

Holland & Associates



Environmental Consultants

Impact Assessments - Environmental Management Programs - Compliance Monitoring - Process Review

11 December 2020

Dear Interested and/or Affected Party

AMENDMENT OF THE ENVIRONMENTAL AUTHORISATION ISSUED ON 2 JANUARY 2013 FOR THE CONSTRUCTION OF A 100MW PHOTOVOLTAIC (PV) SOLAR ENERGY FACILITY (PV2) ON THE FARM STRUISBULT (PORTION 1 OF FARM NO. 104) IN THE SIYATHEMBA LOCAL MUNICIPALITY NEAR COPPERTON IN THE NORTHERN CAPE PROVINCE (DEA REFERENCE NO.: 12/12/20/2502/AM4)

Notification of Amendment of the Environmental Authorisation

This letter serves to notify all registered Interested and Affected Parties (I&APs) of the Department of Environment, Forestry and Fisheries' (DEFF) decision in respect of the application for amendment of the Environmental Authorisation issued on 2 January 2013 for the construction of a 100MW Photovoltaic (PV) solar energy facility (PV2) on the Farm Struisbult (Portion 1 of Farm No. 104) in the Siyathemba Local Municipality near Copperton in the Northern Cape Province. Furthermore, the provisions regarding the submission of appeals that are contained in the National Environmental Management Act (NEMA) (No. 107 of 1998) National Appeal Regulations (2014) are also outlined herein, should an I&AP wish to appeal DEFF's decision.

1. Decision

We wish to inform you that, based on a review of the reason submitted by Struisbult PV2 (Pty) Ltd for requesting an amendment to the abovementioned Environmental Authorisation (EA) (i.e. an amendment to extend the validity period of the EA), that DEFF, in terms of Chapter 5 of the EIA Regulations, 2014, as amended, **has decided to amend the EA dated 2 January 2013 as amended**, as follows:

Amendment 1: Amendment to extend the validity of the EA:

Condition of Authorisation 6 of the EA (issued on 2 January 2013), as amended (EA amendment decision dated 11 December 2017) stated the following:

"The activity must commence within a period of three (3) years from the date of expiry of the EA issued on 02 January 2013 as amended 07 October 2015 (i.e. the EA lapses on 02 January 2021). If commencement of the activity does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken".

DEFF has granted a two year extension to the validity period of the EA. In this regard, the EA has been amended by DEFF as follows:

“The activity must commence within a period of two (02) years from the date of expiry of the EA issued 02 January 2013 as amended (i.e. the EA lapses on 02 January 2023). If commencement of the activity does not occur within that period, the authorisation lapses and a new application for EA must be made in order for the activity to be undertaken”.

DEFF's amendment to the EA (EA amendment decision dated 4 December 2020), including the reason for the amendment, is included in Annexure A herewith for your information¹.

2. Right to appeal

We would like to draw your attention to your right to appeal against the decision to the Minister, in terms of the National Appeal Regulations (2014) (Government Notice No. R993), which prescribes the appeal procedure to be followed. Refer to Appendix B herewith for a copy of the National Appeal Regulations, 2014.

Should any person wish to lodge an appeal, the appellant must submit an appeal to the appeal administrator, and a copy of the appeal to the Applicant (i.e. Struisbult PV2 (Pty) Ltd), any registered Interested and Affected Party, and any organ of state with interest in the matter within 20 days from the date² that the notification of the decision was sent to the registered I&APs by the Applicant, or the date³ that the notification of the decision was sent to the Applicant by DEFF, whichever is applicable.

Appeals must be submitted in writing in the prescribed form to:

The Director: Appeals and Legal Review of the Department of Environment, Forestry and Fisheries (DEFF) 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

To obtain the prescribed appeal form and for guidance on the submission of appeals, please visit DEFF's website at https://www.environment.gov.za/documents/forms#legal_authorisations or request a copy of the documents at appeals@environment.gov.za.

Should you require any further information or have any queries, please contact the undersigned.

