

(12 March 2015 – to date)

NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

(Gazette No. 19519, Notice No. 1540. Commencement date: 29 January 1999 [Proc. No. 8, Gazette No. 19703])

NATIONAL APPEAL REGULATIONS, 2014

*Government Notice R993 in Government Gazette 38303 dated 8 December 2014. Commencement date:
8 December 2014.*

As amended by:

*National Appeal Amendment Regulations, 2015 - Government Notice R205 in Government Gazette 38559
dated 12 March 2015. Commencement date: 12 March 2015.*

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

(Signed)

BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

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CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

1. Interpretation

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

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

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

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

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

(Definition of "applicant" placed in the correct alphabetical order by regulation 2(b) of Government Notice R205 dated 12 March 2015)

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

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

(Definition of "Environmental Impact Assessment Regulations, 2006" inserted by regulation 2(a) of Government Notice R205 dated 12 March 2015)

"**Environmental Impact Assessment Regulations, 2010**" means the Environmental Impact Assessment Regulations, 2010 published under Government Notice No, R. 543 of 2 August 2010;

(Definition of "Environmental Impact Assessment Regulations, 2010" inserted by regulation 2(a) of Government Notice R205 dated 12 March 2015)

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

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

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

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

2. Purpose of Regulations

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

3. Application of Regulations

- (1) These Regulations are applicable to an appeal in terms of section 43 of the Act to the Minister or MEC against a decision taken in terms of the:
 - (a) Environment Conservation Act, 1989 (Act No. 73 of 1989);
 - (b) National Environmental Management Act, 1998 (Act No. 107 of 1998);
 - (c) National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
 - (d) National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004); or
 - (e) National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

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

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

CHAPTER 2 ADMINISTRATION AND PROCESSING OF APPEALS

4. Appeal submission

- (1) An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:
 - (a) the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or

- (b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a).

(2) An appeal submission must be-

(a) submitted in writing in the form obtainable from the appeal administrator; and

(b) accompanied by-

(i) a statement setting out the grounds of appeal;

(ii) supporting documentation which is referred to in the appeal submission; and

(iii) a statement, including supporting documentation, by the appellant to confirm compliance with regulation 4(1) of these Regulations.

5. Responding statement

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

6. Appeal panel

(1) If the appeal authority reasonably believes that expert advice must be sought or that an appeal panel must be appointed, the appeal administrator must source an independent expert or constitute an independent appeal panel, or both, within 10 days from the date of receipt of an instruction from the appeal authority.

(2) The appeal panel contemplated in subregulation (1) may consist of such number of independent experts and with such expertise as the Appeal Authority may deem necessary under the circumstances;

(3) The expert or appeal panel must provide advice to the appeal administrator within 10 days from the receipt of an instruction from the appeal administrator.

7. Recommendations and decisions on appeals

(1) The appeal administrator must make a recommendation on the appeal to the appeal authority within 30 days of receipt of the responding statement referred to in regulation 5 of these Regulations, in the

event that an independent expert has not been sourced or an independent appeal panel has not been constituted.

- (2) The appeal administrator must make a recommendation on the appeal to the appeal authority within 10 days of receipt of the advice referred to in regulation 6(2) of these Regulations, in the event that an independent expert has been sourced or an independent appeal panel has been constituted,
- (3) The appeal authority must reach a decision on an appeal, and notify the appellant, applicant, and any registered interested and affected party, within 20 days of the recommendation on the appeal by the appeal administrator,
- (4) The decision contemplated in subregulation (3) must contain written reasons for the decision.

8. Communication

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

CHAPTER 3 GENERAL MATTERS

9. Repeal of regulations

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

10. Transitional arrangements

- (1) An appeal lodged prior to the commencement of these Regulations, and which is still pending when these Regulations takes effect, must be finalised in terms of the legislation that applied at the time when the appeal was lodged.
- (2) An appeal lodged after 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 the Environmental Impact Assessment Regulations, 2010 as if those regulations have not been repealed: Provided in the instance 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 (2), the appeal process indicated in such decision must be followed, unless otherwise informed by the relevant appeal authority.

(Regulation 10(2) substituted by regulation 3(a) of Government Notice R205 dated 12 March 2015)

- (3) For all decisions, other than decisions in sub-regulation (2)-
- (a) an appeal lodged 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; and
- (b) an appeal lodged after 8 December 2014 against a decision taken after 8 December 2014, in terms of the legislation indicated in regulation 3 of these Regulations, must be submitted, processed and considered in terms of these Regulations.

(Regulation 10(3) added by regulation 3(b) of Government Notice R205 dated 12 March 2015)

11. Short title and commencement

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

ANNEXURE 1

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