GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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MINISTRY OF ENVIRONMENT AND TOURISM

No. 28 2012

COMMENCEMENT OF THE ENVIRONMENTAL MANAGEMENT ACT, 2007

In terms of section 58 of the Environmental Management Act, 2007 (Act No. 7 of 2007), I determine that the Act comes into operation on the date of publication of this notice in the *Gazette*.

N. NANDI-NDAITWAH
MINISTER OF ENVIRONMENT AND TOURISM Windhoek, 18 January 2012

MINISTRY OF ENVIRONMENT AND TOURISM

No. 29 2012

LIST OF ACTIVITIES THAT MAY NOT BE UNDERTAKEN WITHOUT ENVIRONMENTAL CLEARANCE CERTIFICATE: ENVIRONMENTAL MANAGEMENT ACT, 2007

Under section 27 of the Environmental Management Act, 2007 (Act No. 7 of 2007), and after following the consultative process referred to in section 44 of that Act, I list in the Annexure to the Schedule, activities that may not be undertaken without an environmental clearance certificate.

N. NANDI-NDAITWAH
MINISTER OF ENVIRONMENT AND TOURISM Windhoek, 18 January 2012

SCHEDULE

Definitions

1. In this notice, a word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

"alien species" means -

(a) a non-indigenous plant, animal or micro organism; or

(b) an indigenous plant, animal or micro organism, translocated or intended to be translocated to a place outside its natural range of nature,

that does not normally interbreed with individuals of another kind, including any subspecies cultivar, variety, geographic race, strain, hybrid or geographically separate population;

"Aquaculture Act, 2002" means the Aquaculture Act, 2002 (Act No. 18 of 2002);

"Atmospheric Pollution Prevention Ordinance, 1976" means the Atmospheric Pollution Prevention Ordinance, 1976 (Ordinance No. 11 of 1976);

"aquaculture" means the farming and ranching of aquatic animals;

"canal" means an open structure that is lined or reinforced for the conveying of a liquid or that serves as an artificial watercourse;

"channel" means an excavated hollow bed for running water or an artificial underwater depression to make a water body navigable or to improve the flow of water in a natural stream, river or the sea;

"construction" means the building, erection or modification of a facility, structure or infrastructure that is necessary for the undertaking of an activity, including the modification, alteration, upgrading or decommissioning of such facility, structure or infrastructure;

"dangerous goods" means goods which by reason of their nature, quantity or mode of stowage, are likely to endanger the environment or the lives or the health of persons, and which are listed in -

(a) Part 4 of the Road Traffic and Transport Regulations published in Government Notice No. 53 of 30 March 2001; or

(b) any other law as dangerous goods;

"generation" in relation to electricity, means the production of electricity by way of natural or artificial processes;

"genetically modified organisms" means an organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology, and includes combinations of genetically modified organisms;

"Hazardous Substances Ordinance, 1974" means the Hazardous Substance Ordinance, 1974 (Ordinance No. 14 of 1974);

"high-water mark" means the highest line reached by the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

"mariculture" means the culture or husbandry of fish in sea water;

"Minerals (Prospecting and Mining) Act, 1992" means the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992);

"public road" means any road, street or thoroughfare or any other place which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes -

(a) the verge of any such road, street or thoroughfare;

(b) any bridge, culvert, causeway, ferry, ford or drift traversed by any such road, street or thoroughfare;

(c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

"sea" means the water and the bed of the sea and includes the land between the high-water and low-water marks;

"supply", in relation to electricity, means the delivery of electricity to a customer as a commodity;

"the Act" means the Environmental Management Act, 2007 (Act No. 7 of 2007).

"transmission", in relation to electricity, means the conveyance of electricity by means of a transmission system, which consists wholly or mainly of high voltage networks and electrical plant, from an energy source or system to a customer;

Identification of competent authority

2. If no person or authority is in terms of any law charged with the responsibility of granting authorisation in respect of an activity listed in this notice, the Minister is the competent authority in respect of the activity, unless otherwise determined in terms of section 30(3) of the Act.

ANNEXURE

LIST OF ACTIVITIES THAT MAY NOT BE UNDERTAKEN WITHOUT ENVIRONMENTAL CLEARANCE CERTIFICATE

ENERGY GENERATION, TRANSMISSION AND STORAGE ACTIVITIES

1. The construction of facilities for -

(a) the generation of electricity;
(b) the transmission and supply of electricity;
(c) refining of gas, oil and petroleum products; and
(d) nuclear reaction, including production, enrichments, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and waste.

