## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

#### DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 3121 8 March 2023

NATIONAL FORESTS ACT, 1998 (ACT NO. 84 OF 1998)

# AMENDMENTS TO THE REGULATIONS ON THE NATIONAL FORESTS ACT, 1998 (ACT NO. 84 OF 1998)

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries, and the Environment, hereby in terms of sections 53 and 54 of the National Forests Act, 1998 (Act No. 84 of 1998), amend the Regulations on the National Forests Act, 1998 (Act No. 84 of 1998) published under Government Notice R466, Government *Gazette* 32185 of 29 April 2009, as set out in the Schedule hereto.

Members of the public are invited to submit, within thirty (30) days of publication of this notice in the Government *Gazette* or in the newspaper, whichever date is the last date, written comments to the proposed amendments to any of the following addresses:

**By post to**: The Director-General: Department of Forestry, Fisheries, and the Environment

Attention: Ms Shumani Dzivhani

Private Bag X447 **PRETORIA** 0001

By hand at: Environment House, 473 Steve Biko Road, Arcadia, 0083

By email at: sdzivhani@dffe.gov.za.

Any enquiries in connection with the draft Notice can be directed to Ms Shumani Dzivhani at 0123095765/0721979264

Comments received after the closing date may not be considered.

BARBARA DALLAS CREECY

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

### **SCHEDULE**

#### **Definitions**

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

"the Act" means the National Forests Act, 1998 (Act No. 84 of 1998); and

"the Regulations" means the Regulations under the National Forests Act 84 of 1998, published under Government Notice R.466, of Government *Gazette* 32185 on 29 April 2009.

### Amendment of regulation 1 of the Regulations

- 2. Regulation 1 of the Regulations is hereby amended by the insertion after the definition of "access", of the following definitions:
  - "appeal administrator" means the holder of an office in the Department that administers an appeal on behalf of the appeal authority;
  - "appeal authority" means the Minister; or appeal committee;
  - "appeal committee" means a panel of experts with expertise appointed by the Minister;
  - "appellant" means any person who is aggrieved and has submitted an appeal in terms of section 57A of the Act;";

#### Amendment of regulation 24 of the Regulations

**3.** Regulation 24 of the Regulations is hereby amended by the insertion after regulation 24 of the following regulation:

#### "24A. Issuing of written notice

- (1) The Minister or a person delegated by him or her, may issue a written notice for contravention of section 7(5) of the Act, by using the form set out in Annexure A to these Regulations.
- (2) Before issuing a written notice in terms of subregulation (1), the Minister or a person delegated by him or her, must give the person to whom the written notice is intended -
  - (a) advance written notice of his or her intention to issue such written notice by using the form set out in Annexure B to these Regulations; and
  - (b) a reasonable opportunity to make written representations to the Minister or a person delegated by him or her, as to why he or she should not issue the written notice as intended.

(3) If the Minister or a person delegated by him or her, has reason to believe that giving an advance notice, in accordance with subregulation (2), of the intention to issue a written notice, will cause a delay which may result in significant and sudden harm to the natural forest habitat, the Minister or a person delegated by him or her, may issue a written notice, without compliance with subregulation (2).".

## Amendment of regulation 25 of the Regulations

**4.** Regulation 25 of the Regulations is hereby amended by the insertion after regulation 25 of the following regulation:

## "CHAPTER 11 ADMINISTRATION AND PROCESSING OF APPEALS

#### 25A. Application

- (1) This chapter applies to an appeal against a decision taken in terms of the Act.
- (2) No appeal is available if the appeal authority issued the decision being appealed.

