

No. R. 1182 5 September 1997

ENVIRONMENT CONSERVATION ACT, 1989 (ACT No. 73 OF 1989)

***THE IDENTIFICATION UNDER SECTION 21 OF ACTIVITIES WHICH MAY HAVE A SUBSTANTIAL
DETRIMENTAL EFFECT ON THE ENVIRONMENT***

I, Zweledinga Pallo Jordan, Minister of Environmental Affairs and Tourism, after consultation with the Minister of each department of State responsible for the execution, approval or control of such activities, the Minister of Finance and the competent authorities of the provinces, hereby under section 21 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), identify the activities in Schedule 1 in general as activities which may have a substantial detrimental effect on the environment.

I further determine that this Notice will commence in respect of different activities on the dates indicated in Schedule 2.

ZP JORDAN

Minister of Environmental Affairs and Tourism

SCHEDULE 1

1. The construction or upgrading of -

- (a) facilities for commercial electricity generation and supply;*
- (b) nuclear reactors and installations for the production, enrichment, reprocessing and disposal of nuclear fuels and wastes;*
- (c) transportation routes and structures, and manufacturing, storage, handling or processing facilities for any substance which is dangerous or hazardous and is controlled by national legislation;*
- (d) roads, railways, airfields and associated structures outside the borders of town planning schemes;*
- (e) marinas, harbours and all structures below the high-water mark of the sea;*
- (f) cableways and associated structures;*
- (g) structures associated with communication networks, other than telecommunication lines and cables, as well as access roads leading to these structures;*
- (h) racing tracks for motor-powered vehicles and horse racing, excluding indoor tracks;*
- (i) canals and channels, including diversions of the normal flow of water in a river bed and water transfer schemes between water catchments and impoundments;*
- (j) dams, levees or weirs affecting the flow of a river;*
- (k) reservoirs for public water supply;*
- (l) schemes for the abstraction or utilisation of ground or surface water for bulk supply purposes;*
- (m) public and private resorts and associated infrastructure;*
- (n) sewage treatment plants and associated infrastructure; and*
- (o) buildings and structures for industrial and military manufacturing and storage of explosives or ammunition or for testing or disposal of such explosives or ammunition.*

2. The change of land use from-

- (a) residential use to industrial or commercial use;*
- (b) light industrial use to heavy industrial use;*
- (c) agricultural or undetermined use to any other land use;*
- (d) use for grazing to any other form of agricultural use; and*
- (e) use for nature conservation or zoned open space to any other land use.*

3. The concentration of livestock in a confined structure for the purpose of mass commercial production.

4. The intensive husbandry of, or importation of, any plant or animal that has been declared a weed or an invasive alien species.

5. The release of any organism outside its natural area of distribution that is to be used for biological pest control.

6. *The genetic modification of any organism with the purpose of fundamentally changing the inherent characteristics of that organism.*
7. *The reclamation of land below the high-water mark of the sea and in inland water_including wetlands.*
8. *The disposal of waste in terms of section 20 of the Environment Conservation Act, 1989.*
9. *Scheduled processes listed in the Second Schedule to the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965).*

SCHEDULE 2

Item number in Schedule 1 Date of commencement

1(a) (b) (d) (e) (f) (h) (m); 7 8 September 1997

1(g) (o); 3; 4; 5; 6 5 January 1998

1(c) (i) (j) (k) (l) (n); 8; 9 2 March 1998

2(a) (b) (c) (d) (e) 1 April 1998

No. R. 1183 5 September 1997

ENVIRONMENT CONSERVATION ACT, 1989 (ACT No. 73 OF 1989)

REGULATIONS REGARDING ACTIVITIES IDENTIFIED UNDER SECTION 21(1)

The Minister of Environmental Affairs and Tourism has, under sections 26 and 28 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), and with the concurrence of the Minister of Finance, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

"activity" means any activity identified under section 21 of the Act;

"alternative" in relation to an activity, means any other possible course of action, including the option not to act;

"applicant" means any person who applies for an authorisation to undertake an activity or to cause such activity to be undertaken as contemplated in section 22(1) of the Act;

"interested party" means any person or group of persons concerned with or affected by an activity;

"provincial authority" means a competent authority as defined in section 1 of the Act;

"relevant authority" means the Minister, provincial authority or local authority contemplated in regulation 4(2), (3) or (4), as the case may be;

"the Act" means the Environment Conservation Act, 1989 (Act No.73 of 1989).

Application of regulations

2. (1) These regulations apply in respect of any activity which has been identified in Government Notice No. 18261 of 5 September 1997 under section 21(1) of the Act.

(2) These regulations do not apply in respect of an activity referred to in Government Notice R.879 of 31 May 1996, unless it forms part of an activity that has been identified in Government Notice No. 18261 of 5 September 1997.