WASTE MANAGEMENT, TREAMENT, HANDLING AND DISPOSAL ACTIVITIES

2.1 The construction of facilities for waste sites, treatment of waste and disposal of waste.

2.2 Any activity entailing a scheduled process referred to in the Atmospheric Pollution Prevention Ordinance, 1976.

2.3 The import, processing, use and recycling, temporary storage, transit or export of waste.

MINING AND QUARRYING ACTIVITIES

3.1 The construction of facilities for any process or activities which requires a licence, right or other form of authorisation, and the renewal of a licence, right or other form of authorisation, in terms of the Minerals (Prospecting and Mining Act), 1992.

3.2 Other forms of mining or extraction of any natural resources whether regulated by law or not.

3.3 Resource extraction, manipulation, conservation and related activities.

3.4 The extraction or processing of gas from natural and non-natural resources, including gas from landfill sites.

3.5 The extraction of peat.

FORESTRY ACTIVITIES

4. The clearance of forest areas, deforestation, aforestation, timber harvesting or any other related activity that requires authorisation in term of the Forest Act, 2001 (Act No. 12 of 2001) or any other law.

LAND USE AND DEVELOPMENT ACTIVITIES

5.1 The rezoning of land from -

(a) residential use to industrial or commercial use;

(b) light industrial use to heavy industrial use;

(c) agricultural use to industrial use; and

(d) use for nature conservation or zoned open space to any other land use.

5.2 The establishment of land resettlement schemes.

5.3 Construction of veterinary protected area or game proof and international boundary fences.

TOURISM DEVELOPMENT ACTIVITIES

6. The construction of resorts, lodges, hotels or other tourism and hospitality facilities.

AGRICULTURE AND AQUACULTURE ACTIVITIES

7.1 Construction of facilities for aquaculture production, including mariculture and algae farms where the structures are not situated within an aquaculture development zone declared in terms of the Aquaculture Act, 2002.

7.2 The declaration of an area as an aquaculture development zone in terms of the Aquaculture Act, 2002.

7.3 The genetic modification of any organism with the purpose of fundamentally changing the inherent characteristics of that organism.

7.4 The import, processing and transit of genetically modified organisms.

7.5 Pest control.

7.6 The release of genetically modified organisms into the environment where an environmental assessment is required by law.

7.7 The release of any organism outside its natural area of distribution that is to be used for biological pest control.

7.8 The introduction of alien species into local ecosystems.

WATER RESOURCE DEVELOPMENTS

8.1 The abstraction of ground or surface water for industrial or commercial purposes.

8.2 The abstraction of groundwater at a volume exceeding the threshold authorised in terms of a law relating to water resources.

8.3 Any water abstraction from a river that forms an international boundary.

8.4 Construction of canals and channels including the diversion of the normal flow of water in a riverbed and water transfer schemes between water catchments and impoundments.

8.5 Construction of dams, reservoirs, levees and weirs.

8.6 Construction of industrial and domestic wastewater treatment plants and related pipeline systems.

8.7 Irrigation schemes for agriculture excluding domestic irrigation.

8.8 Construction and other activities in water courses within flood lines.

8.9 Construction and other activities within a catchment area.

8.10 Reclamation of land from below or above the high-water mark of the sea or associated inland waters.

8.11 Alteration of natural wetland systems.

8.12 The release of brine back into the ocean by desalination plants.

HAZARDOUS SUBSTANCE TREATMENT, HANDLING AND STORAGE

9.1 The manufacturing, storage, handling or processing of a hazardous substance defined in the Hazardous Substances Ordinance, 1974.

9.2 Any process or activity which requires a permit, licence or other form of authorisation, or the modification of or changes to existing facilities for any process or activity which requires an amendment of an existing permit, licence or authorisation or which requires a new permit, licence or authorisation in terms of a law governing the generation or release of emissions, pollution, effluent or waste.

9.3 The bulk transportation of dangerous goods using pipeline, funiculars or conveyors with a throughout capacity of 50 tons or 50 cubic meters or more per day.

9.4 The storage and handling of a dangerous goods, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of more than 30 cubic meters at any one location.

9.5 Construction of filling stations or any other facility for the underground and aboveground storage of dangerous goods, including petrol, diesel, liquid, petroleum, gas or paraffin.

INFRASTRUCTURE

10.1 The construction of-

(a) oil, water, gas and petrochemical and other bulk supply pipelines;

(b) public roads;

(c) railways and harbours;

(d) airports and airfields;

(e) any structure below the high water mark of the sea;

(f) cableways;

(g) communication networks including towers, telecommunication and marine telecommunication lines and cables;

(h) motor vehicle and motorcycle racing and test tracks;

(i) the outdoor racing sites of motor powered vehicles including -

(i) motorcars;

(ii) trucks;

(iii) motorcycles;

(iv) quad bikes;

(v) boats; and

(vi) jet skis;

(j) masts of any material or type and of any height, including those used for telecommunication broadcasting and radio transmission, but excluding -

(i) flag poles; and

(ii) lightning conductor poles.

