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DATE, TIME : 05/04 12:53
FAX NO./NAME : 0865015883
DURATION : 00:04:53
PAGE(S) : 14
RESULT : OK
MODE : STANDARD



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X 447 PRETORIA · 0001 · Fedsure Building · 315 Pretorius Street · PRETORIA
Tel (+ 27 12) 310 3911 · Fax (+ 2712) 322 2682

NEAS Reference: DEAEIA/0001461/2012

DEA Reference: 14/12/16/3/3/1/700

Enquiries: Tebogo Sibanyoni

Telephone: 012-310-3328 Fax: 012-320-7539 E-mail: tsibanyoni@environment.gov.za

Mr Abram Masango
Eskom Holdings SOC Limited- Kusile Power Station
Suite 46 Postnet
HIGHVELD
1035

Fax no: 086 664 5078

PER FACSIMILE / MAIL

Dear Mr Masango

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: GN R. 543 AND 544: PROPOSED CONSTRUCTION OF DIRTY WATER PIPELINE BETWEEN THE ASH DUMP AND THE ASH DUMP DIRTY DAM; SILT RETENTION DAM AND TOE DRAINS WITHIN WETLANDS AT KUSILE POWER STATION IN EMALAHLENI MUNICIPALITY, MPUMALANGA PROVINCE

With reference to the above application, please be advised that the Department has decided to grant authorisation. The environmental authorisation (EA) and reasons for the decision are attached herewith.

In terms of regulation 10(2) of the Environmental Impact Assessment Regulations, 2010 (the Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 12 (twelve) days of the date of the EA, of the Department's decision in respect of your application as well as the provisions regarding the submission of appeals that are contained in the Regulations.



environmental affairs

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Your attention is drawn to Chapter 7 of the Regulations, which prescribes the appeal procedure to be followed. This procedure is summarised in the attached document. Kindly include a copy of this document with the letter of notification to interested and affected parties.

Should the applicant or any other party wish to appeal any aspect of the decision a notice of intention to appeal must be lodged by all prospective appellants with the Minister, within 20 days of the date of the EA, by means of one of the following methods:

- By facsimile: 012 320 4431;
- By post: Private Bag X447,
Pretoria, 0001; or
- By hand: 2nd Floor, Fedsure Building, North Tower,
Cnr. Lilian Ngoyi (Van der Walt) and Pretorius Streets, Pretoria.

If the applicant wishes to lodge an appeal, it must also serve a copy of the notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where, and for what period, the appeal submission will be available for inspection, should you intend to submit an appeal.

Please include the Department (*Attention: Director: Integrated Environmental Authorisations*) in the list of interested and affected parties, notified through your notification letter to interested and affected parties, for record purposes.

Appeals must be submitted in writing to:

Mr Z Hassam, Director: Appeals and Legal Review, of this Department at the above mentioned addresses or fax number. Mr Hassam can also be contacted at:

Tel: 012 310 3271

Email: AppealsDirectorate@environment.gov.za

The authorised activity/ies shall not commence within twenty (20) days of the date of signature of the authorisation. Further, please note that the Minister may, on receipt of appeals against the authorisation or conditions thereof suspend the authorisation pending the outcome of the appeals procedure.

Yours sincerely



Mr Mark Gordon
Chief Director: Integrated Environmental Authorisations
Department of Environmental Affairs
Date: 05/04/2013


CC:	Mr Deon Esterhuizen	Sebata Institute	Tel: 012-685-0900	Fax: 012-665-1886
	Mr G Batchelor	Mpumalanga Provincial Department	Tel: 013-759-4099	Fax: 013-766-4614
	Ms Yolanda Pulaneseqami	Emalahleni Municipality	Tel: 013-665-6065	Fax: 013-655-6041
	Mr S Malaza	Compliance Monitoring (DEA)	Tel: 012-310-3397	Fax: 012-320-5744

