



REFERENCE: 19/2/5/4/A6/57/WL0098/19

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Attention: Ms. Tamryn Heydenrych

Dear Madam

RE: VARIATION OF THE WASTE MANAGEMENT LICENCE FOR THE DECOMMISSIONING OF THE HISTORIC NOORDHOEK WASTE DISPOSAL FACILITY ON THE REMAINDER OF CAPE FARM NO. 933 AND ERF 3823, NOORDHOEK, CAPE TOWN – REQUEST TO AMEND THE WASTE DISPOSAL SITE CO-ORDINATES

1. About the request from JG Afrika, dated and received by the Department of Environmental Affairs and Development Planning, Sub-directorate: Waste Management Licensing (hereinafter referred to as "this Sub-directorate") on 12 March 2020, please find the response below.
2. This Sub-directorate has the following comments:
 - 2.1. A Waste Management Licence (WML) Application Form dated 21 January 2014 for the closure of the historic Noordhoek waste disposal facility was submitted by the City of Cape Town in terms of the requirements of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) Environmental Impact Assessment (EIA) Regulations of 2010. The 2010 NEMA EIA Regulations governed the submission and processing of WML applications when the WML application was submitted to this Department. The WML Application Form was acknowledged and accepted by this Sub-directorate on 30 January 2014.
 - 2.2. The WML Application Additional Information Annexure submitted with the Final Basic Assessment Report ("BAR") dated 19 May 2014, provided, *inter alia*, the footprint co-ordinates of the waste disposal facility that was required for decision-making.
 - 2.3. Deviation from meeting certain public participation process (PPP) requirements in terms of the 2010 NEMA EIA Regulations was applied for in the WML Application Form, notably deviation from the requirements of Regulation 54(2)(a) to (d). The request for deviation from the requirements of Regulation 54(2)(a) to (d) of the 2010 NEMA EIA Regulations was accepted by this Sub-Directorate on 30 January 2014.

2.4. Regulation 54(2)(a) and (b) of the EIA Regulations, 2010 required that:

"54. (2) The person conducting a public participation process must take into account any guidelines applicable to public participation as contemplated in Section 24J of the Act and must give notice to all potential interested and affected parties of the application which is subjected to public participation by—

(a) fixing a notice board at a place conspicuous to the public at the boundary or on the fence of—

(i) the site where the activity to which the application relates is or is to be undertaken; and

(ii) any alternative site mentioned in the application;

(b) giving written notice to—

(i) the owner or person in control of that land if the applicant is not the owner or person in control of the land;

(ii) the occupiers of the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;

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

(iv) the municipal councillor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represent the community in the area;

(v) the municipality which has jurisdiction in the area;

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

(vii) any other party as required by the competent authority;" (own emphasis).

2.5. J&G Africa in their correspondence dated 12 March 2020 asserts that the requirements of regulation 15 of the 2010 NEMA EIA Regulations were not met, specifically regarding notification to an owner or person in control of the land on which the activity is to be undertaken. Per Regulation 15(1) of the 2010 NEMA EIA Regulations, it was not compulsory to obtain the landowner's consent, but an applicant had to notify the owner or person in control of the land of the application.

2.6. Regulation 15(1), (3) and (5) of the 2010 NEMA EIA Regulations required that:

"15. (1) If the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the applicant must give written notice of the proposed activity to the owner or person in control of the land on which the activity is to be undertaken, and inform such person that he may participate in the public participation process as contemplated in regulation 54."

"(3) Proof of the notice contemplated in subregulation (1) must be submitted with the application form as contemplated in regulation 12(2)."

"(5) Where deviation from subregulation (1) or (3) may be appropriate, the applicant may deviate from the requirements of that subregulation to the extent and in the manner as may be agreed to by the competent authority."

2.7. The City of Cape Town applied for and was granted approval for deviation from the requirements of Regulation 54(2)(a) to (d) of the 2010 NEMA EIA Regulations. It is important to note that regulation 54(2)(b)(i) and (ii) speaks directly to the requirements of Regulation 15(1). In effect, although not explicitly applied for, the applicant was granted deviation from the

requirements of Regulation 15(1) through granting deviation from meeting the requirements of Regulation 54(2)(b). Notwithstanding the deviation granted, you are hereby informed that the owner of Erf 3823, the Lake Michelle Estate (admin@lakemichelle.co.za), was indeed notified of the application and provided with an opportunity to participate during the PPP. Please refer to the notice of the application, sent via e-mail on 28 March 2014 (refer to PDF page 70 of the BAR). All owners of land on which the waste disposal facility is located, were thus notified of the application.

2.8. This Sub-directorate hereby advises you that the WML for the decommissioning of the Noordhoek waste disposal facility was thus granted and issued lawfully and correctly based on the information received during the licensing process, any variations of the licence will be done with the variation application to be submitted by the Licence Holder as outlined in the way forward, below.

3. Way forward

3.1. The Environmental Authorisation (EA) process for the proposed development on Erf 3823 can continue, which must include the undertaking of the required specialist studies that will assess the risks and impacts for the proposed development and the removal of the waste.

3.2. Should an EA be granted for the proposed development, the Licence Holder may apply to the Licensing Authority for a Part 1 (non-substantive) variation of the WML for the reduction of the authorised footprint to only include the Remainder of Cape Farm No. 933, as the risks and impacts associated with the removal of the waste would have been assessed and authorised in the EIA process for development of Erf 3823.

4. The Department reserves the right to revise initial comments and request further information based on the information received.

Yours faithfully



EDDIE HANEKOM

DIRECTOR: WASTE MANAGEMENT

DATE: 04-05-2020

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