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CONTENTS · INHOUD

No.

Page
No. Gazette
No.**GENERAL NOTICE****Environmental Affairs, Department of***General Notice*

234	National Environmental Management: Waste Act (59/2008): Regulations for site assessments and reports: For public comments.....	3	35161
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GENERAL NOTICE

NOTICE 234 OF 2012

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

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

REGULATIONS FOR SITE ASSESSMENTS AND REPORTS

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby publish my intention to make regulations in terms of section 69(1)(v) of the National Environmental Management Waste Act, 2008 (Act No.59 of 2008) as set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within sixty (60) days of publication of this notice in the Gazette, written representations on or objections to the following addresses:

By post to: The Director General: Department of Environmental Affairs
 Attention: Mrs Khashiwe Masinga
 Private Bag X447
 Pretoria, 0001

By hand at: 2nd Floor, Fedsure Forum Building, 315 Pretorius Street, Pretoria, 0001

By email: kmasinga@environment.gov.za, or by fax: (012) 322 5515 or tel (012) 310 3377.

The draft regulations can be accessed at www.sawic.org.za under **Documents for comment** or obtained in the Department's offices.

Comments received after the closing date may not be considered.



BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

SCHEDULE
TABLE OF CONTENTS

1. **Definitions**
2. **Purpose of Regulations**
3. **Content of site assessment report**
4. **Person who may conduct site assessments**
5. **Public participation**
6. **Submission of site assessment reports**
7. **Consideration of site assessment report**
8. **Offences and penalties**
9. **Commencement and transitional provisions**
10. **Short title**

DEFINITIONS

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, unless the context indicates otherwise, and—
“**contaminant**” means a substance that is in, or on land that has the potential to cause an impact to human health or the environment;
“**contaminated**” means the presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the environment adversely;
“**EAP**” means an environmental assessment practitioner as defined in section 1 of the National Environmental Management Act, 1998 (Act No.107 of 1998);
“**groundwater**” means water fully or partially saturated geological formations;
“**independent**”, in relation to an EAP or a person compiling a specialist report undertaking a specialised process or appointed as a reviewer or member of a review panel, means—
 - (a) that such EAP or person has no business, financial, personal or other interest in the activity, application or review in respect of which that EAP or person is appointed in terms of these

Regulations other than fair remuneration for work performed in connection with that activity, application or review; or

- (b) that there are no circumstances that may compromise the objectivity of that EAP or person in performing such work;

“pathway” means the route or means that controls the release and migration of a contaminant to environmental media, for instance soil to water or soil to air;

“public participation process” means a process in which potential interested and affected parties are given an opportunity to comment on or raise issues relevant to specific matters;

“receptor” means a person or organism exposed to contamination;

“remediation” means the interim or permanent elimination through mitigation or abatement of toxic or biohazard contaminants that pose human health consequences or threats to the environment.

PURPOSE OF THESE REGULATIONS

2. The purpose of the regulations is to—
- (a) regulate the contents of a site assessment report as contemplated in section 37 of the Act; and
- (b) regulate the person or persons who may conduct such assessments as contemplated in section 37 of the Act.

CONTENTS OF THE SITE ASSESSMENT REPORT

3. (1) The site assessment report must consider all ecological, social and economic aspects.
- (2) A site assessment report must have the following elements:
- (a) A detailed site description, which must include:
- (i) Details of the current land owner and occupiers of the land;
- (ii) The location and size of the site;
- (iii) The site coordinates, irrespective of the site of the facility;
- (iv) The farm, plot, and/or erf numbers;
- (v) The street number, street name, suburb and town/city;

- (vi) The current site plan with scale bar showing northerly direction, local water drainage and other locally significant features on-site and immediately off-site.
 - (vii) The plan in paragraph (vi) must also show the historical location of structures that may have affected the distribution of contamination (e.g. building, underground storage tanks, treatment baths, etc);
 - (viii) A locality map;
- (b) The site history which must include:
 - (i) the type of contaminant;
 - (ii) the nature and extent of contamination (including resources known to be contaminated);
 - (iii) the description of the past and present activity that lead to contamination;
 - (iv) details of the previous polluter(s) or land user(s);
 - (v) the description of the current conditions of the site;
- (c) any relevant studies conducted, including the contents and results of those studies;
- (d) the description of the environment that may or has been affected, which must include—
 - (i) the local topography and geology, including soil types;
 - (ii) the drainage patterns, surface cover, vegetation;
 - (iii) details of any relevant sensitive environments;
 - (iv) a determination of groundwater quality and direction as well as sensitivity of aquifers and the depth to water table;
 - (v) the quality of and proximity to surface water;
 - (vi) the proximity to drinking water supplies;
 - (vii) meteorological data, including annual rainfall and flood potential;
- (e) the current, previous and potential land and water use for the site and nearby areas;
- (f) sampling, which must include the nature of samples collected, the sampling procedures followed, including field sampling quality assurance and quality control requirements;