Yours sincerely



NICOLE HOLLAND (Pr. Sci. Nat.)

For: Holland & Associates - Environmental Consultants

¹ Note: The EA amendment decision from DEFF dated 4 December 2020 must be read in conjunction with the EA dated 2 January 2013 and amendments thereto. A copy of the EA dated 2 January 2013, and amendments to the EA, are available from Nicole Holland of Holland & Associates Environmental Consultants on request.

² This letter, which is being sent to registered I&APs on behalf of the Applicant, serves as notification of DEFF's decision, and is scheduled to be emailed and/or posted to I&APs on 14 December 2020.

³ 10 December 2020

**ANNEXURE A:
DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES' AMENDMENT OF THE
ENVIRONMENTAL AUTHORISATION – DATED 4 DECEMBER 2020**



environment, forestry & fisheries

Department:
Environment, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Private Bag X 447· PRETORIA 0001· Environment House 473 Steve Biko Road, Arcadia· PRETORIA

DEA Reference: 12/12/20/2502/AM4

Enquiries: Ms Thabile Sangweni

Telephone: (012) 399 9409 E-mail: TSangweni@environment.gov.za

Mr Warren Morse
Struisbult PV2 (Pty) Ltd
PO Box 548
Howard Place
CAPE TOWN
7450

Telephone Number: (021) 685 3240
Email Address: warren@mulilo.com

PER EMAIL / MAIL

Dear Mr Morse

AMENDMENT OF THE ENVIRONMENTAL AUTHORISATION ISSUED ON 02 JANUARY 2013 FOR THE CONSTRUCTION OF A 100MW PHOTOVOLTAIC (PV) SOLAR ENERGY FACILITY (PV2) ON THE FARM STRUISBULT (PORTION 1 OF FARM NO. 104) IN THE SIYATHEMBA LOCAL MUNICIPALITY NEAR COPPERTON IN THE NORTHERN CAPE PROVINCE

The Environmental Authorisation (EA) issued for the abovementioned application by this Department on 02 January 2013, the amendments to the EA dated 28 March 2013, 01 October 2013, 07 October 2015 and 11 December 2017, your application for amendment of the EA received by the Department on 19 November 2020 and the acknowledgement email dated 20 November 2020, refer.

Based on a review of the reason for requesting an amendment to the above EA, this Department, in terms of Chapter 5 of the Environmental Impact Assessment Regulations, 2014 as amended, has decided to amend the EA dated 02 January 2013 as amended, as follows:

Amendment 1: Amendment to extend the validity of the EA:

The activity must commence within a period of two (02) years from the date of expiry of the EA issued on 02 January 2013 as amended (i.e. the EA lapses on 02 January 2023). If commencement of the activity does not occur within that period, the authorisation lapses and a new application for EA must be made in order for the activity to be undertaken.

The Department is aware that the environment changes constantly, as a result it might be significantly different from the one that existed at the time of the issuing of this EA, hence the validity of the EA cannot exceed a maximum period of 10 years. Failure to commence with construction activities within the maximum 10 year period, your EA will be deemed to have lapsed and a new application for EA will have to be lodged.

M.S

The applicant applied to extend the validity period of the EA due to the highly competitive nature of the Department of Minerals Resources and Energy's (DMRE) Renewable Energy Independent Power Producer Procurement Program (REIPPP) and the prolonged 8 year delay in issuing the next procurement Bid Window 5 Request for Proposals (RFP), with the last awarded Bid Window 4 having only occurred in 2014.

This more than 5 year gap has resulted in no new Preferred Bidder projects being awarded contracts and therefore prevented the ability of this project to compete in a competitive tender process, be selected and ultimately constructed as planned.

This amendment letter must be read in conjunction with the EA dated 02 January 2013 as amended.

In terms of the Promotion of Administrative Justice Act, 2000 (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, 2013 (Act no. 4 of 2013) which stipulates 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 abuses or compromises your personal information in any way.

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 decision, of the Department's decision as well as the provisions regarding the submission of appeals that are contained in the Regulations.

