

(7 April 2017 – to date)

NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

(Gazette No. 19519, Notice No. 1540. Commencement date: 29 January 1999 [Proc. No. 8, Gazette No.19703])

ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS: LISTING NOTICE 2 OF 2014

Government Notice R984 in Government Gazette 38282 dated 4 December 2014. Commencement date: 8 December 2014.

As amended by:

Government Notice 325 in Government Gazette 40772 dated 7 April 2017. Commencement date: 7 April 2017.

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby repeal Listing Notice 2 of 2010, published under Notice No. 545 in Gazette No. 33306 dated 18 June 2010, and publish Listing Notice 2 of 2014 under sections 24(2), 24(5), 24D and 44, read with section 47A(1)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.

(Signed)

BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

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1. PURPOSE

The purpose of this Notice is to identify activities that would require an environmental authorisation prior to the commencement of that activity and to identify competent authorities in terms of sections 24(2) and 24D of this Act.

2. DEFINITIONS

Prepared by:

- (1) In this Notice, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates –

"associated structures, infrastructure and earthworks" means any structures, infrastructure or earthworks, including borrow pits, that is necessary for the functioning of a facility or activity;

"channel" means an excavated hollow bed for running water or an artificial underwater depression to make a water body navigable in a natural watercourse, river or the sea;

"dam" when used in these Regulations means any barrier dam and any other form of impoundment used for the storage of water, excluding reservoirs;

(Definition of "dam" substituted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

"dangerous goods" means goods containing any of the substances as contemplated in South African National Standard No. 10234, supplement 2008 1.00: designated "List of classification and labelling of chemicals in accordance with the Globally Harmonized Systems (GHS)" published by Standards South Africa, and where the presence of such goods, regardless of quantity, in a blend or mixture, causes such blend or mixture to have one or more of the characteristics listed in the Hazard Statements in section 4.2.3, namely physical hazards, health hazards or environmental hazards;

"development" means the building, erection, construction or establishment of a facility, structure or infrastructure, including associated earthworks or borrow pits, that is necessary for the undertaking of a listed or specified activity, but excludes any modification, alteration or expansion of such a facility, structure or infrastructure, including associated earthworks or borrow pits, and excluding the redevelopment of the same facility in the same location, with the same capacity and footprint;

(Definition of "development" substituted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

"development footprint" means any evidence of physical alteration as a result of the undertaking of any activity;

"development setback" means a setback line defined or adopted by the competent authority;

"expansion" means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which an activity takes place in such a manner that the capacity of the facility or the footprint of the activity is increased;

"indigenous vegetation" refers to vegetation consisting of indigenous plant species occurring naturally in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding ten years;

"industrial complex" means an area used or zoned for industrial purposes, including bulk storage, manufacturing, processing or packaging purposes;

"linear development activity" means an activity that is arranged in or extending along one or more properties and which affects the environment or any aspect of the environment along the course of the activity, and includes railways, roads, canals, channels, funiculars, pipelines, conveyor belts, cableways, powerlines, fences, runways, aircraft landing strips, firebreaks and telecommunication lines;

(Definition of "linear development activity" substituted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

"maintenance" means actions performed to keep a structure or system functioning or in service on the same location, capacity and footprint;

"maintenance management plan" means a management plan for maintenance purposes defined or adopted by the competent authority;

"marina" means a constructed waterway that is normally associated with residential or commercial use and that could include mooring facilities;

"route determination" means the process of planning and designing a new route;

"the Act" means the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended;

"throughput capacity" means the design capacity or maximum capable capacity of a facility, structures or infrastructure, whichever is the greater;

"urban areas" means areas situated within the urban edge (as defined or adopted by the competent authority), or in instances where no urban edge or boundary has been defined or adopted, it refers to areas situated within the edge of built-up areas;

"virgin soil" means land not cultivated for the preceding 10 years.

"watercourse" means –

- (a) a river or spring;
- (b) a natural channel in which water flows regularly or intermittently;
- (c) a wetland, pan, lake or dam into which, or from which, water flows; and

- (d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse as defined in the National Water Act, 1998 (Act No. 36 of 1998); and

a reference to a watercourse includes, where relevant, its bed and banks; and

"wetland" means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

- (2) The following words relevant to coastal activities will have the meaning assigned to it in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008):

(Words preceding regulation 2(2)(a) substituted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

- (a) "estuary";
- (b) "high-water mark";
- (c) "littoral active zone";
- (d) "low-water mark"; and
- (e) "sea".

