

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 3773

4 August 2023

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

CONSULTATION ON THE INTENTION TO AMEND 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 the intention to amend the Environmental Impact Assessment Regulations, 2014, as amended, and Environmental Impact Assessment Regulations Listing Notice 1, 2 and 3 of 2014, as amended, as set out in the Schedule.

Members of the public are invited to submit written comments or inputs, within 30 days after the publication of this Notice in the *Gazette*, to the following address:

By post to: The Director-General
Department of Forestry, Fisheries and the Environment
Attention: Dr D Fischer
Private Bag X447
PRETORIA
0001

By hand at: Environment House
473 Steve Biko Road
ARCADIA
0083

By e-mail: dfischer@dfre.gov.za

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

The Department of Forestry, Fisheries and the Environment complies with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). Comments received and responses thereto are collated into a

comments and responses report which will be made available to the public as part of the consultation process. If a commenting party has any objection to his or her name, or the name of the represented company/organisation, being made publicly available in the comments and responses report, such objection should be highlighted in bold as part of the comments submitted in response to this government notice.

A handwritten signature in black ink, appearing to read 'BDCreecy', with a long horizontal flourish extending to the right.

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 from time to time;

“Listing Notice 1” means the notice published under Government Notice No. R. 983 in Government Gazette No. 38282 on 4 December 2014, as amended from time to time;

“Listing Notice 2” means the notice published under Government Notice No. R. 984 in Government Gazette No. 38282 on 4 December 2014 as amended from time to time; and

“Listing Notice 3” means the notice published under Government Notice No. R. 985 in Government Gazette No. 38282 on 4 December 2014 as amended from time to time.

Amendment of index of the Regulations

2. The index of the Regulations is hereby amended—

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

“AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING OF COMPLIANCE WITH AN ENVIRONMENTAL AUTHORISATION, EMPr OR CLOSURE PLAN”;

(b) by the substitution for the heading of Part 3 of Chapter 5 of the following heading:

“Auditing and amendment of environmental authorisation, EMPr and closure plan”;

(c) by the substitution for the heading of regulation 34 of the following heading:

“Auditing of compliance with environmental authorisation, EMPr and closure plan”;

(d) by the substitution for the heading of regulation 35 of the following heading:

“Amendment of an EMPr or closure plan as a result of an audit”;

(e) by the substitution for the heading of Part 4 of Chapter 5 of the following heading:

“Other amendments of an EMPr or closure plan”;

(f) by the substitution for the heading of regulation 36 of the following heading:

“Other amendments of an EMPr or closure plan”;

(g) by the substitution for the heading of regulation 37 of the following heading:

"Amendment of an EMPr or closure plan on application by holder of environmental authorisation";
and

- (h) by the substitution for the heading of Appendix 4 of the following heading:

"EMPr".

Amendment of regulation 1 of the Regulations

3. Regulation 1 of the Regulations is hereby amended—

- (a) by the insertion after the definition of **"EAP"** of the following definition:

"EMP" means the plan to manage and rehabilitate the environmental impact resulting from a prospecting, exploration or mining operation approved in terms of sections 17, 80 or 27 of the Mineral and Petroleum Resources Development Act;";

- (b) by the insertion after definition of **"environmental impact assessment report"** of the following definition:

"Environmental Management Programme" means the programme to manage and rehabilitate the environmental impact resulting from a mining or production operation authorised in terms of sections 23 or 84 of the Mineral and Petroleum Resources Development Act;";

- (c) by the insertion after definition of **"mineral"** 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 substitution for the definition of **"mining application"** of the following definition:

"mining activity" means an activity that requires a permission, right, permit, or consent in terms of the Mineral and Petroleum Resources Development Act and includes hydraulic fracturing and reclamation;";

- (e) by the insertion after the definition of **"National Appeal Regulations"** of the following definition:

"offshore activities" means activities as identified in the Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Listing Notice 2 of 2014 or Listing Notice 3 of 2014, published in terms of the Act, which activities are proposed within the exclusive economic zone and continental shelf of the Republic referred to in sections 3, 4, 7 and 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);"; and

- (f) by the deletion in the definition of **"petroleum"** of the words ", 2002 (Act No. 28 of 2002)".

