

No. R. 661

13 June 2008

**AMENDMENT OF LIST OF ACTIVITIES AND COMPETENT AUTHORITIES  
IDENTIFIED IN TERMS OF SECTIONS 24(2) AND 24D OF THE  
NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

The Minister of Environmental Affairs and Tourism hereby publishes the second amendment draft to Listing Notice 2 of the List of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 387 of 21 April 2006, which provides for activities which may not commence without environmental authorisation from the competent authority and in respect of which the investigation, assessment and communication of potential impact of activities must follow the procedure as described in regulations 27 to 36 of the Environmental Impact Assessment Regulations, 2006, promulgated in terms of section 24(5) of the Act.

**DRAFT AMENDMENT REGULATIONS**

To amend Listing Notice 2 of the List of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 387 of 21 April 2006, so as to provide for certain textual alterations, the insertion of new definitions and substitution of others; and augmenting definitions to amendments to certain listed activities in order to clarify which activities should be included to undergo a scoping and environmental impact assessment process or the exclusion of certain listed activities which should not undergo an assessment process and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

## General Explanatory Note

“[ ]” Words in bold type in square brackets indicate omissions from existing enactments.

“ ” Words underlined with a solid line indicate insertions in existing enactments.

## SCHEDULE

### Definitions

In this Notice, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates -

**[“asbestos” means any fibrous mineral silicates, including actinolite, amosite, anthophyllite, chrysotile, crocokolite or tremolite;]**

**“associated structures or infrastructure”** means any building or infrastructure that is necessary for the functioning of a facility or activity or that is used for an ancillary service or use from the facility;

**“construction”** means the building, erection or establishment of a facility, structure or infrastructure that is necessary for the undertaking of a listed or specified activity but excludes any modification, alteration or expansion of such a facility, structure or infrastructure; **[building, erection or expansion of a facility, structure or infrastructure that is necessary for the undertaking of an activity, but excludes any modification, alteration or upgrading of such facility, structure or infrastructure that does not result in a change to the**

**nature of the activity being undertaken or an increase in the production, storage or transportation capacity of that facility, structure or infrastructure]**

“dam” when used in these Regulations means any barrier dam and any other form of impoundment used for the storage of water;

**“dangerous goods” means goods as contemplated in the Schedule hereto [that are capable of posing a significant risk to the health and safety of people or the environment and which are listed in South African National Standard No.10228: 2003, Edition 3, excluding ammonium nitrate to be used solely for the purpose of fertilizer; [, designated “The identification and classification of dangerous goods for transport”, SANS 10228:2003, edition 3, published by Standards South Africa, ISBN 0-626-14417-5, as may be amended from time to time]**

“derelict land” means abandoned land or property where the lawful/legal land use right has not been exercised during the preceding ten year period;

“development footprint”, in respect of land, means any evidence of physical transformation as a result of the undertaking of any activity;”

“development activity” means a setback line in terms of zoning scheme regulations or a setback line determined in terms of development approval conditions or a setback line determined in terms of approval conditions included in previous authorisations, rezoning or subdivision approvals spatial development tools and which must, where appropriate, be scientifically motivated;

“effluent” means wastewater from any source;

**“expansion”** means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which an activity takes place in such a manner that the [production, treatment, storage or] capacity of the facility or the scale of the activity is increased], **but excludes regular or routine maintenance and the replacement of inefficient or old equipment, plant or machinery where such does not result in an increase in the capacity of the facility, structure or infrastructure**];

**“filling station”** means a site where petrol, diesel, liquid petroleum gas or paraffin is offered for sale, and includes shops and car-washing facilities that are located on the same property or form part of the same development, but excludes retail shops that sell gas or paraffin in small containers;

**[“floodplain” means the 1:10 year flood line, a discernable flat landscape feature next to a river or stream that was created by weathering and sedimentation over time]**

**“marina”** means a constructed waterway that is normally associated with residential or commercial use and that could include mooring facilities;