APPEALS PROCEDURE IN TERMS OF CHAPTER 7 OF THE NEMA EIA REGULATIONS, 2010 (THE REGULATIONS) AS PER GN R. 543 OF 2010 TO BE FOLLOWED BY THE APPLICANT AND INTERESTED AND AFFECTED PARTIES UPON RECEIPT OF NOTIFICATION OF AN ENVIRONMENTAL AUTHORISATION (EA)

APPLICANT	INTERESTED AND AFFECTED PARTIES (IAPs)
1. Receive EA from the relevant Competent Authority (the Department of Environmental Affairs [DEA]).	1. Receive EA from Applicant/Consultant.
2. Within 12 days of date of the EA notify all IAPs of the EA and draw their attention to their right to appeal against the EA in terms of Chapter 7 of the Regulations.	2. N/A.
3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA with the Minister of Water and Environmental Affairs (the Minister).	3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA. with the Minister of Water and Environmental Affairs (the Minister).
4. After having submitted your notice of intention to appeal to the Minister, provide each registered IAP with a copy of the notice of intention to appeal within 10 days of lodging the notice.	4. After having submitted your notice of intention to appeal to the Minister, provide the applicant with a copy of the notice of intention to appeal within 10 days of lodging the notice.
5. The Applicant must also serve on each IAP: <ul style="list-style-type: none"> a notice indicating where and for what period the appeal submission will be available for inspection. 	5. Appellant must also serve on the Applicant within 10 days of lodging the notice, <ul style="list-style-type: none"> a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.
6. The appeal must be submitted in writing to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.	6. The appeal must be submitted to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.
7. Any IAP who received a notice of intention to appeal may submit a responding statement to that appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.	7. An Applicant who received notice of intention to may submit a responding statement to the appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.

NOTES:

1. **An appeal against a decision must be lodged with:-**
 - a) the Minister of Water and Environmental Affairs if the decision was issued by the Director- General of the Department of Environmental Affairs (or another official) acting in his/ her capacity as the delegated Competent Authority;
 - b) the Minister of Justice and Constitutional Development if the applicant is the Department of Water Affairs and the decision was issued by the Director- General of the Department of Environmental Affairs (or another official) acting in his/ her capacity as the delegated Competent Authority;
2. **An appeal lodged with:-**
 - a) the Minister of Water and Environmental Affairs must be submitted to the Department of Environmental Affairs;
 - b) the Minister of Justice and Constitutional Development must be submitted to the Department of Environmental Affairs;
3. **An appeal must be:-**
 - a) submitted in writing;
 - b) accompanied by:
 - a statement setting out the grounds of appeal;
 - supporting documentation which is referred to in the appeal; and
 - a statement that the appellant has complied with regulation 62 (2) or (3) together with copies of the notices referred to in regulation 62.





environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Environmental Authorisation

In terms of regulation 36 of the Environmental Impact Assessment Regulations, 2010

Construction of a dirty water pipeline between the ash dump and the ash dump dirty dam; silt retention dams; and toe drains within wetlands at Kusile Power Station

Emalahleni Municipality

Authorisation register number:	<i>14/12/16/3/3/1/700</i>
NEAS reference number:	<i>DEA/EIA/1461/2012</i>
Last amended:	<i>First issue</i>
Holder of authorisation:	<i>Eskom Holdings SOC Limited</i>
Location of activity:	<i>Mpumalanga Province, Emalahleni Municipality</i>

This authorisation does not negate the holder of the authorisation's responsibility to comply with any other statutory requirements that may be applicable to the undertaking of the activity.

Decision

The Department is satisfied, on the basis of information available to it and subject to compliance with the conditions of this environmental authorisation, that the applicant should be authorised to undertake the activities specified below.

Non-compliance with a condition of this authorisation may result in criminal prosecution or other actions provided for in the National Environmental Management Act, 1998 and the EIA regulations.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1.