Amendment of regulation 16 of the Regulations

4. Regulation 16 of the Regulation 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 or permit in terms of the Mineral and Petroleum Resources Development Act, where the application is for a mining activity.”; 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 or permit in terms of the Mineral and Petroleum Resources Development Act;”.

Amendment of regulation 19 of the Regulations

- 5. Regulation 19 of the Regulations is hereby amended by the substitution for paragraph (a) of subregulation 1 of the following paragraph:

“(a) a basic assessment report, inclusive of any specialist reports, an EMP, the report generated by the national web based environmental screening tool, a closure plan in the case of a closure activity and where the application is for a mining activity, 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”.

Amendment of regulation 21 of the Regulations

- 6. Regulation 21 of the Regulations is hereby amended by the substitution for subregulation 3 of the following subregulation:

“(3) A scoping report must contain the report generated by the national web based environmental screening tool as well as the information set out in Appendix 2 to these Regulations or comply with a protocol or minimum information requirements relevant to the application as identified and gazetted by the Minister in a government notice.”.

Amendment of regulation 23 of the Regulations

- 7. Regulation 23 of the Regulations is hereby amended by the substitution for paragraph (a) of subregulation 1 of the following paragraph:

“(a) an environmental impact assessment report inclusive of any specialist reports, an EMP, a closure plan in the case of a closure activity and where the application is for a mining activity, 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”.

Amendment of the heading of Chapter 5 of the Regulations

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

“AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING OF COMPLIANCE WITH AN ENVIRONMENTAL AUTHORISATION, EMPr OR CLOSURE PLAN”.

Amendment of the heading of Part 3 of Chapter 5 of the Regulations

9. The heading of Part 3 of Chapter 5 of the Regulations is hereby amended by the substitution for the heading of the following heading:

“Auditing and amendment of environmental authorisation, an EMPr and closure plan”.

Amendment of the heading of regulation 34 of the Regulations

10. The heading of regulation 34 of the Regulations is hereby amended by the substitution for the heading of the following heading:

“Auditing of compliance with an environmental authorisation, EMPr and closure plan”.

Amendment of regulation 35 of the Regulations

11. Regulation 35 of the Regulations is hereby amended—

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

“Amendment of an EMPr or closure plan as a result of an audit”; and

- (b) by the insertion in subregulation 2 of the words “or closure plan” between the words “that the EMPr” and “sufficiently provides for”.

Amendment of the heading of Part 4 of Chapter 5 of the Regulations

12. The heading of Part 4 of the Regulations is hereby amended by the substitution for the heading of the following heading:

“Other amendments of EMPr or closure plan”.

Amendment of the heading of regulation 36 of the Regulations

13. The heading of regulation 36 of the Regulations is hereby amended by the substitution for the heading of the following heading:

"Other amendments of an EMPr or closure plan"

Amendment of regulation 37 of the Regulations

14. Regulation 37 of the Regulations is hereby amended—

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

"Amendment of an EMPr or closure plan on application by holder of environmental authorisation"; and

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

"(2) The holder of an environmental authorisation must invite comments on the proposed amendments to the impact management outcomes of the EMPr or amendments to the closure objectives of the closure plan in the case of a closure activity from potential interested and affected parties, including the competent authority, by using any of the methods provided for in the Act for a period of at least 30 days."

Amendment of regulation 39 of the Regulations

15. Regulation 39 of the Regulations is hereby amended—

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

"(b) mining activities, including hydraulic fracturing and reclamation and the expansion of mining activities, hydraulic fracturing and reclamation;"

(b) by the substitution, at the end of paragraph (c) of subregulation 2, for the "." of a ";;

(c) by the insertion of the following paragraph (d) in subregulation (2):

"(d) activities proposed in coastal public property; and"

(d) by the insertion of the following paragraph (e) in subregulation (2):

"(e) offshore activities."; and

(e) by the insertion, after subregulation (2), of the following subregulation (3):

"(3) Where the activity is proposed to be undertaken on coastal public property, the proponent must, before applying for an environmental authorisation in respect of the activity, notify the relevant organ of state responsible for managing any part of the coastal public property."

Amendment of regulation 40 of the Regulations

16. Regulation 40 is hereby amended by the substitution in paragraph (a) of subregulation (1) for the word “and” of a “,” after the words “basic assessment report”.

