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Contents

No.		Gazette No.	Page No.
	GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS		
Forestry, Fisheries and the Environment, Department of / Bosbou, Visserye en die Omgewingsake, Departement van			
6102	National Environmental Management: Waste Act, 2008 (Act No.59 of 2008) NEMWA: Regulations regarding the Exclusion from the definition of a Waste Stream for public comment.....	52454	3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 6102 **4 April 2025**

NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 (ACT NO. 59 OF 2008)

PROPOSED AMENDMENTS TO THE REGULATIONS REGARDING THE EXCLUSION OF A WASTE STREAM OR A PORTION OF A WASTE STREAM FROM THE DEFINITION OF WASTE, 2018

I, Dion Travers George, Minister of Forestry, Fisheries and the Environment, hereby in terms of sections 69(1)(dd), 72 and 73, read together with section 1 (definition of waste), of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), give notice of my intention to amend the Regulations regarding the exclusion of a waste stream or a portion of a waste stream from the definition of waste, published under Government Notice R.715 of Government *Gazette* 41777 on 18 July 2018, as set out in the Schedule hereto.

Members of the public are invited to submit, within thirty (30) days from the date of publication of this Notice in the Government *Gazette*, or in a national newspaper, whichever date comes last, written representations or objections to the proposed amendments to any of the following addresses:

By post to: The Director General
Attention: Mr Jeremia Sibande
The Department of Forestry, Fisheries and the Environment
Private Bag X447
PRETORIA
0001

By hand at: Ground Floor (Reception), Environment House, 473 Steve Biko Road, Arcadia, Pretoria, 0001.

By email to: jsibande@dffe.gov.za.

Any enquiries in connection with the Notice can be directed to Mr Jeremia Sibande jsibande@dffe.gov.za.at (012) 399 9832/067 417 3844.

The proposed amendments can be accessed at http://sawic.environment.gov.za/ under "Draft documents for comment".

The Department of Forestry, Fisheries and the Environment complies with the protection of the Personal Information Act, 2013 (Act No. 4 of 2013), comments received and responses, therefore, may be collated into a comments and response report which will be made available to the public as part of the consultation process. If a commenting party has any objection to his or her name or the name of the represented

company/organisation, being made publicly available in the comments and responses report, that objection should be highlighted in bold as part of the comments submitted in response to this Government Notice.

Comments received after the closing date may not be considered.



DR DION TRAVERS GEORGE
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

Definitions

1. In this Schedule, any word or expression to which a meaning has been assigned in the Act bears that same meaning, and unless the context indicates otherwise –

"the Regulations" means the Regulations regarding the exclusion of a waste stream or a portion of a waste stream from the definition of waste, published under Government Notice R.715 of Government *Gazette* 41777 on 18 July 2018.

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by –

(a) the insertion, after the definition of **"applicant"**, of the following definition:

"exclusion authorisation" means a decision granted for the waste stream or a portion of a waste stream excluded from the definition of waste in terms of these Regulations.".

(b) the insertion, after the definition of **"the Register"**, of the following definition:

"trial" means a test (s) conducted on a waste stream or a portion of a waste stream to determine their viability to produce a product (s) in an operational environment while measures are in place to protect the environment for the purpose of the exclusion process.".

Amendment of regulation 6 of the Regulations

3. Regulation 6 of the Regulations is hereby amended by the substitution for regulation 6 of the following regulation:

"Consideration of an application for exclusion of a waste stream or portion of a waste stream from the definition of waste

6. (1) The Minister may consider an application to exclude a waste stream or a portion of a waste stream, provided that the applicant has submitted a completed application form contemplated in regulation 5, to exclude a waste stream or a portion of a waste stream.

(2) The Department must upon receipt of an application form to exclude a waste stream or a portion of a waste stream, acknowledge receipt, in writing, within 14 days after the date of receipt, and give the applicant a reference number.

(3) Failure to submit the minimum information contemplated in the application form, will lead to the Department not accepting the application form.

(4) The applicant must, following the receipt of an application reference number, conduct a public participation process requesting comments on the proposed application for exclusion, for a minimum of 30 days, and must:

(a) place the advertisement notice requesting members of the public to submit written representations or objections, to the proposed application, in at least one newspaper circulating nationally;
(b) ensure that the advertisement is a size of at least RoI x col 12x3, is in black and white colour, and that is it placed under the tender section;
(c) place a notice board of at least 60cm by 42cm at the generator's location that is conspicuous and accessible by the public;
(d) write a consultation letter addressed to —
    (i) Members of Executive Councils where the generator and beneficiary are located that will be affected by the proposed application; and
    (ii) any organ of state that will be affected by the proposed application.

(5) The advertisement notice, notice board, and written notice contemplated in subregulation (4) must include:
(a) the name of the applicant;
(b) application reference number;
(c) purpose of the application;
(d) description of the waste stream or portion of waste stream applied for;
(e) description of the beneficial uses applied for;
(f) location to which the application relates;
(g) link/location where further information on the application or proposed application can be obtained;
(h) closing date for submitting comments; and
(i) the manner in which and the person to whom representations in respect of the proposed application may be made.