10.2 The route determination of roads and design of associated physical infrastructure where -

(a) it is a public road;

(b) the road reserve is wider than 30 meters; or

(c) the road caters for more than one lane of traffic in both directions.

OTHER ACTIVITIES

11.1 Construction of military demonstration and testing sites,

11.2 Construction of cemeteries, camping, leisure and recreation sites.

MINISTRY OF ENVIRONMENT AND TOURISM

No. 30 2011

ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS:
ENVIRONMENTAL MANAGEMENT ACT, 2007

Under section 56 of the Environmental Management Act, 2007 (Act No. 7 of 2007), I have made the regulations set out in the Schedule.

N. NANDI-NDAITWAH
MINISTER OF ENVIRONMENT AND TOURISM Windhoek, 18 January 2012

SCHEDULE

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Definitions

1. In these regulations a word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context indicates otherwise -

"alternatives", in relation to a proposed activity, means different means of meeting the general purpose and requirements of the activity, which may include alternatives to -

(a) the property on which or location where it is proposed to undertake the activity;

(b) the type of activity to be undertaken;

(c) the design or layout of the activity;

(d) the technology to be used in the activity; and

(e) the operational aspects of the activity;

"application" means an application for an environmental clearance certificate in terms of these regulations;

"assessment register" means an assessment register referred to in regulation 27;

"cumulative effect", in relation to an activity, means the effect of an activity that in itself may not be significant but may become significant when added to the existing and potential effects eventuating from similar or diverse activities or undertakings in the area.,

"environmental assessment practitioner" means a person designated by a proponent to manage the assessment process;

"management plan" means a plan that describes how activities that may have significant environments effects on the environment are to be mitigated, controlled and monitored;

"interested and affected party", in relation to the assessment of a listed activity includes -

(a) any person, group of persons or organisation interested in or affected by an activity; and

(b) any organ of state that may have jurisdiction over any aspect of the activity;

"public consultation process" means a process referred to in regulation 21, in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to, specific matters;

"scoping report" means a document prepared by the proponent to present the case for the assessment of an activity as part of the initial assessment process;

"terms of reference" means a document which forms part of a scoping report and sets out how an assessment must be carried out.,

"the Act" means the Environmental Management Act, 2007 (Act No. 7 of 2007).

Application of regulations

2. (1) These regulations apply to activities listed in Government Notice No. 30 of 6 February 2012.

(2) The activities referred to in subregulation (1), are activities that may not be undertaken without an environmental clearance certificate.

Duties of proponents

3. The proponent must -

(a) designate an environmental assessment practitioner (hereinafter referred to as EAP") to manage the assessment process;

(b) provide the EAP with access to information at the disposal of the proponent regarding the application, whether or not the information is favourable to the proponent; and

(c) ensure that the environmental assessment procedures, specified in the Act, these regulations and guidelines, for the proposed activity are followed.

General requirements for EAPs

4. An EAP designated in terms of regulation 3, must -

(a) have knowledge of and experience in conducting assessments, including knowledge of the Act, these regulations and guidelines that have relevance to the proposed activity;

(b) perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;

(c) comply with the Act, these regulations, guidelines and other applicable laws and

(d) disclose to the proponent, competent authority and the Environmental Commissioner all material information in the possession of the EAP that reasonably has or may have the potential of influencing -

(i) any decision to be taken with respect to the application in terms of the Act and these regulations; or

(ii) the objectivity of any report, plan or document to be prepared by the EAP in terms of the Act and these regulations.

Determining if proposed activity is a listed activity

5. (1) Before submitting an application for an environmental clearance certificate the proponent must determine that the activity for which the application is made is a listed activity.

(2) For the purposes of subregulation (1), the proponent may consult the Environmental Commissioner, the competent authority and guidelines, if any.

(3) If the proponent has in terms of subregulation (1) determined that the proposed activity is a listed activity, the proponent must apply for an environmental clearance certificate in accordance with regulation 6.

Application for environmental clearance certificate

6. (1) The application for an environmental clearance certificate must be -

(a) made on a form which corresponds substantially with Form 1 of Annexure 1 to the regulations, and obtainable from the Ministry and other designated offices; and

(b) submitted to the relevant competent authority.

(2) If the Minister is in terms of section 30(1) of the Act identified as the competent authority in respect of a listed activity the application must be submitted to the Environmental Commissioner.

(3) If any other organ of state is in terms of section 30(1) of the Act identified as the competent authority in respect of a listed activity the application must be submitted to the designated organ of state.

(4) If the Minister has in terms of section 30(3) of the Act made an agreement with an organ of state in respect of applications for environmental clearance certificates, the application must be submitted to that organ of state.

