



24G Consultation: 14/2/4/1/D2/19/0014/23

Pre-Application – Information Requirements letter

The Owner
Farm Buffelsrivier 42/46 and 34/46
GEORGE
6530

Email: otterswem@hilbert.co.za

Attention: J van Rensburg

INFORMATION REQUIREMENTS OF THE POTENTIAL SECTION 24G APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") FOR THE UNLAWFUL COMMENCEMENT OF LISTED ACTIVITIES: UNLAWFUL CONSTRUCTION AND EXPANSION OF AN INSTREAM DAM AND CLEARING OF INDIGENOUS VEGETATION ON FARM BUFFELS RIVIER 42/46 AND 34/46, GEORGE

1. The abovementioned submission received by this Department, has reference.
2. Please be advised that the *Section 24G Fine Regulations (GN. No. 698 of 20 July 2017)* (hereafter referred to as "the fine regulations") were published on 20 July 2017. The fine regulations require that public participation be conducted prior to the submission of an application and that an application must include the representations as set out in Annexure A of the fine regulations.
3. Please be advised that submission of a section 24G application shall in no way derogate from an investigation of any transgression in terms of the *National Environmental Management Act, 1998 (Act 107 OF 1998)* ("NEMA") nor from the National Prosecuting Authority's legal authority to institute criminal proceedings.

Listed activities that are being applied for:

4. A section 24G application is only relevant to listed activities that have commenced without the pre-requisite environmental authorisation. Only those activities applied for will be considered for environmental authorisation.
5. The applicant is thus required to ensure that all the applicable listed activities are included in the application to be submitted. In this regard, the timeframe of commencement of the listed activity/ies and the relevant Environmental Impact Assessment legislative period/regime is of particular importance.

6. Please also ensure that the similarly listed activities in terms of the current *Environmental Impact Assessment Regulations, 2014* (as amended) are applied for should the listed activities not have commenced within this period.
7. The appointed Environmental Assessment Practitioner is required to provide a detailed explanation as to why the unlawfully commenced activity is still similarly listed in terms of the NEMA.

Minimum requirements for every application for environmental authorisation:

8. You are reminded that section 24G is an application for environmental authorisation and thus an applicant must comply with the requirements of the NEMA in relation to the submission of an application for environmental authorisation and any other relevant information (section 24(1A)(e) of the NEMA). Section 24(4)(a) of the NEMA specifies the “procedures for the investigation, assessment and communication of the potential consequences or impacts of the activities on the environment” that every application for environmental authorisation must comply with.
9. Taking the above into consideration, together with the information requirements of Annexure A, Section C, Part 1 of the fine regulations related to the environmental impacts and representations to be completed by an Environmental Assessment Practitioner (“EAP”); and to be submitted together with the section 24G application; you are hereby advised that the application be informed by an environmental impact assessment.
10. When conducting such environmental impact assessment, the applicant/EAP must take into account the applicable guidelines developed by the Department, which may be downloaded from the Department's website (see above). In particular, the following are applicable:
 - 10.1. Guideline for Environmental Management Plans (June 2005);
 - 10.2. Guideline on Public Participation
 - 10.3. Guideline on Alternatives
 - 10.4. Guideline on Need and Desirability
 - 10.5. Departmental guideline series for involving specialist assessments, 2005
 - 10.6. Information Document for the Development of a Maintenance Management Plan for a Watercourse, July 2017
11. You are required to submit a Screening Report from the National Web based Environmental Screening Tool. The Screening Tool also provides site specific EIA process and review information, for example, the Screening Tool may identify if an industrial development zone, minimum information requirement, Environmental Management Framework or bio-regional plan applies to a specific area. The Screening Tool identifies related exclusions and/ or specific requirements including specialist studies applicable to the site and/or development, based on the national sector classification and the environmental sensitivity of the site.
12. Having considered the information contained in the consultation form, this Department hereby advises that a freshwater specialist be considered for appointment to assess the impacts of the unlawful activities on the receiving environment. The specialist report must be submitted to support your section 24G application.

Public Participation Process:

13. Preliminary Advertisement

- 13.1. Kindly note the requirements of Regulation 8 and Annexure A, Section D of the fine regulations which stipulate that when submitting an application form, the applicant must attach proof that the application has been advertised in at least one local newspaper in circulation in the area in which the activity was commenced, and on the applicant's website, if any.
- 13.2. Please note further that the advertisement must state that the applicant commenced a listed/ specified/ waste management activity(ies) without the necessary environmental authorisation and/or waste management licence and is now applying for *ex post facto* approval. The advertisement **must** include (a) the date, (b) the location, (c) the applicable legislative provision contravened, (d) and the listed activity(ies) commenced with without the required authorisation.
- 13.3. Interested and affected parties (I&APs) must be provided with the details of where they can register as an I&AP and submit their comment. Please be advised that at least 20 days must be provided in which to do so. Proof of compliance with Regulation 8 of the fine regulations must be submitted together with your application.
- 13.4. Should you decide to compile a draft section 24G Application and of your own accord make it available for comment, it is recommended that the draft section 24G Application report be made available simultaneously with the Preliminary Advertisement requirement.