(6) The applicant must develop and maintain a register of Interested and Affected (I&A) parties, and the register must contain:
(a) names;
(b) contact details;
(c) addresses;
(d) organisation;
(e) all comments received; and
(f) responses provided.

(7) The applicant must make available reasonable alternative methods, where a person wishes to comment but is unable to do so because of a lack of reading or writing skills, a disability, or any other disadvantage.

(8) A decision will be made granting or refusing the application, within 90 days of submission of proof of compliance with subregulations 4-7 by the applicant.

(9) The Minister may, after consideration of the submitted information, in writing –
(a) require the applicant to submit additional information within a specified period; and
(b) failure to submit the required additional information may lead to a refusal decision by the Minister.

(10) The Minister must, after receipt of all information and after consideration of the information, in writing –
(a) grant the application and provide reasons for the decision; or
(b) refuse the application and provide reasons for the decision.

(11) The Department must provide the applicant with the decision in writing within 14 days after the Minister's decision and draw the attention of the applicant to the fact that an appeal may be lodged against the decision.

(12) The applicant must within 30 days of the receipt of the decision provide I&A parties with a copy of the decision, reasons for the decision, and the fact that they may appeal the decision.
(13) For the purpose of these Regulations, the decision includes an application granted or refused.
(14) The exclusion authorisation granted must be managed in terms of the risk management plan contemplated in regulation 9.
(15) The public participation process requesting comments on the proposed application must not be conducted during the month of December."

Insertion of regulation 6A

4. The following regulation is hereby inserted after regulation 6:

"Registration of a trial for the purpose of exclusion

6A. (1) An applicant applying for the exclusion of a waste stream or a portion of a waste stream from a trial project, must register the trial project using the trial project registration form obtainable from the Department.
(2) The trial project registration form must be accompanied by:
(a) the details of owner of where the trials will be conducted;
(b) the details of tenants where trials are to be conducted by person other than the landowner;
(c) details of site where the trials will be conducted;
(d) description of the site where the trials will be conducted;
(e) Copy of a commissioned written agreement between owner of the land and person who will conduct trials (Lessee and lessor agreement);
(f) the four corner coordinates for the area where the trial will be conducted; and
(g) the Standard Operating Procedure providing detail measures for prevention, control and mitigation of pollution that may arise during trials must be submitted with registration form."

Amendment of regulation 7 of the Regulations

5. Regulation 7 of the Regulations is hereby amended by the substitution for regulation 7 of the following regulation:

"Criteria for exclusion of a waste stream or portion of a waste stream from the definition of waste

7. The Minister may exclude a waste stream or a portion of a waste stream, from the definition of waste, provided that the applicant –
(1) Demonstrated that the waste is being or has been or will be used for a beneficial purpose either locally or internationally;
(2) Has undertaken a risk assessment in terms of regulation 8;
(3) Developed and submitted a risk assessment report based on regulation 8;
(4) Developed and submitted a risk management plan in terms of regulation 9;
(5) Submitted a list of the names of beneficiaries;
(6) Submitted evidence of the public participation process contemplated in regulation 6(4);

(7) Considered the outcome of the public participation processes conducted as contemplated in regulation 6; and
(8) Provided any additional information required by the Minister.

Amendment of regulation 8 of the Regulations

6. Regulation 8 of the Regulations is hereby amended by the substitution for regulation 8 of the following regulation:

"Elements of the Risk Assessment Report

8. A risk assessment report must include, but is not limited to, the following elements:
   (1) information that is facility-based;
   (2) the description and source of the waste;
   (3) the intended uses of the excluded waste;
   (4) the description of the methodology used to assess the hazardous characteristics of the waste that is to be excluded;
   (5) identification and assessment of any potential risks relating to all the activities associated with the intended beneficial use of the excluded waste;
   (6) identification of mitigation measures that can be used to manage the risks identified in subregulation (5);
   (7) the laboratory results or results of trials that were conducted in relation to waste excluded or products produced from the excluded waste; and
   (8) a mechanism to record the amount of waste distributed to specific users for an Intended beneficial use, including the number of jobs and enterprises established or supported and the extent to which previously disadvantaged individuals have been supported."

Amendment of regulation 9 of the Regulations

7. Regulation 9 of the Regulations is hereby amended by the substitution for regulation 9 of the following regulation:

"Contents of the Risk Management Plan

9. A risk management plan must include, but is not limited to, the following elements:
   (1) the risk identified; and
   (2) mitigation measures to address the risk identified in the risk assessment report."

Amendment of regulation 10 of the Regulations

8. Regulation 10 of the Regulations is hereby amended by the substitution for regulation 10 of the following regulation:

"Reporting

10. An exclusion authorisation holder, must on an annual basis, on a platform provided for by the Department, must:
   (1) Develop a risk management report;
   (2) Subject the risk management report to an external audit by a qualified/independent person, which audited risk management report must include, but is not limited to, the following elements:
      (a) assessment of compliance with the Risk Management Plan;

(b) volumes of waste diverted through beneficiation;
(c) jobs created;
(d) SMMEs / enterprises established or supported; and
(e) the extent to which previously disadvantaged individuals have been supported.;

(3) Submit an external audited risk management report to the Department by 28 February of each year."

