

5. LEGISLATIVE CONTEXT

5.1. Introduction

This section of the Scoping Report details applicable legal provisions and the legal context for the EIA. It provides a review of relevant national legislation and regulations, which are applicable to (or have implications for) the proposed project in the Republic of South Africa.

One of the main foci of this section is on the provisions of the National Environmental Management Act (NEMA) and the National Environmental Management: Waste Act (NEMWA). NEMA is the primary South African legislation governing the requirements for environmental impact assessment. In the context of the Hendrina Ash Dam EIA, the provisions of NEMA, NEMWA and the associated EIA Regulations (regarding scoping and EIA) are of fundamental relevance.

Various pieces of legislation are applicable to this project. For the purposes of this scoping phase the relevant legislation has been listed below and the Acts which detail the relevant listed activities have been expanded on further. A full legal review will be conducted as part of the EIA Study in relation to the identified preferred site/s.

The following Acts are applicable to this project:

- The National Environmental Management: Air Quality Act No 39 of 2004;
- GN R1179 (GG 16536 of 25 August 1995) – Hazardous Chemical Substances Regulations promulgated in terms of the Occupational Health and Safety Act No 85 of 1993;
- Hazardous Substances Act No 15 of 1973
- Constitution of South Africa, 1996 (with reference to noise)
- National Environmental Management Act No 107 of 1998 (with reference to noise and prevention of pollution)
- National Environmental Management: Biodiversity Act No 10 of 2004 (in respect of Fauna, Flora and National Heritage Resources)
- Conservation of Agricultural Resources Act No 43 of 1989 (in respect of Fauna, Flora and National Heritage Resources)
- National Forest Act No 84 of 1998 (in respect of protected trees)
- National Veld and Forest Fire Act No 101 of 1998
- National Heritage Resources Act No 25 of 1999
- Promotion of Access to Information Act No 2 of 2000 (in respect of record-keeping and interested and affected parties and monitoring of environmental impacts:

5.2. Legal Review

5.2.1. Waste Management

Legislation	Specific compliance requirements	Legal commentary and recommended action
<p>National Environmental Management: Waste Act No 59 of 2008</p>	<p>Section 16 - General duty in respect of waste management</p>	<p>Eskom (as a 'holder of waste') must take reasonable measures to avoid the generation of waste and the minimization of the toxicity and amounts of waste generated and also to reduce, recycle and recover waste. Waste must be disposed of in an environmentally sound manner. It must not cause a nuisance through noises, odour or visual impacts</p>
	<p>Section 17 - Reduction, re-use, recycling and recovery of waste</p>	<p>Any activity involving the reduction, re-use, recycling or recovery of waste must use less natural resources than the disposal of such waste and must be less harmful to the environment than the disposal of such waste.</p>
	<p>Section 20 - Consequences of listing waste management activities</p>	<p>If Eskom intends to undertake a waste management activity, it must be in accordance with the waste management license for that activity. A waste management activity includes the generation, accumulation, storage, re-use, recycling and disposal of waste.</p>
	<p>Section 26 - Prohibition of unauthorised disposal</p>	<p>No person may dispose of waste in or on any land, waterbody or at any facility unless the disposal is authorised by law; or dispose of waste in a manner that is likely to cause pollution of the environment or harm to health and well-being.</p>

	<p>Section 45 - Application for waste management licenses</p> <p>R718 of 2009 (GG 32368 of 03/07/2009)</p> <p>Regulation 1 - Definitions</p> <p>Regulation 2 - General</p> <p>Category B</p>	<p>This section sets out the provisions regarding the application for waste management licenses.</p> <p>This regulation lists the waste management activities that have, or are likely to have a detrimental effect on the environment.</p> <p>Eskom to note that the definition of a 'lagoon' includes an ash dam and 'temporary storage' means continuous storage of waste excluding a once off storage of waste for a period not exceeding 90 days.</p> <p>It must be noted that Eskom may not undertake or conduct a waste management activity listed in this schedule unless a license is issued in respect of that activity.</p> <p>The following listed activities apply: Activity 1: The storage including the temporary storage of hazardous waste in lagoons Activity 2 of Category B deals with the re-use and recycling of Hazardous Waste (<i>to be added to application – not originally included</i>) Activity 9: The disposal of any quantity of hazardous waste to land Activity 11: The construction of facilities for activities</p>
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		listed in Category B of this schedule (not in isolation to associated activity)
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5.2.2. Water Consumption and Disposal