- (g) the analyses undertaken, methodologies used and laboratory quality assurance/quality control procedures, including laboratory certificates and appropriate accreditation listed;
 - (h) the actual extent and concentrations of contaminants in all appropriate environmental media on site based on verified test data;
 - (i) any formal authorization(s), notice(s), order(s) and/or directives issued;
 - (j) the land use type or restriction, and
 - (k) any potential effects of contaminants on human health, the environment, or any other structures and property.
- (3) Should the site be considered contaminated, a detailed site remediation plan must accompany site assessment report. The site remediation plan must include the following:
- (a) the remediation objectives that may include numerical soil and water targets where relevant;
 - (b) the remediation options available and the rationale for the selection of the preferred option;
 - (c) a risk assessment of the proposed remediation activities and mitigatory measures;
 - (d) an identification of regulatory requirements;
 - (e) the proposed monitoring and testing to validate the site during and upon completion of remedial activities; and
 - (f) a contingency plan in case of failure of the preferred remedial option.

PERSON WHO MAY CONDUCT THE SITE ASSESSMENT

4. (1) A site assessment must be conducted by an independent and suitably qualified person or persons appointed by the owner of the site.
- (2) In case the owner of the site is unable to conduct the site assessment in accordance with these Regulations, the Minister or MEC may appoint an independent and suitably qualified person or persons to conduct the site assessment and redeem such costs from the owner of the site.

PUBLIC PARTICIPATION

5. (1) A person conducting site assessment must undertake a public participation process which must include the following:
- (a) at least one public meeting; and
 - (b) advertise in local media.

SUBMISSION OF THE SITE ASSESSMENT REPORT

6. (1) After having complied with all the provisions in these Regulations, the owner of the site must—
- (a) submit to the Minister or MEC the information contemplated in subregulation 3(2)(a) within 14 days of receiving notification to conduct a site assessment;
 - (b) ensure that all submitted documents have been signed and dated by the owner of the site or authorised representative;
 - (c) submit all supporting documents to the Minister or MEC in addition to the following:
 - (i) the site assessment report containing all specialised studies or processes reports;
 - (ii) a declaration of interest by the EAP or person or persons who conducted the site assessment;
 - (iii) the notice and details of the public participation process undertaken;
 - (iv) the minutes and attendance register of public participation meetings;
 - (v) copies of objections, comments and/or any representations received in connection with the assessment during the public participation process;
 - (vi) responses to those comments, objections and/or representations.
 - (d) notify and inform all interested and affected parties, including those that attended the public meetings, of the reports submitted to the Minister or MEC.

CONSIDERATION OF THE SITE ASSESSMENT REPORT

7. (1) The Minister or MEC must acknowledge receipt of the documents referred to in sub regulation 6(1) within 14 days of receipt of such documents.
- (2) The Minister or MEC must within 30 (thirty) days of acknowledgement of receipt of a report, advise the owner of the site in writing, of any further information required or not sufficiently covered in the site assessment report, which should be submitted within a specified timeframe.
- (3) The Minister or MEC may instruct the owner of the site to send the site assessment report for external review at own cost.
- (4) The Minister or MEC may, within ninety (90) days of acknowledging receipt of the site assessment report, direct the applicant to remediate the site by issuing a Remediation Order, or direct the owner of the site to monitor and manage the site by issuing an Order in terms of Section 38 of the Act or declare that the site is not contaminated.
- (5) After the Minister or MEC has reached a decision referred to in regulation 6(4), the Minister or MEC must, in writing within 10 days—
 - (a) notify the owner of the site of the decision and of the period within which the owner must remediate and/or monitor the site;
 - (b) give reasons for the decision; and
 - (c) draw the attention of the owner of the site to the fact that an appeal may be lodged against the decision in terms of section 78 of the Act.
- (6) On receipt of such decision, the owner of the site must, in writing, within ten (10) days—
 - (a) notify all registered interested and affected parties of the outcome and reasons for the decision; and
 - (b) notify all registered interested and affected parties that an appeal may be lodged against the decision in terms of section 78 of the Act.

OFFENCES AND PENALTIES

8. (1) A person commits an offence if that person fails to comply with regulations 3, 4, 5 and 6.
- (2) A person who commits an offence in terms of subregulation (1) is liable on conviction to—
- (a) imprisonment for a period not exceeding fifteen (15) years;
 - (b) an appropriate fine; or
 - (c) both such fine and imprisonment.

COMMENCEMENT AND TRANSITIONAL PROVISIONS

9. (1) These Regulations take effect on the date determined by the Minister in a *Gazette*.
- (2) Persons who lawfully conduct site assessments and contaminated land remediation activities on the date of the coming into effect of these Regulations may continue with those activities as directed in an Order, Directive or waste management licence unless otherwise directed by the Minister or MEC to comply with these Regulations.

SHORT TITLE

10. These Regulations are called the National Regulations for Site Assessments and Reports, 2012.
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