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## 1. Introduction

The National Veld and Forest Fire Act (Act 101 of 1998) commenced on the 1<sup>st</sup> of April 1999. The Act was further amended by the National Forest and Fire Laws amendment Act (Act 12 of 2001).

The purpose of this act is to prevent and combat veld, forest and mountain fires in the Republic. To this end the Act provides for a number of institutions, methods and practices for achieving this purpose. The formation of Fire Protection Associations (FPA) is one such institution that the Act proposes.

## 2. Summary of the Act

Table 1 below summarises the Act.

<b>Chapters</b>	<b>Content</b>
<b>1</b>	<b>Purpose and definitions</b>
<b>2</b>	<b>Fire protection Associations:</b> Formation, registration, duties, officials, financial assistance and de-registration of FPA.
<b>3</b>	<b>Fire Danger Rating</b> , communication of FDI, delegation of powers and duties
<b>4</b>	Prevention of fires through <b>Fire Breaks</b> , duty and exemptions to prepare fire breaks, requirements for fire breaks, exemption from prohibitions on damaging plants
<b>5</b>	<b>Fire fighting</b> , readiness, actions and agreements for mutual assistance
<b>6</b>	<b>Administration of the Act</b> , regulations, duties and delegations, assignment of powers and duties
<b>7</b>	<b>Offences and Penalties</b>
<b>8</b>	Enforcement, powers of entry, search, seize and arrest
<b>9</b>	<b>General and transitional provisions</b> , research, publications, notices, limitation of liability, presumption of negligence

A more comprehensive treatment of the act may be found on the Eskom Intranet at Enviroweb's legal database.

## 3. Definition of land owner

The transmission system of Eskom is operated on land that is held in two major ways. In the first instance substations are built on land where Eskom is the freehold owner.

Transmission lines are normally held in terms of a servitude. Although also a "real right", the servitude does not constitute or imply the extent of ownership as freehold title. It merely grants the right to convey electricity over the land in question, subject to certain provisions. The question therefore may be posed whether Eskom is a "landowner" on the servitudes for the purposes of the Act.

A legal opinion obtained stated that in terms of the definition of "owner" in the Act, Eskom could not be seen to "control" the land that the servitude covers and can therefore not be seen as the owner. The owner is clearly the freehold owner. There can also not be two owners for the same piece of land.

In spite of this point of view, Eskom should fully participate in the FPA for its own benefit as well as being a good corporate citizen.

## **4. Chapter two: Fire Protection Associations (FPA)**

Chapter two of the Act addresses the formation of an FPA. Landowners may form an association and register it for the purpose of predicting, preventing, managing and extinguishing veldfires.

### **4.1. Formation and registration of an FPA**

An FPA may be formed by landowners in respect of an area, which has regular veldfires, relatively uniform risk, climatic conditions and uniform types of vegetation.

If no FPA has been registered within a year after the Act comes into effect, in an area where the Minister is of the opinion that such an association should exist, the Minister may convene a meeting in that area with the objective to:

- explain the Act, determine the amount of support and
- Identify the assistance that the Department may render for the formation of such association.

Subject to the provisions of subsection 4, the Minister may register and FPA. These provisions include the ability to perform the tasks assigned to the FPA as well as representing the owners of an area.

The minister may also recognise and register existing bodies as FPA's subject to certain conditions. Municipalities and owners of State land must become members of the FPA in terms of subsections 4(7) and 4(8) of this chapter.

Subsections 4(9) and 4(10) of this chapter makes provision for the creation of umbrella FPI's. The duties of the FPA is described in section 5 and includes the development of a veldfire management strategy and mechanisms for the co-ordination of actions with adjoining FPA's. Some of the more important aspects of section 5 will be highlighted below.

### **4.2. Duties and rights of the FPA and appointment of a fire protection officer.**

The FPA must make rules, which bind its members, identify ecological conditions that affect fire danger and communicate the fire danger rating. These rules must provide for minimum standards to be maintained by its members as well as rules for, controlled burns. It must further inform its members about equipment and technology available for the prevention of veld fires, provide management services and training.