## 25B. Establishment of Appeals Committee

#### 25Ba. Appointment of Appeals Committee

- (1) Whenever it is necessary to appoint the Committee, the Minister must:
  - (a) Invite nominations by means of a notice published in at least two nationally distributed newspapers, specifying a period within which the nominations must be submitted;
  - (b) A shortlist of suitable candidates from the nominations should be compiled and submitted to the Minister within one month of receiving the nominations;
  - (c) The Minister must appoint the members of the Committee after considering the short list.
- (2) The Minister may appoint-
  - (a) an alternate member for any member of the Committee; and
  - (b) a replacement for any member who vacates his or her office.
- (3) The replacement serves for the balance of the term of the person he or she replaces.
- (4) The Minister must appoint one member of the Committee as chairperson and one member as vice-chairperson.

### 25Bb. Conditions of appointment of Committee members

- (1) A member of the Committee holds office for a period of-
  - (a) six years in the case of the chairperson of the Committee; and
  - (b) five years in the case of other members.
- (2) At the expiry of his or her term of office, a member may be appointed again.
- (3) A member or alternate member of the Committee must vacate his or her office if
  - (a) the Minister at any time terminates his or her term of office for good reason after consulting the chairperson of the Committee;
  - (b) he or she can no longer perform his or her duties on the Committee;
  - (c) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine;
  - (d) he or she is absent for more than two consecutive meetings of the Committee without the leave of the chairperson; or
  - (e) he or she resigns by written notice to the Minister.
- (4) Members of the Committee are not to be paid for their services, except for travel and accommodation for the purpose of attending Committee meetings.

## 25C. Submission of appeal

- (1) An appellant must, within 20 days from the date that a decision is received, submit an appeal—
  - (a) to the appeal administrator using the form set out in Annexure C;
  - (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.
- (2) 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; and
  - (d) include the supporting documentation, which is referred to in the appeal.
- (3) An applicant must notify and make a copy of the appeal available to registered, interested and affected parties, where applicable, and affected organs of state, within 10 days after receipt of an appeal in terms of subregulation (1)(b).

#### 25D. Responding to an appeal

The appeal authority must within 10 days from the date of receipt of an appeal, respond in writing to the appellant.

## 25E. Answering to an appeal

The appellant may, within 10 days from the date of receipt of the appeal authority's written response to the appeal, respond in writing to the appeal administrator.

#### 25F. Additional information

The appeal administrator may at any time during an appeal process, request any party participating in the appeal process, to submit additional information.

## 25G. Decision on appeal

- (1) The appeal administrator must make recommendations to the appeal authority within 20 days of response from the appellant.
- (2) The appeal authority must decide on an appeal, and notify the appellant, applicant, and, where applicable, any registered, interested and affected party and affected organs of state, of its decision within 30 days of receiving recommendations from the appeal administrator.
- (3) An appeal decision must contain written reasons for the decision.

## 25H. Processing of appeal

- (1) The appeal administrator must acknowledge receipt of an appeal, responding or answering to an appeal, respectively, within five working days after receiving either.
- (2) The appeal administrator must notify the appellant and the applicant, if applicable, within five working days of the appointment of an advisory appeal panel or expert.

#### 25I. Extension of timeframes

The timeframes contemplated in regulations 25C, 25D, 25E and 25F, may be extended, in writing, by agreement between the appellant, the appeal administrator and where applicable, the applicant.

#### 25J. Complex appeals

- (1) The appeal administrator must make recommendations to the appeal authority within 30 days of response from the appellant.
- (2) Despite regulation 25F, the appeal authority may decide on an appeal and notify the appellant, applicant, and, where applicable, any registered, interested and affected party and affected organs of state, of its decision within 50 days of receiving recommendations from the appeal administrator, if an appeal is complex.
- (3) An appeal is complex if it requires—
  - (a) the appeal administrator to appoint an external expert/ specialist 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.

## 25K. Delivery of documents

A person may deliver documents in terms of these Regulations by-

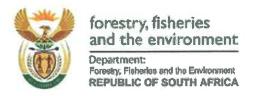
- (a) delivering a hard copy by hand to the appeal administrator;
- (b) registered post;
- (c) courier; or
- (c) electronic mail.