- (3) The following words will have the meaning so assigned to it in terms of section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002):

(Words preceding regulation 2(3)(a) substituted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

- (a) "exploration right";
- (b) "mine";
- (c) "mineral";
- (d) "mining area";
- (e) "mining right";
- (f) "petroleum";

(g) "production right"; and

(h) "prospecting right".

3. IDENTIFIED ACTIVITIES AND COMPETENT AUTHORITIES

(1) The activities identified in Appendix 1 may not commence without environmental authorisation from the competent authority.

(2) The investigation, assessment and communication of the potential impact of activities must follow the procedure as prescribed in regulations 21, 22, 23 and 24 of the Environmental Impact Assessment Regulations published in terms of section 24(5) of the Act, unless otherwise indicated by the Minister in a government notice.

(Regulation 3(2) substituted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

(3)

(Regulation 3(3) deleted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

4. REPEAL OF NOTICE 545 DATED 18 JUNE 2010

Notice 545 published in *Gazette* 33306 is hereby repealed.

5. SHORT TITLE

This Listing Notice is called the Environmental Impact Assessment Regulations Listing Notice 2 of 2014, and takes effect on 08 December 2014.

APPENDIX 1

(Appendix 1 substituted by Government Notice 325 in Government Gazette 40772 dated 7 April 2017)

Identification of competent authority: The competent authority in respect of the activities listed in this part of the schedule is the competent authority in the province in which the activity is to be undertaken, unless—

- (a) it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act; or
- (b) the listed or specified activity is or is directly related to—
 - i. prospecting or exploration of a mineral or petroleum resource; or
 - ii. extraction and primary processing of a mineral or petroleum resource;

in which case the competent authority is the Minister responsible for mineral resources.

The exception mentioned in (b) above does not apply to the following activities contained in this Notice: 3; 8(i); 13; 26; 27; and 29.

Activity number	Activity description
1.	The development of facilities or infrastructure for the generation of electricity from a renewable resource where the electricity output is 20 megawatts or more, excluding where such development of facilities or infrastructure is for photovoltaic installations and occurs — (a) within an urban area; or (b) on existing infrastructure.
2.	The development and related operation of facilities or infrastructure for the generation of electricity from a non-renewable resource where the electricity output is 20 megawatts or more.

Activity number	Activity description
3.	The development and related operation of facilities or infrastructure for nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products, nuclear waste or radioactive waste.
4.	The development and related operation of facilities or infrastructure, for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of more than 500 cubic metres.
5.	The development and related operation of facilities or infrastructure for the processing of a petroleum resource, including the beneficiation or refining of gas, oil or petroleum products with an installed capacity of 50 cubic metres or more per day, excluding activities which are included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies.
6.	<p>The development of facilities or infrastructure for any process or activity which requires a permit or licence or an amended permit or licence in terms of national or provincial legislation governing the generation or release of emissions, pollution or effluent, excluding—</p> <ul style="list-style-type: none"> (i) activities which are identified and included in Listing Notice 1 of 2014; (ii) activities which are included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies; (iii) the development of facilities or infrastructure for the treatment of effluent, polluted water, wastewater or sewage where such facilities have a daily throughput capacity of 2 000 cubic metres or less; or (iv) where the development is directly related to aquaculture facilities or infrastructure where the wastewater discharge capacity will not exceed 50 cubic metres per day.
7.	<p>The development and related operation of facilities or infrastructure for the bulk transportation of dangerous goods—</p> <ul style="list-style-type: none"> (i) in gas form, outside an industrial complex, using pipelines, exceeding 1 000 metres in length, with a throughput capacity of more than 700 tons per day; (ii) in liquid form, outside an industrial complex, using pipelines, exceeding 1 000 metres in length, with a throughput capacity of more than 50 cubic metres per day; or (iii) in solid form, outside an industrial complex, using funiculars or conveyors with a throughput capacity of more than 50 tons per day.
8.	<p>The development of—</p> <ul style="list-style-type: none"> (i) airports; or (ii) runways or aircraft landing strips longer than 1,4 kilometres.