The FPA must also supply annual statistics about veldfires to the Minister as well as information for the fire danger rating system.

The FPA will appoint a fire protection officer, which will perform the function of chief executive officer of the FPA. Where a municipality is a member, the chief fire officer will normally be appointed as fire protection officer, unless this position is declined. This officer will take control of any fire fighting in the area and enforce rules. He will monitor and report to the Minister as well as train members and inspect their land to ensure compliance with the Act.

The fire protection officer has the right to enter onto the land of a member on reasonable notice and also has the powers of arrest, search and seizure, which powers may not be delegated.

The minister may give a loan, grant or other assistance any FPA or to any owner who prepares a firebreak for land on the borders of the Republic and in doing so, incurs extra expenses. If an FPA has become inoperative or ineffective, the Minister may deregister it and withdraw its certificate. In that event the FPA will repay any loan made to it and will return all assets lent to it by the department.

## **5. Presumption of negligence.**

In the case where any loss was suffered by someone due to a fire that was caused, started on or spread from a land owners' property, such a person may bring an action in terms of this Act. In terms of section 34 (chapter 9) of the Act, the landowner is presumed to have been negligent unless the landowner is a member of an FPA or unless the contrary is proved.

## **6. Conclusion**

The formation and activities of FPA's is the cornerstone of the efficient prevention and combating of veld, forest and mountain fires.

Eskom is affected by fires and the provision of this Act, both on the land that it owns as well as the transmission lines it operates. The participation in the activities of FPA is recommended, where possible.

## **7. Supporting Clauses**

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## **8. Scope**

This document covers those aspects of the National Veld and Forest Fire Act (Act 101 of 1998) that affects Transmission servitudes.

### **8.1. Purpose**

The purpose of this guideline is to summarise the provisions of the National Veld and Forest Fire Act (Act 101 of 1998) with regards to the Fire Protection Associations as prescribed by section two of the act and describe its effect on Eskom.

### **8.2. Applicability**

This guideline shall apply to the Eskom Transmission Division.

## **9. Normative/Informative References**

Parties using this guideline shall apply the most recent edition of the documents listed below :

### **9.1. Normative**

National Veld and Forest Fire Act (Act 101 of 1998)  
ISO 9001:2000 Quality Management Systems

## **9.2. Informative**

n/a

## **10. Definitions**

**The Act** National Veld and Forest Fire Act (Act 101 of 1998)

**The Minister.** The minister with the responsibility for veld fires.

**Owner** has the common law meaning and includes-

1. a lessee or other person who controls the land in question in terms of a contract, testamentary document, law or order of the High Court;
2. in relation to land controlled by a community, the executive body of the community in terms its constitution or any law or custom;
3. in relation to State land not controlled by a person contemplated in paragraph (a) or a community-
  - (i) the Minister of the Government department or the member of the executive council of the provincial administration exercising control over that State land; or
  - (ii) a person authorised by him or her; and
4. in relation to a local authority, the chief executive officer of the local authority or a person authorised by him or her;

## **11. Abbreviations**

**FPA** Fire Protection Association as meant in chapter two of the National Veld and Forest Fire Act (Act 101 of 1998)

**FDI** Fire Danger rating: a measure of the danger of the occurrence and spread of fires as determined by the air temperature, relative humidity and wind speed.

## **12. Roles and Responsibilities**

The Line and Servitude managers for each Grid shall be responsible for the implementation of this guideline.

## **13. Implementation date**

The implementation date is November 2006.

## **14. Process for monitoring**

The Line and Servitude managers for each Grid shall be responsible for the monitoring of compliance with this guideline.

## **15. Related/Supporting Documents**

N/a

## **16. Authorisation**

This document has been seen and accepted by:

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## **17. Revisions**

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