**“peat”** in relation to the undertaking of an activity means extraction of peat or peat soils for sale or consumption or the disturbance of vegetation or soils in anticipation of the extraction of peat or peat soils for sale or consumption, including the removal of peat or peat soils for construction activities or the removal of overburden for mining activities;

**“petroleum”** means any liquid, solid hydrocarbon or combustible gas as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended;

“sewage” means effluent from a domestic source which is conveyed by sewer to a wastewater treatment plant;

**“the Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998); **[and]**

**“the regulations”** means **[he]** the Environmental Impact Assessment Regulations, 2006;

**[“virgin soil” means any land excluding land outside industrial areas, which has at no time during the preceding ten years been cultivated.]**

“undeveloped” means that no facilities, structures or infrastructure have previously been effected upon the land or property, either above or below ground, to give effect to the lawful land use right of the land or property;

“urban areas” means areas situated within the urban edge (as defined or adopted by the competent authority), or in instances where no urban edge or boundary has been defined or adopted, it refers to areas situated within the edge of built-up areas;

“vacant” means not occupied for the purpose of its lawful land use right namely residential, mixed, retail, commercial, industrial or institutional use during the preceding ten year period;

2. In this Notice, the following words relevant to aquaculture activities will have the meaning so assigned hereunder;

**“aquaculture”** means the farming [animals or plants in an aquatic environment]of aquatic organisms including fish, molluscs, crustaceans and

plants in controlled or selective aquatic environments, with some form of intervention in the rearing process to enhance production, such as regular stocking, feeding and protection from natural predators;

**“cage culture”** means- the practice of aquaculture within a defined pen or net cage or structure that is contained within a larger water body;

**“exotic”** means all species not naturally found in South Africa or which has been introduced into South Africa by human intervention;

**“extralimital”** means species that occur within South Africa but which have been introduced into areas where they do not occur naturally; i.e. outside of their natural distribution range;

**“finfish”** means- an aquatic vertebrate of the super-class Pisces.

**“naturalized distribution range”** means the distribution range occupied by an exotic or extralimital species in which it has established a reproducing population.

3. In this Notice, the following words will have the meaning so assigned hereunder; until such time as the national legislation providing for waste management has come into effect, where after the definitions will be substituted by the applicable definitions of the national legislation governing waste management in the Republic of South Africa -

**“hazardous waste”** means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;

**“temporary storage of hazardous waste”** means the storage of hazardous waste for a period of 90 days or less;

**“waste”** means any substance, whether or not that substance can be reduced, reused, recycled and recovered, that –

- (i) is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (ii) the generator has no further use of for the purposes of production, reprocessing or consumption;
- (iii) that must be treated or disposed of; or
- (iv) is identified as a waste by the Minister:

Provided that a by-product shall not be considered to be waste and provided further that any portion of waste once reduced, reused, recycled or recovered ceases to be waste;

4. In this Notice, the following words will have the meaning so assigned in terms of section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended -

**“mine”; “mineral”, “mining permit”; “reconnaissance permit”; “retention area” and “retention permit”**

5. In this Notice, the following words will have the meaning so assigned hereunder; until such time as the national legislation governing coastal management in the Republic of South Africa has come into effect, where after the definitions will be substituted by the applicable definitions of the national legislation governing coastal management in the Republic of South Africa -

“coastal protection zone” consists of –

(a) an area declared in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) as a sensitive coastal area within which activities identified in terms of section 17(1) of that Act may not be undertaken without an authorisation;

(b) any part of the littoral active zone that is not coastal public property;

(c) any coastal protected area, or part of such area, which is not coastal public property;

(d) any area situated wholly or partially within one kilometre of the high water mark which –

(i) is zoned for agricultural or undetermined use; or

(ii) is not zoned nor part of a lawfully established township, urban area or other human settlement;

(e) any area not referred to in paragraph (d) that is situated wholly or partially within 100 metres inland of the high water mark;