Activity number	Activity description
9.	<p>The development 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 excluding the development of bypass infrastructure for the transmission and distribution of electricity where such bypass infrastructure is —</p> <ul style="list-style-type: none"> (a) temporarily required to allow for maintenance of existing infrastructure; (b) 2 kilometres or shorter in length; (c) within an existing transmission line servitude; and (d) will be removed within 18 months of the commencement of development.
10.
11.	<p>The development of facilities or infrastructure for the transfer of 50 000 cubic metres or more water per day, from and to or between any combination of the following —</p> <ul style="list-style-type: none"> (i) water catchments; (ii) water treatment works; or (iii) impoundments; <p>excluding treatment works where water is to be treated for drinking purposes.</p>
12.	<p>The development of railway lines, stations or shunting yards excluding —</p> <ul style="list-style-type: none"> (i) railway lines, shunting yards and railway stations in industrial complexes or zones; (ii) underground railway lines in a mining area; or (iii) additional railway lines within the railway line reserve.
13.	<p>The physical alteration of virgin soil to agriculture, or afforestation for the purposes of commercial tree, timber or wood production of 100 hectares or more.</p>
14.	<p>The development and related operation of—</p> <ul style="list-style-type: none"> (i) (ii) an anchored platform; or (iii) any other structure or infrastructure — <p>on, below or along the sea bed;</p>

Activity number	Activity description
	excluding — (a) development of facilities, infrastructure or structures for aquaculture purposes; or (b) the development of temporary structures or infrastructure where such structures will be removed within 6 weeks of the commencement of development and where coral or indigenous vegetation will not be cleared.
15.	The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for— (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan.
16.	The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.
17.	Any activity including the operation of that activity which requires a mining right as contemplated in section 22 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including— (a) associated infrastructure, structures and earthworks, directly related to the extraction of a mineral resource; or (b) the primary processing of a mineral resource including winning, extraction, classifying, concentrating, crushing, screening or washing; but excluding the secondary processing of a mineral resource, including the smelting, beneficiation, reduction, refining, calcining or gasification of the mineral resource in which case activity 6 in this Notice applies.
18.	Any activity including the operation of that activity which requires an exploration right as contemplated in section 79 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including — (a) associated infrastructure, structures and earthworks; or (b) the primary processing of a petroleum resource including winning, extraction, classifying, concentrating or water removal; but excluding the secondary processing of a petroleum resource, including the beneficiation or refining of gas, oil or petroleum products in which case activity 5 in this Notice applies.
19.	The removal and disposal of minerals contemplated in terms of section 20 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including— (a) associated infrastructure, structures and earthworks, directly related to prospecting of a mineral resource; or

Activity number	Activity description
	(b) the primary processing of a mineral resource including winning, extraction, classifying, concentrating, crushing, screening or washing; but excluding the secondary processing of a mineral resource, including the smelting, beneficiation, reduction, refining, calcining or gasification of the mineral resource in which case activity 6 in this Notice applies.
20.	Any activity including the operation of that activity which requires a production right as contemplated in section 83 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including — (a) associated infrastructure, structures and earthworks; or (b) the primary processing of a petroleum resource including winning, extraction, classifying, concentrating or water removal; but excluding the secondary processing of a petroleum resource, including the beneficiation or refining of gas, oil or petroleum products in which case activity 5 in this Notice applies.
21.
22.
23.	The reclamation of an island or parts of the sea.
24.	The extraction or removal of peat or peat soils, including the disturbance of vegetation or soils in anticipation of the extraction or removal of peat or peat soils, but excluding where such extraction or removal is for the rehabilitation of wetlands in accordance with a maintenance management plan.
25.	The development and related operation of facilities or infrastructure for the treatment of effluent, wastewater or sewage with a daily throughput capacity of 15 000 cubic metres or more.
26.	Development— (i) in the sea; (ii) in an estuary; (iii) within the littoral active zone; (iv) in front of a development setback; or (v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;

Activity number	Activity description
	<p>in respect of —</p> <ul style="list-style-type: none"> (a) facilities associated with the arrival and departure of vessels and the handling of cargo; (b) piers; (c) inter- and sub-tidal structures for entrapment of sand; (d) breakwater structures; (e) coastal marinas; (f) coastal harbours or ports; (g) tunnels; or (h) underwater channels; <p>but excluding the development of structures within existing ports or harbours that will not increase the development footprint of the port or harbour.</p>
27.	<p>The development of a road—</p> <ul style="list-style-type: none"> (i) (ii) (iii) with a reserve wider than 30 metres; or (iv) catering for more than one lane of traffic in both directions; <p>but excluding a road—</p> <ul style="list-style-type: none"> (a) for which an environmental authorisation was obtained for the route determination in terms of activity 5 in Government Notice 387 of 2006 or activity 18 in Government Notice 545 of 2010, in which case activity 24 in Listing Notice 1 of 2014 applies; (b) which is 1 kilometre or shorter; or (c) where the entire road falls within an urban area.
28.
29.	The expansion and related operation of facilities for nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products, nuclear waste or radioactive waste.