Process after submission of application

7. (1) After submitting the application to the competent authority the proponent must -

(a) conduct a public consultation process in accordance with regulation 21;

(b) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 22;

(c) consider all objections and representations received from interested and affected parties following the public consultation process conducted in terms of paragraph (a), and subject the proposed application to scoping by assessing -

(i) the potential effects of the proposed listed activity on the environment;

(ii) whether and to what extent the potential effects referred to in subparagraph (i) can be mitigated; and

(iii) whether there are any significant issues and effects that require further investigation;

(d) prepare a scoping report; and

(e) give all registered interested and affected parties an opportunity to comment on the scoping report in accordance with regulation 23.

(2) After the completion of the processes referred to in subregulation (1), the proponent must submit to the relevant competent authority -

(a) the scoping report;

(b) the management plan;

(c) copies of any representations, objections and comments received in connection with the application or the scoping report;

(d) copies of the minutes of any meetings held by the proponent with interested and affected parties and other role players which record the views of the participants; and

(e) any responses by the EAP to those representations, objections, comments and views.

Scoping report

8. A scoping report must include -

(a) the curriculum vitae of the EAP who prepared the report;

(b) a description of the proposed activity;

(c) a description of the site on which the activity is to be undertaken and the location of the activity on the site;

(d) a description of the environment that may be affected by the proposed activity and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed listed activity;

(e) an identification of laws and guidelines that have been considered in the preparation of the scoping report;

(f) details of the public consultation process conducted in terms of regulation 7(1) in connection with the application, including -

(i) the steps that were taken to notify potentially interested and affected parties of the proposed application;

(ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the proposed application have been displayed, placed or given;

(iii) a list of all persons, organisations and organs of state that were registered in terms of regulation 22 as interested and affected parties in relation to the application; and

(iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;

(g) a description of the need and desirability of the proposed listed activity and any identified alternatives to the proposed activity that are feasible and reasonable, including the advantages and disadvantages that the proposed activity or alternatives have on the environment and on the community that may be affected by the activity;

(h) a description and assessment of the significance of any significant effects, including cumulative effects, that may occur as a result of the undertaking of the activity or identified alternatives or as a result of any construction, erection or decommissioning associated with the undertaking of the proposed listed activity;

(i) terms of reference for the detailed assessment; and

(j) a draft management plan, which includes -

(aa) information on any proposed management, mitigation, protection or remedial measures to be undertaken to address the effects on the environment that have been identified including objectives in respect of the rehabilitation of the environment and closure;

(bb) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of the activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and

(cc) a description of the manner in which the applicant intends to modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation remedy the cause of pollution or degradation and migration of pollutants.

Terms of reference

9. The terms of reference for an assessment must set out the approach that the proponent intends to follow in undertaking an assessment in accordance with the Act, these regulations and guidelines and must include -

(a) a description of all tasks to be undertaken as part of the assessment process, including any specialist to be included if needed;

(b) an indication of the stages at which the Environmental Commissioner is to be consulted;

(c) a description of the proposed method of assessing the environmental issues and alternatives; and

(d) the nature and extent of the public consultation processes to be conducted during the assessment process.

Competent authority's responsibilities

10. On receipt of an application in terms of regulation 6 and the documents referred to in regulation 7(2), and if the applicant meets with the requirements of the competent authority contemplated in section 32(1) of the Act, the competent authority must forward to the Environmental Commissioner the application for the environmental clearance certificate as well as the documents referred to in regulation 7(2).

Consultation between organs of state

11. If a listed activity also requires an assessment in terms of any other law or policy and that other law or policy requires that information must be submitted or processes must be carried out that are substantially similar to information or processes required in terms of these regulations, the Minister must take steps to enter into a written agreement with the authority responsible for administering the law or policy in respect of the co-ordination of the requirements of the law, policy and these regulations to avoid duplication in the submission of such information or the carrying out of such processes.

Consideration of scoping report and determining the need for assessment

12. (1) On receipt of an application the Environmental Commissioner must -

(a) within three days acknowledge receipt of the application; and

(b) register the application in the assessment register;

(c) within 14 days of receipt of application consider the scoping report and

(i) accept the scoping report; or

(ii) reject the scoping report if it does not comply with the Act, these regulations and guidelines, if any; and

(d) in terms of section 33(1) of the Act and within 14 days of receipt of an application decide if the proposed activity requires a detailed assessment.

(2) A scoping report that has been rejected in terms of subregulation (1)(c)(ii) may be amended and be resubmitted by the proponent.

(3) On receipt of an amended scoping report in terms of subregulation (2) the Environmental Commissioner must reconsider the report in term subregulation 1(c).

