

GOVERNMENT NOTICE

MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM

No.

2021

SAND AND GRAVEL EXTRACTION REGULATIONS: ENVIRONMENTAL MANAGEMENT ACT, 2007

Under section 56 of the Environmental Management Act, 2007 (Act No. 7 of 2007), read with section 29A of that Act, I have made the regulations set out in the Schedule.

**Minister of Environment,
Forestry and Tourism**

Windhoek,

2021

SCHEDULE

ARRANGEMENT OF REGULATIONS

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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 otherwise indicates -

“communal land” as defined in section 15 of the Communal Land Reform Act 5 of 2002;

“commercial extraction” means the removal or displacement of sand, gravel, rock, aggregate, clay or similar materials conducted for financial gain;

“environmental clearance certificate” means an environmental clearance certificate issued in terms of section 34 or 37, authorising a listed activity to be undertaken under the Act;

“entity”, includes a village trust and a community-based organisation;

“inspector” means the sand extraction site inspector appointed under regulation

“environmental clearance certificate holder” means the holder of a sand extraction environmental clearance certificate;

“pit” means any excavation or depression or hole in the ground, natural or artificial from which sand, gravel, rock, aggregate, clay or similar materials are being or have been dug, extracted, or quarried under these regulations.

“site” means a lot or parcel of land, or a series of contiguous or adjacent lots or parcels of land described by a lease or similar document upon which a pit is located or upon which commercial extraction operations are being or may be conducted, and which is covered by an environmental clearance certificate.

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

“traditional authority” means a Traditional Authority of which the traditional leaders have been recognised under the Traditional Authorities Act, 2000;

“state land” as defined in the Land Tenure Act, 32 of 1966;

Extraction of sand for domestic use

2. A person may, without a environmental clearance certificate, extract sand from -
 - (a) a piece of land the person has a right to occupy for domestic use; or
 - (b) a specifically designated piece of land in communal land area or State land for domestic use but not exceeding five cubic metres (5m³).

Prohibition of extraction of sand exceeding five cubic metres (5m³) on designated piece of land

3. A person may not extract sand exceeding five cubic metres (5m³) for domestic use or otherwise than commercial on any designated piece of land in communal land area or on State land, except with a special approval of the traditional authority or custodian of the State land concerned.

Extraction of sand for commercial purposes

4. A person may not extract sand in communal land area, on State land or private land for commercial purposes, unless the person is an environmental clearance certificate holder.

Application for sand extraction recommendation

5. (1) A person or entity that wishes to extract sand in communal land area, on State land or private land for commercial purposes must notify such entity -

- (a) the relevant traditional authority, in case of communal land;
- (b) the custodian of a State land, in case of State land;
- (c) the owner of a private land, in case of a private land,

(2) An application for a sand extraction recommendation must be accompanied by -

- (a) a business plan;
- (b) a report stating that -
 - (i) there is no fauna dependent on the proposed sand extraction site or the areas close to the site for their nesting; and

- (ii) there is no need for cutting down tree species categorised as protected, endemic, endangered and threatened species;
 - (c) a profit distribution plan, if the application is made by a community trust or a community-based organisation; and
 - (d) a sand extraction site management plan; and
 - (e) a restoration and rehabilitation plan.
- (3) Upon approval of the sand extraction recommendation, the traditional authority, custodian of State land or owner of private land must -
- (a) issue the applicant with a letter of approval of the sand extraction recommendation or letter of notice in the form of Form 2 set out in Annexure 1; and
 - (b) advise the applicant -
 - (i) to apply to the Environmental Commissioner for environmental clearance certificate in terms of the Act; and
 - (ii) that the environmental clearance certificate will be issued on submission of the environmental clearance certificate to the authority, custodian or owner.
- (4) When applying for an environmental clearance certificate, the applicant must, apart from the requirements in the Act and the Impact Assessment Regulations, submit -
- (a) all the documentation listed in subregulation (2); and
 - (b) the letter of approval of sand extraction recommendation referred to in subregulation (3)(a).

