



# forestry, fisheries & the environment

Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA

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

DFFE Reference: 14/12/16/3/3/3/68

Enquiries: Mr Lunga Dlova

Telephone: (012) 399 8524 E-mail: [LDlova@environment.gov.za](mailto:LDlova@environment.gov.za)

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

Telephone Number: (011) 800 3501 / 3725  
Cellphone Number: (083) 660 1147  
Email Address: [HerbstDL@eskom.co.za](mailto:HerbstDL@eskom.co.za)

## PER EMAIL / MAIL

Dear Ms Herbst

### **REFUSAL OF AN APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT NO. 107 OF 1998, AS AMENDED AND THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008, (ACT NO. 59 OF 2008), AS AMENDED: FOR THE PROPOSED NEW 30 YEAR ASH DISPOSAL FACILITY FOR THE KENDAL POWER STATION WITHIN EMALAHLENI LOCAL MUNICIPALITY IN MPUMALANGA PROVINCE**

With reference to the above application, please be advised that the Department has decided to refuse authorisation. The refusal of the Environmental Authorisation (EA) and reasons for the decision are attached herewith.

In terms of Regulation 10 (2) of the Environmental Impact Assessment Regulations, 2010 (the EIA Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 12 (twelve) days of the date of the 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 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.

*MS*

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](mailto:appeals@environment.gov.za);

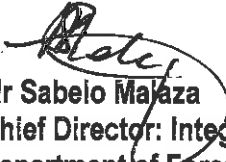
By hand: Environment House  
473 Steve Biko  
Arcadia  
Pretoria  
0083; or

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](https://www.environment.gov.za/documents/forms#legal_authorisations) or request a copy of the documents at [appeals@environment.gov.za](mailto:appeals@environment.gov.za).

Yours faithfully

  
**Mr Sabelo Malaza**  
**Chief Director: Integrated Environmental Authorisations**  
**Department of Forestry, Fisheries and the Environment**  
Date: *22/04/2021*

cc	Ms Tania Oosthuizen	Zitholele Consulting (Pty) Ltd	Email: <a href="mailto:taniao@zitholele.co.za">taniao@zitholele.co.za</a>
	Ms Robyn Luyt	Mpumalanga Department of Economic Development and Tourism	Email: <a href="mailto:RLuyt@mpg.gov.za">RLuyt@mpg.gov.za</a>
	Erald Nkabinde	Emalahleni Local Municipality	Email: <a href="mailto:nkabindeej@emalahleni.co.za">nkabindeej@emalahleni.co.za</a>
	Emmy Molepo	Eskom Holdings SOC Limited	Email: <a href="mailto:MolepoME@eskom.co.za">MolepoME@eskom.co.za</a>

DFFE Reference: 14/12/16/3/3/3/68

Refusal of the new 30 year Ash Disposal Facility for the Kendal Power Station with In Emalahleni Local Municipality In Mpumalanga Province

*MS*



**forestry, fisheries  
& the environment**

Department:  
Forestry, Fisheries and the Environment  
**REPUBLIC OF SOUTH AFRICA**

Refusal of an Integrated Environmental Authorisation Issued in terms of

The National Environmental Management Act, 1998 and the Environmental Impact  
Assessment Regulations 2010

and

The National Environmental Management: Waste Act, 2008 and Government Notice 718  
of 2009

New 30 Year Ash Disposal Facility for the Kendal Power Station within Emalahleni Local  
Municipality in Mpumalanga Province

Nkangala District Municipality

<b><i>Authorisation register number:</i></b>	<i>14/12/16/3/3/3/68</i>
<b><i>Last amended:</i></b>	<i>First Issue</i>
<b><i>Holder of integrated authorisation:</i></b>	<i>Eskom Holdings SOC Ltd</i>
<b><i>Location of activities:</i></b>	<i>MPUMALANGA PROVINCE: On Ward 30 of the Emalahleni Local Municipality.</i>

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.

## DECISION

The Department is satisfied, on the basis of information available to it and subject to compliance with the conditions of this integrated environmental authorisation ("the environmental authorisation") that the applicant should not be authorised to undertake the NEMA EIA and NEMWA listed activities specified below.

Details regarding the basis on which the Department reached this decision are set out in Annexure "I" to this environmental authorisation.

