



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: 14/12/16/3/3/3/52/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 EXEMPTION FROM LINING REQUIREMENTS ISSUED ON 19 OCTOBER 2015 FOR THE PROPOSED CONTINUOUS ASHING AT THE TUTUKA POWER STATION ASH DISPOSAL FACILITY, MPUMALANGA PROVINCE

The Environmental Authorisation (EA) issued for the abovementioned application by this Department on 19 October 2015, Exemption from lining requirements issued on 05 May 2016, your application for amendment to the Exemption received on 29 November 2018, response letter issued to you dated 09 January 2019 and the final motivation report for amendment dated on September 2019 received by this Department on 14 October 2019 refer.

The applicant 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 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 development. Based on a review of the application for amendment as indicated above and the supporting documentation to amend the Exemption issued, this Department has decided **not to amend the exemption** dated 05 May 2016. The reasons for the decision are provided below:

- The cost of water lost in unlined facilities and consequential water treatment costs almost always exceed the barrier costs in coal ash and mine tailings facilities. The unjustified claim by Eskom on cost comparison ignores stability which requires drainage of the foundations.
- Leaving out a liner does not imply stable disposal-and this is known worldwide as seen by numerous hydraulic deposit failures around the world with consequential loss of life and pollution. The Eskom cost comparison excludes foundation drainage stability, as well as the socio-economic costs to the State and public for unlined facilities and resultant pollution remediation, including water treatment and dilution.
- 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.

- Non-compliance with legislation including the constitution of the Republic of South Africa, bill of human Rights, National Environmental Management Act principles of 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 of 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 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.

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Project Title: Exemption amendment for the continuous ashing at the Tutuka Power Station Ash Disposal Facility, Mpumalanga Province

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 Vusi Skosana

**Acting Chief Director: Integrated Environmental Authorisations
Department of Environmental Affairs**

Date: 24/03/2020



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**Department:
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REPUBLIC OF SOUTH AFRICA**

Private Bag X447 PRETORIA 0001 Environment House · 473 Steve Biko Road, Arcadia· PRETORIA
Tel(+ 27 12) 389 9372

Enquiries: Mr Ishaam Abader Telephone: 012 399 9330 E-mail: iabader@environment.gov.za

Mr. Vusi Skosana
Director: Strategic co-ordination planning and support

Dear Mr. V Skosana

APPOINTMENT AS ACTING CHIEF DIRECTOR: INTEGRATED ENVIRONMENTAL AUTHORISATIONS FOR THE PERIOD 23rd MARCH 2020 UNTIL 27th MARCH 2020. WHILEST MR. SABELO MALAZA WILL BE ON ANNUAL LEAVE.

I hereby inform you that I have decided to appoint you as the Acting Chief Director: Integrated Environmental Authorizations for the period 23rd March 2020 until 27th March 2020 whilst Mr. Sabelo Malaza will be on annual leave.

All the correspondence and other documents that are usually signed by the Chief Director: Integrated Environmental Authorizations must be signed under Acting Chief Director: Integrated Environmental Authorisations during the above-mentioned period.

Your appointment in the above acting position remains subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as amended, the Government Employees Pension Fund Act, 1996 (Proclamation No. 21 of 1996), the regulations promulgated under these Acts and relevant circulars.

In the execution of your duties and the exercising of the powers delegated to you, you will furthermore be subjected to the provisions of the Public Finance Management Act, compliance with the Promotion of Access to Information Act, Promotion of Administrative Justice Act, the Minimum Information Security Standard, Departmental Policies and other applicable legislations with the Republic of South Africa. You are therefore advised to make yourself familiar with the provisions of this legislations and policies and the amendments thereof. (Copies of Departmental policies can be obtained from the Human Resource Office).

Please accept my heartfelt gratitude for all your assistance on behalf of the department.

Yours sincerely,


Mr Ishaam Abader
DDG: Regulatory Compliance & Sector Monitoring
Date: 16/3/2020

ACKNOWLEDGEMENT

I ACCEPT / ~~DO NOT ACCEPT~~ appointment as Acting Chief Director: integrated environmental authorisations

Signed: 

Date: 16/03/2020