Responsibilities in terms of regulations

3. (1) An applicant -

(a) must appoint an independent consultant who must on behalf of the applicant comply with these regulations;

(b) is solely responsible for all costs incurred in connection with the employment of the consultant or any other person acting on the applicant's behalf to comply with these regulations;

(c) must ensure that the consultant has no financial or other interest in the undertaking of the proposed activity, except with regard to the compliance with these regulations;

(d) must ensure that the consultant, while complying with these regulations, has -

(i) expertise in the area of environmental concern being dealt with in the specific application;

(ii) the ability to perform all the relevant tasks contemplated in these regulations;

- (iii) the ability to manage the public participation process contemplated in paragraph (f);*
- (iv) the ability to timeously produce thorough, readable and informative documents;*
- (v) adequate recording and reporting systems to ensure the preservation of all data gathered; and*
- (vi) a good working knowledge of all relevant policies, legislation, guidelines, norms and standards.*

(e) must ensure that the consultant provides to the relevant authority access to, and opportunity for review of, all procedures, underlying data, reports and interviews with interested parties, whether or not such information may be reflected in a report required in terms of these regulations;

(f) is responsible for the public participation process to ensure that all interested parties, including government departments that may have jurisdiction over any aspect of the activity, are given the opportunity to participate in all the relevant procedures contemplated in these regulations; and

(g) must indemnify the government of the Republic, the relevant authority and all its officers, agents and employees, from any liability arising out of the content of any report, any procedure or any action for which the applicant or consultant is responsible in terms of these regulations.

(2) If any provision of subregulation (1) is not complied with by the applicant and not immediately attended to, after having been made aware of it by the relevant authority, the application is regarded to have been withdrawn;

(3) The relevant authority must -

(a) ensure that officers, agents or consultants employed by the relevant authority to evaluate any reports submitted in terms of these regulations have -

- (i) expertise in the area of environmental concern being dealt with in the specific application;*
- (ii) the ability to perform the evaluation tasks contemplated in these regulations efficiently;*
- (iii) the ability to timeously produce thorough, readable, and informative documents; and*
- (iv) a good working knowledge of all relevant policies, legislation, guidelines, norms and standards;*

(b) ensure that the evaluation and decisions required in terms of these regulations are done or reached efficiently and within a reasonable time, and that the applicant is informed immediately of any delay and is provided with a written explanation for any delay that may occur;

(c) provide the applicant with any guidelines, as well as access to any other information in the possession of the relevant authority, that may assist the applicant in fulfilling its obligations in terms of these regulations; and

(d) try to keep the inputs required from the applicant to the minimum that are necessary to make an informed decision on the application, without putting any limitation on the rights that interested parties may have in terms of these regulations.

(4) While working for any applicant in terms of these regulations, a consultant may not work for any relevant authority in terms of these regulations in respect of the same application.

(5) Any interested party who wishes to participate in the public participation process contemplated in subregulation (1)(f) must respond within the time agreed to between the relevant authority and the applicant.

Application for authorisation to undertake activity

4. (1) *Application must be made on a form obtainable from the relevant authority.*
- (2) *An application must be submitted to the relevant provincial authority for consideration: Provided that an application in respect of an activity contemplated in subregulations (3) or (4) must be referred for consideration as indicated in those subregulations.*
- (3) *The provincial authority must refer the application to the Minister for consideration -*
 - (a) *where the activity concerned has direct implications for national environmental policy or international environmental commitments or relations;*
 - (b) *where the environment under threat is demarcated as an area of national or international importance;*
 - (c) *where the Minister and the provincial authority jointly decide that an application in respect of a specific activity should be considered by the Minister;*
 - (d) *where a national government department, the relevant provincial authority or a statutory body is the applicant; or*
 - (e) *where the activity has the potential to affect the environment across the borders of two or more provinces.*
- (4) *If a local authority has been designated by the Minister in terms of section 22(1) of the Act to issue authorisation for an activity specified by the Minister, the provincial authority must refer an application in respect of such activity to that local authority for consideration.*
- (5) *The relevant authority must keep a register of all applications received.*
- (6) *The relevant authority must inform the applicant whether the applicant must advertise the application, and of the manner in which this must be done.*

Plan of study for scoping

5. (1) *After considering the application made in accordance with regulation 4, the relevant authority may request the applicant -*
 - (a) *to submit a plan of study for scoping for the purposes of a scoping report referred to in regulation 6; or*
 - (b) *in a suitable case, to submit such scoping report without a prior plan of study.*
- (2) *A plan of study for scoping must include-*
 - (a) *a brief description of the activity to be undertaken;*
 - (b) *a description of all tasks to be performed during scoping;*
 - (c) *a schedule setting out when the tasks contemplated in paragraph (b) will be completed;*
 - (d) *an indication of the stages at which the relevant authority will be consulted; and*
 - (e) *a description of the proposed method of identifying the environmental issues and alternatives.*
- (3) *The relevant authority may, after receiving the plan of study referred to in subregulation (1) (a) and after considering it, request the applicant to provide additional information that the relevant authority requires to accept the plan of study for scoping.*

Scoping report

6. (1) On being informed by the relevant authority that the plan of study submitted in accordance with regulation 5(1)(a) has been accepted or on receiving the request referred to in regulation 5(1)(b), as the case may be, the applicant must submit a scoping report to the relevant authority, which must include -

- (a) a brief project description;
- (b) a brief description of how the environment may be affected;
- (c) a description of environmental issues identified;
- (d) a description of all alternatives identified; and
- (e) an appendix containing a description of the public participation process followed, including a list of interested parties and their comments.