Activities authorised

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act 107 of 1998) and the Environmental Impact Assessment Regulations, 2010 the Department hereby authorises –

ESKOM HOLDINGS SOC LIMITED

with the following contact details –

Mr Abram Masango
Eskom Holding SOC Limited
Suite 46, Posnet
HIGHVELD
1035

Tel: (013) 759 4099

Fax: (086) 664 5078

Cell: (082) 888 9276

E-mail: MasangA@eskom.co.za



to undertake the following activities (hereafter referred to as "the activities") indicated in Listing Notices 1 (GN R.544):

Listed activities	Activity/Project description
<p><u>GN R. 544 Item 11:</u> The construction of: (ii) channels; (iv) dams; where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.</p>	<ul style="list-style-type: none"> - Construction of the ash dump dirty dam and settling dams within a wetland; - Construction of toe drains within a wetland; - Construction of the ash dump access embankment (with culvert) within a wetland; - Crossing of wetlands by pipeline between the ash dump dirty dam and station dirty dam; - Crossing of the wetland by a dirty water pipeline between the ash dump and the ash dump dirty dam; and - Crossing of wetlands by the fence-lines around the Kusile ash dump and the Kusile Power Station
<p><u>GN R. 544 Item 18:</u> The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, pebbles or rock from (i) a watercourse.</p>	<ul style="list-style-type: none"> - Infilling of soil and rock into a wetland for the construction of the ash dump access embankment with culvert) - Removal of soil located in a wetland for the construction of the ash dump dirty dam and the depositing ash waste material exceeding 5m³ into wetland for storage purposes using a waste management facility.

as described in the Basic Assessment Report (BAR) dated 30 January 2013 at:

coordinates 25 ° 56.175' south and 28° 54.992' east,

- for the construction of a dirty water pipeline between the ash dump and the ash dump dirty dam; silt retention dams; and toe drains within wetlands on farm Hartbeestfontein 537 JR and farm Klipfontein 566 JR at Kusile Power Station in Emalahleni Municipality, Mpumalanga Province, hereafter referred to as "the property".




The infrastructure associated with this facility includes:

- Construction of the ash dump dirty dam and settling dams within a wetland;
- Construction of toe drains within a wetland;
- Construction of the ash dump access embankment (with culvert) within a wetland;
- Crossing of wetlands by pipeline between the ash dump dirty dam and station dirty dam;
- Crossing of the wetland by a dirty water pipeline between the ash dump and the ash dump dirty dam;
- Crossing of wetlands by the fence-lines around the Kusile ash dump and the Kusile Power Station;
- Infilling of soil and rock into a wetland for the construction of the ash dump access embankment (with culvert); and
- Removal of soil located in a wetland for the construction of the ash dump dirty dam and the depositing ash waste material exceeding 5m³ into wetland for storage purposes using a waste management facility.

Conditions of this Environmental Authorisation

Scope of authorisation

1. The construction of a dirty water pipeline between the ash dump and the ash dump dirty dam; silt retention dams; and toe drains within the low integrity wetlands located between the power station and the 10 year ash dump area.
2. Authorisation of the activity is subject to the conditions contained in this authorisation, which form part of the environmental authorisation and are binding on the holder of the authorisation.
3. The holder of the authorisation is responsible for ensuring compliance with the conditions contained in this environmental authorisation. This includes any person acting on the holder's behalf, including but not limited to, an agent, servant, contractor, sub-contractor, employee, consultant or person rendering a service to the holder of the authorisation.
4. The activities authorised may only be carried out at the property as described above.
5. Any changes to, or deviations from, the project description set out in this authorisation must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as 

it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder of the authorisation to apply for further authorisation in terms of the regulations.

6. This activity must commence within a period of three (3) years from the date of issue of this authorisation. If commencement of the activity does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.
7. Commencement with one activity listed in terms of this authorisation constitutes commencement of all authorised activities.
8. The holder of an environmental authorisation must notify the competent authority of any alienation, transfer and change of ownership rights in the property on which the activity is to take place.