### NEMA EIA AND NEMWA ACTIVITIES NOT AUTHORISED

By virtue of the powers conferred on it by NEMA, the NEMA EIA Regulations, 2010, NEMWA and Government Notice 718 of 03 July 2009 the Department hereby refuses Environmental Authorisation to:

#### ESKOM HOLDINGS SOC LTD

with the following contact details –

Ms Deidre Herbst

Eskom Holdings ,Megawatt Park

P.O. Box 1091

**JOHANNESBURG**

2000

Tel: (011) 800 3501 / 3725

Cell: (083) 660 1147

E-mail: [HerbstDL@eskom.co.za](mailto:HerbstDL@eskom.co.za)

to undertake the following activities (hereafter referred to as "the activities") in terms of Listing Notice 1 and Listing Notice 2 of the EIA Regulations, 2010 and waste activities in terms of National Environmental Management Waste Act (NEM: WA, Act 59 of 2008), GN R.718 of 03 July 2009, Category B to carry out the following activities:

Listed activities	Activity/Project description
<p><b><u>Listing Notice 1 (GN R 544) – Activity 10 (i):</u></b></p> <p>The construction of facilities or infrastructure for the transmission and distribution of electricity -                      (i) outside urban areas or industrial complexes with a capacity of more than 33 but less than 275 kilovolts;</p>	<p>Several power lines occur on the site and will have to be re-aligned. The following power lines require diversion:</p> <ul style="list-style-type: none"> <li>• 11kV Distribution Power Line</li> <li>• 22kV Distribution Power Line</li> <li>• Two 88kV Distribution Power Lines</li> <li>• Two 132kV Distribution Power Lines</li> <li>• Two 400kV Transmission Power Lines</li> </ul>
<p><b><u>Listing Notice 1 (GN R 544) – Activity 12:</u></b></p> <p>The construction of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, with a combined capacity of 50000 m<sup>3</sup> or more, unless such storage falls within the ambit of activity 19 of Notice 545 of 2010;</p>	<p>Seven new dams are being proposed, some of which will exceed 50 000 m<sup>3</sup> in capacity.</p>
<p><b><u>Listing Notice 1 (GN R 544) – Activity 11:</u></b></p> <p>The construction of:                      (ii) channels;                      (iv) dams;                      (x) buildings exceeding 50 m<sup>2</sup> in size; or                      (xi) infrastructure or structures covering 50 m<sup>2</sup> or more                      where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse,</p>	<p>The preferred site (Site H) is located over several wetlands. The project will include different types of storm water management infrastructure (channels, dams, etc.) and will also exceed 50m<sup>2</sup>.</p>

Listed activities	Activity/Project description
excluding where such construction will occur behind the development setback line.	
<p><b><u>Listing Notice 1 (GN R 544) – Activity 18 (i):</u></b></p> <p>The infilling or depositing of any material of more than 5 m<sup>3</sup> into, or the dredging, excavation, removal or moving of soil, sand, shell grit, pebbles or rock of more than 5 cubic meters from:</p> <p>(i) a watercourse;</p>	<p>The construction activities required for the ADF Liner will inherently entail excavations within, and the removal / moving soil from the wetland.</p> <p>The volume of soil that will be removed by the excavations may exceed 5 m<sup>3</sup>.</p>
<p><b><u>Listing Notice 1 (GN R 544) – Activity 22 (ii):</u></b></p> <p>The construction of a road, outside urban areas;</p> <p>(ii) where no reserve exists where the road is wider than 8 metres.</p>	<p>The D1390 will be re-aligned. Also, an access road will be constructed around the Ash Disposal Facility (ADF).</p>
<p><b><u>Listing Notice 1 (GN R 544) – Activity 26:</u></b></p> <p>Any process or activity identified in terms of section 53(1) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).</p>	<p>At this point, no protected species have been found that require removal. However, should any such species be discovered during later phases the NEM: BA process should be followed to apply for their removal.</p>
<p><b><u>Listing Notice 1 (GN R 544) – Activity 29 (ii):</u></b></p> <p>The expansion of facilities for the generation of electricity where:</p> <p>(ii) regardless the increased output of the facility, the development footprint will be expanded by 1 hectare or more.</p>	<p>The Kendal 30-year project can be considered as an extension of the existing Kendal Power Station – to prolong its lifespan. The new ADF will exceed 1 ha in size.</p>
<p><b><u>Listing Notice 2 (GN R 545) – Activity 5:</u></b></p> <p>The construction of facilities or infrastructure for any process or activity which requires a permit or license in terms of national or provincial legislation governing the generation or release of emissions, pollution or effluent and which is not identified in Notice No. 544 of 2010 or included in the list of waste management activities published in terms of</p>	<p>The project requires a Water Use Licence (WUL) from the Department of Water and Sanitation for various water use activities,</p>

