

NOTICE 167 OF 2009**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF
1998)****LISTING NOTICE2: LIST OF ACTIVITIES AND COMPETENT AUTHORITIES
IDENTIFIED IN TERMS OF SECTIONS 24(2) AND 24D**

I, Marthinus Christoffel Johannes van Schalkwyk, Minister of Environmental Affairs and Tourism, hereby, under section 47(1), publish for public comment, the draft Listing Notice 2 of the activities and competent authorities identified in terms of sections 24(2) and 24D of the National Environmental Management Act, 1998, in the Schedule.

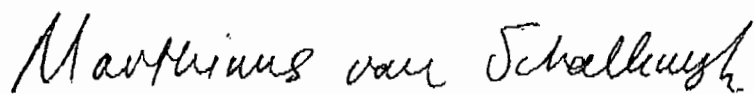
Any person who wishes to submit written representations or comments in connection with the draft regulations are invited to do so within 30 days of the date of this notice. All written representations and comments must be submitted in writing to the Director-General of the Department of Environmental Affairs and Tourism:

By post to: The Director-General: Environmental Affairs and Tourism
 Attention: Mrs. Amanda Britz
 Private Bag X447
 Pretoria, 0001

Delivered to: The Department of Environmental Affairs and Tourism
Attention: Mrs. Amanda Britz
Fedsure Building
South Tower Room
315 Pretorius Street
PRETORIA

By fax to: (012) 3103688, and by e-mail to abritz@deat.gov.za

Comments received after the closing date may not be considered.



MARTHINUS VAN SCHALKWYK
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

SCHEDULE

PURPOSE

1. The purpose of this Notice is to identify activities that would require an environmental authorisation and to identify competent authorities in terms of sections 24(2) and 24D of the National Environmental Management Act, 1998

DEFINITIONS

1. (1) 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—

“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 and excluding the reconstruction of the same facility in the same location, with the same capacity and footprint;

“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 South African National Standard No. 10234, supplement 2008 1.00: designated “List of classification and labelling of chemicals in accordance with the Globally Harmonized System (GHS)” published by Standards South Africa;

“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 setback” means a setback line as defined or adopted by the competent authority and where none has been defined or adopted it will be assumed that no setback line applies;

“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 capacity of the facility or the footprint of the activity is increased;

“industrial area” means an area used or zoned for bulk storage, manufacturing, processing or packaging purposes;

“linear development activities” include railways, roads, funiculars, pipelines, conveyor belts, cableways, powerlines, fences, runways, landing strips, and telecommunication lines;

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

“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);

“the regulations” means the Environmental Impact Assessment Regulations made under section 24(5) of the Act;

“transformation” means the physical alteration of the land use as a result of the undertaking of any activity;

“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 namely residential, mixed, retail, commercial, industrial or institutional use;

“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) The following words relevant to aquaculture activities will have the meaning assigned hereunder:

“**aquaculture**” means the farming 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; and

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

- (3) 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, whereafter these definitions will be substituted by the applicable definitions of that national legislation:

“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; and

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

- (a) is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (b) the generator has no further use of for the purposes of production, reprocessing or consumption;
- (c) that must be treated or disposed of; or
- (d) 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) 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):

- (a) “exploration right”;
- (b) “mine”;
- (c) “mineral”;
- (d) “mining permit”;
- (e) “mining right”;

- (f) “production right”;
- (g) “reconnaissance permit”;
- (h) “retention area”; and
- (i) “retention permit”.

(5) 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 that national legislation:

“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;

“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; and

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

IDENTIFIED ACTIVITIES AND COMPETENT AUTHORITIES

2. (1) The activities identified in Appendix may not commence without environmental authorisation from the competent authority.
- (2) The investigation, assessment and communication of the potential impact of activities must follow the procedure as prescribed in the Environmental Impact Assessment Regulations.

REPEAL OF NOTICE 387 DATED 21 APRIL 2006

3. Notice 387 published in Gazette 28938 is hereby repealed.

APPENDIX

Activity number	Activity description	Identification of competent authority
1	<p>The construction of—</p> <p>(a) facilities or infrastructure for the generation of electricity where the electricity output is 20 megawatts or more;</p> <p>(b) facilities or infrastructure for nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and nuclear and radioactive waste;</p> <p>(c) facilities or infrastructure for the storage of a dangerous good, where such storage occurs in</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—</p> <p>(a) 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; 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 in which case the competent authority is the Minister of</p>

