



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

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Reference: 12/12/20/1553

Enquiries: Mogole Mphahlele

Telephone: 012-310-3004 Fax: 012-320-7539 E-mail: MLMphahlele@environment.gov.za

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

Fax: 086 660 6092

### **PER FACSIMILE / MAIL**

Dear Ms Herbst

### **APPLICATION FOR ENVIRONMENTAL AUTHORISATION: PROPOSED EXTENSION OF THE EXISTING GENERAL WASTE DISPOSAL SITE AND ASSOCIATED INFRASTRUCTURE AT THE TUTUKA POWER STATION, MPUMALANGA PROVINCE**

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

In terms of regulation 10(2) of the Environmental Impact Assessment Regulations, 2006, you are instructed to notify all registered interested and affected parties, in writing and within 10 (ten) calendar days of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the submission of appeals that are provided for in the regulations.

Your attention is drawn to Chapter 7 of the Regulations which regulates appeal procedures. Attached please find a simplified copy of the appeals procedure to be followed. Kindly include a copy of this procedure with the letter of notification to interested and affected parties.

A copy of the official appeal form can be obtained from:

Mr T Zwane, Senior Appeals Administrator, Tel: 012 310 3929, [twane@environment.gov.za](mailto:twane@environment.gov.za), at the Department.

Should any party, including you, wish to appeal any aspect of the decision, they / you must, *inter alia*, lodge a notice of intention to appeal with the Minister, within 10 days of receiving notice of the decision, by means of one of the following methods:

By facsimile: 012-320-7561;  
By post: Private Bag X447, Pretoria, 0001; or  
By hand: 2nd Floor, Fedsure Building, North Tower, Cnr. Van der Walt and Pretorius Streets,  
Pretoria.

You (applicant) 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, Environmental Impact Evaluation) in the list of interested and affected parties, notified through your notification letter to interested and affected parties, for record purposes.

The authorised activity / ies shall not commence within thirty (30) 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 faithfully



Ms Lize McCourt

**CHIEF DIRECTOR: ENVIRONMENTAL IMPACT MANAGEMENT**

Department of Environmental Affairs

Date: 28 September 2010

CC: Mr. Konrad Kruger  
Mr T Zwane

Zitholele Consulting (Pty) Ltd  
DEA Appeals Administrator

Fax: (011) 805 2100  
Fax: (012) 320 7561

**APPEALS PROCEDURE IN TERMS OF CHAPTER 7 OF R. 385 OF 2006 TO BE FOLLOWED BY THE APPLICANT AND INTERESTED AND AFFECTED PARTIES UPON RECEIPT OF NOTIFICATION OF AN ENVIRONMENTAL AUTHORISATION**

<b>APPLICANT</b>	<b>INTERESTED AND AFFECTED PARTIES (IAPs)</b>
1. Receive notice of Environmental Authorisation from the relevant Competent Authority	1. Receive notice of Environmental Authorisation from Applicant/Consultant
2. Within 10 days of receipt of notification, notify the relevant Competent Authority and all IAPs of intention to appeal	2. Within 10 days of receipt of notification, notify the relevant Competent Authority of intention to appeal
3. Notification served by the Applicant must include: 3.1. A copy of the notice of intention to appeal; and 3.2. A notice indicating where and for what period the appeal submission will be available for inspection by all IAPs	3. Appellant must serve on the Applicant 3.1. A copy of the notice of intention to appeal 3.2. A notice indicating where and for what period the appeal submission will be available for inspection by the applicant
4. The appeal must be submitted to the relevant Competent Authority or delegated organ of State within 30 days of lodging of the notice of intention to appeal	4. The appeal must be submitted to the relevant Competent Authority or delegated organ of State within 30 days of lodging of the notice of intention to appeal
5. A person or organ of state that receives notice of an appeal may submit a responding statement to the relevant Competent Authority or delegated organ of state within 30 days from the date that the appeal submission was made available for inspection by the appellant	5. An Applicant that receives notice of an appeal may submit a responding statement to the relevant Competent Authority or delegated organ of State within 30 days from the date the appeal submission was made available for inspection by the appellant

**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;
- c) the MEC if the decision was issued by the Head of Department (or another official) acting in his/ her capacity as the delegated Competent Authority;
- d) the delegated organ of state where relevant.

**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;
- c) the MEC must be submitted to the provincial department responsible for environmental affairs;
- d) the delegated organ of state, where relevant, must be submitted to the delegated organ of state.

