

2 APRIL 2020

ENVIRONMENTAL ALERT

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COVID-19 lockdown...of environmental permitting time periods?

On 31 March 2020, the Minister of Environment, Forestry and Fisheries (Minister) published directions in terms of Regulation 10(8) of the regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2002 (Directions) relating to measures to address, prevent and combat the spread of COVID-19. The Directions will be valid for the lockdown period of the national state of disaster being from 27 March to 16 April 2020 (Lockdown Period).

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The Directions are intended to address the impacts of the national state of disaster arising particularly from the restrictions placed on the movement of people and the consequences on licensing processes, public participation processes (PPP), appeals processes, reporting requirements and the provision of waste management services as contemplated in the National Environmental Management Act 107 of 1998 (NEMA), its associated strategic environmental management Acts (SEMA), being the National Environmental Management: Waste Act 59 of 2008 (NEMWA) and the National Environmental Management: Air Quality Act 39 of 2004 (NEMAQA), and the Environmental Impact Assessment Regulations, 2014 (EIA Regulations).

The Directions extend the time periods prescribed by the NEMA and SEMAs by the number of days of the Lockdown Period, including any extensions to the Lockdown Period and apply to all stakeholders involved in the processes summarised below which are subject to the Directions, including, all national, provincial and local authorities, applicants, appellants, environmental assessment practitioners (EAPs), companies and interested and affected parties (I&APs).

The Directions can accordingly be summarised as follows:

Licence and environmental authorisation application and appeal time periods

- The time periods prescribed in the EIA Regulations and SEMAs relating to licences and environmental authorisations (EAs) are extended for the Lockdown Period. These time periods include the time periods to conduct environmental impact assessments (EIAs), submit EIA reports and conduct PPP.

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COVID-19 lockdown...of environmental permitting time periods?...continued

The Gauteng Province Department of Agriculture and Rural Development (GDARD) has communicated that it will not be processing section 24G Applications from the start to the end of the Lockdown Period.

- The time periods prescribed in the National Appeal Regulations, 2014 published in terms of NEMA are extended for the Lockdown Period. The National Appeal Regulations in the normal course require that an appeal against a decision made in terms of the NEMA or SEMA must be brought within 20 days of the date that the notification of the decision was sent to the registered I&APs by the applicant or competent authority.
- Authorities responsible for the processing of applications or appeals will in any event not to receive or process such applications or appeals from 27 March 2020, until the termination of the lockdown period of the national state of disaster.

NEMWA specific time periods

- Exemptions from provisions of the NEMWA, that expire between 27 March 2020, and the termination of the Lockdown Period are extended;
- Applications for the transfer of waste management licences (WMLs) will not be received or processed by the competent authorities for the duration of the Lockdown Period;
- Any authorisation issued for the export of waste tyres in terms of the Waste Tyre Regulations, 2017 that expires between 27 March 2020 and the termination of the Lockdown Period is extended;
- Applications for the amendment of orders to remediate contaminated land will not be received or processed by the competent authorities for the duration of the Lockdown Period.

NEMAQA specific time periods

- The 31 March reference for reporting in terms of the National Atmospheric Emission Reporting Regulations, 2015 must be read as a reference to 30 April 2020.
- The reference for reporting in terms of the National Greenhouse Gas Emission Reporting Regulations, 2016 must be read as a reference to 30 April 2020 for the duration of the Lockdown Period.

Provincial communications regarding time periods and processes

It is noteworthy that the Directions provide that, in the event that any licencing authorities, competent authorities or appeal authorities affected by the Directions has publicly indicated that a different arrangement applies, that particular arrangement will prevail over any arrangement prescribed by the Directions. To date, authorities in the Western Cape, Eastern Cape, Gauteng and Limpopo, have circulated various communications (albeit not published in any provincial gazette). However, on 1 April 2020 Provincial Minister Anton Bredell withdrew the Western Cape communication and has confirmed that the Western Cape will apply the Directions.

The following provinces have communicated as follows:

- The Gauteng Province Department of Agriculture and Rural Development (GDARD) has communicated that it will not be processing section 24G Applications from the start to the end of the Lockdown Period, and that the period for submission of all EIA reports or additional information due

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Should you require assistance in respect of a time period extension that may be applicable to you or your operation, please do not hesitate to contact us.

for submission during the Lockdown Period is extended by a period of 30 days from their due date.

- The Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (EC DEDEAT) has communicated that it will halt the review and processing of EIAs, WMLs and AELs during the Lockdown Period. The EC DEDEAT has further noted that the applicable timeframes (which we assume to be those prescribed in respect of the above licences) shall either be halted or extensions granted in terms of the EIA Regulations. It is not clear which of these options is preferable.
- The Limpopo Department of Economic Development, Environment and Tourism (LEDET) has circulated a brief media release that vaguely states that one of LEDET's measures to be implemented to prevent the spread of COVID-19 is the "suspension of permit processing activities". No further detail is provided as to the types of permits being referred to, and whether this would cover all of the licences which fall under the auspices of the Directions.

We await any directions that may be published by the Minister of Human Settlements, Water and Sanitation in respect of the time periods associated with water related matters and licensing, as well as any directions from the Minister of Minerals and Energy in respect of, amongst others, appeals under the Mineral Resources and Development Act 28 of 2002.

It does not appear from the Directions that enforcement proceedings or investigations by the Green Scorpions are in any way affected by the Lockdown Period.

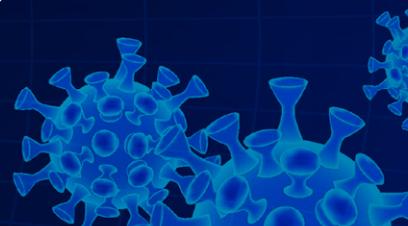
Regardless of the above, all persons must continue to comply with the prevailing duties of care and take steps to minimise any potential transgressions, including in relation to compliance with conditions of environmental authorisations and licences.

Should you require assistance in respect of a time period extension that may be applicable to you or your operation, please do not hesitate to contact us.

Margo-Ann Werner and Laura Wilson

CDH'S COVID-19 RESOURCE HUB

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