



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

**Honourable BD Creecy**

Minister of Environmental Affairs, Forestry and Fisheries  
Pretoria

By email: [dfischer@environment.gov.za](mailto:dfischer@environment.gov.za)

Our Ref: Proposed amendments EIA Regulations 2020  
11 December 2020

Dear Honourable Minister,

**SUBMISSIONS ON THE THE PROPOSED AMENDMENTS TO THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, LISTING NOTICE 1, LISTING NOTICE 2 AND LISTING NOTICE 3 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 FOR ACTIVITIES IDENTIFIED IN TERMS OF SECTION 24(2) AND 24D OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998,**

1. We address you in relation to the Proposed Amendments to the Environmental Impact Assessment Regulations, Listing Notice 1, Listing Notice 2 and Listing Notice 3 of the Environmental Impact Assessment Regulations, 2014 for Activities identified in terms of Section 24(2) and 24D of the National Management Act, 1998, published for public comment, on 13 November 2020 in Government Gazette Number 43904 under Notice Number 1224.
2. The Centre for Environmental Rights (CER) is a non-profit organisation and firm of environmental rights lawyers who help communities and civil society organisations in South Africa realise our Constitutional right to a healthy environment by advocating and litigating for environmental justice. The CER makes its submissions based on its experience in applying the National Environmental Management Act, 1998, the Environmental Impact Assessment Regulations together with the listing notices, both in our own name and on behalf of civil society and community clients.
3. We regret that no explanatory memorandum was supplied by the Department in relation to the proposed amendments. Such memoranda play an important role for civil society in understanding the Department's objectives and intention behind proposed amendments which in turn promotes meaningful consultation and enriched engagement. In circumstances where various proposed amendments have been published both in relation to NEMA and to the Financial Provision Regulations since the commencement of the one environmental system, which proposed amendments have not been finalised, we submit that an explanatory memorandum in relation to the current proposed amendments to the EIA Regulations was particularly necessary.
4. We nevertheless enclose our comments on the abovementioned Proposed Amendments to the Environmental Impact Assessment Regulations in the form of a table containing our comments and our proposed amendments / insertions.
5. We request that prior to the finalisation of these proposed amendments to the listing notices, further engagement is facilitated between interested and affected parties and the Department (including the provincial departments) to draw more fully on the direct and practical experience of interested and affected parties in the application of

Cape Town: 2<sup>nd</sup> Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa

Johannesburg: First Floor, DJ du Plessis Building, West Campus, University of the Witwatersrand, Braamfontein, 2001, South Africa

Tel 021 447 1647 (Cape Town) | Tel 010 442 6830 (Johannesburg) | Fax 086 730 9098

[www.cer.org.za](http://www.cer.org.za)

environmental legislation, especially environmental impact assessment, mine closure and rehabilitation and financial provisioning.

6. We also request that in future, consultation initiated by the Department around draft legislation follows a more robust and participatory process and does not create or leave the impression that the draft texts are fait accompli, particularly given the time of publication and the potential comments to be received. Lastly, we reiterate that these proposed amendments occur in the context of other pieces of planning and environmental legislation which are also in the process of being amended or introduced. This staggered piecemeal approach to environmental regulation is likely to result in legal uncertainty, conflicting laws and an unnecessary additional administrative and economic burden on the State, industry and civil society respectively.
7. We appreciate the opportunity to make submissions on the proposed amendments. Please advise if you require further information on any of our submissions.

Yours sincerely

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

**Tarisai Mugunyani**

**Attorney**

Direct email: [tmugunyani@cer.org.za](mailto:tmugunyani@cer.org.za)