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GENERAL NOTICE

NOTICE 1081 OF 2014

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

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

REGULATIONS RELATING TO THE PROCEDURE TO BE FOLLOWED WHEN ORAL REQUESTS ARE MADE IN TERMS OF SECTION 30A

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make regulations, in terms of section 44(1)(aD) pertaining to the procedure to be followed when oral requests are made in terms of section 30A of the National Environmental Management Act, 1998 (Act No.107 of 1998), as set out in the Schedule hereto.

Members of the public are invited to submit, within 30 days from the date of publication of the notice in the *Gazette*, written comments or inputs to the following addresses:

By post: The Director-General
 Department of Environmental Affairs
 Attention: Mr Sabelo Malaza
 Private Bag X447
 PRETORIA
 0001

By hand : Environment House, 473 Steve Biko Road, Arcadia, Pretoria, 0001.

By email : Mmalza@environment.gov.za

Enquiries: Mr Sabelo Malaza.

Tel: 012 399 8792

Comments received after the closing date may not be considered.

BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the National Environment Management Act, 1998 (Act No. 107 of 1998), shall have the meaning so assigned.

Purpose

2. The purpose of these Regulations is to provide for the procedure for the submission and processing of oral requests for verbal directives in terms of Section 30A(1) of National Environment Management Act, 1998 (Act No. 107 of 1998).

Application

3. (1) Any person who reasonably foresees that:
 - (a) he or she may commence with a listed or specified activity identified in terms of Regulations promulgated under Section 24(2) of National Environment Management Act, 1998 (Act No. 107 of 1998) without an environmental authorisation; and
 - (b) commencement with such listed or specified activity would be directly in response to a situation that has arisen suddenly and which poses an imminent and serious threat to the environment, human life or property; or
 - (c) commencement with such listed or specified activity would be directly in response to a 'disaster' as defined in section 1 of the Disaster Management Act, 2002 (Act No. 57 of 2002),may, orally request the competent authority to issue a verbal directive in terms of Section 30A(1) of National Environment Management Act, 1998 (Act No. 107 of 1998).
- (2) These Regulations do not apply in the event that a person has already commenced with a listed or specified activity identified in terms of Regulations promulgated in terms of Section 24(2) of National Environment Management Act, 1998 (Act No. 107 of 1998) without an environmental authorisation.

Circumstances in which an oral request may be made

4. A person may only submit an oral request for a verbal directive in terms of Section 30A(1) of National Environment Management Act, 1998 (Act No. 107 of 1998) in urgent circumstances, where:
 - (a) the immediate commencement of the listed or specified activity is necessary to prevent or contain an emergency situation; or prevent, contain or mitigate the effects of an emergency situation; and
 - (b) the delay in submitting a written request would defeat the object of the directive.

Information required

5. (1) A person that submits an oral request for a verbal directive in terms of Section 30A(1) of National Environment Management Act, 1998 (Act No. 107 of 1998) must include, where known, the following information as part of the request to the competent authority:
- a) the nature, scope and possible impact of the emergency situation;
 - b) the listed or specified activities that will be commenced with in response to the emergency situation;
 - c) the cause of the emergency situation; and
 - d) the proposed measures to prevent or to contain the emergency situation; or to prevent, contain or mitigate the effects of the emergency situation.
- (2) The competent authority may not issue a verbal directive in terms of Section 30A(1) of National Environment Management Act, 1998 (Act No. 107 of 1998) without first obtaining and considering the information as set out in subregulation (1)(a),(b),(c) and (d) above.
- (3) In addition to the information required in regulation 5(1) of these Regulations, the competent authority may request any information that is reasonably required to issue the oral directive, including the submission of photographs of the potential or actual emergency situation.

Refusal of verbal directive

6. The competent authority may refuse to issue a verbal directive, and instruct the person to submit a written request in terms of section 30A(1) of National Environment Management Act, 1998 (Act No. 107 of 1998) where, in the opinion of the competent authority:
- (a) the reported circumstances do not fall within the definition of an emergency situation as defined in Section 30A(7) of National Environment Management Act, 1998 (Act No. 107 of 1998) or a 'disaster' as defined in section 1 of the Disaster Management Act 57 of 2002; or
 - (b) the reported circumstances are not found to be as urgent as envisaged in Regulation 4 of these Regulations.

Written confirmation

7. (1) In the event that an oral request to issue a verbal directive in terms of Section 30A(1) of the National Environment Management Act, 1998 (Act No. 107 of 1998) is accepted by the competent authority, the person making the oral request must deliver a written confirmation of the request within 24 hours of the oral request.
- (2) Delivery of the written confirmation must be by hand, e-mail or fax (upon acknowledgement of receipt), to the person who issued the verbal directive.

Factors to be considered

8. (1) In considering whether or not to issue a verbal directive in terms of Section 30A(1) of the National Environment Management Act, 1998 (Act No. 107 of 1998), the competent authority must take the following into consideration:

- (a) the nature of the emergency situation;
- (b) the information contained in the request referred to in Section 30A (2) of the National Environment Management Act, 1998 (Act No. 107 of 1998);
- (c) whether the emergency situation was caused by or the fault of the person;
- (d) the principles contained in Section 2 of National Environment Management Act, 1998 (Act No. 107 of 1998);
- (e) the risk of the impact on the environment as a result of the emergency and the costs of the measures considered; and
- (f) the risk of the impact on the environment of the emergency situation, prevention, control or mitigation measures and the post-event mitigation or rehabilitation measures that may be required.

