

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 3815

25 August 2023

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)
DRAFT NATIONAL APPEAL REGULATIONS, 2023**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby publish for public comment, the draft regulations pertaining to the processing, consideration of, and decisions on appeals, in terms of sections 43, section 44(1)(b) and 47 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the Draft National Appeal Regulations, 2023 is invited to do so within 30 calendar days from the date of the publication of this notice in the Gazette or the newspaper whichever is the later date. Comments received after this time may not be considered. The draft regulations are also available on the Department's website at www.dffe.gov.za/legislation/gazetted_notices.

All representations and comments must be submitted in writing to the Department:

By hand: The Deputy Director-General: Regulatory
Compliance & Sector Monitoring
Attention: Mr Heinrich Muller
Department of Forestry, Fisheries and the Environment
1 East Pier Building, East Pier Road
Victoria & Alfred Waterfront, Cape Town
By e-mail: draftappealregulations@dffe.gov.za

By post to: The Deputy Director-General:
Regulatory Compliance & Sector Monitoring
Attention: Mr Heinrich Muller
Department of Forestry, Fisheries and the
Environment
P.O. Box / Private Bag x4390
Cape Town, 8002



**BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

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CHAPTER 1 INTERPRETATION AND PURPOSE

1. Interpretation

- (1) Unless indicated otherwise in these regulations, a word or expression that is defined in the Act bears the same meaning in these regulations, and in addition—

“appeal administrator” means the holder of an office—

- (a) in the Department;
- (b) in the department responsible for mineral resources;
- (c) in the provincial department responsible for environmental affairs; or
- (d) in the municipal body,

who administers an appeal on behalf of the appeal authority;

“appellant” means any person or organ of state who is entitled to submit an appeal in terms of section 43 of the Act and includes an applicant;

“appeal authority” means—

- (a) the Minister;
- (b) the Minister responsible for mineral resources;
- (c) MEC;
- (d) a person delegated the power to decide an appeal; or
- (e) a municipal body as contemplated in section 43(1C) of the Act,

as the case may be;

“applicant” means a person to whom a decision contemplated in section 43 of the Act, has been issued;

“Biodiversity Act” means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“Environmental Impact Assessment Regulations, 2006” means the Environmental Impact Assessment Regulations, 2006 published under Government Notice No. R. 385 of 21 April 2006;

“Environmental Impact Assessment Regulations, 2010” means the Environmental Impact Assessment Regulations, 2010 published under Government Notice No. R. 543 of 18 June 2010;

“independent”, in relation to a person appointed as a member of an advisory appeal panel, 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; or
- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work;

“Integrated Coastal Management Act” means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

“registered interested and affected parties” has the meaning assigned to it in regulation 1 of the Environmental Impact Assessment Regulations, 2014 (Government Notice No. R 982 in *Government Gazette* 38282 dated 4 December 2014, as amended); and

“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 the 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 between 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.

2. Purpose of regulations

The purpose of these regulations is to regulate the procedure contemplated in section 43 of the Act relating to the submission, processing, consideration of, and decisions on appeals in respect of the Act and any specific environmental management Act.

CHAPTER 2

ADMINISTRATION AND PROCESSING OF APPEALS

3. Application of regulations

- (1) This chapter is applicable to an appeal against a decision taken in terms of the Act or a specific environmental management Act that is subject to an appeal to the appeal authority in terms of section 43 of the Act.
- (2) No appeal is available if the appeal authority issued the decision being appealed.

4. Submitting an appeal

- (1) An appellant must submit an appeal—
 - (a) within 20 days from the date that the decision is sent by the decision-maker, or, where applicable, by the applicant to registered interested and affected parties; or
 - (b) within 30 days from the date that the decision is sent, where the appeal is submitted in terms of section 43(8) of the Act.
- (2) The appellant must submit the appeal—
 - (a) to the appeal administrator;
 - (b) to the applicant, where the appellant is not the applicant;
 - (c) where applicable, to any registered interested and affected party where the appellant is the applicant; and
 - (d) to any affected organs of state.
- (3) An appeal submitted in terms of sub-regulation (1) must—
 - (a) be in writing;
 - (b) be in the form obtainable from the appeal administrator;
 - (c) include a statement setting out the grounds of appeal;
 - (d) include supporting documentation, which is referred to in the appeal; and
 - (e) include proof of payment of a non-refundable appeal fee, if prescribed.
- (4) An applicant must notify and make a copy of the appeal available to registered interested and affected parties, where applicable, and to

affected organs of state, within 10 days after receipt of an appeal in terms of sub-regulation (2)(b).

5. Responding statement

The applicant, where applicable, and any other person contemplated in regulation 4 may, within 10 days from the date of receipt of the appeal, submit, in the form obtainable from the appeal administrator, a statement responding to an appeal, to the appeal administrator and to the appellant.