Notification of authorisation and right to appeal

9. The holder of the authorisation must notify every registered interested and affected party, in writing and within 12 (twelve) calendar days of the date of this environmental authorisation, of the decision to authorise the activity.
10. The notification referred to must –
 - 10.1. specify the date on which the authorisation was issued;
 - 10.2. inform the interested and affected party of the appeal procedure provided for in Chapter 7 of the Environmental Impact Assessment Regulations, 2010;
 - 10.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
 - 10.4. give the reasons of the competent authority for the decision.
11. The holder of the authorisation must publish a notice –
 - 11.1. informing interested and affected parties of the decision;
 - 11.2. informing interested and affected parties where the decision can be accessed; and
 - 11.3. drawing the attention of interested and affected parties to the fact that an appeal may be lodged against this decision in the newspaper(s) contemplated and used in terms of regulation 54(2)(c) and (d) and which newspaper was used for the placing of advertisements as part of the public participation process.



Management of the activity

12. A detailed Wetland Management Plan (WMP) must be submitted to Department for approval prior to commencement of construction activities. The WMP must identify details of the specific impacts expected at every wetland crossing and within wetlands; and provide details of practical implementable rehabilitation measures to mitigate, manage and/or rehabilitate wetlands affected by the following specific activities:
- 12.1. Construction of the ash dump dirty dam and settling dams within a wetland;
 - 12.2. Construction of toe drains within a wetland;
 - 12.3. Construction of the ash dump access embankment (with culvert) within a wetland;
 - 12.4. Crossing of wetlands by pipeline between the ash dump dirty dam and station dirty dam;
 - 12.5. Crossing of the wetlands by a dirty water pipeline between the ash dump and the ash dump dirty dam;
 - 12.6. Crossing of wetlands by the fence-lines around the Kusile ash dump and the Kusile Power Station;
 - 12.7. Infilling of soil and rock into a wetlands for the construction of the ash dump access embankment with culvert);
 - 12.8. Removal of soil located in a wetlands for the construction of the ash dump dirty dam and the depositing ash waste material exceeding 5m³ into wetlands for storage purposes using a waste management facility programme plan; and
 - 12.9. Measures to protect the high integrity wetlands.
13. The WMP must further include, but should not be limited to:
- 13.1. Measures for the protection of all affected wetlands from pollution in particular where construction takes place within the 1:100 year flood line; and
 - 13.2. Details of the remaining wetlands and measures to ensure the conservation of these wetlands; either through the Wetland Banking System via Working for Wetlands or a Stewardship Agreement through the Mpumalanga Parks Board. These measures must be for as long as the impact lasts.
14. A comprehensive map illustrating the total extent of all lost wetlands referred to above, must accompany the WMP.



Monitoring

15. The current independent Environmental Control Officer (ECO) for the construction of Kusile Power Station in terms of condition 3.13 of EA issued on 17 March 2008 must incorporate this authorisation into his/her responsibilities.
16. The existing Environmental Monitoring Committee (EMC) for Kusile Power Station project must also include this project in complying with condition 3.11 of the EA issued for Kusile Power Station on 17 March 2008.

Recording and reporting to the Department

17. All documentation e.g. audit/monitoring/compliance reports and notifications, required to be submitted to the Department in terms of EA issued for Kusile Power Station on 17 March 2008, shall include the activities approved in this authorisation.

Commencement of the activity

18. The authorised activity shall not commence within twenty (20) days of the date of signature of the authorisation.
19. An appeal under section 43 of the National Environmental Management Act (NEMA), Act 107 of 1998 (as amended), does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or any directive, unless the Minister, MEC or delegated organ of state directs otherwise.
20. Should you be notified by the Minister of a suspension of the authorisation pending appeal procedures, you may not commence with the activity until such time that the Minister allows you to commence with such an activity in writing.

Notification to authorities

21. Fourteen (14) days written notice must be given to the Department that the activity will commence. Commencement for the purposes of this condition includes site preparation. The notice must include a date on which it is anticipated that the activity will commence, as well as a reference number. This notification period may coincide with the notice of intent to appeal period.

Operation of the activity

22. Fourteen (14) days written notice must be given to the Department that the activity operational phase will commence.

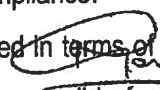
Site closure and decommissioning

23. Should the activity ever cease or become redundant, the applicant shall undertake the required actions as prescribed by legislation at the time and comply with all relevant legal requirements administered by any relevant and competent authority at that time.