“coastal public property” consists of –

(a) State-owned land located adjacent to and inland of the sea-shore;

(b) the sea-shore; and

(c) the sea between the low water mark and the territorial waters as defined in the Maritime Zones Act, 1994 (Act 15 of 1994);

“estuary” means a body of surface water that –

(a) is part of a water course that is permanently or periodically open to the sea; and

(b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the sea; or



(c) the salinity is measurably higher as a result of the influence of the sea;

“high-water mark” means the highest line reached by coastal waters but excluding any line reached as a result of –

(a) exceptional or abnormal floods or storms that occur no more than once in ten years; or

(b) an estuary being closed to the sea;

**[the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;]**

“littoral active zone” means any land forming part of, or adjacent to, the seashore that is –

(a) unstable and dynamic as a result of natural processes; and

(b) characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated;

“low-water mark” means the lowest line to which coastal waters recede during spring tides;

“sea” means all marine waters, including –

(a) the high seas;

(b) all marine waters under the jurisdiction of any state; and

(c) the bed, subsoil and substrata beneath those waters,

but does not include estuaries;

[means the water and the bed of the sea and the subsoil thereof, below the high-water mark, including the water and the bed of any tidal river and tidal lagoon]

“seashore” means the area between the low-water mark and the high-water mark.

## SCHEDULE

ACTIVITIES IDENTIFIED IN TERMS OF SECTION 24(2)(a) OF THE ACT, WHICH MAY NOT COMMENCE WITHOUT ENVIRONMENTAL AUTHORISATION FROM THE COMPETENT AUTHORITY AND IN RESPECT OF WHICH THE INVESTIGATION, ASSESSMENT AND COMMUNICATION OF POTENTIAL IMPACT OF ACTIVITIES MUST FOLLOW THE PROCEDURE AS DESCRIBED IN REGULATIONS 27 TO 36 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2006, PROMULGATED IN TERMS OF SECTION 24(5) OF THE ACT

Activity number	Activity description	Identification of competent authority
1	<p>The construction of <b>-[facilities or infrastructure, including associated structures or infrastructure, for -]</b></p> <p><u>(a) facilities or infrastructure for the generation of electricity where –</u></p> <p>(i) the electricity output is 20 megawatts or more; <b>[or</b></p> <p>(ii) <b>[the elements of the facility cover a combined area in excess of 1 hectare;]</b></p> <p><u>(b) facilities or infrastructure for nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of</u></p>	<p>The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless: (a) it is an application for an activity contemplated in section 24C(2) of</p>

	<p>nuclear fuels, radioactive products <u>and nuclear and radioactive waste</u>;</p> <p>(c) <u>facilities or infrastructure for the aboveground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, where such storage occurs in containers with a combined capacity of more than a 1000 cubic metres</u>;</p> <p>(d) <u>filling stations, and facilities or infrastructure for the underground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, where such storage occurs in containers with a combined capacity of more than a 1000 cubic metres</u>;</p> <p><b>[the above ground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of 1 000 cubic metres or more at any one location or site including the storage of one or more dangerous goods, in a tank farm;]</b></p> <p>(e) <u>facilities or infrastructure for the refining of gas, oil and petroleum products</u>;</p>	<p>the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended; or</p> <p>(b) the activity is to be conducted in or on a mining area or is to transform the area where the activity is to be conducted into a mining area.</p>
--	---	---

	<p>(f) <u>facilities or infrastructure for any process or activity which requires a permit or license in terms of national or provincial legislation governing the generation or release of emissions, pollution, effluent or waste and which is not identified in Government Notice No. R. 386 of 2006;</u></p> <p>(g) <u>facilities or infrastructure for the recycling, re-use, handling, temporary storage or treatment of general waste with a throughput capacity of 50 tons or more daily average measured over a period of 30 days;</u></p> <p>(h) <u>facilities or infrastructure for the use, recycling, handling, treatment, storage beyond 90 days or final disposal of hazardous waste;</u></p> <p>(i) <u>facilities or infrastructure for the manufacturing, storage or testing of explosives, including ammunition, but excluding licensed retail outlets and the temporary storage for the legal end use of such explosives and temporary structures used as targets or for data capturing during testing;</u></p>	
--	--	--