	<p>containers with a combined capacity of more than 500 cubic metres;</p> <p>(d) facilities or infrastructure for the refining, extraction or processing of gas, oil and petroleum products with an installed capacity of 50 cubic metres or more, excluding gas from landfill sites;</p> <p>(e) 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 Notice No. 166 of 2009;</p> <p>(f) 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;</p> <p>(g) facilities or infrastructure for the use, recycling,</p>	Minerals and Energy.
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	<p>handling, treatment, storage beyond 90 days or final disposal of hazardous waste;</p> <p>(h) facilities or infrastructure for the bulk transportation of dangerous goods—</p> <ul style="list-style-type: none"> (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; <p>(i) (i) airports,</p> <p>(ii) runways or landing strips longer than 1,4</p>	
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	<p>kilometres;</p> <p>(j) facilities or infrastructure for the transmission and distribution of electricity with a capacity of 275 kilovolts or more, outside urban areas;</p> <p>(k) facilities or infrastructure for marine telecommunications;</p> <p>(l) facilities or infrastructure for the transfer of 50 000 cubic metres or more water between water catchments, water treatment works or impoundments per day, excluding treatment works for drinking purposes;</p> <p>(m) 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;</p> <p>(n) facilities or infrastructure for the treatment of effluent or</p>	
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	<p>sewage with an annual throughput capacity of 50 000 cubic metres or more;</p> <p>(o) 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;</p> <p>(p) facilities or infrastructure for the microbial deactivation, chemical sterilisation or non-thermal treatment of waste or effluent;</p> <p>(q) railway lines, stations or shunting yards, excluding—</p> <ul style="list-style-type: none"> (i) railway lines, shunting yards and railway stations in industrial areas; (ii) underground railway lines in a mining area; (iii) additional railway lines within the servitude of an existing railway line; <p>(r) facilities or infrastructure for aquaculture of—</p>	
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		<p>i) finfish, crustaceans, reptiles or amphibians, including offshore cage culture with a production output exceeding 200 000 kg per annum (live round weight);</p> <p>ii) molluscs with a production output exceeding 150000 kg per annum (live round weight);</p> <p>iii) aquatic plants with a production output exceeding 150000 kg per annum (live round weight);</p> <p>iv) exotic or extralimital species with a production output exceeding 200000 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 20000 kg per annum (live round weight); and</p> <p>(s) an island, anchored platform or any other permanent structure on the sea bed.</p>	
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2	<p>Transformation of undeveloped, vacant, derelict land for residential, mixed, retail, commercial, recreational, industrial or institutional use where the total area to be transformed is 20 hectares or more; except where such transformation takes place for linear development activities.</p>
3	<p>Agriculture, or afforestation for the purposes of commercial tree, timber or wood production where the total area to be transformed is 100 hectares or more.</p>
4	<p>The 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 or mining activities.</p>

5	<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 or 2009, 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">(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);(ii) it is a road administered by a provincial authority;(iii) the road reserve is wider than 30 metres; or(iv) the road will cater for more than one lane of traffic in both directions.
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6	<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>	
7	<p>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).</p>	
8	<p>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).</p>	
9	<p>Any activity which requires a production right or renewal thereof as contemplated in sections 83 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</p>	

10	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), excluding where such reconnaissance is conducted by means of a fly over.	
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<p>11</p>	<p>Construction or earth moving activities in the sea, an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater, excluding an activity listed in item 2 of Notice No 156 of 2009, but including construction or earth moving activities in respect of—</p> <ul style="list-style-type: none"> (a) facilities associated with the arrival and departure of vessels and the handling of cargo; (b) piers; (c) inter- and sub-tidal structures for entrapment of sand; (d) breakwater structures; (e) coastal marinas; (f) coastal harbours or ports; (g) structures for reclaiming parts of the sea; (h) tunnels; or (i) underwater channels, <p>but excluding—</p> <ul style="list-style-type: none"> (i) construction or earth moving activities on or even within existing urban areas if such construction or earth moving activities will occur behind a development setback line; (ii) where such construction or earth moving activities will occur in existing ports or harbours; or (iii) where such construction or earth moving activities takes place for maintenance or rehabilitation purposes. 	<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>
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12	<p>The expansion of facilities for—</p> <p>(a) the generation of electricity where the electricity output increases by 20 megawatts or more;</p> <p>(b) nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and nuclear and radioactive waste.</p>	
13	Any activity listed in Category B of Schedule 1 to the National Environmental Management: Waste Act, 2008. ¹	The competent authority in respect of this listed activity is determined by the National Environmental Management: Waste Act, 2008.

¹ This activity will come into effect once the National Environmental Management: Waste Act comes into effect later in 2009. It will lead to the deletion of the following activities in this Schedule: 1(f), 1(g) and 1(m).