Amendment of regulation 11 of the Regulations

9. Regulation 11 of the Regulations is hereby amended by the substitution for regulation 11 of the following regulation:

"Transfer, Variation, Revocation, Suspension, and Surrender of the exclusion authorisation

11. (1) **Transfer of an exclusion authorisation**

(a) The holder of an exclusion authorisation must lodge an application for the transfer of an exclusion authorisation to a new owner with the Minister.
(b) The application must be in the form required by the Department and must be accompanied by such documentation and information as may be reasonably required by the Department.
(c) If the environment or the rights or interests of other parties are likely to be adversely affected, the Minister must, before deciding the application for transfer, request the applicant to conduct a public participation process contemplated in regulation 6, and/or that may be appropriate in the circumstances to bring the application for the transfer of an exclusion authorisation to the attention of relevant organs of state, interested persons and the public.
(d) When considering an application for the transfer of an exclusion authorisation, the Minister may request any additional information and must take into account all relevant matters, including whether the person to whom the exclusion authorisation is to be transferred to is a fit and proper person.
(e) If the Minister's decision is to grant permission for the transfer of an exclusion authorisation, the Minister must issue an amended exclusion authorisation that reflects the details of the person to whom the exclusion authorisation is being transferred to.
(f) The transfer of an exclusion authorisation does not relieve the holder of the authorisation from whom the authorisation was transferred of any liability that the authorisation holder may have incurred whilst he or she was the holder of that authorisation.

(2) **Variation of an exclusion authorisation**

(a) The Minister may, by written notice to the holder of an exclusion authorisation, vary the authorisation—
(i) if it is necessary or desirable to prevent pollution;
(ii) if it is necessary or desirable for the purposes of achieving waste management standards or minimum requirements;
(iii) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
(iv) to make a non-substantive amendment; and
(v) at the written request of the holder of the exclusion authorisation.
(b) The variation of an exclusion authorisation includes —
(i) the attaching of an additional condition or requirement to the exclusion authorisation;
(ii) the substitution of a condition or requirement;
(iii) the removal of a condition or requirement; and/or

(iv) the amendment of a condition or requirement.

(c) If the Minister receives a request from the holder of an exclusion authorisation in terms of regulation 11(2)(a)*(v)*, the Minister must require the authorisation holder to undertake a public participation process contemplated in regulation 6 to bring the request to the attention of relevant organs of state, interested persons and the public if the variation of the authorisation is to authorise an increase in the environmental impact regulated by the exclusion authorisation.

(3) **Revocation and suspension of an exclusion authorisation**

(a) The Minister may, by written notice to the holder of an exclusion authorisation, revoke or suspend the exclusion authorisation if the Minister is of the opinion that the exclusion authorisation holder has contravened a provision of these Regulations or a condition of the exclusion authorisation and such contravention may have, or is having, a significant effect on health or the environment; and

(b) The Minister may not revoke or suspend an exclusion authorisation before affording the holder of the exclusion authorisation an opportunity to make a submission in respect of the intended revocation or suspension.

(4) **Surrender of an exclusion authorisation**

(a) A holder of an exclusion authorisation may surrender the exclusion authorisation with the permission of the Minister;

(b) In considering a request to surrender an exclusion authorisation, the Minister may—

(i) request such information as he or she requires to consider the request; and

(ii) require the exclusion authorisation holder to take such steps as h or she considers necessary for the protection of the environment, before accepting the surrender of the exclusion authorisation; and

(c) The surrender of an exclusion authorisation does not relieve the holder of the exclusion authorisation of any liability that the exclusion authorisation holder may have incurred whilst he or she was the holder of that exclusion authorisation.

Amendment of regulation 14 of the Regulations

10. Regulation 14 of the Regulations is hereby amended by the substitution for regulation 14 of the following regulation:

"14. Offences and penalties

(1) A person commits an offence if that person -

(a) provides or submits misleading information to the Minister in respect of an application for the exclusion of a waste stream or a portion;

(b) fails to submit an external audited risk management report to the Department by 28 February of each year; or

(c) contravenes or fails to comply with the exclusion authorisation granted.

(2) A person convicted of an offence in terms of subregulation (1) is liable on conviction to imprisonment for a period not exceeding five years or a fine not exceeding 5 million rands, and in the case of a second or subsequent conviction, imprisonment for a period not exceeding ten years or to a fine not exceeding 10 million rands; and in both instances to both a fine and such imprisonment."

Amendment of the Table of Contents of the Regulations

11. The Table of Contents is hereby amended by the substitution of content 11 of the following content:

"**11.** Transfer, Variation, Revocation, Suspension, and Surrender of the exclusion authorisation"

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