6. Answering statement

The appellant may, within 20 days from the date of receipt of the responding statement, submit an answering statement to the appeal administrator to address any relevant new information contained in the responding statement which is not addressed in the appeal.

7. Additional information

The appeal administrator may, within 20 days from the date of receipt of the responding statement or answering statement, where applicable, request any party participating in an appeal process to submit additional information.

8. Decision on appeal

- (1) The appeal authority must reach a decision on an appeal, and notify the appellant, applicant, and, where applicable, any registered interested and affected party and affected organs of state within 30 days of—
 - (a) the expiry of the time period provided for in regulation 5, 6 or 7, whichever is applicable; or

- (b) receiving recommendations from an advisory appeal panel or expert, if appointed.
- (2) An appeal decision must contain written reasons for the decision.

CHAPTER 3 GENERAL PROVISIONS

9. Processing of appeal

- (1) The appeal administrator must acknowledge receipt of an appeal, responding statement or answering statement, respectively, within 5 working days after receiving either.
- (2) The appeal administrator must notify the appellant and the applicant, if applicable, within 5 working days of the appointment of an advisory appeal panel or expert in terms of section 43(5) of the Act, read with regulation 12 of these regulations.

10. Extension of timeframes

The timeframes contemplated in regulations 5, 6 and 7 may be extended, in writing, by agreement between the appellant, the appeal administrator and where applicable, the applicant.

11. Complex appeals

- (1) Despite regulation 8(1), the appeal authority may decide an appeal within 50 days of the applicable periods in regulation 8(1)(a) or (b), where an appeal is complex.

- (2) An appeal is complex where it requires—
 - (a) the appointment of an advisory appeal panel or an expert to assist the appeal authority to render a decision;
 - (b) the appeal administrator to undertake a site inspection to properly advise the appeal authority; or
 - (c) more than one appeal administrator to process the appeal due to the volume of its documents or the technical nature of its subject-matter.

12. Advisory appeal panel

- (1) If the appeal authority decides to appoint an advisory appeal panel or expert to consider and advise the appeal authority on an appeal, the appeal administrator must provide the appeal panel or expert with a written instruction within 10 days of being appointed concerning the issues which the advisory appeal panel or expert must advise on.
- (2) The advisory appeal panel or expert must, within 10 days of receiving instructions, submit its written recommendations to the appeal administrator.
- (3) A member of the advisory appeal panel or an expert must—
 - (a) be independent; and
 - (b) have suitable qualifications and experience in relation to the matters that must be considered in the appeal.
- (4) A person may not be appointed as a member of an advisory appeal panel or an expert if he or she—

- (a) was involved in any way in the making of the decision being appealed;
 - (b) or any spouse, partner or close family member of that person has a personal or private interest in the outcome of the appeal;
 - (c) is an unrehabilitated insolvent;
 - (d) has, as a result of improper conduct, been removed from an office of trust; or
 - (e) has been declared by a court to be mentally ill or disordered.
- (5) The chairperson of the advisory appeal panel must ensure that any dissenting opinion by a member of the panel is recorded in the written report of the panel.

13. Delivery of documents

A person may deliver documents in terms of these regulations by—

- (a) delivering a hard copy by hand;
- (b) registered post; or
- (c) electronic mail.

14. Transitional arrangements

- (1) An appeal lodged prior to the commencement of these regulations, and which is still pending when these regulations take effect, must be finalised in terms of the legislation that applied at the time when the appeal was submitted.
- (2) Any appeal submitted after the date that these regulations come into effect must be administered in terms of these regulations, read together with the Act.
- (3) An appeal lodged after 8 December 2014 against a decision taken—
 - (a) in relation to a waste management license or integrated in terms of the National Environmental Management: Waste Act 2008 (Act No. 59 of 2008), which followed the processes in the regulations referred to in paragraph (b) and (c);
 - (b) in terms of the Environmental Impact Assessment Regulations, 2006; or
 - (c) in terms of the Environmental Impact Assessment Regulations, 2010,must, despite the repeal of the regulations referred to in paragraphs (b) and (c), be dispensed with in terms of those regulations as if those regulations have not been repealed.
- (4) Where a decision was taken after 8 December 2014, but prior to the publication of the National Appeal Amendment Regulations, 2015, and the applicant was informed in such decision to follow a different appeal process than the process indicated in sub-regulation (3), the appeal process indicated in such decision must be followed.

- (5) For all decisions other than decisions contemplated in sub-regulations (3) and (4), an appeal submitted after 8 December 2014 against a decision taken prior to 8 December 2014 must follow the appeal process applicable at the time of the decision.

15. Repeal of regulations

The National Appeal Regulations, 2014 (GN R. 993 of 8 December 2014) and the Integrated Coastal Management Appeal Regulations, 2016 (GN R. 815 of 8 July 2016) are hereby repealed.

16. Short title and commencement

These regulations are called the National Appeal Regulations, 2023 and take effect on the date of publication in the *Gazette*.