the case of a closure activity, the closure plan to—
- (i) sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity on an on-going basis;
 - (ii) sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the closure of the facility in the case of a closure activity; and
 - (iii) ensure compliance with the provisions of environmental authorisation, EMPr, and in the case of a closure activity, the closure plan.”.

Amendment of Listing Notice 1

26. Listing Notice 1 is hereby amended—

- (a) by the deletion of the definition of “**decommissioning**”;
- (b) by the insertion in subparagraph (1) of paragraph 2 after the definition of “**expansion**” of the following definition:

“**Financial Provisioning Regulations**” means the Financial Provisioning Regulations published in terms of section 44(aE), (aF), (aG), (aH) read with sections 24(5)(b)(ix), 24(5)(d), 24N, 24P and 24R of the Act;”;

- (c) by the insertion in subparagraph (1) of paragraph 2 after the definition of “**Financial Provisioning Regulations**” of the following definition:

“**hydraulic fracturing**” means a well stimulation technique in which rock is fractured by a pressurized liquid, which process involves the high-pressure injection of fracturing fluids into a wellbore to create cracks in the deep-rock formations through which natural gas, petroleum, and brine will flow more freely;”;

- (d) by the insertion in subparagraph (1) of paragraph 2 after the definition of “**marina**” of the following definition:

“**Mineral and Petroleum Resources Development Act**” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;

- (e) by the insertion in subparagraph (1) of paragraph 2 after the definition of “**Mineral and Petroleum Resources Development Act**” of the following definition:

“**mining application**” means an application for an environmental authorisation for a permission, right, permit, or consent required in terms of the Mineral and Petroleum Resources Development Act and includes hydraulic fracturing and reclamation;”;

- (f) by the substitution for subparagraph (3) of paragraph 2 of the following subparagraph:

“(3) The following words will have the meaning assigned to them in terms of section 1 of the Mineral and Petroleum Resources Development Act:

- (a) “exploration right”;
- (b) “mine”;
- (c) “mineral”;
- (d) “mining permit”;
- (e) “mining right”;
- (f) “petroleum”;
- (g) “production right”;
- (h) “prospecting right”;
- (i) “reconnaissance permit”;
- (j) “residue deposit”; and
- (k) “residue stockpile”.

- (g) by the substitution, in Appendix 1, of the paragraph for the “identification of competent authority” for the following:

“Identification of competent authority:

The competent authority in respect of the activities listed in this part of the Schedule is the competent authority in the province in which the activity is to be undertaken, unless—

- (a) it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act; or
 - (b) the application is a mining application, in which case the competent authority is the Minister responsible for mineral resources.”;
- (h) by the insertion, in activity 12(ff) after the words “commencement of” of the word “the”;

- (i) by the substitution for activity 20 of the following activity:

"20. Any activity including the operation of that activity which requires a prospecting right in terms of section 16 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the prospecting right.";

- (j) by the substitution for activity 21 of the following activity:

"21. Any activity including the operation of that activity which requires a mining permit in terms of section 27 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the mining permit.";

- (k) by the insertion, after activity 21 of the following activities:

"21A. Any activity including the operation of that activity which requires a reconnaissance permission in terms of section 13 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the reconnaissance permission.

21B. Any activity including the operation of that activity which requires a reconnaissance permit in terms of section 74 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the reconnaissance permit.

21C. Any activity including the operation of that activity which requires an exploration right in terms of section 79 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the exploration right, excluding –

- (a) any desktop studies, and
- (b) a hydraulic fracturing activity which is included in activity 20A in Listing Notice 2 of 2014, in which case that activity applies.

21D. Any activity including the operation of that activity which requires an amendment or variation to a right or permit as contemplated in section 102 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity contained in this Listing Notice or in Listing Notice 3 of 2014, required for such amendment.

21E. Any activity including the operation of that activity for which the Minister responsible for mineral resources has issued an exemption in a Government Notice in terms of section 106(1) of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required for the exercising of such exempted activity.

21F. Any activity including the operation of that activity required for the reclamation of a residue stockpile or a residue deposit as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required for the reclamation of a residue stockpile or a residue deposit.";

- (l) by the deletion of activity 22;

- (m) by the substitution for paragraph (ii) of activity 26 of the following paragraph:

"(ii) where an environmental authorisation has been obtained for the decommissioning or closure of such an industry in terms of this Notice or any previous NEMA notice; or";

(n) by the substitution for activity 31 of the following activity:

“31. The closure of existing facilities, structures, or infrastructure for—

- (i) any development and related operation activity or activities listed in this Notice, Listing Notice 2 of 2014 or Listing Notice 3 of 2014;
- (ii) any expansion and related operation activity or activities listed in this Notice, Listing Notice 2 of 2014 or Listing Notice 3 of 2014;
- (iii) ...
- (iv) any phased activity or activities for development and related operation activity or expansion or related operation activities listed in this Notice or Listing Notice 3 of 2014; or
- (v) any activity regardless the time the activity was commenced with, where such activity:
 - (a) is similarly listed to an activity in (i) or (ii) above; and
 - (b) is still in operation or development is in progress;

excluding where—

- (aa)...
- (bb) the closure is covered by part 8 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) as decommissioning, in which case the National Environmental Management: Waste Act, 2008 applies; or
- (cc) such closure forms part of a mining application, in which case the requirements of the Financial Provisioning Regulations apply.”.