14. Section 24O consultation with organs of state/State departments

- 14.1. However, kindly note that any public participation undertaken **prior to submission of the section 24G Application** report, does not exempt from compliance with section 24O of the NEMA which obligates the competent authority when considering an application; to consult with every State department that administers a law relating to a matter affecting the environment.
 - 14.2. You are required to submit a list of organs of state to be consulted in terms of section 24O together with the complete and signed application. The list of organs of state must include their contact details with fax/email and the relevant contact person.
 - 14.3. Copies of the section 24G application may be made available for comment to the relevant organs of state upon simultaneous submission of the application to the Department.
Note: this does not qualify as the Regulation 8 public participation requirement which is required to be conducted prior to submission of an application.
 - 14.4. Upon receipt of the complete and signed application, the Department will issue section 24O letters to the relevant organs of state for comment as per the EAPs specified timeframe for comment.
15. It is noted that your activity/development may require a water use licence. Please provide proof of submission of the application to the relevant authority together with your section 24G application form.
16. Two printed copies as well as an electronic copy of the final Application must be submitted to the Department.

17. You are reminded that it is an offence in terms of section 49A of the NEMA to commence with a listed activity unless the competent authority has granted environmental authorisation for the undertaking of the activity, and it is an offence to fail to comply with a directive issued in terms of NEMA. A person convicted of an offence is liable to a fine not exceeding **R10 million** or **imprisonment for a period not exceeding 10 years**, or to both such fine and imprisonment.
18. Kindly quote the abovementioned reference number in any future correspondence in respect of this consultation form.

Zaidah Toefy Digitally signed by Zaidah Toefy
Date: 2023.09.08 10:20:34 +02'00'

Mrs Z Toefy
Head of Rectification
Directorate: Environmental Governance

CC: (1) Diana Mouton (DEA&DP: Environmental Law Enforcement: Region 3)

Email: diana.mouton@westerncape.gov.za



24G Application: 14/2/4/2/3/D2/20/0030/23

SECTION 24G PRE-DIRECTIVE

The Owners
PO Box 125
UNIONDALE
6460

Tel: (044) 023 0102
Email: otterswem@hilbert.co.za

Attention: Jakobus Christo Janse and Ella Doretia Janse van Rensburg

PRE-DIRECTIVE IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CONSTRUCTION AND EXPANSION OF 2 DAMS AND CLEARING OF INDIGENOUS VEGETATION ON FARM BUFFELS RIVIER 42/46 AND 34/46, GEORGE

1. Section 24G of the NEMA provides for the consequences of unlawful commencement, and upon application to the competent authority, applies to any person who has commenced a listed or a specified activity without environmental authorisation in contravention of section 24F(1) of the NEMA.
2. The Department has received your application regarding the unlawful construction and expansion of 2 dams and clearing of indigenous vegetation on Farm Buffels Rivier 42/46 and 34/46, George.
3. Having considered the information in respect of your application, you are hereby given notice of the delegated authority's intention to issue you with a Directive in terms of section 24G of the NEMA (as amended), which will direct you to:
 - 3.1 Compile a report containing a description of the public participation process followed during the course of compiling the application and assessment report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed.

4. Kindly be reminded of the NEMA public participation requirements for applications for environmental authorisation:
 - (i) Section 24(1A) and 24(4)(a) of the NEMA stipulate the minimum requirements for applications for environmental authorisation and includes the requirement for public participation to be undertaken.
 - (ii) Please refer to Chapter 6 of the *Environmental Impact Assessment Regulations, 2014* (as amended G.N. No 326 of 7 April 2017) for detail on the public participation process to be followed for applications for environmental authorisation.
 - (iii) In terms of section 24O of the NEMA, the relevant competent authority must consult with every State department that administers a law relating to a matter affecting the environment when such authority considers an application for an environmental authorisation.
5. The application must therefore be made available to registered Interested and Affected Parties (I&APs) and State Departments for a 30-day commenting period.
6. The applicant/Environmental Assessment Practitioner ("EAP") is required to inform this Department, in writing, upon submission of the application to the relevant State Departments. Upon receipt of this confirmation, this Department will in accordance with section 24O(2) & (3) of NEMA, inform the relevant State Departments of the commencement date of the 30-day commenting period.
7. In terms of the public participation process ("PPP") to be undertaken, kindly be advised that you/the EAP must record and respond to all comments received during the public participation process. The comments and responses must be captured in a Comment and Response Report ("C&RR") and must also include a description of the PPP followed.
8. Following the initial 30-day commenting period, the application and the C&RR must be made available to registered I&APs and State Departments for an additional 21-days for review and/or comment, if any, advising them how their issues or concerns have been addressed, before it is submitted to the Department for consideration. Proof of notification of the additional 21-day commenting period must be appended to the final C&RR.
9. Together with a public participation process, that comprises of comments and responses, the section 24G application process includes the issuing and payment of an administrative fine, prior to deciding on the application.

10. Please note that a signed declaration page must be included as part of the s24G application and must therefore be submitted with the final application.
11. In addition to any representations made in the application, you are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-directive to make written representations to the Department as to why a Directive should not be issued.
12. Please note that if you fail to comply with a Directive, you will have committed a criminal offence in terms of 49A(1)(g) of the NEMA.
13. In addition, section 49B of the NEMA stipulates that a person convicted of an offence in terms of section 49A(1)(g) is liable to a fine not exceeding R10 million, or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.
14. Kindly quote the abovementioned reference number in any future correspondence in respect of this application.



Zaidah Toefy

Digitally signed by Zaidah Toefy
Date: 2024.05.23 10:02:59 +02'00'

MRS Z TOEFY
HEAD OF RECTIFICATION
DIRECTORATE: ENVIRONMENTAL GOVERNANCE

CC: (1) Joclyn Marshall (EAP)

Email: joclyn@ecoroute.co.za