Sand extraction environmental clearance certificate

6. (1) A traditional authority, custodian of State land or owner of private land issues a sand extraction environmental clearance certificate -

- (a) to the applicant who submits to the traditional authority, custodian or owner -
 - (i) the letter of approval of environmental clearance certificate as issued by the traditional authority, custodian or owner under regulation 5; and
 - (ii) an environmental clearance certificate issued by the Environmental Commissioner under the Act and in accordance with regulation 5(4); and
- (b) in the form of Form 3 set out in the Annexure 1.

(2) The environmental clearance certificate must, among others, indicate -

- (a) the duration of environmental clearance certificate which may not exceed five years;
- (b) the location and size of the sand extraction site;
- (c) the particular whether it is sand or gravel and the purpose for use;
- (d) the volume of sand or gravel to be extracted;
- (e) the offloading site and location; and
- (f) the conditions subject to which it is granted, if any.

(3) A environmental clearance certificate once issued to the applicant -

- (a) is not transferable to any person or entity;
- (b) may not be leased or ceded; or
- (c) inherited after the death of the holder, if the holder was an individual.

(4) The traditional authority, custodian of State land or owner of private land must, by notice in the *Gazette*, announce the issuing of an environmental clearance certificate to the applicant within 30 days of issue, and the notice must indicate -

- (a) the name of the environmental clearance certificate holder;
- (b) the duration of the environmental clearance certificate;
- (c) the location and size of the sand extraction site;
- (d) whether it is sand or gravel and the purpose for use;
- (e) the volume of sand or gravel to be extracted;
- (f) the offloading site and location; and
- (g) the conditions subject to which it is granted, if any.

Duration and effectiveness of environmental clearance certificate

7. A environmental clearance certificate -

- (a) is issued for a period not exceeding five years;

- (b) is effective from the date of issue; and
- (c) remains effective for the period of its duration, unless suspended or cancelled under regulation 9.

Renewal of environmental clearance certificate

8. (1) A environmental clearance certificate holder may, at least three months before the expiry of the environmental clearance certificate, apply to the traditional authority, custodian of State land or owner of private land concerned for the renewal of the environmental clearance certificate in the form of Form 1 set out in Annexure 1.

(2) Regulation 5 applies with the necessary changes to an application for renewal of an environmental clearance certificate.

(3) In addition the applicant must together with the application for renewal submit particulars of any complaint from any person or community and whether the complaint has been addressed or not.

(4) The renewal of an environmental clearance certificate -

- (a) depends entirely on meeting the requirements of renewal of environmental clearance certificate by the Environmental Commissioner; and
- (b) once issued is announced in accordance with regulation 6(4).

Suspension, cancellation, review and amendment of environmental clearance certificate s and environmental clearance certificates

9. (1) If the environmental clearance certificate holder contravenes or fails to comply with the Act, Environmental Impact Assessment Regulations, any term or condition of the environmental

clearance certificate or of the environmental clearance certificate, the traditional authority, custodian of State land or owner of private land, after having given the environmental clearance certificate holder a reasonable opportunity to be heard, may -

- (a) suspend the environmental clearance certificate -
 - (i) for a specified period not exceeding 12 months; and
 - (ii) on condition that the suspension is to be lifted if the environmental clearance certificate holder remedies the defect within such period; or
- (b) cancel the environmental clearance certificate if the defect is so serious that it cannot be easily remedied.

(2) If the environmental clearance certificate holder cannot remedy the defect within the specified period but still within the period of 12 months, the holder may request for extension of such period but the extended period together with the initial period may not exceed 12 months in total.

- (3) If an environmental clearance certificate holder -
 - (a) fails to commence with the sand extraction operation within 12 months of the issue of the environmental clearance certificate;
 - (b) having commenced with the sand extraction operation ceases the operation for a continuous period of 12 months;
 - (c) fails to remedy the defect in a specified period including any extension that might have been given to the environmental clearance certificate holder on request and such period equals the maximum period of 12 months; or

- (d) expresses in writing his or her inability to remedy the defect within any specified period not exceeding 12 months,

the environmental clearance certificate is automatically cancelled from the date of failure, cessation or receipt of the expression.