(2) Upon receipt of the oral request for a verbal directive in terms of Section 30A(1) of the National Environment Management Act, 1998 (Act No. 107 of 1998), the competent authority must use the form provided for in Annexure A hereto to record, in writing, all the information required in terms of regulation 7 of these Regulations.

Issuing of verbal directive

9. (1) If, in the opinion of the competent authority, the oral request to issue a verbal directive in terms of Section 30A(1) of the National Environment Management Act, 1998 (Act No. 107 of 1998) reveals that-

- (a) the circumstances are urgent as set out in regulation 4 of these Regulations; and
- (b) that a delay in drafting and issuing a written directive would defeat the object of the directive,

the competent authority may issue a verbal directive, after having considered all of the information referred to in regulations 7 and 10 of these Regulations.

- (2) The verbal directive must be issued within 6 hours after receipt of all information referred to in regulation 7 of these Regulations.
- (3) The verbal directive must be confirmed, in writing, within 7 days of the issuance of the verbal directive.

Site inspection.

10. The competent authority shall, where reasonably possible, and in any event no later than 48 hours after receipt of an oral request for a verbal directive, dispatch an official to the scene of the emergency situation.

Amendment, suspension, revocation

11. The competent authority may amend, suspend or revoke the verbal directive in the event that:
- (a) no written confirmation of the oral request has been received within the timeframe set out in regulation 9 of these Regulations;
 - (b) the written confirmation contains facts that are materially different from the oral request; or
 - (c) the official, after having assessed the scene of the emergency situation, is of the reasonable belief that the circumstances are materially different from the oral request or written confirmation of the oral request.

Written notice of its intention to amend, suspend or revoke

12. Should the competent authority decide to amend, suspend or revoke the verbal directive in accordance with Regulation 13, it shall first provide written notice of its intention to amend, suspend or revoke the verbal directive to the person in whose favour the verbal directive was issued and shall give said person 48 hours in which to object to the amendment, suspension or revocation.

Reporting requirements

13. The competent authority shall, as soon as reasonably possible, report the emergency situation to all other relevant authorities that may be responsible for the management thereof.

Offences

14. It is an offence for any person to provide incorrect or misleading information, orally or in writing, to the competent authority or an Environmental Management Inspector in terms of these Regulations.

Penalties

15. A person convicted of an offence in terms of Regulation 14 is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.

Short title and commencement

16. These Regulations are called the National Environmental Management: Emergency Situations: Oral Requests for Verbal Directives Regulations, 2014 and take effect on the date of publication thereof in the *Gazette*.

ANNEXURE A:

MANDATORY WRITTEN RECORDING OF INFORMATION REQUIRED IN TERMS OF REGULATIONS 7 AND 10

1.	Name and identity number of person making the oral request ("the requester").
2.	Is the requester placing the request in his or her personal capacity or on behalf of a state body/parastatal/corporate entity?
3.	Name of state body/parastatal/corporate entity on whose behalf the request is made; registration number where appropriate and registered street address.
4.	If the request is made on behalf of a state body/parastatal/corporate entity, in what capacity is the requester employed by that body?
5.	Location of the emergency situation. [Street address and/or GPS coordinates]
6.	The nature of the emergency situation as stated by the requester, including the progression of the emergency (whether or not it has commenced/is imminent/has caused damage at the time of the oral request)

7.	The cause of the emergency situation; including confirmation of whether or not it was caused by the fault of the applicant.
8.	The risk of the impact on the environment as a result of the emergency; including an impact which may already have occurred.
9.	The risk of the impact on human health and well-being as a result of the emergency; including any impact which may already have occurred.
10.	The proposed measures to be taken, including whether they will provide a temporary or permanent solution to the situation.
11.	What aspect of the emergency each measure will seek to address and how.
12.	The listed or specified activities that will be triggered by the proposed measures.
13.	The estimated costs of the measures proposed.

14.	Any reasonable alternative measures; including an estimate of the costs thereof.
15.	The risk of the impact on the environment of the prevention, control or mitigation measures proposed.
16.	Any post-event mitigation or rehabilitation measures that may be required.

Once the above information has been obtained and prior to making its decision, the competent authority must apply the information and balance the proposed measures against the National Environment Management Act, 1998 (Act No. 107 of 1998) principles.

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- Publications Enquiries : 012 748 6052/6053/6058 GeneralEnquiries@gpw.gov.za
- Maps : 012 748 6061/6065 BookShop@gpw.gov.za
- Debtors : 012 748 6060/6056/6064 PublicationsDebtors@gpw.gov.za
- Subscription : 012 748 6054/6055/6057 Subscriptions@gpw.gov.za
- SCM : 012 748 6380/6373/6218
- Debtors : 012 748 6236/6242
- Creditors : 012 748 6246/6274

Please consult our website at www.gpwnonline.co.za for more contact details.

The numbers for our provincial offices in Polokwane, East London and Mmabatho will not change at this stage.

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