Specific conditions

24. The applicant must provide the department with a detailed long term plan for the expansion of the approved 10 year ash dump to align it with the lifespan of the power station.
25. Storm water discharge points must be fitted with the energy dissipaters to slow down the high velocity water discharged into wetlands.
26. All hazardous material must be stored away from the wetlands in bunded areas.
27. Silt traps must be installed to reduce the sediment loads to avoid sediment loads in river and stream of concern.

General

28. A copy of this authorisation and the approved EMPr must be kept at the property where the activity/ will be undertaken. The authorisation and approved EMPr must be produced to any authorised official of the Department who requests to see it and must be made available for inspection by any employee or agent of the holder of the authorisation who works or undertakes work at the property.
29. The holder of the authorisation must notify both the *Director: Integrated Environmental Authorisations* and the *Director: Compliance Monitoring* at the Department, in writing and within 48 (forty eight) hours, if any condition of this authorisation cannot be or is not adhered to. Any notification in terms of this condition must be accompanied by reasons for the non-compliance.
30. National government, provincial government, local authorities or committees appointed in terms of  the conditions of this authorisation or any other public authority shall not be held responsible for

any damages or losses suffered by the applicant or his successor in title in any instance where construction or operation subsequent to construction be temporarily or permanently stopped for reasons of non-compliance by the applicant with the conditions of authorisation as set out in this document or any other subsequent document emanating from these conditions of authorisation.

Date of environmental authorisation: 05 April 2013

A handwritten signature in black ink, appearing to read 'Mark Gordon', with a large, sweeping flourish underneath.

Mr Mark Gordon

Chief Director: Integrated Environmental Authorisations

Department of Environmental Affairs

Annexure 1: Reasons for Decision

1. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration -

- a) The information contained in the BAR dated 30 January 2013;
- b) The information contained in the existing environmental authorisation dated 17 March 2007 for Kusile Power Station;
- c) The previous specialised studies undertaken for the entire Kusile Power Station in 2006 and confirmation letters from the specialist confirming the present ecological status of the affected area;
- d) Comments from the Directorate Biodiversity and Conservation Planning of this Department;
- e) Mitigation measures proposed in the final BAR and the EMPr;
- f) Information contained in the site visit report conducted on 17 January 2013; and
- g) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998).

2. Key factors considered in making the decision

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance is set out below.

- a) The initial authorisation dated 17 March 2008 for the construction of the Kusile Power Station;
- b) The specialist studies confirming the present ecological status of the affected areas;
- c) The significance of potential impacts on wetlands;
- d) The need and desirability of the proposed activities;
- e) The water use license application for the proposed activities;
- f) Inputs made by the Directorate Biodiversity and Conservation Planning;
- g) The mitigation measures stipulated in the final BAR and the EMPr; and
- h) Public participation process conducted.



3. Findings

After consideration of the information and factors listed above, the Department made the following findings -

- a) The initial authorisation dated 17 March 2008 partially approved the proposed activities.
- b) The specialist studies confirmed that the present ecological status remains unchanged.
- c) The impacts on wetlands will be high; however, it is the low integrity wetlands that are affected.
- d) The proposed activities are highly essential and interconnected to the entire development of the power station for the normal day to day operation hence their need.
- e) The Water Use License application covers the proposed activities in that it approved the diversion and altering of the flow in a watercourse (wetlands) for disposal of ash/gypsum.
- f) According to the Biodiversity Management Directorate, some impacts around the affected wetlands (such as crossings) can be mitigated and where infilling of wetlands with soil and rock or removal of soil in wetlands will occur, compensation is necessary.
- g) The impacts on the wetlands will be significant, however mitigation measures are proposed and specific conditions are included in the EA to minimise and manage the impacts.
- h) No objections against the proposed activities were received from the public.

In view of the above, the Department is satisfied that, subject to compliance with the conditions contained in the environmental authorisation, the proposed activity will not conflict with the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act, 1998 and that any potentially detrimental environmental impacts resulting from the proposed activity can be mitigated to acceptable levels. The application is accordingly granted.