(4) If the Environmental Commissioner decides in terms of section 33(l) -

(a) that the proposed activity requires a detailed assessment the application must proceed in accordance with regulations 14, 15, 16, 17 and 18; and

(b) that the proposed activity does not require a detailed assessment the application must proceed in accordance with regulation 13.

Procedure where assessment is not required

13. If the Environmental Commissioner decides in terms of section 33(1) that the proposed listed activity does not require a detailed assessment, the Environmental Commissioner must within seven days of making the decision -

(a) in writing notify proponent and the competent authority of the decision; and

(b) on payment of the fee prescribed in Annexure 2 to the regulations, and subject to conditions, if any, issue the environmental clearance certificate.

Deciding on the scope of assessment

14. If the Environmental Commissioner in terms of section 33(1) of the Act decides that the proposed activity requires an assessment, the Environmental Commissioner must determine the scope, procedures and methods for assessment in terms of section 35(l) of the Act, and -

(a) in writing notify the proponent to prepare an assessment report in accordance with the scope, procedure and methods determined; and

(b) in writing notify the competent authority.

Assessment report

15. (1) The proponent must instruct the EAP to prepare an assessment report within 21 days of receipt of a notification in terms of regulation 14.

(2) An assessment report must contain all information that is necessary for the Environmental Commissioner to consider and to make a decision on the application, and must include -

(a) the curriculum vitae of the EAP who compiled the report;

(b) a detailed description of the proposed listed activity;

(c) a description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;

(d) a description of the need and desirability of the proposed listed activity and identified potential alternatives to the proposed listed activity, including advantages and disadvantages that the proposed activity or alternatives may have on the environment and the community that may be affected by the activity;

(e) an indication of the methodology used in determining the significance of potential effects;

(f) a description and comparative assessment of all alternatives identified during the assessment process;

(g) a description of all environmental issues that were identified during the assessment process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures;

(h) an assessment of each identified potentially significant effect, including -

(aa) cumulative effects;

(bb) the nature of the effects;

(cc) the extent and duration of the effects;

(dd) the probability of the effects occurring;

(ee) the degree to which the effects can be reversed;

(ff) the degree to which the effects may cause irreplaceable loss of resources; and

(gg) the degree to which the effects can be mitigated;

(i) a description of any assumptions, uncertainties and gaps in knowledge;

(j) an opinion as to whether the proposed listed activity must or may not be authorised, and if the opinion is that it must be authorised, any conditions that must be made in respect of that authorisation; and

(k) a non-technical summary of the information.

(3) On the completion of the assessment report the proponent must submit the report to the Environmental Commissioner.

Notification of the application and assessment report

16. (1) On receipt of the assessment report in terms of regulation 15, the Environmental Commissioner must -

(a) within three days acknowledge receipt of the report;

(b) if the report complies with the Act and these regulations, in terms of section 35(6) proceed with the notification of the application and assessment report, in accordance with regulation 21;

(c) if the report does not comply with the Act and these regulations, request the applicant to make such amendments to the report as the Environmental Commissioner may require for acceptance of the assessment report; or

(d) reject the report if it does not comply with the Act and these regulations in a material respect.

(2) An assessment report that is rejected in terms of subregulation (1)(d) may be amended and resubmitted.

(3) On receipt of the amended assessment report in terms of subregulation (2) the Environmental Commissioner must reconsider the report in terms of subregulation (1).

Notification of public hearing in terms of section 36(2) of the Act

17. The notification of a public hearing in terms of section 36(2) of the Act must be done in accordance with regulation 21.

Environmental Commissioner's decision

18. The Environmental Commissioner must within seven days from the date of reviewing the application in terms of section 36 of the Act -

(a) in writing notify the proponent and the competent authority of the decision on the application; and

(b) on payment of the fee prescribed in Annexure 2 to the regulations, and subject to conditions, if any, issue the environmental clearance certificate.

Amendment of environmental clearance certificate under section 39 of Act

19. (1) The request for an amendment of the environmental clearance certificate under section 39(1)(a) of the Act, must be -

(a) made on a form which corresponds substantially with Form 2 of Annexure 1 to the regulations, and obtainable from the Ministry and other designated offices;

(b) accompanied by the fee prescribed in Annexure 2 to the regulations; and

(c) submitted to the Environmental Commissioner.

(2) On receipt of an application in terms of subregulation (1), the Environmental Commissioner must -

(a) within three days acknowledge receipt of the application;

(b) make a decision on the application in terms of section 39 of the Act; and

(c) notify the competent authority of the application.

(3) If the Environmental Commissioner intends to amend an environmental clearance certificate at his or her initiative under section 39(1)(b), the Environmental Commissioner must -

(a) notify the holder of the certificate in writing of the proposed amendment; and

(b) give the holder an opportunity to submit representations on the proposed amendment, in writing.

