



environmental affairs

Department:
Environmental Affairs
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/AM2

Enquiries: Ms Masina Litsoane

Telephone: (012) 399 9375 E-mail: MLitsoane@environment.gov.za

Ms Deidre Herbst
Eskom Holdings SOC Limited
PO Box 1091
JOHANNESBURG
2000

Tel: 011 800 3501
Email: HerbstDL@eskom.co.za

PER FACSIMILE / MAIL / EMAIL

Dear Ms Herbst

AMENDMENT OF THE ENVIRONMENTAL AUTHORISATION ISSUED ON 28 JULY 2015 FOR THE PROPOSED CONTINUOUS ASHING AT THE KENDAL POWER STATION ASH DISPOSAL FACILITY, MPUMALANGA PROVINCE.

The Environmental Authorisation (EA) issued for the abovementioned application by this Department (DEA) on 28 July 2015, your application for amendment to the EA received on 12 November 2018, the draft report received on 12 November 2018, the acknowledgement letter dated 22 November 2018, and the final motivation report for amendment received on 14 December 2018 refer.

The applicant wishes to amend the EA for the abovementioned project to remove references to a Class C liner and barrier systems requirements and by doing so, amend the condition 17.3.1 of the EA as follows:

Condition	Amendment
17.3.1 "Any development on the site must adhere to a Class C containment barrier design as described in Regulation 636, National Norms and Standards for Disposal of Waste to Landfill dated 23 August 2013."	"Any development on the site, excluding the Kendal Continuous Ash Disposal Facility footprint, must adhere to a Class C containment barrier design as described in Regulation 636, National Norms and Standards for Disposal of Waste to Landfill dated 23 August 2013. "The Kendal Continuous Ash Disposal Facility footprint must adhere to a Class D containment barrier design as described in Regulation 636, National Norms and Standards for Disposal of Waste to Landfill dated 23 August 2013 as recommended by the Source-Pathway-Receptor Study for the Kendal Power Station's existing Ash Disposal Facility, dated August 2018".

MS

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 proposed amendment. Based on a review of the application for amendment as indicated above and the supporting documentation to amend the above EA, this Department, in terms of Regulation 33(1) of the Environmental Impact Assessment Regulations 2014, as amended, has decided **to refuse the proposed amendment** to the EA dated 28 July 2015, as amended. The reasons for the decision are provided below:

- The proposed "Source-pathway-receptor" (SPR) goes against water conservation and promotes pollution and dispersion with consequential risk to human health and the environment.
- The imprecise SPR philosophy result in a conceptual plan which is not even a conceptual design report, and which does not meet the standard of the Engineering Professions Act Board Notice 138 of 2015 for Stage 3 design development reports and drawings for presentation to authorities.
- Nonetheless, the SPR fails to quantify the difference in performance between a Class C barrier and the proposed non-compliant unlined facility on a virgin ground or with rudimentary clearing, with respect to water conservation and water use efficiency in the already typical over-stressed catchment for which there is currently inadequate water to meet existing demand.
- The SPR concept as presented is largely focused on calcium migration as an indicator which fails to identify the element as one of the less mobile pollutants which readily attaches itself to particulate matter in filters and drains at the ADF itself. The failure to recognize the ash pollutant source change over time as it weathers and leachate movement through preferential flow paths, changing the rate of major ions and trace elements releases, is not quantified, nor is the impact on groundwater chemistry. Still further the complex interaction between groundwater and surface water as the pathway is not accurately reported relying on decades of post pollution monitoring for calibration.
- 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 Station some years ago.
- The proposed concept of SPR modelling has been shown to not meet water conservation and water use efficiency principles, to fail pollution control standards, to be in conflict with Act of Parliament including the Constitution, National Environmental Management Act (NEMA) and National Water Act (NWA), and to have significant socio-economic impacts with health risks to communities while simultaneously failing to demonstrate efficient and effective use of State Resources. Furthermore, the multiple applications by Eskom despite being informed of rejection by DEA and DWS, have resulted in inefficient use of human resources within the authorities and possibly fruitless and wasteful expenditure by Eskom on professional service providers. Therefore all conditions proposed for amendment are not recommended.

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 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 stipulate 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.

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 Environmental Affairs

Date: 08/06/2020