## 25L. Reckoning of days

- (1) When 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 between 15 December to 5 January must be excluded from the reckoning of days.
- (2) 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.

#### 5. Short title and commencement

These Regulations are called the National Forests Act Amendment Regulations, 2023, and come into operation on the date of publication in the Government *Gazette*.



#### ANNEXURE A

#### WRITTEN NOTICE OF NON-COMPLIANCE

(in terms of regulation 24A(1))

Ref:	
Enquiries:	
Physical address:	
Tel:	
Email:	

#### www.environment.gov.za

[Name of person to be issued a Written notice (non-compliance notice)]

[Address]

[Contact details]

Dear Sir/Madam

WRITTEN NOTICE IN TERMS OF REGULATION 24A FOR CONTRAVENING SECTION 7(5) OF THE NATIONAL FORESTS ACT, 1998 (ACT NO. 84 OF 1998) AS AMENDED IN RESPECT OF [INSERT ILLEGAL ACTIVITY COMMENCED WITH] AT [INSERT PROPERTY/SITE DESCRIPTION ERF/PORTION/STREET NUMBER AND NAME] UNDER [INSERT MUNICIPALITY] ("THE SITE").

#### 1. DECISION

- 1.1. I, [insert name of official], in my capacity as Forest Officer, Grade 2 having considered the matter, am of the view that you, [insert Person's Name/ company name] represented by [insert name of representative] in your capacity as [insert capacity in the company)], as the person who has unlawfully commenced with illegal activities on the Site, have failed to adhere to the provisions of the law in respect of the commenced activities on the Site.
- 1.2. Accordingly, I hereby issue you, <u>[insert Person's Name/ company name]</u> represented by <u>[insert name of representative]</u> as the person who has unlawfully commenced with [list activities] on the Site with

a written notice in terms of Regulation 24A for contravening section 7(5) of the National Forests Act, 1998 (Act No. 84 of 1998) as amended.

#### 2. INTRODUCTION

- 2.1. I refer to the following:
- 2.1.1. [Refer to any inspections conducted, the observation made, the notice of intention to issue a written notice, any representations received from the alleged transgressor and any other relevant correspondence].

#### 3. DETAILS OF ACTIVITIES CONSTITUTING A NON-COMPLIANCE

3.1. Section number

Section 7(5) of the National Forests Act, 1998 (Act No.84 of 1998), as amended

3.2. Legal Provision:

3.7.

- 3.2.1. Written notice in terms of regulation 24A for contravening section 7(5) of the National Forests Act, 1998 (Act No.84 of 1998) as amended.

Tree species disturbed, damaged or destroyed (if identifiable) or possessed, collected, removed, transported, exported, purchased, sold, donated, or in any other manner acquired or disposed of

#### 4. INSTRUCTION OR STEPS TO BE TAKEN

In terms of this written notice, I require you to do the following:

any tree, or any forest product derived from a natural forest

- 4.1 [Indicate steps to be taken, insert details in respect of the steps to be taken by the person accused of non-compliance and the period in which these steps must be taken]
- 4.2 [Prohibited conduct: List any acts which may not be performed by the person accused of non-compliance and the period in which the prohibition will remain in force.]

#### 5. PROCEDURAL ARRANGEMENTS

- 5.1. If you would like me to vary this written notice or to extend the period to which it relates, you may make representations to me as the Forest Officer to do so within forty-eight (48) hours of receipt of the written notice, at the following address: [insert physical address or e-mail address]
- 5.2. You may object to the written notice, you may do so by making representations in writing, to the Minister of the Department of Forestry, Fisheries and Environment within 30 days of receipt of the written notice.
- 5.3. You may also make representations to the Minister to suspend the operation of the written notice pending the finalisation of the objection, at the following address: Environment House, Cnr. Steve Biko (previously Beatrix Street) and Soutpansberg Road, 473 Steve Biko, Arcadia, Pretoria, 0083, South Africa.
- 5.4. Irrespective of any representations you may make to me or the Minister, you must comply with the written notice unless the Minister agrees to suspend the operation of the written notice.