(4) A traditional authority, custodian of State land or owner of private land at any time during the duration of an environmental clearance certificate, may visit the sand extraction site concerned and review the environmental clearance certificate, and pursuant to the review and after having afforded the environmental clearance certificate holder an opportunity to be heard may -

- (a) amend the terms or conditions of the environmental clearance certificate;
- (b) suspend the environmental clearance certificate; or
- (c) cancel the environmental clearance certificate,

if the environmental clearance certificate holder contravenes or fails to comply with the Act, the Environmental Impact Assessment Regulations, any term or condition of the environmental clearance certificate, or it is in the public or community interest to do so.

(5) The Environmental Commissioner, at any time during the duration of an environmental clearance certificate, may visit any sand extraction site and review the environmental clearance certificate, and pursuant to the review and after having afforded the environmental clearance certificate holder, traditional authority and the community concerned, custodian of State land or owner of private land, an opportunity to be heard may -

- (a) amend the terms or conditions of the environmental clearance certificate; or
- (b) suspend or cancel the environmental clearance certificate,

if the environmental clearance certificate holder contravenes or fails to comply with the Act, the Environmental Impact Assessment Regulations, any term or condition of the environmental clearance certificate, or it is in the public or community interest to do so.

(6) The traditional authority, custodian of State land or owner of private land concerned must, within 30 days of the cancellation of environmental clearance certificate and by notice in the *Gazette*, announce the cancellation of the environmental clearance certificate.

Effects of expiry and cancellation of environmental clearance certificate

10. If an environmental clearance certificate -

- (a) expires and is not renewed; or
- (b) is cancelled,

the Environmental Commissioner may -

- (i) require the environmental clearance certificate holder, at the expense of the environmental clearance certificate holder, to remove any liens or other restrictions preventing the free use of the site;
- (ii) order the environmental clearance certificate holder to restore, at the expense of the environmental clearance certificate holder, the state of affairs which existed before the environmental clearance certificate was issued, if doing so is reasonable and practicable under the circumstances; or
- (iii) enter into an arrangement with the environmental clearance certificate holder and the traditional authority, custodian of State land or owner of private land to restore and rehabilitate the sand extraction site.

Management and control of sand extraction site

11. (1) The holder of a sand extraction environmental clearance certificate must ensure that -
- (a) for the sake of safety and security, the sand extraction site is fenced off before he or she starts with the operation; and
 - (b) sand is extracted in systematic and sustainable manner taking into account a complete restoration and rehabilitation of the site at the end of the operation.
- (2) The borderline of a sand extraction site may not be less than 100 metres closer to any house or homestead, educational institution or business premises.
- (3) A sand extraction environmental clearance certificate holder must ensure that -
- (a) the extraction of sand does not exceed the depth or size set out in the environmental clearance certificate;
 - (b) the endangered, vulnerable or endemic species, if any, are well protected;
 - (c) The cutting of trees near sand extraction site must be in compliance with the provisions of the section 23 of the Forest Act 12 of 2001.
 - (d) air pollution from dust is well managed, where applicable, with the use of sprinkling water to minimise dust.

Monitoring of sand loads and counting of loads

12. (1) A environmental clearance certificate holder when loading and counting sand loads must -

- (a) work alongside with a sand extraction site inspector duly appointed by the traditional authority, custodian of State land or owner of private land concerned to inspect and count the sand loads and volumes at the site; and
- (b) fully cooperate with the sand extraction site inspector who performs his or her functions independent from the environmental clearance certificate holder.

(2) The environmental clearance certificate holder and the traditional authority, custodian of State land or owner of private land must keep logbooks for the correct recording of -

- (a) quantity of sand loads and volumes extracted per day; and
- (b) number and sizes of vehicles per day, registration number of vehicles, person in charge of vehicles and drivers.