**3. An appeal must be:-**

- a) on an official form obtainable or published by the relevant department;
- b) accompanied by:
  - a statement setting out the grounds of appeal;
  - supporting documentation which is referred to in the appeal and is not available to the relevant Competent Authority;
  - a statement that the appellant has complied with regulation 62 (2) or (3) together with copies of the notices referred to in regulation 62;
  - the prescribed appeal fee, if any.

**4. A copy of the official appeal form can be obtained from:**

See authorisation cover letter.



**environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA


## Environmental Authorisation

**Authorisation register number:** 12/12/20/1553

**Last amended:** First issue

**Holder of authorisation:** ESKOM HOLDINGS LIMITED

**Location of activity:** Lekwa Local Municipality,  
Mpumalanga Province

 25/9/2010

## 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 be authorised to undertake the activities specified below.

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 No. 107 of 1998) and the Environmental Impact Assessment Regulations, 2006, the Department hereby authorises –

### ESKOM HOLDINGS LIMITED

With the following contact details –

Ms. Deidre Herbst  
Eskom Holdings Limited  
P O Box 1091  
**JOHANNESBURG**  
2000

Tel no: 011 800 3501  
Fax no: 086 660 6092

to undertake the following activities (hereafter referred to as "the activity")

- R. 386 :
  - 1 (m): The construction of facilities or infrastructure, including associated structures or infrastructure, for any purpose in the one in ten year floodline of a river or stream, or within 32

meters from the bank of a river or stream where the floodline is unknown, excluding purposes associated with existing residential use, but including –

- i. canal;
  - ii. channels;
  - iii. bridges;
  - iv. dams; and
  - v. weirs.
- 15) The construction of a road that is wider than 4 metres or that has a reserve wider than 6 metres, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30 metres long.
- 16)
- a) The transformation of undeveloped, vacant or derelict land to establish infill development covering an area of 5 ha or more, but less than 20 ha.
  - b) The transformation of undeveloped, vacant or derelict land to residential, mixed, retail, commercial, industrial or institutional use where such development does not constitute infill where the total area to be transformed is bigger than 1ha (10000m<sup>2</sup>).
- 25) The expansion of or change to existing facilities for any process or activity, which requires an amendment of an existing permit or license of a new permit or license in terms of legislation governing the release of emissions, pollution, effluent.

• R. 387 :

- 2) Any development activity, including associated structures, where the total area of the development is, or is intended to be 20 ha, or more.
- 10) Any process or activity identified in terms of section 53(1) of the NEM: Biodiversity Act, 2004.

as described in the Environmental Impact Assessment Report (EIR) dated July 2010, page 19, summarily as follows:

The proposed project is the extension of the general waste disposal site and associated infrastructure at the Tutuka Power Station. The waste licence in terms of Regulation 718 and Section 49 of the National Environmental Management: Waste Act, 2008 (Act 59 of 2008) was issued by the Department of Environmental Affairs on 02 September 2010.

The granting of this Environmental Authorisation is subject to the conditions set out below.

## Conditions

### Scope of authorisation

1. Site Alternative A is approved for the proposed construction and extension of the General Waste Disposal Site and associated infrastructure at the Tutuka Power Station.
2. Authorisation of the activity is subject to the conditions contained in this authorisation, which conditions form part of the Environmental Authorisation and are binding on the holder of the authorisation.
3. The holder of the authorisation shall be responsible for ensuring compliance with the conditions contained in this Environmental Authorisation. This includes any person acting on the Applicant'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 activity authorised may only be carried out at the property indicated 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. 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. 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.
  - 7.1. Relevant legislation that must be complied with by the holder of this authorisation includes:
    - Archaeological remains, artificial features and structures older than 60 years are protected by National Heritage Resources Act, 1999 (Act No. 25 of 1999). Should any archaeological artefacts be exposed during excavation for the purpose of construction, construction in the vicinity of the finding must be stopped. A registered heritage specialist must be called to the site for inspection. Under no circumstances shall any heritage material be destroyed or removed from the site. The relevant heritage resource agency

must be informed about the finding. Heritage remains uncovered or disturbed during earthworks must not be disturbed further until the necessary approval has been obtained from the South African Heritage Resources Agency and/or any of their delegated provincial agencies.