#### 6. FAILURE TO COMPLY

Act / Section Number	Offence and penalty		
Section 7(5) read with section 62(1) of the	Offence: Section 61, Any person who fails to take the steps		
National Forests Act, 1998 (Act No.84 of	which he or she has been instructed to take in terms of		
1998).	[section] sections 4(8), 7(5), 8(3), 14(6) and 17(3) within the		
	period or the extended period laid down, is guilty of a fifth		
	category offence.		
	Section 62(1) Any person who contravenes the prohibition of		
	certain acts in relation to trees, indigenous vegetation or any		
	other forest product in natural forests referred to in section		
	7(1) is guilty of a first category offence.		
	Section 63(5) Any person who contravenes a condition in a		
	license, exemption, or any other authorisation in terms of this		
	Act, in respect of—		
	(a) a protected area, a natural forest, or protected trees,		
	is guilty of a second category offence.		
	(b) any other forest, is guilty of a third category offence.		
	Penalty:		
	Section 58(1) - A person who is guilty of a first category		
	offence referred to in sections 62 and 63 may be sentenced		
	to a fine or imprisonment for a period of up to three years, or		
	to both a fine and such imprisonment.		
	Section 58(2) - A person who is guilty of a second category		
	offence referred to in section 62, 63 and 64 may be sentenced		
	on a first conviction for that offence to a fine or imprisonment		
	for a period of up to two years, or to both a fine and such		
	imprisonment.		

		Section 58(3) - A person who is guilty of a third category offence referred to in section 62 and 63 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to one year, or to both a fine and such imprisonment.  Section 58(4) - A person who is guilty of a fourth category offence referred to in section 63 and 64 may be sentenced on a first conviction for that offence to a fine or a community service for a period of up to six months or to both a fine and such service.  Section 58(5) - A person who is guilty of a second, third or fourth offence category offence may be sentenced on a second conviction for that offence as if he or she has committed a first, second or third category offence, respectively.			
		Section 58(6) - A person who is guilty of a fifth category offence referred to in section 61 may be sentenced to a fine not exceeding R10 million or imprisonment a period of up to 10 years or to both such fine and imprisonment.			
		Section 58(8)(b) - A court which sentences any person for any offence in terms of this Act, may suspend or revoke a licence granted to the offender under section 7, 15 or 23.			
<ul><li>6.1</li><li>6.2</li><li>6.3</li></ul>	We wish to make it clear that the instructions contained herein are made in the interest of sustainable forest management and with a view to a cooperative resolution of the issue. The submission of the requested information above does not imply that no further action would be taken against you.  If any licence has been issued, the licence [insert licence number] has been revoked due to the above non-compliance until further notice.				
(Insert Date:	Name of Forest Officer)				
Ackno	wledgement of Receipt:				
Receiv	ed by Mr /Ms	on behalf of the company			
On this	sday of, at				
Signati	ure				



# ANNEXURE B NOTICE OF INTENTION TO ISSUE A WRITTEN NOTICE

(in terms of regulation 24A(2)(a))

Ref:
Enquiries:
Physical address:
Tel:
Email:

www.environment.gov.za

[Name of person to be issued a Notice of Intention]

[Address]

[Contact details]

Dear Sir/Madam

NOTICE OF INTENTION (PRE-COMPLIANCE) TO ISSUE A WRITTEN NOTICE IN TERMS OF REGULATION 24A FOR CONTRAVENING OF THE NATIONAL FORESTS ACT, 1998 (ACT NO. 84 OF 1998) AS AMENDED IN RESPECT OF [INSERT ILLEGAL ACTIVITY COMMENCED WITH] AT [INSERT PROPERTY/SITE DESCRIPTION ERF/PORTION/STREET NUMBER AND NAME] UNDER [INSERT MUNICIPALITY] ("THE SITE").