(3) An inspector must keep and fill in the daily logbook for onsite sand loading in the form of Form 4 set out in Annexure 1.

(4) For purposes of proper recording the environmental clearance certificate holder or traditional authority, custodian of State land or owner of private land may use advanced technology such as bar coding, information and communications technology, web based and ICT enabled services, mobile SMS App and other reliable technologies to account for volumes of sand being extracted and the number of vehicles moving in and out of the site.

Road safety at intersection with main and other roads

13. A sand extraction environmental clearance certificate holder must ensure that -

- (a) the intersection at takeoff point between junction road and main road is properly developed with proper width and geometry required for safe movement of traffic at his or her own cost;
- (b) speed limit signs are set and displayed on the road side;
- (c) road is not negligently damaged due to transportation of sand and in case of damage caused negligently the environmental clearance certificate holder is liable for same; and
- (d) sand is not stockpiled along the road side.

Transportation of sand from site to destinations

14. A environmental clearance certificate holder must ensure that -

- (a) a vehicle transporting sand is roadworthy and insured against any loss and damage;
- (b) overloading of vehicles with sand does not take place at all;
- (c) every driver of any vehicle transporting sand is a holder of an appropriate driving licence;
- (d) sand is transported in secured and safe manner without any spillover of sand on the road or any surface;
- (e) in populated areas and busy roads sand is transported in a vehicle covered with tarpaulin or other suitable method to avoid spillage of sand and air pollution from dust; and
- (f) regular water sprinkling is carried out in critical areas prone to air pollution and having high levels of dust pollution such as dirty road, loading and offloading point and transfer points.

Penalties for contraventions

Sand and Gravel Extraction Regulations as @ 20 July 2021

15. (1) An environmental clearance certificate holder may only offload sand at an authorised site as specified in the environmental clearance certificate and no any other site, unless authorised under subregulation (3).

(2) If an environmental clearance certificate holder contravenes subregulation (1) the environmental clearance certificate holder is liable to a fine equal to double the price of the load concerned.

(3) An environmental clearance certificate holder may request for authorisation from the authority, to offload sand at another site closer to the authorised offloading site to be reserved for immediate use for the same project on condition that such pillage of sand -

- (a) does not exceed 30 tons;
- (b) is only authorised to remain for a period not exceed three months;
- (c) is not for sale; and
- (d) if not used until the expiry of three months, the environmental clearance certificate holder is liable to a fine of N\$100 per ton per any day in excess of three months.

Period to extract and transport sand

16. (1) An environmental clearance certificate holder is authorised to extract and transport sand from 08h00 to 17h00 on weekdays and from 08h00 to 13h00 on Saturdays.

(2) An environmental clearance certificate holder may not extract or transport sand on Sundays or public holidays, but where the environmental clearance certificate holder is pressed by circumstances to extract and transport sand on Sundays and public holidays, the environmental clearance certificate

holder may apply to the traditional authority, custodian of State land or owner of private land for such authorisation.

(3) If the application for extraction and transportation of sand on Sunday or public holiday is granted -

- (a) the sand is extracted and transported from 08h00 to 17h00;
- (b) the levy of sand per load is accordingly doubled.

Health and safety of workers

17. An environmental clearance certificate holder must ensure that -

- (a) the health and safety of the workers are taken care off as provided for under the Labor Act 11 of 2007;
- (b) the personnel working in dusty areas wear protective respiratory devices or masks;
- (c) the workers are provided with adequate training and information on safety and health aspects;
- (d) drinking water, mobile toilets, first aid kit including species specific anti venom provisioning are provided, and that mobile toilets are regularly cleaned;
- (e) an emergency helpline numbers for ambulance and police are displayed at the site; and
- (f) regular water sprinkling is carried out in critical areas prone to air pollution and having high levels of dust pollution such as road, loading and offloading point and transfer points.