(j) facilities or infrastructure for the extraction or processing of natural gas [including gas from landfill sites];

(k) facilities or infrastructure for the bulk transportation of dangerous goods-

(i) in gas form, outside an industrial complex or zone, using pipelines, exceeding 1000 m in length, with a throughput capacity of more than 700 tons per day;

(ii) in liquid form, outside an industrial complex or zone, using pipelines, exceeding 1000 m in length, with a throughput capacity more than 50 cubic metres per day; or

(iii) in solid form, outside an industrial complex or zone, using funiculars or conveyors with a throughput capacity of more than 50 tons day;

**[the bulk transportation of dangerous goods using pipelines, funiculars or conveyors with a throughput capacity of 50 tons or 50 cubic metres or more per day;]**

(l) facilities or infrastructure for the landing, parking and maintenance of aircraft, excluding helicopter landing pads [unpaved landing strips shorter than 1,4 kilometres in length], but including -

	<p>(i) airports;</p> <p>(ii) runways;</p> <p><b>[(iii) water ways; or]</b></p> <p>(iii) structures for engine testing; <u>or</u></p> <p><u>(iv) landing strips longer than 1,4 kilometres in length;</u></p> <p>(m) <u>facilities or infrastructure for the transmission and distribution of [above ground] electricity with a capacity of [120] 220 kilovolts or more, outside urban, mining or industrial areas;</u></p> <p>(n) <u>facilities or infrastructure for marine telecommunications;</u></p> <p>(o) <u>facilities or infrastructure for the transfer of [20]50 000 cubic metres or more water between water catchments, water treatment works or impoundments per day, excluding treatment plants for drinking purposes;</u></p> <p>(p) <u>facilities or infrastructure for the final disposal of general waste covering an area of 100 square metres or more or 200 cubic metres or more of airspace;</u></p> <p>(q) <u>facilities or infrastructure for the treatment of effluent or sewage with an annual throughput capacity of [15 000] 50</u></p>	
--	---	--

	<p><u>000</u> cubic metres or more;</p> <p>(r) <u>facilities or infrastructure for the incineration, burning, evaporation, thermal treatment, roasting or heat sterilisation of waste or effluent, including the cremation of human or animal tissue;</u></p> <p>(s) <u>facilities or infrastructure for the microbial deactivation, chemical sterilisation or non-thermal treatment of waste or effluent;</u></p> <p>(t) <u>facilities or infrastructure for rail transportation, excluding railway lines and sidings in industrial <u>areas</u> and underground railway lines in mines, but including -</u></p> <p style="padding-left: 40px;">(i) railway lines;</p> <p style="padding-left: 40px;">(ii) stations; or</p> <p style="padding-left: 40px;">(iii) shunting yards.</p> <p><b>[(t) any purpose where lawns, playing fields or sports tracks covering an area of 10 hectares or more, will be established.]</b></p> <p>(u) <u>facilities or infrastructure for aquaculture of-</u></p> <p style="padding-left: 40px;">i) <u>finfish, crustaceans, reptiles or amphibians, including offshore cage culture with a production output</u></p>	
--	---	--



	<p><u>exceeding 150 000 kg per annum (live round weight);</u></p> <p>ii) <u>molluscs with a production output exceeding 150 000 kg per annum (live round weight);</u></p> <p>iii) <u>aquatic plants with a production output exceeding 150 000 kg per annum (live round weight).</u></p> <p>iv) <u>exotic or extralimital species with a production output exceeding 150 000 kg per annum (live round weight, with the exception of Rainbow Trout (<i>Oncorhynchus mykiss</i>) farmed within its naturalized distribution range, with a production output which does not exceed 20 000 kg per annum (live round weight).</u></p>	
--	--	--