Your attention is drawn to Chapter 2 of the National Environmental Management Act, 1998 (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 prescribe 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.

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 Sabelo Malaza
Chief Director: Integrated Environmental Authorisations
Department of Environment, Forestry and Fisheries

Date: 04/12/2020

cc:	Ms Nicole Holland	Holland & Associates Environmental Consultants	E-mail: nicole@hollandandassociates.net
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ANNEXURE B
NATIONAL APPEAL REGULATIONS (GN R. 993)

GOVERNMENT NOTICES

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

No. R. 993

8 December 2014

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

NATIONAL APPEAL REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make the 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), as set out in the Schedule hereto.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

TABLE OF CONTENTS

CHAPTER 1

INTEPRETATION AND PURPOSE OF REGULATIONS

1. Interpretation
2. Purpose of Regulations
3. Application of Regulations

CHAPTER 2

ADMINISTRATION AND PROCESSING OF APPEALS

4. Appeal submission
5. Responding statement
6. Appeal panel
7. Recommendations and decisions on appeals
8. Communication

CHAPTER 3

GENERAL MATTERS

9. Repeal of regulations
10. Transitional arrangements
11. Short title and commencement

Annexure 1: Regulations Repealed

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 a holder of an office in the Department or Provincial Department responsible for environmental affairs who administers the appeal on behalf of the appeal authority;

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

“appellant” means any person who is entitled to submit an appeal in terms of the legislation referred to in regulation 3(1) of these Regulations;

“decision-maker” means an official who has been delegated the authority to make a decision in terms of the laws referred to in regulation 3(1) of these Regulations;

“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 or a person providing an appeal authority with expert advice as contemplated in regulation 6 of these Regulations, 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; and
- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work;

“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 5 January must be excluded from the reckoning of days.
- (3) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.

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, a decision on an appeal.

Application of Regulations

3. (1) These Regulations are applicable to an appeal in terms of section 43 of the Act to the Minister or MEC against a decision taken in terms of the:
- (a) Environment Conservation Act, 1989 (Act No. 73 of 1989);
 - (b) National Environmental Management Act, 1998 (Act No. 107 of 1998);
 - (c) National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
 - (d) National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004); or
 - (e) National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

and subordinate legislation made in terms of any of these Acts.

- (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.
- (3) An appeal against a decision by an official or municipal manager acting under delegated authority from a metropolitan, district or local municipality must be submitted, processed and considered in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

CHAPTER 2

ADMINISTRATION AND PROCESSING OF APPEALS

Appeal submission

4. (1) An appellant 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:

- (a) the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or
 - (b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, 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 appeal administrator; 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
 - (iii) a statement, including supporting documentation, by the appellant to confirm compliance with regulation 4(1) of these Regulations.

Responding statement

5. The applicant, the decision-maker, interested and affected parties and organ of state must submit their responding statement, if any, 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 reasonably believes that expert advice must be sought or that an appeal panel must be appointed, the appeal administrator must source an independent expert or constitute an independent appeal panel, or both, within 10 days from the date of receipt of an instruction from the appeal authority.
- (2) The appeal panel contemplated in subregulation (1) may consist of such number of independent experts and with such expertise as the Appeal Authority may deem necessary under the circumstances;
- (3) The expert or appeal panel must provide advice to the appeal administrator within 10 days from the receipt of an instruction from the appeal administrator.

Recommendations and decisions on appeals

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

Communication

8. (1) A person may deliver documents in terms of these regulations by using one of the delivery methods referred to in section 47D of the Act.
- (2) In order to meet the time periods determined in these regulations, the person referred to in subregulation (1), must also email, fax or hand deliver the document to the recipient, if the document is delivered by ordinary mail or registered mail.

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. (1) 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.
- (2) An appeal lodged after the commencement of the Environmental Impact Assessment Regulations, 2014 must be submitted, processed and considered in terms of these Regulations.

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 No. 33306</i> of 18 June 2010.	Environmental Impact Assessment Regulations, 2010.	Chapter 7.