(2) The relevant authority may, after receiving the scoping report referred to in subregulation (1) and after considering it, request the applicant to make the amendments that the relevant authority requires to accept the scoping report.

(3) After a scoping report has been accepted, the relevant authority may decide -

- (a) that the information contained in the scoping report is sufficient for the consideration of the application without further investigation; or
- (b) that the information contained in the scoping report should be supplemented by an environmental impact assessment which focuses on the identified alternatives and environmental issues identified in the scoping report.

(4) In the event of a decision contemplated in subregulation (3)(a), the relevant authority must consider the application in accordance with regulation 9.

Plan of study for environmental impact assessment

7. (1) In the event of a decision contemplated in regulation 6(3)(b), the applicant must submit a plan of study for an environmental impact assessment, which must include -

- (a) a description of the environmental issues identified during scoping that may require further investigation and assessment;
- (b) a description of the feasible alternatives identified during scoping that may be further investigated;
- (c) an indication of additional information required to determine the potential impacts of the proposed activity on the environment;
- (d) a description of the proposed method of identifying these impacts; and
- (e) a description of the proposed method of assessing the significance of these impacts.

(2) The relevant authority may, after receiving the plan of study referred to in subregulation (1) and after considering it, request the applicant to make the amendments to the plan of study that the relevant authority requires to accept the plan.

Submission of environmental impact report

8. *After the plan of study for the environmental impact assessment has been accepted, the applicant must submit an environmental impact report to the relevant authority, which must contain -*

- (a) a description of each alternative, including particulars on -
 - (i) the extent and significance of each identified environmental impact; and*
 - (ii) the possibility for mitigation of each identified impact;**
- (b) a comparative assessment of all the alternatives; and*
- (c) appendices containing descriptions of -
 - (i) the environment concerned;*
 - (ii) the activity to be undertaken;*
 - (iii) the public participation process followed, including a list of interested parties and their comments;*
 - (iv) any media coverage given to the proposed activity; and*
 - (v) any other information included in the accepted plan of study.**

Consideration of application

9. *(1) After the relevant authority has made a decision contemplated in regulation 6(3)(a), or has received an environmental impact report that complies with regulation 8, as the case may be, the relevant authority must consider the application and may decide to -*

- (a) issue an authorisation with or without conditions; or*
- (b) refuse the application.*

(2) The relevant authority must determine the period of validity of the authorisation.

Record of decision

10. *(1) The relevant authority must issue a record of the decision that was taken under regulation 9(1) to the applicant, and on request to any other interested party.*

(2) The record of the decision must include -

- (a) a brief description of the proposed activity, the extent or quantities and the surface areas involved, the infrastructural requirements and the implementation programme for which the authorisation is issued;*
- (b) the specific place where the activity is to be undertaken;*
- (c) the name, address and telephone number of the applicant;*
- (d) the name, address and telephone number of any consultant involved;*
- (e) the date of, and persons present at, site visits, if any;*
- (f) the decision of the relevant authority;*

(g) the conditions of the authorisation, (if any), including measures to mitigate, control or manage environmental impacts or to rehabilitate the environment;

(h) the key factors that led to the decision;

(i) the date of expiry or the duration of the authorisation;

(j) the name of the person to whom an appeal may be directed as contemplated in regulation 11;

(k) the signature of a person who represents the relevant authority; and

(l) the date of the decision.

Manner of appeal

11. (1) An appeal to the Minister or provincial authority under section 35 (3) of the Act, must be done in writing within 30 days from the date on which the record of decision was issued to the applicant in terms of regulation 10(1).

(2) An appeal must set out all the facts as well as the grounds of appeal, and must be accompanied by all relevant documents or copies of them which are certified as true by a commissioner of oaths.

Access to information

12. After the record of the decision contemplated in regulation 10 has been issued by the relevant authority, any report submitted for the purposes of these regulations becomes a public document, subject to the rights of the owner of it.

Commencement

13. These regulations shall commence as set out in Schedules 1 and 2 of Government Notice No. R. 1182 of 5 September 1997.

No. R.1184 5 September 1997

ENVIRONMENT CONSERVATION ACT, 1989 (ACT No. 73 OF 1989)

DESIGNATION OF THE COMPETENT AUTHORITY WHO MAY ISSUE AUTHORISATION FOR THE UNDERTAKING OF IDENTIFIED ACTIVITIES

I, Zweledinga Pallo Jordan, Minister of Environmental Affairs and Tourism, hereby, in terms of section 22(1) of the Environment Conservation Act, 1989 (Act No. 73 of 1989), designate the competent authority, as defined in section 1 of the said Act (as amended by Proclamation R.43 of 8 August 1996), in each province as an authority which may issue a written authorisation to undertake or cause to undertake an activity identified in Government Notice No... dated 5 September 1997, insofar as the regulations published in Government Notice No... dated 5 September 1997 may be applied by such competent authority.

ZP JORDAN

Minister of Environmental Affairs and Tourism