(4) The Environmental must give the decision under section 39 of the Act in writing to the holder of the environmental clearance certificate and the competent authority.

Transfer of environmental clearance certificate under section 41 of Act

20. (1) An application for the transfer of an environmental clearance certificate in terms of section 41 of the Act must be -

(a) made in writing;

(b) accompanied by the fee prescribed in Annexure 2 to the regulations;

(c) accompanied by the relevant documents; and

(d) submitted to the Environmental Commissioner.

(2) The Environmental Commissioner must -

(a) within three days acknowledge receipt of the application for the transfer of an environmental clearance certificate; and

(b) notify the competent authority of the application for the transfer of an environmental clearance certificate.

(3) The Environmental Commissioner must give his or her decision in terms of section 41 of the Act -

(a) only after having consulted the competent authority; and

(b) in writing to the holder of the environmental clearance certificate and the competent authority.

Public consultation process

21. (1) This regulation only applies where specifically required by a provision of these regulations.

(2) The person conducting a public consultation process must give notice to all potential interested and affected parties of the application which is subjected to public consultation by -

(a) fixing a notice board at a place conspicuous to the public at the boundary or on the fence of the site where the activity to which the application relates is or is to be undertaken;

(b) giving written notice to -

(i) the owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site

(ii) the local authority council, regional council and traditional authority, as the case may be, in which the site or alternative site is situated;

(iii) any other organ of state having jurisdiction in respect of any aspect of the activity; and

(c) advertising the application once a week for two consecutive weeks in at least two newspapers circulated widely in Namibia.

(3) A notice, notice board or advertisement referred to in subregulation (2) must -

(a) give details of the application which is subjected to public consultation; and

(b) state -

(i) that the application is to be submitted to the Environmental Commissioner in terms of these regulations;

(ii) the nature and location of the activity to which the application relates;

(iii) where further information on the application or activity can he obtained: and

(c) the manner in which and the person to whom representations in respect of the application may be made.

(4) A notice board referred to in subregulation (2) must be of a size at least 60cm by 42cm.

(5) If a deviation from subregulation (2) is appropriate the person conducting the public participation process may deviate from the requirements of that subregulation to the extend and in the manner agreed by the Environmental Commissioner after consultation with the competent authority.

(6) When complying with this regulation, the person conducting the public consultation process must ensure that -

(a) information containing all relevant facts in respect of the application is made available to potential interested and affected parties; and

(b) consultation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application.

(7) The public consultation process -

(a) in respect of an application for an environmental clearance certificate in terms of regulation 6(1); and

(b) the notification of an application and an assessment report in terms of regulation 16(1)(h),

must be completed within 21 days.

Register of interested and affected parties

22. (1) An applicant responsible for an application must open and maintain a register which contains the names and addresses of -

(a) all persons who, as a consequence of the public consultation process conducted in respect of that application, have submitted written comments or attended meetings with the applicant;

(b) all persons who, after completion of the public consultation process referred to in paragraph (a), have requested the applicant responsible for the application, in writing, for their names to be placed on the register; and

(c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

(2) An applicant responsible for an application must give access to the register to any person who submits a request for access to the register in writing.

Registered interested and affected parties

23. (1) A registered interested or affected party is entitled to comment in writing, on all written submissions made to the Environmental Commissioner by the applicant responsible for the application, and to bring to the attention of the Environmental Commissioner any issues which that party, believes may be of significance to the consideration of the application, as long as -

(a) comments are submitted within 7 days of notification of an application or receiving access to a scoping report or an assessment report; or

(b) the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

(2) Before the applicant submits a report compiled in terms of these regulations to the Environmental Commissioner, the applicant must give registered interested and affected parties access to, and an opportunity to comment in writing on the report.

(3) Reports referred to in subregulation (2) include -

(a) scoping reports;

(b) scoping reports amended and resubmitted;

(c) assessment reports; and

(d) assessment reports amended and resubmitted.

(4) Any written comments received by the applicant from a registered interested or affected party must accompany the report when the report is submitted to the Environmental Commissioner.

(5) A registered interested or affected party may comment on any final report that is submitted by a specialist reviewer for the purposes of these regulations where the report contains substantive information which has not previously been made available to a registered interested or affected party.

Comments of interested and affected parties to be recorded

24. The applicant responsible for an application must ensure that the comments of interested and affected parties are recorded in reports submitted to the Environmental Commissioner in terms of these regulations, and comments by interested and affected parties on a report which is to be submitted to the Environmental Commissioner may be attached to the report without recording those comments in the report itself.

Appeals in terms of section 50 of Act

25. (1) This regulation applies to decisions that are subject to an appeal to the Minister in terms of section 50 of the Act.

