

The Director-General
Dept Forestry, Fisheries and the Environment
Att: Mr Alvan Gabriel
Private Bag X 447
Pretoria 0001

31st January 2022

Dear Mr Gabriel

1. I write as a Professor of Public Health at the University of Cape Town who has been teaching postgraduate students in Public Health and Environmental Health for the past 25 years, and as a civil society activist for health equity and social justice.
2. I believe the proposed amendments to the Section 24H registration authority regulations are highly problematic and should be reconsidered because they restrict public participation, particularly for communities and groups who are not able to afford services such as an Environmental Assessment Practitioner.
3. There is no logic or rationale provided for the changes proposed.
4. While the efforts to ensure registration of EAPs are desirable and needed, it is unclear why the Department has seen fit to restrict public access to appeals process to a route which depends on the availability of an EAP.
5. In my experience, communities are much more likely to identify lawyers willing to assist them pro bono or to have access to skilled community resource persons to assist them to appeal than they would ever have the chance to obtain services of an EAP to represent them. Where will a rural community, for example, find an EAP willing to work pro bono for this community? By restricting the categories of persons able to represent communities, the regulations severely curtail community groups' capacity to participate in environmental decision-making.
6. Such curtailment is contrary to the principle contained in NEMA and contrary to the intent of our constitution. It is particularly marginalised communities (e.g. informal settlements, rural communities, persons living in poverty, migrants, etc) who will lack access to an EAP, let alone the funds to pay for EAP services.
7. The Department should be making it easier for communities, particularly marginalised communities, to participate rather than placing obstacle in their path.
8. The idea that civil society groups should have to pay for services to enable their participation, a very likely consequence of this amendment, must surely be a development that will fall foul of constitutional review.
9. I draw your attention to the preamble of NEMA which states clearly that public participation in environmental decision-making is a priority for government inasmuch as "... it is desirable that the law should establish

procedures and institutions to facilitate and promote public participation in environmental governance... and ... the law should facilitate the enforcement of environmental laws by civil society.” Section 2(4)(f) further emphasises that the “participation of all interested and affected parties in environmental governance must be promoted.”

10. I do not believe the amendments could be remotely described as promoting participation of all interested and affected parties in environmental governance.
11. I believe the regulations should be withdrawn to enable a more effective consultation to take place. In that regard, I note it as extremely unfortunate that the Department should have advertised these regulations during the Christmas / New Year holidays. I only became aware of these amendments a few days ago and am submitting these comments as best I can but find it distinctly uncomfortable to have been rushed in this way because of the unfortunate timing of ‘public consultation’ on these amendments.
12. Lastly, i wish to point out that if the Department wish to intervene to improve the quality of environmental decision-making through ensuring registration of EAPs, then I urge the department to consider measures to improve the independence of EAPs in the conduct of EIAs and other regulatory matters. It is well-recognised that EAPs, in general, are seen as serving the interests of parties who purchase their services and generally struggle to demonstrate their independence in environmental decision-making. While there may be exceptions, their existence as exceptions proves the rule. It is simply high time the Department development more direct guidance to ensure EAPs practice independently and are not dictated to in their work by who pays them.

As indicated, I submit these comments, almost at the last minute, simply because the consultation period for considering these amendment is abysmally timed and undermines proper consultation - the amendment should never have been released for comment whilst most people are on holiday.

I hope the regulation amendment will be either withdrawn and resubmitted in an amended form for public consultation or, at the very least, a more extended period for public consultation be allowed.

Could you kindly confirm receipt?

Yours sincerely

Professor Leslie London
Chair: Public Health Medicine, University of Cape Town; Centre for Environmental and Occupational Health Research