Closure, restoration and rehabilitation of sand extraction site

Sand and Gravel Extraction Regulations as @ 20 July 2021

18. For the purpose of ensuring restoration and rehabilitation of the sand extraction site before the closure of the site, an environmental clearance certificate holder is guided and must follow the environmental clearance certificate procedure on closure, restoration and rehabilitation contemplated in section 48A of the Act.

Liability for loss and damages

19. The Minister, Environmental Commissioner, traditional authority or any staff member of the Ministry or traditional authority is not liable for any loss or damage caused by an environmental clearance certificate holder or his or her employee or any person contracted by him or her in the cause of extraction and transportation of sand.

Offences and penalties

20. (1) A person who extracts sand -

- (a) exceeding five cubic metres (5m³) on designated piece of land in communal land area or on State land for domestic or other purpose; or
- (b) on communal land area for commercial purposes,

without an environmental clearance certificate commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(2) A environmental clearance certificate holder who extracts sand for commercial purposes in contravention of any term or condition of his or her environmental clearance certificate -

- (a) commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; and

Sand and Gravel Extraction Regulations as @ 20 July 2021

In addition to the commission of the offence referred to in paragraph (a), is liable to a penalty of N\$1000 for every day the environmental clearance certificate holder continues to be in contravention.

Levies and fees for sand extraction

21. (1) A traditional authority is entitled to charge levies on any cubic metres of sand extracted in its jurisdiction for commercial purposes as set out in Table 1 of Annexure 2.

(2) A holder of communal land right in respect of the land on which sand is extracted is entitled to charge 15% on levies paid to the traditional authority for sand extracted in its jurisdiction for commercial purposes as set out in Table 1 of Annexure 2.

(3) .

ANNEXURE 1

FORM 1



MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM

Environmental Management Act, 2007 (Act No. 7 of 2007)

(Section 31/Regulation 5(1))

To: The Chief Administrator/Secretary

.....Traditional Authority/Custodian of State
Land/Owner of Private Land

**APPLICATION FOR ENVIRONMENTAL CLEARANCE CERTIFICATE TO EXTRACT AND
TRANSPORT SAND**

Applicant Details:

Name and Surname/Business Name:

ID/Company Registration Number:

Postal Address:

Physical/Business Address:

Tell/Cell Number:

Extraction Site Details:

Location (Village and Magisterial District):

.....

Sand and Gravel Extraction Regulations as @ 20 July 2021

Size in Square Metres (m²):

Volume or Quantity in Cubic Metre (m³):

Scale and total volume of proposed sand/gravel (m ³)	Number of loads	Tick mark (✓)
<105m ³		
105 - 505m ³		
600m ³		

Proposed duration:

Transportation Details:

Type of proposed trucks to be used and their sizes:

(1) Name: Size:

(2) Name: Size:

(3) Name: Size:

(4) Name: Size:

Total number of trucks

Offloading Details:

Offloading location: (1)..... (..... m³)

Offloading location: (2) (..... m³)

Occupied/Unoccupied land:

If land is occupied:

(a) Name of the holder of land right:

ID Number:

Address: Telephone:

(b) Name of lessee if the land is being leased:

Sand and Gravel Extraction Regulations as @ 20 July 2021

ID Number:

Address: Telephone:

Consent of owner of land right:

I, ..., having read and understand the contents of this application to extract sand on this piece of land which is m² in extent for a period of years, and which is part of the main area of land I lawfully occupy in this communal land area, have no objection to this application and hereby give my full consent to the issuing of the sand extraction environmental clearance certificate if the application met all the requirements. (*Attach proof of land right/right to occupy*)

Signature: Date:

Condition of Approval:

This Application has been approved on condition that the applicant applies to the Environmental Commissioner for environmental clearance certificate in terms of the Act and the applicant is issued with proof of approval of application for sand extraction environmental clearance certificate. Upon submission of the environmental clearance certificate the traditional authority, custodian of State land must issue the applicant with the sand extraction environmental clearance certificate.

OFFICE USE ONLY:

The above application has been Approved/Disapproved.