- All provisions of the Occupational Health and Safety Act, 1993 (Act 85 of 1993).
  - All provisions of the National Water Act, 1998 (Act 36 of 1998).
  - All provisions of the National Forests Act, 1984 (Act No. 122 of 1984).
  - All provisions of the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004).
  - All provisions of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003) and its Regulations.
8. All outdoor advertising i.e. signage boards associated with this proposed activity must be below the thresholds stipulated in the EIA Regulations as it was not applied for as an activity for authorisation during the Environmental Authorisation process. Should the holder of the Environmental Authorisation wish to exceed these thresholds he/she must submit an application for authorisation to this Department. Further, all outdoor advertising associated with this proposed activity, whether on or off the property concerned, must comply with the applicable Local Authority By-Law for the control of Outdoor Advertising or in the absence of local legislative controls, must comply with the South African Manual for Outdoor Advertising Control (SAMOAC).
  9. The gravel ring road must be constructed around the waste disposal site to allow for maintenance and monitoring, as well as to form a firebreak.
  10. During construction the footprint of the impact should be kept to a minimum. All construction activities and/or earthworks must be carried out within the limits of the authorised site. No go areas must be identified to minimise compaction of soil and potential erosion.
  11. Should fill material be required for any purpose, the use of borrow pits must comply with the provisions of the Minerals and Petroleum Resources Development Act, 2002 (Act 28 of 2002) administered by the Department of Minerals Resources.
  12. All mitigation measures as detailed within the Draft EMP must be implemented, monitored and audited.
  13. The Draft EMP should form part of the contract with the Contractors appointed to construct and maintain the proposed project.
  14. The EMP must be implemented throughout the life cycle of the proposed project.



15. All areas disturbed during the construction phase must be rehabilitated at the end of the construction phase.
16. All mitigation measures listed in the EIR and specialist studies must be taken into consideration.

#### **Appeal of Authorisation**

17. The holder of the authorisation must notify every registered Interested and Affected Party (I&AP), in writing and within ten (10) calendar days, of receiving notice of the Department's decision to authorise the activity.
18. The notification referred to in 17 must –
  - 18.1. specify the date on which the authorisation was issued;
  - 18.2. inform the interested and affected party of the appeal procedure provided for in Chapter 7 of the regulations;
  - 18.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
  - 18.4. give the reasons for the decision.

#### **Management of the activity**


19. The draft Environmental Management Plan submitted as part of the EIR dated June 2010 (EMP) must be implemented and strictly enforced during all construction activities. The EMP will be seen as a dynamic document. The EMP must be included in all contract documentation for the construction phase of the development.
20. The recommendations and mitigation measures recorded in the EIR dated June 2010 must be adhered to and incorporated as part of the EMP where applicable.
21. Measures for the management of heritage resources if such are exposed during construction must be implemented. Should any heritage resources be exposed during excavation for the purpose of construction, construction in the vicinity of the finding must be stopped immediately. A registered heritage specialist must be called to the site for inspection. Under no circumstances shall any heritage material be destroyed or removed from the site. The relevant heritage resource agency must be informed about the finding.
22. All correspondence with regard to this application must be forwarded for attention to The Director: Environmental Impact Evaluation within the department.

## Monitoring

23. The Applicant must appoint an Environmental Control Officer (ECO) for the duration of the construction and rehabilitation phases of the development that will have the responsibility to ensure that the mitigation/rehabilitation measures recommendations referred to in this authorisation are implemented and to ensure compliance with the provisions of the EMP.
24. The ECO must be appointed before commencement of any land clearing or construction activities.
25. The ECO must, in addition to the requirements of the EMP, monitor project compliance with conditions of this environmental authorisation, environmental legislation and the recommendations for mitigation contained in the EIR dated June 2010.
  - 25.1. The ECO must keep record of all activities on site, problems identified, transgressions noted and a task schedule of tasks undertaken by the ECO and compliance monitoring.
  - 25.2. Records relating to monitoring must be kept on site and made available for inspection to any relevant and competent authority in respect of this development within five (5) days upon request.
  - 25.3. The ECO must remain employed until all rehabilitation measures, as required by the EMP are completed and the site is ready for operation.
  - 25.4. The cost of the ECO shall be borne by the applicant.
  - 25.5. The ECO must in addition to the requirements contained in the EMP also maintain the following on site:
    - A non-conformance register; and
    - A public complaints register.

## Recording and reporting to the Department

26. The ECO must submit an environmental audit report to the Department upon completion of the construction and rehabilitation activities. This audit must:
  - 26.1. Indicate the date of the audit, the name of the auditor and the outcome of the audit in terms of compliance with the environmental authorisation conditions as well as the requirements of the EMP.
  - 26.2. Records relating to monitoring and auditing must be kept on site and made available for inspection to any relevant and competent authority in respect of this development.

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27. The results of these audits must be submitted in writing to the Department within 10 (ten) days after completion of the audits. Should the reports indicate that there are significant detrimental impacts; the Department reserve the right to review its decision as indicated in the letter of authorisation.
28. All compliance monitoring and audit reports must be submitted to the Director: Compliance Monitoring.