Amendment of regulation 54 of the Regulations

17. Regulation 54 of the Regulations is hereby amended by the deletion of subregulation 2.

Amendment of regulation 54A of the Regulations

18. Regulation 54A of the Regulations is hereby amended—

- (a) by deletion in paragraph (b) of subregulation 1 of the words “, 2002 (Act No. 28 of 2002)”; and
- (b) 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 and the associated Environmental Management Programme or EMP approved in terms of the Mineral and Petroleum Resources Development Act is still in effect after 8 December 2014, the requirements contained in Part 3 of Chapter 5 of these Regulations apply to such Environmental Management Programmes or EMPs, and where—

- (a) the audit or performance assessment cycle of the Environmental Management Programme or EMP 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 or performance assessment requirement was set in the Environmental Management Programme or EMP, 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 the heading of Appendix 4 of the Regulations

19. The heading of Appendix 4 of the Regulations is hereby amended by the substitution for the heading of the following heading:

“Content of an EMP”.

Amendment of appendix 7 of the Regulations

20. Appendix 7 of the Regulations is hereby amended—

- (a) by the substitution in subparagraph (a)(i) of paragraph 2 for the word “and” of “,” after the words “environmental authorisation”;
- (b) by the substitution in subparagraph (a)(ii) of paragraph 2 for the word “and” of the word “or” after the words “for in the EMPr”;
- (c) by the deletion in subparagraph (c) of paragraph 2 of the “,” after the words “the EMPr”;
- (d) by the deletion in subparagraph (d) of paragraph 2 of the “,” after the words “the EMPr”;
- (e) by the deletion in subparagraph (e) of paragraph 2 of the “,” after the words “the EMPr”;
- (f) by the deletion in subparagraph (1)(e) of paragraph 3 of the “,” after the words “the EMPr”; and
- (g) by the deletion in subparagraph (1)(e)(iii) of paragraph 3 of the “,” after the word “, EMPr”.

Amendment of Listing Notice 1

21. Listing Notice 1 is hereby amended—

- (a) by the substitution in subparagraph (1) of paragraph 2 for the definition of “**mining application**” of the following definition:

“**mining activity**” means an activity that requires a permission, right, permit, or consent in terms of the Mineral and Petroleum Resources Development Act and includes hydraulic fracturing and reclamation;”;

- (b) by the insertion, in subparagraph (1) of paragraph 2 after the definition of “**previous NEMA notices**” of the following definitions:

“**residue deposit**” means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right, production right or an old order right;

“**residue stockpile**” means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of, by the holder of a mining right, mining permit, production right or an old order right;”;

- (c) 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 and Schedule II of the Mineral and Petroleum Resources Development Act:

- (a) “exploration operation”;
- (b) “exploration right”;
- (c) “mine”;
- (d) “mineral”;

- (e) "mining operation";
- (f) "mining permit";
- (g) "mining right";
- (h) "old order right"
- (i) "petroleum";
- (j) "production operation";
- (k) "production right";
- (l) "prospecting operation";
- (m) "prospecting right" and
- (n) "reconnaissance permit".;

- (d) by the substitution, in Appendix 1 **"Identification of competent authority"**, for paragraph (b) of the following paragraph:

"(b) the application is for a mining activity, the expansion of a mining activity, the reclamation of a residue stockpile or residue deposit and the expansion of a residue stockpile or residue deposit, in which case the competent authority is the Minister responsible for mineral resources.";

- (e) by the substitution in paragraph (b) of activity 21A for the word "arial" of the word "aerial";
- (f) by the substitution in paragraph (b) of activity 21B for the word "arial" of the word "aerial";
- (g) by the substitution in paragraph (b) of activity 21C for the word "arial" of the word "aerial";
- (h) by the substitution for activity 21F of the following activity:

"Any activity including the operation of that activity required for the reclamation of a residue stockpile or a residue deposit which requires a mining right in terms of section 22 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 reclamation of a residue stockpile or a residue deposit.";

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

"21G. Any activity including the operation of that activity required for the reclamation of a residue stockpile or a residue deposit where the residue stockpile or residue deposit was established before the Mineral and Petroleum Resources Development Act came into effect.

