



environment, forestry & fisheries

Department:
Environment, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Private Bag X 447 · PRETORIA · 0001 · Environment House · 473 Steve Biko Road, Arcadia · PRETORIA

DEA Reference: 14/12/16/3/3/3/63/AM3

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Ms Deidre Herbst
Eskom Holdings SOC Limited
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JOHANNESBURG
2000

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PER MAIL / EMAIL

Dear Ms Herbst

AMENDMENT TO THE EXEMPTION FROM LINING REQUIREMENTS ISSUED ON 05 MAY 2016 FOR THE CONTINUOUS ASHING AT THE KENDAL POWER STATION ASH DISPOSAL FACILITY, MPUMALANGA PROVINCE

The Environmental Authorisation (EA) issued for the abovementioned application by this Department on 28 July 2015, the Exemption from lining requirements issued on 05 May 2016, your application for amendment of the Exemption received on 01 November 2019, response letter issued to you dated 11 November 2019 and the final motivation report for amendment dated on December 2019 received by this Department on 13 December 2019 refer.

The holder of the authorisation requires an amendment for extension of the validity period of the exemption from lining requirements issued on 05 May 2016.

This Department has consulted the Department of Water and Sanitation (DWS) in order to obtain concurrence that is required in terms of Section 49(2) of the National Environmental Management: Waste Act, 2008 (Act No 59 of 2008) regarding the authorised development and subsequent exemption. Based on a review of the application for amendment and the supporting documentation motivating for the amendment of the Exemption issued, this Department has decided **not to amend the exemption** dated 05 May 2016. The reasons for the decision are as follows:

- The reason provided in the initial exemption application was that the installation of the Class C liner will take approximately 4 years post-acquisition of the EA. The exemption was therefore issued solely based on the time required to install the liner and not on footprint requirements as stated in your motivation for requesting the amendments to the exemption timeframe.
- The proposed amendment will result in disputes over precedence among other Type 3 waste producers of the mining and industrial sectors as the members of the mining sector have already raised allegations of unfairness following the four (4) years dry ash exemption granted by DWS to Eskom for some Power Stations some years ago.

- Non-compliance with legislation including but not limited to the constitution of the Republic of South Africa, Bill of Human Rights, National Environmental Management Act Principles for decision making by authorities, National Water Act, sections on pollution control and factors to be considered for licensing and the Public Finance Management Act requirements for effective and efficient use of resources.

In terms of Regulation 4(2) of the Environmental Impact Assessment Regulations, 2014, as amended (the EIA Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 14 (fourteen) days of the date of the EA, of the Department's decision as well as the provisions regarding the submission of appeals that are contained in the Regulations.

In terms of the Promotion of Administrative Justice Act, Act No. 3 of 2000, you are entitled to the right to fair, lawful and reasonable administrative action; and to written reasons for administrative action that affects you negatively. Further your attention is drawn to the provisions of the Protection of Personal Information Act, Act No. 4 of 2013 which stipulates that the Department should conduct itself in a responsible manner when collecting, processing, storing and sharing an individual or another entity's personal information by holding the Department accountable should the Department abuse or compromise your personal information in any way.

Your attention is drawn to Chapter 2 of National Environmental Management Act, Act No. 107 of 1998 National Appeal Regulations published under Government Notice R993 in Government Gazette No. 38303 dated 08 December 2014 (National Appeal Regulations, 2014), which prescribes the appeal procedure to be followed. Kindly include a copy of this document (National Appeal Regulations, 2014) with the letter of notification to interested and affected parties in this matter.

Should any person wish to lodge an appeal against this decision, he/she 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 the date that the notification of the decision was sent to the registered interested and affected parties by the applicant; or the date that the notification of the decision was sent to the applicant by the Department, whichever is applicable.

*In addition to the above, as per paragraph 4.4 of the 5 June 2020 Directions, the timeline for lodgment of appeals is extended by a further 30 days. Thus I&APs will have 20 days from the date of the decision **PLUS a further 30 days to lodge appeals.***

Appeals must be submitted in writing in the prescribed form to:

The Director: Appeals and Legal Review of this Department at the below mentioned addresses.

By email: appeals@environment.gov.za

By hand: Environment House
473 Steve Biko
Arcadia
Pretoria
0083; or

By post: Private Bag X447
Pretoria
0001

Please note that in terms of Section 43(7) of the National Environmental Management Act, Act No. 107 of 1998, as amended, the lodging of an appeal will suspend the environmental authorisation or any provision or condition

attached thereto. In the instance where an appeal is lodged, you may not commence with the activity until such time that the appeal is finalised.

To obtain the prescribed appeal form and for guidance on the submission of appeals, please visit the Department's website at https://www.environment.gov.za/documents/forms#legal_authorisations or request a copy of the documents at appeals@environment.gov.za.

Yours faithfully



Mr Sabelo Malaza
Chief Director: Integrated Environmental Authorisations
Department of Environment, Forestry and Fisheries

Date: 19/06/2020