(2) An appeal in terms of section 50 of the Act must be -

(a) made within 14 days from the date of receipt of notification of a decision contemplated in section 50 of the Act;

(b) made on a form which corresponds substantially with Form 3 of Annexure 1 to the regulations, and obtainable from the Ministry;

(c) accompanied by the a fee prescribed in Annexure 2; and

(d) submitted to the secretary of the appeal panel, designated in terms of subregulation (3).

(3) The Minister must designate a staff member within the Ministry as the secretary for the purpose of an appeal in terms of section 50 of the Act, who must perform administrative functions relating to the appeals.

(4) The secretary designated in terms of subregulation (3), must acknowledge an appeal within 14 days from the date of its receipt.

(5) If the appellant is an applicant, the appellant must serve on each person registered as an interested and affected party in relation to the applicant's application -

(a) a copy of the appeal application referred to in subregulation (2); and

(b) a notice indicating where and for what period the appeal submission is available for inspection by the person.

(6) If the appellant is a person other than an applicant, the appellant must serve on the applicant -

(a) a copy of the appeal application referred to subregulation (2); and

(b) a notice indicating where and for what period the appeal submission is available for inspection by the applicant.

(7) The Minister may in writing, on good cause extend the period within which an appeal must be submitted.

(8) A person that receives a notice in terms of subregulation (5), or an applicant who receives a notice in terms of subregulation (6), may submit to the Minister, a responding statement within 30 days from the date the appeal submission was made available for inspection in terms of that section.

(9) A person or applicant who submits a responding statement in terms of subregulation (8), (hereinafter referred to as a respondent"), must serve a copy of the statement on the appellant.

(10) If a respondent introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister within 30 days of receipt of the responding statement,

(11) The appellant must serve a copy of the answering statement on the respondent who submitted the new information.

(12) The Minister may, in writing, on good cause extend the period within which responding statements or an appellant's answering statement in terms of must be submitted.

(13) Receipt by the Minister of an appeal, responding statement or answering statement must be acknowledged within 10 days of receipt of the appeal, responding statement or answering statement.

(14) An appellant and each respondent is entitled to be notified of the appointment of an appeal panel in terms of section 50(3) of the Act, if the Minister appoints an appeal panel for purposes of the appeal.

(15) The Minister may request the appellant or a respondent to submit such additional information in connection with the appeal as the Minister may require.

Decision on appeals

26. If the Minister has reached a decision on appeal in terms of section 50, the appellant, each respondent and the competent authority must be notified in writing of the decision.

Keeping of records and assessment register

27. (1) The record of decisions required to be kept in terms of section 38 of the Act must include -

(a) decision taken and reasons for the decision taken in terms of section 33;

(b) decision taken and reasons for the decision taken in terms of section 34;

(c) decision taken and reasons for the decision taken in terms of section 37;

(d) decision taken and reasons for decision taken on amendments in terms of section 39 of the Act;

(e) decision taken and reasons for decision taken on amendments in terms of section 41 of the Act;

(f) decision taken and reasons for the decision taken on appeals made in terms of section 50 of the Act; and

(g) exemptions granted in terms of the Act.

(2) An assessment register required to be kept in terms of section 33 of the Act, must contain -

(a) the number and nature of assessment undertaken in terms of these regulations;

(b) number and nature of amendments sought ill terms of section 39 of the Act;

(c) number and nature of appeals made in terms of the Act; and

(d) number and nature of exemptions made or sought in terms of the Act.

Service of documents

28. For the purpose of the Act and these regulations a notice is given to a person or a person is informed of a decision, if a document to that effect is -

(a) delivered personally to that person;

(b) sent by registered post to the persons last known address;

(c) left with an adult individual apparently residing at or occupying or employed at the person's last known address; or

(d) in the case of a business-

(i) delivered to the public officer of the business;

(ii) left with an adult individual apparently residing at or occupying or employed at its registered address;

(iii) sent by registered post addressed to the business or its public officer at their last known addresses; or

(iv) transmitted by means of a facsimile transmission to the person concerned at the registered office of the business.

Manner of payment of fees under the Act

29. The payment of all fees or other moneys payable under the Act must be effected -

(a) by affixing a revenue stamp to the document concerned; or

(b) by affixing a revenue franking machine impression on the document concerned.

Penalties and offences

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

(a) knowingly provides false or misleading information in any document submitted in terms of the Act to the Environmental Commissioner:

(b) knowingly and without the consent of the Environmental Commissioner -

(i) makes or causes to be made any entry on a document;

(ii) destroys or defaces any document; or

(iii) alters or causes to be altered any entry on a document.

(2) A person who commits an offence in terms of this regulation is on conviction liable to a fine not exceeding N$ 100 000 or to imprisonment for a period not exceeding 10 years or to both the fine and imprisonment.