(o) by the substitution for paragraph (ii) of activity 35 of the following paragraph:

- (ii) where an environmental authorisation has been obtained for the decommissioning or closure of such an industry in terms of this Notice or any previous NEMA notice; or”;

(p) by the insertion, after activity 66, of activity 66A:

“66A. The expansion and related operation of hydraulic fracturing, as well as any other applicable activities as contained in this Listing Notice or in Listing Notice 3 of 2014, required for hydraulic fracturing expansion and related operation.”; and

(q) by the deletion in activity 67 of the number “22.”.

Amendment of Listing Notice 2

27. Listing Notice 2 is hereby amended—

(a) by the insertion in subparagraph (1) of paragraph 2 after the definition of **“expansion”** of the following definition:

““Financial Provisioning Regulations” means the Financial Provisioning Regulations published in terms of section 44(aE), (aF), (aG), (aH) read with sections 24(5)(b)(ix), 24(5)(d), 24N, 24P and 24R of the Act;”;

(b) by the insertion in subparagraph (1) of paragraph 2 after the definition of **“Financial Provisioning Regulations”** of the following definition:

““hydraulic fracturing” means a well stimulation technique in which rock is fractured by a pressurised liquid, which process involves the high-pressure injection of fracturing fluids into a wellbore to create cracks in the deep-rock formations through which natural gas, petroleum and brine will flow more freely;”;

(c) by the insertion in subparagraph (1) of paragraph 2 after the definition of **“marina”** of the following definition:

““Mineral and Petroleum Resources Development Act” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

- (d) by the insertion in subparagraph (1) of paragraph 2 after the definition of **“Mineral and Petroleum Resources Development Act”** of the following definition:

““mining application” means an application for an environmental authorisation for a permission, right, permit or consent required in terms of the Mineral and Petroleum Resources Development Act and includes hydraulic fracturing and reclamation.”;

- (e) by the substitution for subparagraph (3) of paragraph 2 of the following subparagraph:

“(3) The following words will have the meaning assigned to it in terms of section 1 of the Mineral and Petroleum Resources Development Act:

- (a) “exploration right”;
- (b) “mine”;
- (c) “mineral”;
- (d) “mining area”;
- (e) “mining operation”;
- (f) “mining right”;
- (g) “petroleum”;
- (h) “production right” and;
- (i) “prospecting right” .”;

- (f) by the substitution, in Appendix 1, of the paragraph for the “identification of competent authority” for the following:

“Identification of competent authority: The competent authority in respect of the activities listed in this part of the Schedule is the competent authority in the province in which the activity is to be undertaken, unless—

- (a) it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act; or
- (b) the application is a mining application in which case the competent authority is the Minister responsible for mineral resources.”;

- (g) by the substitution for activity 17 of the following activity:

“17. Any activity including the operation of that activity, which requires a mining right as contemplated in section 22 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required to exercise the mining right.”;

- (h) by the deletion of activity 18;

- (i) by the substitution for activity 19 of the following activity:

“19. The removal and disposal of a mineral, which requires a permission as contemplated in section 20 of the Mineral and Petroleum Resources Development Act as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required to exercise the permission.”;

- (j) by the substitution for activity 20 of the following activity:

“20. Any activity including the operation of that activity which requires a production right as contemplated in section 83 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required to exercise the production right.”; and

- (k) by the insertion, after activity 20, of activity 20A:

“20A. Any hydraulic fracturing including the operation as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required for hydraulic fracturing and related operation.”.

Amendment of Listing Notice 3

28. Listing Notice 3 is hereby amended—

- (a) by the insertion in subparagraph (1) of paragraph (2) after the definition of “**maintenance management plan**” of the following definition:

““**mining application**” means an application for an environmental authorisation for a permission, right, permit or consent required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and includes hydraulic fracturing and reclamation;” and

- (b) by the deletion of subparagraph (3) of paragraph 2; and
- (c) by the substitution, in Appendix 1, for the paragraph for the “identification of competent authority” of the following:

“**Identification of competent authority:** The competent authority in respect of the activities listed in this part of the Schedule is the competent authority in the province in which the activity is to be undertaken, unless—

- (a) it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act; or
- (b) the application is a mining application in which case the competent authority is the Minister responsible for mineral resources.”.

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