Legislation	Specific compliance requirements	Legal commentary and recommended action
National Water Act No 36 of 1998	Section 19 – Prevention and remedying effects of pollution	<p>This section places a duty on Eskom to establish whether any of its activities caused, causes or may cause pollution to a water resource. In order to do this, monitoring of water must be done on a regular basis. If any such pollution or possible pollution has been identified, reasonable measures must be taken to prevent the continuation or recurrence thereof. The effectiveness thereof must be monitored and if such pollution is not prevented, other measures must be investigated. Measures must also be taken for any future activities which may cause pollution to water resources.</p> <p>The CMA has been given extensive powers in prevention or remedying the effects of pollution of water resources and may recover their costs in any action, which could become quite significant.</p> <p>The Ash Dam facility must be constructed in such a way as to ensure that maintenance can be performed to ensure that there are no leakages. Water quality must also be monitored to ensure no pollution to the environment in the event of leakages.</p>
	Section 20 - Control of emergency incidents	<p>Eskom needs to identify the possibility of any substances used which may cause significant pollution of water resources during an accident or incident. Management procedures need to be implemented to prevent such accident or incident.</p>

5.2.3. EIA Activities

Legislation	Specific compliance requirements	Legal commentary and recommended action
National Environmental Management Act No 107 of 1998	<p>Regulation 544 of 2010 (GG 33306 of 18 June 2010) – Listing notice 1: List of activities and competent authorities identified in terms of section 24(2) and 24D</p> <p>Regulation 3 – Identified activities and competent authorities</p> <p>Appendix 1</p>	<p>These regulations set out the activities and competent authorities.</p> <p>The activities listed in Appendix 1 may not commence without an environmental authorisation from the competent authority.</p> <p>Activity 9: The construction of facilities or infrastructure exceeding 1000 metres in length for the bulk transportation of water, sewage or stormwater</p> <ul style="list-style-type: none"> (i) With an internal diameter of 0.36 metres or more; or (ii) With a peak throughput of 120 litres per second or more. <p>Activity 10: The construction of facilities or infrastructure for the transmission and distribution of electricity outside urban areas or industrial complexes with a capacity of more than 33 but less than 275kV.</p> <p>Activity 22: The construction of a road, outside urban areas,</p> <ul style="list-style-type: none"> (i) with a reserve wider than 13,5 meters or, (ii) where no reserve exists where the road is wider than 8 metres, or (iii) for which an environmental authorisation was

	<p>Regulation 545 of 2010 (GG 33306 of 18 June 2010) – Listing notice 2: List of activities and competent authorities identified in terms of sections 24(2) and 24D</p> <p>Regulation 3 – Identified activities and competent authorities</p> <p>Appendix 1</p>	<p>obtained for the route determination in terms of activity 5 in Government Notice 387 of 2006 or activity 18 in Notice 545 of 2010. <i>(to be added to application – not originally included)</i></p> <p><i>(In the event that Alternative E is a preferred site, Activity 27 will also apply and will be required to be added to the application, due to the fact that power lines will be required to be decommissioned and relocated.</i></p> <p>These regulations set out the activities and competent authorities.</p> <p>The activities identified in Appendix 1 may not commence without environmental authorization from the competent authority.</p> <p>Activity 6: The construction of facilities or infrastructure for the bulk transportation of dangerous goods in solid form, outside an industrial complex, using funiculars or conveyors with a throughput capacity of more than 50 tons per day</p> <p>Activity 15: Physical alteration of undeveloped, vacant or derelict land for residential, retail, commercial, recreational, industrial or institutional use, where the total area to be transformed is 20 hectares or more.</p> <p><i>(In the event that Alternative E is a preferred site and it is found that the capacity of the electrical infrastructure exceeds 275kV, Activity 8 will also apply and will be required to be added to the application.)</i></p>
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Minimum Requirements for waste disposal by landfill issued by the Department of Water Affairs and Forestry	4.4 Elimination of areas with inherent fatal flaws	It is a minimum requirement that no landfill site be developed in an area with an inherent fatal flaw. The situations set out in this document may represent fatal flaws in that they may prohibit the development of an environmentally or publicly acceptable waste disposal facility except at excessive costs and should be considered in electing a suitable site.
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