
GENERAL NOTICE

NOTICE 709 OF 2014

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

DRAFT NATIONAL APPEAL REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make regulations pertaining to the processing, consideration of, and decision on appeals, under section 44(1)(a) read with section 43(4) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 (thirty) days after the publication of the notice in the *Gazette*, written comments or inputs to the following addresses:

By post to: The Director-General: Department of Environmental Affairs
 Attention: Ms. Nomsa Mahlale
 Private Bag X447
 Pretoria
 0001

By hand at: Corner Steve Biko and Soutpansberg Roads, Pretoria.

By e-mail: nmahlale@environment.gov.za.

Any enquiries in connection with the draft regulations can be directed to Mr. S. Shabalala at (012) 399 9351.

Comments received after the closing date may not be considered.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

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CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

Interpretation

1. (1) In these Regulations any word or expression to which a meaning has been assigned in the Act, and unless the context requires otherwise—

“appeal administrator” means the person who administers the appeal on behalf of the appeal authority;

“appeal authority” is the Minister, the MEC or person delegated the power to decide on appeals by the Minister or MEC, as the case may be;

“appellant” means a person contemplated in regulation 4;

“applicant” means a person to whom a decision has been issued in terms of the Act or specific environmental management Act;

“independent”, in relation to a person appointed as a member of an appeal panel, means—

- (a) that such a person has no business, financial, personal or other interest in the appeal in respect of which that person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that appeal; or
- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work;

“person” has the meaning assigned to it in section 1 of the Act and includes an organ of state;

“the Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

- (2) When a period of days must be reckoned in terms of these regulations, the period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday, and the period of 15 December to 1 January must be excluded from the reckoning of days.

Purpose of Regulations

2. The purpose of these Regulations is to regulate the procedure contemplated in section 43(4) of the Act relating to the submission, processing and consideration of, and decision on an appeal.

Application of Regulations

3. (1) These Regulations are applicable to a decision that is subject to an appeal to the Minister or MEC in terms of the:
- (a) National Environmental Management Act, 1998 (Act No. 107 of 1998);
 - (b) National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
 - (c) National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).
- (2) No appeal is available if the Minister or MEC took the decision himself or herself in his or her capacity as the competent authority, issuing authority or licensing authority.

CHAPTER 2**ADMINISTRATION AND PROCESSING OF APPEALS****Appeal submission**

4. (1) An appellant must submit the appeal to the appeal administrator, the applicant, and any known interested and affected party, if applicable, within 20 days from:
- (a) the date that the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties; or
 - (b) the date that the decision was sent to the applicant, in the case of decisions other than those referred to in paragraph (a).
- (2) An appeal submission must be—
- (a) submitted in writing in the form obtainable from the Minister or MEC; and
 - (b) accompanied by—
 - (i) a statement setting out the grounds of appeal;
 - (ii) supporting documentation which is referred to in the appeal submission and which did not form part of the documentation considered when the original decision was made by the licensing authority; and
 - (iii) a statement by the appellant to confirm compliance with regulation 4(1).

Responding statement

5. The applicant, the decision-maker, interested and affected parties and organs of state must submit their written response to the appeal authority and the appellant within 20 days from the date of receipt of the appeal submission.

Appeal panel

6. (1) If the appeal authority is of the view that expert advice must be sought or that an appeal panel must be appointed, the appeal administrator must source the expert advice or constitute the appeal panel within 10 days from the date of receipt of an instruction from the appeal authority.
- (2) The expert or the appeal panel must provide advice to the appeal administrator within 10 days from the receipt of an instruction from the appeal administrator.

Decision on appeal

7. (1) The appeal administrator must make a recommendation on the appeal to the appeal authority within 30 days of receipt of the written response referred to in regulation 5, in the event that an appeal panel has not been constituted.
- (2) The appeal administrator must make a recommendation on the appeal to the appeal authority within 10 days of receipt of the written response referred to in regulation 6(2), in the event that an appeal panel has been constituted.
- (3) The appeal authority must reach a decision on an appeal, and notify the appellant, applicant, and any known interested and affected party, within 20 days of the recommendation on the appeal by the appeal administrator; and
- (4) The decision contemplated in subregulation (1) must contain written reasons for the decision.

Communication

8. Communication in terms of these Regulations must be in accordance with section 47D of this Act.

CHAPTER 3**GENERAL MATTERS****Repeal of regulations**

9. The regulations mentioned in the Table in Annexure 1 to these Regulations are hereby repealed or amended to the extent set out in the third column of the Table.

Transitional arrangements

10. An appeal lodged prior to the commencement of these Regulations, and which is still pending when these Regulations takes effect, must be finalised in terms of the legislation that applied at the time when the appeal was lodged.

Short title and commencement

11. These Regulations are called the National Appeal Regulations, 2014, and take effect on the date of publication in the *Gazette*.

ANNEXURE 1

REGULATIONS REPEALED		
Date and year of publication	Short title	Extent of repeal
Government Notice No. R.543, <i>Gazette</i> No. 33306 of 18 June 2010.	Environmental Impact Assessment Regulations, 2010.	Chapter 7.

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