21H. Any activity including the operation of that activity associated with an onshore seismic survey, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to undertake the activity, excluding –

- (a) any desktop study;
- (b) any aerial survey; and
- (c) an activity contemplated in activity 21C in this Listing Notice, in which case that activity applies.";

- (j) by the substitution for paragraph (cc) of activity 31 for the following paragraph:

“(cc) such closure forms part of an activity for which a permission, right, permit or consent was issued in terms of the Mineral and Petroleum Resources Development Act, in which case the financial provisioning requirements of the Mineral and Petroleum Resources Development Act or the Financial Provisioning Regulations apply.”;

- (k) by the substitution for activity 66A of the following activity:

“66A. The expansion and related operation of a hydraulic fracturing activity.”; and

- (l) by the insertion, after activity 66A, of the following activities:

“66B. The expansion and related operation of a prospecting, mining, exploration or production operation authorised in terms of the Mineral and Petroleum Resources Development Act, including a residue stockpile or residue deposit and a reclamation activity, but excluding expansion contemplated in activity 66A, in which case that activity applies.

66C. The expansion and related operation of the reclamation of a residue stockpile or residue deposit where such residue stockpile or residue deposit was established before the coming into effect of the Mineral and Petroleum Resources Development Act.”

Amendment of Listing Notice 2

22. Listing Notice 2 is hereby amended—

- (a) by the substitution in subparagraph (1) of paragraph 2 for the definition of **“mining application”** of the following definition:

““mining activity” means an activity that requires a permission, right, permit, or consent in terms of the Mineral and Petroleum Resources Development Act and includes hydraulic fracturing and reclamation;”;

- (b) by the insertion, in subparagraph (1) of paragraph 2 after the definition of **“mining activity”** of the following definitions:

““residue deposit” means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right, production right or an old order right;

“residue stockpile” means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of, by the holder of a mining right, mining permit, production right or an old order right;”;

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

“(3) The following words will have the meaning so assigned to it in terms of section 1 and Schedule II 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) "old order right";
- (h) "petroleum";
- (i) "production right"; and
- (j) "prospecting right".

- (d) by the substitution, in Appendix 1 **"Identification of competent authority"**, for paragraph (b) of the following paragraph:

"(b) the application is for a mining activity, the expansion of a mining activity, the reclamation of a residue stockpile or residue deposit and the expansion of a residue deposit or residue stockpile, in which case the competent authority is the Minister responsible for mineral resources.";

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

"17. Any activity including the operation of that activity which requires a mining right in terms of 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 excluding where —

- (i) the activity is a reclamation activity in which case activity 21F of Listing Notice 1 applies."

- (f) by the substitution in paragraph (b) of activity 18 for the word "arial" of the word "aerial";

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

"19. 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, where the prospecting activity includes bulk sampling and the removal and disposal of a mineral which requires a permission in terms of 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."; and

- (h) by the insertion after activity 20A of the following activity:

"20B. Any activity including the operation of that activity which requires a prospecting right, a mining permit or exploration right in terms of the Mineral and Petroleum Resources Development Act, or the reclamation of a residue stockpile or residue deposit, which triggers an activity as contained in this Listing Notice as well as any other applicable activity as contained in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required to exercise the right."

Amendment of Listing notice 3

23. Listing Notice 3 is hereby amended—

- (a) by the substitution in subparagraph (1) of paragraph 2 for the definition of “**mining application**” of the following definition:

““**mining activity**” means an activity that requires a permission, right, permit, or consent 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 substitution, in Appendix 1 “**Identification of competent authority**”, for paragraph (b) of the following paragraph:

“(b) the application is for a mining activity, the expansion of a mining activity, the reclamation of a residue stockpile or residue deposit and the expansion of a residue stockpile or residue deposit, in which case the competent authority is the Minister responsible for mineral resources.”;

Transitional arrangements

24. An application submitted in terms of the Environmental Impact Assessment Regulations, 2014, published under Government Notice No. R. 982 in *Government Gazette* No. 38282 of 4 December 2014, or in terms of any amendments affected to these Regulations, which application is pending when these amendments take effect, must be finalised in terms of those Regulations that were in place at the time of the submission of the application.

Commencement

25. Unless otherwise indicated, the amendments contained in this Notice will apply to applications submitted on or after the date of publication of this Notice in the *Government Gazette*.