- 1. I, [insert name of official], in my capacity as a Forest Officer, hereby give you written notice of my intention to issue you, [insert name of natural person/company represented by [insert name of representative] in your capacity as [insert capacity of representative in company], as the person who has unlawfully commenced with illegal activities at [insert property description] under [insert relevant Municipality] with a written notice in terms of section 7(5) of the National Forests Act, 1998 (Act No. 84 of 1998) as amended read with regulation 24A of the these Regulations.
- 2. The written notice that I intend to issue relates to your non-compliance with [indicate relevant legislation / Regulation].

- 3. I have reasonable grounds for believing that you have commenced, on or after [insert date], with illegal activities in terms of Regulation 24A contravening [insert relevant section of the Act] without a license required in terms of [insert relevant section of the Act].
- **4.** I have reached this opinion because of the following:
  - 4.1 [Refer to any correspondences between the transgressor and the Department, inspections conducted, and the observation made, spatial analysis that was conducted e.g., aerial imagery, and any other relevant correspondence].
  - 4.2 List the illegal activities observed on site in relation to the Act.

#### 5. INTENDED INSTRUCTIONS

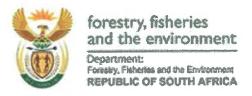
- In accordance with Regulation 24A of the Regulations read with the Promotion of Administration of Justice Act, 2000 (Act No. 3 of 2000), I hereby afford you the opportunity to make written representations to me within [insert time frame] calendar days of receipt of this Notice, if you are of the view that there are any compelling and substantial reasons for me not to exercise my powers in terms of Regulation 24A contravening [Insert relevant section of the Act] to issue a written notice which will require you to, inter alia:
- 5.2 [insert specific instructions that would be given in the written notice to address the non-compliances]

#### 6. PROCEDURAL ARRANGEMENTS

- 6.1 If you would like me to vary this notice of intention or to extend the period to which it relates, you may make representations to me as the Forest Officer to do so within forty-eight (48) hours of receipt of the notice of intention, at the following address: [insert physical address or e-mail address]
- You may lodge an objection to the notice of intention, you may do so by making representations in writing, to the Minister of the Department of Forestry, Fisheries and Environment within 30 days of receipt of the notice of intention.
- You may also make representations to the Minister to suspend the operation of the written notice of intention pending the finalisation of the objection, at the following address: Environment House, Cnr. Steve Biko (previously Beatrix Street) and Soutpansberg Road, 473 Steve Biko, Arcadia, Pretoria, 0083, South Africa.
- 6.4 Irrespective of any representations you may make to me or the Minister, you must comply with the written notice of intention unless the Minister agrees to suspend the operation of the written notice of intention.
- 6.5 Should you fail to comply with this written notice of intention above, which is to make representations in writing, a written notice will be issued.
- 6.6 Failure to comply with a written notice when it has been issued, you will have committed an offence in terms of the National Forests Act, 1998 (Act No. 84 of 1998) as amended.
- 6.7 The Department will be entitled to take the required steps on your behalf and to claim from you any costs incurred in so doing.
- 6.8 We wish to make it clear that the instructions contained herein are made in the interest of sustainable forest management and with a view to a co-operative resolution of the issue. Depending on the outcome of the representations made in this regard, the Department will

- decide upon a way forward regarding this matter. The submission of the requested information above does not imply that no further action would be taken against you.
- 6.9 If you are unclear about any aspect of this notice of intention, kindly contact the person indicated for enquiries in writing as soon as possible.
- 6.10 You may avail yourself of the remedies contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) if you wish to do so, considering the above adverse finding on your matter.