#### **Commencement of the activity**

29. The construction of the authorised activity may not commence within thirty (30) days of date of signature of this authorisation.
30. Should you be notified by the Minister of a suspension of the authorisation pending any appeals decision on the authorised activities, you may not commence with the activities unless authorised by the Minister in writing.

#### **Notification to authorities**


31. 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. This notification period may coincide with the period contemplated in 3129 above.

#### **Operation of the activity**

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

#### **Site closure and decommissioning**

33. 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.

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**General**

34. A copy of this authorisation, the EIR dated June 2010 and the EMP must be kept at the property where the activity will be undertaken. The authorisation 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.
35. Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/or telephonic details, the applicant must notify the Department as soon as the new details become known to the applicant.
36. The holder of the authorisation must notify 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. 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 regulations.
37. 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:** 28 September 2010



Ms Lize McCourt

**CHIEF DIRECTOR: ENVIRONMENTAL IMPACT MANAGEMENT**

Department of Environmental Affairs

## Annexure 1: Reasons for Decision

### 1. Background

The applicant, Eskom Holdings Limited applied for authorisation to carry out the following activities:

- R. 386 :

1 (m): The construction of facilities or infrastructure, including associated structures or infrastructure, for any purpose in the one in ten year floodline of a river or stream, or within 32 meters from the bank of a river or stream where the floodline is unknown, excluding purposes associated with existing residential use, but including –

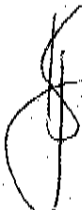
- canal;
- channels;
- bridges;
- dams; and
- weirs.

15) The construction of a road that is wider than 4 metres or that has a reserve wider than 6 metres, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30 metres long.

16)

- The transformation of undeveloped, vacant or derelict land to establish infill development covering an area of 5 ha or more, but less than 20 ha.
- The transformation of undeveloped, vacant or derelict land to residential, mixed, retail, commercial, industrial or institutional use where such development does not constitute infill where the total area to be transformed is bigger than 1ha (10000m<sup>2</sup>).

25) The expansion of or change to existing facilities for any process or activity, which requires an amendment of an existing permit or license of a new permit or license in terms of legislation governing the release of emissions, pollution, effluent.

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- R. 387 :
- 2) Any development activity, including associated structures, where the total area of the development is, or is intended to be 20 ha, or more.
- 10) Any process or activity identified in terms of section 53(1) of the NEM: Biodiversity Act, 2004.

The applicant appointed Zitholele Consulting (Pty) Ltd to undertake an environmental assessment process in accordance with the EIA Regulations, 2006.

## 2. Information considered in making the decision

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

- a) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998, (Act No. 107 of 1998), as amended.
- b) All issues raised by the Interested and Affected Parties.
- c) The findings of the Specialist Studies as included in Appendices H - R of the EIR dated June 2010.

## 3. 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 Tutuka Power Station, Thuthukani Township and the New Denmark Colliery require a licensed general waste disposal site as the current licensed site at Tutuka Power Station has reached the end of its life. It is proposed to either extend the existing site or to establish a new site within the property of the Tutuka Power Station.
- b) On the basis the impact summary on page 143 of the EIR dated it was clear that the preferred alternative is to extend the current waste disposal site (Alternative A) rather than to establish a new site (Alternatives B and C).
- c) The proposed development is located entirely on Eskom property.


- d) Alternative A is preferred because all the existing infrastructure can be utilised with minimal amendment required. In addition the site can use the existing monitoring program and minimal additional boreholes will have to be drilled, all resulting in a cost saving to the project.
- e) The impact of the development is seen as a positive impact from a social perspective. This due to the fact that the development will allow increased provision of general waste facilities not only for the power station, but also for the community of Thuthukani, at no increased cost.
- f) A detailed Public Participation Process was undertaken and the consultant has satisfied the minimum requirements as prescribed in the EIA regulations, 2006 for public involvement.

#### 4. Findings

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

- The EIR dated June 2010 includes the identification, assessment and mitigation of impacts;
- The procedure followed for the impact assessment has been adequate for the decision-making process;
- All legal and procedural requirements have been met;
- There has been sufficient consultation with Interested and Affected Parties;
- The information contained in the EIR dated June 2010 is accurate and credible;
- Adequate assessment of the main identified issues and impacts have been done;
- The proposed development is compatible with the proposed site for the development; and
- The EMP provided for all identified environmental impacts and includes mitigation measures for the identified impacts and issues.

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, as amended, and that any potentially detrimental environmental impacts resulting from the proposed activity can be mitigated to acceptable levels. The application is accordingly granted.

 25/9/2010