ANNEXURE 1
FORMS

Form 1

REPUBLIC OF NAMIBIA

ENVIRONMENTAL MANAGEMENT ACT, 2007

(Section 32)

APPLICATION FOR ENVIRONMENTAL CLEARANCE CERTIFICATE

Revenue stamp or revenue franking machine impression

PART A: DETAILS OF APPLICANT

1. Name: (person or business)
2. Business Registration / Identity No. (if applicable)
3. Correspondence Address:
4. Name of Contact Person:
5. Position of Contact Person:
6. Telephone No.:
7. Fax No.:
8. E-mail Address : (if any)

☐ Tick (☐) the appropriate box

PART B: SCOPE OF THE ENVIRONMENTAL CLEARANCE CERTIFICATE

1. The environmental clearance certificate is for:

☐
☐
☐

2. Details of the activity(s) covered by the environmental clearance certificate:

[Note: Please attach plans to show the location and scope of the designated activity(s), and use additional sheets if necessary:

Title of Activity:
Nature of Activity:
Location of Activity:
Scale and Scope of Activity:

PART C: DECLARATION BY APPLICANT

I hereby certify that the particulars given above are correct and true to the best of my knowledge and belief. I understand the environmental clearance certificate may be suspended, amended or cancelled if any information given above is false, misleading, wrong or incomplete.

_____ _____ _____

Signature of Applicant Full Name in Block Letters Position

on behalf of _____ _____

Date

Form 2

REPUBLIC OF NAMIBIA

ENVIRONMENTAL MANAGEMENT ACT, 2007

(Section 39)

APPLICATION FOR AMENDMENT OF CONDITIONS OF ENVIRONMENTAL CLEARANCE CERTIFICATE

Revenue stamp or revenue franking machine impression

A. PARTICULARS OF APPLICANT

Name of Applicant:

Address:

Telephone Number:

Cell phone Number:

Fax Number:

E-mail Address:

Name of Contact Person:

Telephone Number:

Cell phone Number:

Fax Number:

E-mail Address:

B. PARTICULARS OF CURRENT ENVIRONMENTAL CLEARANCE CERTIFICATE

1. Name of current holder of Environmental Clearance Certificate:

2. Date of Issue of current Environmental Clearance Certificate:

PART C PROPOSED AMENDMENTS TO THE CONDITIONS IN CURRENT

1. Condition(s) on the Current Environmental Clearance Certificate:

2. Proposed Amendment(s):

3. Reason for Amendment(s):

4. Describe the environmental changes arising from the proposed amendment(s):

5. Describe how the environment and the community might be affected by the proposed amendment(s):

6. Describe how and to what extent the environmental performance requirements set out in the assessment report previously approved or activity profile previously submitted for this activity may be affected:

7. Describe any additional measures proposed to eliminate, reduce or control any adverse environmental effect arising from the proposed amendment(s):

PART D DECLARATION BY APPLICANT

I hereby certify that the particulars given above are correct and true to the best of my knowledge and belief. I understand the environmental clearance certificate may be suspended, amended or cancelled if any information given above is false, misleading, wrong or incomplete.

_____ _____ _____

Signature of Applicant Full Name in Block Letters Position

on behalf of _____ _____

Date

Form 3

REPUBLIC OF NAMIBIA

ENVIRONMENTAL MANAGEMENT ACT, 2007

(Section 50)

APPEAL APPLICATION

Revenue stamp or revenue franking machine impression

To: Secretary of the Appeal Panel

1. Full name of Appellant:

.....

2. Address of Appellant:

.....

.....

.....

Telephone No. ..... Fax No. .....

3. Full name and address of Duly Authorised Representative for service:

.....

.....

Telephone No. ..... Fax No. .....

4. Details of decision appealed against:
(Attach a copy of decision and indicate the particular aspect being the subject of appeal.)

.....

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5. The grounds of appeal are:

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6. A detailed description of the matter to which the appeal relates is as follows:

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.....

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7. A description of each document or thing the appellant intends to produce at the hearing is as follows:

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.....

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8. The name, address, telephone number, fax number and title of each witness the appellant intends to call on his behalf at the hearing is:

.....

.....

.....

9. The particulars of evidence to be given by the witnesses are:

.....

.....

.....

(Appellant)
Dated this ..... day of .....

Please Note:

1. This form must be completed fully in writing in accordance with the directions specified in the form and lodged with the Secretary of the Appeal Panel

ANNEXURE 2
FEES

1. The fees set out in this Annexure are payable in terms of the Act.

2 Payments must be made as prescribed in regulation 29.

FEES

Item	Fee payable for	Fees Payable N$
1	Issue of environmental clearance certificate	300
2	Application for amendment of environmental clearance certificate	300
3	Application for transfer of environmental clearance certificate	1000
4	Appeal application	1000