2	<p><u>Transformation of undeveloped, vacant, derelict land for</u></p> <p>(a) <u>residential, mixed, retail, commercial, recreational, industrial or institutional use where the total area to be transformed is 20 hectares or more;</u></p> <p>(b) <u>agriculture or silviculture use where the total area to be transformed is 100 hectares or more</u></p> <p><u>except where such transformation relates to linear development activities listed in GN R. 386. [Any development activity, including associated structures and infrastructure, where the total area of the developed area is, or is intended to be, 20 hectares or more.]</u></p>
[3]	<p>[The construction of filling stations, including associated structures and infrastructure,] [or any other facility for the underground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin.]</p>
3 [4]	The extraction of peat.

<b>4 [5]</b>	<p>The route determination of roads and design of associated physical infrastructure, including roads that have not yet been built for which routes have been determined before the publication of this notice and which have not been authorised by a competent authority in terms of the Environmental Impact Assessment Regulations, 2006 <u>or 2007</u>, made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, where –</p> <ul style="list-style-type: none"><li>(i) it is a national road as defined in section 40 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);</li><li>(ii) it is a road administered by a provincial authority;</li><li>(iii) the road reserve is wider than 30 metres;</li></ul> <p>or</p> <ul style="list-style-type: none"><li>(iv) the road will cater for more than one lane of traffic in both directions.</li></ul>	
<b>5 [6]</b>	<p>The construction of a dam, where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.</p>	

6 [7]	<p><u>Any activity which requires a mining right or renewal thereof as contemplated in sections 22 and 24 respectively of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u></p> <p><b>[Reconnaissance, exploration and mining, as provided for in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended in respect of such permits and rights.]</b></p>	<p>The competent authority for this part of the schedule is the Minister of ??? <b>[or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended.]</b></p>
7[8]	<p><b>[In relation to permits and rights granted in terms of 6[7] above, or any other right granted in terms of previous mineral legislation, the undertaking of any reconnaissance exploration, production or mining related activity or operation within a exploration, production or mining area, as defined in terms of section of 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).]</b></p> <p><u>Any activity which requires an exploration right or renewal thereof as contemplated in sections 79 and 81 respectively of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u></p>	
8	<p><u>Any activity which requires a production right or renewal thereof as contemplated in sections 83 and 85 respectively of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u></p>	

<u>9</u>	<u>Any activity which requires a reconnaissance permit as contemplated in section 74 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u>	
----------	---	--

10 [9]	<p>Construction or earth moving activities in the sea, <u>an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea, whichever distance is the greater</u>, excluding an activity listed in item 2 of Government Notice No. R386 of 2006 <u>and item 2 of Government Notice No. ?? of 2008</u> but including construction or earth moving activities in respect of –</p> <ul style="list-style-type: none"> <li>(a) facilities associated with the arrival and departure of vessels and the handling of cargo;</li> <li>(b) piers;</li> <li>(c) inter- and sub-tidal structures for entrapment of sand;</li> <li>(d) breakwater structures;</li> <li>(e) <b>[rock revetments and other stabilising structures];</b></li> <li>(f) coastal marinas;</li> <li>(g) coastal harbours;</li> <li>(h) structures for <u>reclaiming</u> <b>[draining]</b> parts of the sea;</li> <li>(i) tunnels; or</li> <li>(j) underwater channels</li> </ul> <p><b>[occur behind an approved development setback line.]</b> .</p>	<p>The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended.</p>
[10]	<p><b>[Any process or activity identified in terms of section 53(1) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).]</b></p>	

<u>11</u>	<p><u>The expansion of facilities for -</u></p> <p><u>(a) the generation of electricity where the electricity output exceeds 20 megawatts or more;</u></p> <p><u>(b) nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and nuclear and radioactive waste.</u></p>
<u>12</u>	<p><u>Any activity listed in Category B of Schedule 1 to the National Environmental Management: Waste Management Act, 2007.</u></p>