Signed on this	sday of	at		
Name of For	rest Officer		Signature	
Acknowledge	ement of Receipt			
Received by I	Mr /Ms	on bel	nalf of the company	
On this	day of	at	Signatu	re:



## ANNEXURE C APPEAL FORM

(in terms of regulation 25C)

## APPEAL FORM IN TERMS OF THE NATIONAL FORESTS ACT, 1998 (ACT NO. 84 OF 1998)

Environment House, Cnr. Steve Biko (previously Beatrix Street) and Soutpansberg Road, 473 Steve Biko, Arcadia, Pretoria, 0083, South Africa

Enquiries: Mr Avhashoni Renny Madula

Telephone: 012 309 5710

Email: amadula@dffe.gov.za Website: http://www.dffe.gov.za

Please submit your completed appeal form and supporting documentation to:

#### **Postal Address:**

Private Bag X447

Pretoria

0001

South Africa

#### **Physical Address:**

The Minister of Forestry, Fisheries, and the Environment

Department of Forestry, Fisheries, and the Environment

Environment House,

Cnr. Steve Biko (previously Beatrix Street) and Soutpansberg Road,

473 Steve Biko,

Arcadia,

Pretoria, 0083

South Africa

## NOTE:

- (1) This form should only be utilized if you are submitting an appeal in terms of any section of the National Forests Act, 1998 (Act No. 84 of 1998 as amended).
- (2) An electronic version of this form may be obtained from the Departmental website at <u>www.dffe.gov.za</u>
- (3) The completed appeal form must be posted or submitted electronically to the above postal/physical/email address.
- (4) Information requested must be provided in the allocated spaces. If the allocated space is insufficient, additional pages may be attached as an Annexure.
- (5) Information should be as brief and clear as possible.
- (6) Where provided with boxes the appropriate box should be ticked.
- (7) The appeal must be submitted to the Minister within 20 (twenty) days after the decision has been granted by the Department and the applicant has been notified in writing of the Department's decision.
- (8) A copy of supporting documents (e.g., reports) must be attached to this form on submission.
- (9) This form must be duly signed by the appellant or the appellant's duly appointed representative.

PART A1. APPELLANT'S DETAILS				
Full	name	of		Appellant:
Company	Name	(if	200	applicable)
Identity document	number or passport number (Atta	ch a certified copy):		
Physical Address		Postal Address		
	Postal Code		Postal Code	
Tel no. (work)		Tel no. (home)		
Fax number:				
Mobile number: Email address:				
	PART A2. DULY AUTHORISED Representing the appellant (if applications)		ETAILS (if applic	able)
dentity document	number or passport number (Attac	ch a certified copy):		
Physical Address		Postal Address		
	Postal Code		Postal Code	
Tel no. (work)		Tel no. (home)		
Fax number:				
Mobile number:				
E-mail address:				

## PART B. INFORMATION OF THE DECISION TO BE APPEALED

1.	Project Name (where applicable):
2.	Property Description (Street Name, ERF number, PTN number, Farm Number, Suburb/Town, Local Municipality, District Municipality, Province):
3.	Brief description of the activity:
4.	Department's decision on the abovementioned project:
5.	Licence number (where applicable):
6.	Were you notified of the Department's decision? (Yes/No):
7.	If yes, please provide date of decision and proof of correspondence:
	PART C: NOTICE OF INTENTION TO APPEAL
1.	Have you notified the Department of the intention to appeal the Department's decision? (Yes/No)
2.	If yes, provide the date of notice of intention was lodged (attached a copy of the correspondence)

PART D: GROUNDS OF APPEAL

**20** No. 48181

1,,	Provide a statement setting out the ground/s of your appeal.
2.	Does your appeal contain any new information that was not submitted to the Department before the Department's decision? (Yes/No).
3.	If yes, please provide the information e.g. why was the information not made available to the Department before the Department's decision and reasons why the Minister should consider it.
4.	Please list any attachments that are included in your appeal document:
	a b
	C
	d
	e
√ppella	ant's Signature (Or duly appointed Date
eprese	entative)

FOR OFFICIAL USE:		
Appeal received by:	Date:	
Attachments included: YES □ NO □		
Copies of notifications attached: YES   NO		
Ref No:		
Signature		
Office of the Minister		