Listed activities	Activity/Project description
<p>section 19 of the National Environmental Management: Waste Act, 2008 (Act No.59 of 2008) in which case that Act will apply.</p>	
<p><b><u>Listing Notice 2 (GN R 545) – Activity 6 (iii):</u></b>                      The construction of facilities or infrastructure for the bulk transportation of dangerous goods – (iii) in solid form, outside an industrial complex, using funiculars or conveyors with a throughput capacity of more than 50 tons day.</p>	<p>The dry ash to be transported to the ash disposal facility on a conveyor belt that transports in excess of 50 tonnes of ash per day. The ash is classified as a dangerous substance</p>
<p><b><u>Listing Notice 2 (GN R 545) – Activity 8:</u></b>                      The construction of facilities or infrastructure for the transmission and distribution of electricity with a capacity of 275 kilovolts or more, outside an urban area or industrial complex.</p>	<p>The following power lines require diversion:</p> <ul style="list-style-type: none"> <li>• Two 400 kV Transmission Power Lines</li> </ul>
<p><b><u>Listing Notice 2 (GN R 545) – Activity 15:</u></b>                      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>The preferred site is located on active farmland, but it may be considered “undeveloped”. The ADF project will exceed 20 ha in area.</p>
<p><b><u>GN R. 718 Category B Item 9</u></b>                      The disposal of any quantity of hazardous waste to land.</p>	<p>The dry ash generated by the combustion of coal in the electricity generation process will be disposed of at the Kendal 30year ADF. Owing to the nature and composition of the ash that is generated by the combustion of coal, it is considered to be hazardous waste.</p>
<p><b><u>GN R. 718 Category B item 11</u></b>                      The construction of a facility for a waste management activity listed in Category B of this Schedule (not in isolation to associated waste management activity).</p>	<p>The existing ADF will be expanded to into the north westerly direction. The expansion of the dry ash dump is required to provide sufficient capacity for the remaining life of the KPS.</p>

as described in the Final Environmental Impact Assessment Report (FEIAR) dated October 2016 at:

*MS*

**Farm Name:** Heuvelfontein 215 IR and Schoongezicht 218 IR.

**Ward:** 30

**SG Coordinates:**

Farm Name	Portion	SGID
Heuvelfontein 215	28	T0IR00000000021500028
Heuvelfontein 215	93	T0IR00000000021500093
Heuvelfontein 215	38	T0IR00000000021500038
Heuvelfontein 215	74	T0IR00000000021500074
Heuvelfontein 215	79	T0IR00000000021500079
Heuvelfontein 215	58	T0IR00000000021500058
Heuvelfontein 215	20	T0IR00000000021500020
Heuvelfontein 215	29	T0IR00000000021500029
Heuvelfontein 215	36	T0IR00000000021500036
Heuvelfontein 215	92	T0IR00000000021500092
Schoongezicht 218	24	T0IR00000000021800024
Schoongezicht 218	38	T0IR00000000021800038

**Ash Disposal Facility centre coordinates:**

Site H	Latitude	Longitude
Centre coordinates	26°3.990' E	28°56.469' S

- for the proposed new 30 year ash disposal facility and associated infrastructure – within 10km radius of the existing Eskom Kendal Power Station within Emalahleni Local Municipality in Mpumalanga Province.

The Project entails existing - new Ash Disposal Facility with its associated infrastructure, the proposed project components are similar to those of the existing Ash Disposal Facility. The proposed project require two fixed conveyors to be constructed from the existing Emergency Dump (E-dump) at the power station and will cross under Road 545 where a new Edump will be constructed. The maximum height that the ADF will reach is 75 m. It will have a ring access road constructed around its perimeter together with stormwater canals intercepting impacted runoff and directing to a pollution control dam.