.....
Signature of Chief Administrator/Secretary

Custodian of State Land/Owner of Private Land

.....
Date Stamp

n



MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM
Environmental Management Act, 2007 (Act No. 7 of 2007)

(Section 31/Regulation 3(3))

.....Traditional Authority/Custodian of State
Land/Owner of Private Land

To: The Environmental Commissioner

Address:

**LETTER OF APPROVAL OF SAND EXTRACTION ENVIRONMENTAL CLEARANCE
CERTIFICATE**

This letter serves as proof of approval of application for sand extraction environmental clearance certificate:

Applicant Details:

Name and Surname/Business Name:

ID/Company Registration Number:

Postal Address:

Physical/Business Address:

Tell/Cell Number:

Details of Site

Location:

Proposed Size in Square Metres (m²):

Proposed Volume or Quantity in Cubic Metre (m³):

Duration: years

.....
Signature of Chief Administrator/Secretary

Sand and Gravel Extraction Regulations as @ 20 July 2021

.....
Date Stamp

Custodian of State Land/Owner of Private Land



MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM

Environmental Management Act, 2007 (Act No. 7 of 2007)

SAND EXTRACTION ENVIRONMENTAL CLEARANCE CERTIFICATE

(Section 31/Regulation 6(1))

..... Traditional Authority/Custodian of State
Land/Owner of Private Land

Enquires Environmental clearance certificate Office Tel:	Receipt No.:	
	Environmental clearance certificate No.:	
	Valid For:	
DETAILS OF ENVIRONMENTAL CLEARANCE CERTIFICATE HOLDER		
Name and surname/Business name: Identity No. /Company registration No.: Physical address: Postal address:		
DETAILS OF SITE		
Location: Size in Square Metres (m ²): Volume or Quantity in Cubic Metre (m ³):		

DETAILS OF SAND DESTINATION

Offload Location: (1)

Physical Address:

Offload Location: (2)

Physical Address:

Offload Location: (3)

Physical Address:

Offload Location: (4)

Physical Address:

Conditions:

Signature : **Date Stamp**

Chief Administrator/Secretary/Custodian State Land/

Owner Private Land

IMPORTANT: *This environmental clearance certificate is not valid if altered in any way and is not transferable*



MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM

Environmental Management Act, 2007 (Act No. 7 of 2007)

(Section 31/Regulation 12(3))

RECORD SHEET FOR ON SITE SAND LOADING

To: The Chief Administrator/Secretary

.....TRADITIONAL AUTHORITY

Enquiries Office Tel:	Receipt No.	
	Environmental clearance certificate No.:	
	Valid For:	
DETAILS OF ENVIRONMENTAL CLEARANCE CERTIFICATE HOLDER		
Name and surname/Business name:		
Identity No. /Company registration No.:		
Physical address:		
Postal address:		
DETAILS OF SITE		
Location:		
Size:		
Depth:		

DETAILS OF EXTRACTION SITE INSPECTOR

Name:

Identity number:

DAILY RECORDING DETAILS

[illegible]

SIGNATURE:.....**DATE:**.....

ANNEXURE 2

TABLE 1

SAND EXTRACTION LEVIES

(Section 29A, Regulation 21)

Load in Cubic Metres	Amount	<i>(Tick in the preferred box)</i>
5m ³	N\$140	
10m ³	N\$280	
15m ³	N\$420	
20m ³ - 45 m ³	N\$110 per 5m ³	
50m ³ and more	N\$250 per 10m ³	
Owner of land right share	15%	
The traditional authority must pay 15% of any levy paid to it over to the owner of land right/lease holder.		

TABLE 2

MAXIMUM FEES FOR SAND EXTRACTION

(Section 29A, Regulation 21)

Scale and total volume of sand m³)	Maximum fees
<105m ³	750 per 5m ³
105 - 505m ³	1500 per 10m ³
600 - 1005m ³	1300 per 10m ³
1010 and more m ³	1200 per 10 m ³