## SCOPE OF AUTHORISATION

1. The new 30 year ash disposal facility and associated infrastructure – within 10km radius of the existing Eskom Kendal Power Station within Emalahleni Local Municipality in Mpumalanga Province is hereby refused.

## NOTIFICATION OF AUTHORISATION AND RIGHT TO APPEAL

2. The holder of the authorisation must notify every registered interested and affected party, in writing and within 12 (twelve) calendar days of the date of this Environmental Authorisation, of the decision to refuse the activity.
3. The notification referred to must –
  - 3.1. specify the date on which the authorisation was issued;
  - 3.2. inform the interested and affected party of the appeal procedure provided for in the National Appeal Regulations, 2010;
  - 3.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
  - 3.4. give the reasons of the Competent Authority for the decision.

Date of refusal of an environmental authorisation: 22/04/2021

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

## ANNEXURE I: REASONS FOR DECISION

### 1. Key factors considered in making the decision

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

- a) The information contained in the final EIR dated October 2016;
- b) The mitigation measures included in the final EIR dated October 2016 and the EMPr;
- c) The information contained in the specialist studies contained within final EIR dated October 2016;
- d) The comments received from the Directorate: Authorisations & Waste Management Licensing and comments from interested and affected parties as included in the final EAIR dated October 2016; and
- e) 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).
- f) Conceptual wetland offset strategy for the proposed Kendal 30-year ADF compiled by Wetland Consulting Services (Pty) Ltd dated September 2018.
- g) Resolutions from the discussion held between Department of Water and Sanitation (DWS): Directorate: Water Abstraction and In-Stream Use, Directorate: Resource Protection and Waste and Eskom to discuss the Wetland Offset Strategy Report amendment required from the previous comments held on 09 December 2019.
- h) The Department request for additional information for final wetland offset strategy report for the proposed new 30 year ash disposal facility for Kendal Power Station in Mpumalanga province dated 12 August 2019.
- i) Eskom letter titled Kendal 30 year ash disposal facility request for more information dated 22 October 2019.
- j) Eskom correspondence titled Kendal 30-year ash disposal facility wetland offset strategy commitment dated 14 July 2020.
- k) The Department of Environment, Forestry and Fisheries (DEFF) request for 2nd additional information on the final amendment wetland offset strategy report for the proposed Eskom Power Station 30 year ash disposal facility in terms of section 50 of the National Environmental Management: Waste Act 2008 – Mpumalanga province dated 19 January 2020.
- l) Eskom e-mail from Ms Emmy Molepo with the subject Eskom Kendal Power Station 30 year Ash Project – Wetland Offset Package of previous submissions to authorities dated 28 January 2021.

- m) E-mail from Department of Water and Sanitation Sub Directorate Instream Water Use with the subject Kendal Power Station Wetland Offset Strategy dated 29 January 2021.

## 2. Findings

After consideration of the information and factors listed above the Department reached the following conclusions:

- a) The final EIR does not comply with Regulation 31 (2) of EIA Regulations, 2010.
- b) Based on the assessment of the documents provided, Department does not approve the issuance of the Environmental Authorization as the motivation submitted does not address recommendations as stated in the 2nd request for additional information as per the Record of Decision dated 24 February 2020.
- c) The following has been noted with regards to the submitted motivation:
  - The Wetland Offset Strategy does not meet wetland offset targets as per the requirements of the 2nd additional information requested on 19 January 2020 and the offset land is not secured (not sterilised from future mining).
  - The alternatives indicated by the Applicant, (Eskom Holdings SOC Limited) like taking over Wastewater Treatment Works (WWTW) in the catchment and making it compliant, are not feasible for enhancing the ecological category of the catchment.
  - The applicant is advised that the recommendations in the Record of Decision dated 24 February 2020 still stand and should be complied to.
- d) The final EIR in its current form is not adequate to make an informed decision on the abovementioned application

In view of the above, the competent authority is of the opinion that the proposed listed activities will conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities may not be mitigated to acceptable levels and should therefore be prevented altogether. The Environmental Authorisation is accordingly refused.