COMMENTS - NID PHASE

Western Cape Government
Environmental Affairs and Development Planning
BETTER TOGETHER.

DIRECTORATE: WASTE MANAGEMENT
Waleed Galvaan
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REFERENCE: 19/2/5/7/B5/16/WL0177/18

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For attention: Jacques Jonker

Dear Sir

ACKNOWLEDGEMENT OF RECEIPT OF THE NOTICE OF INTENT (NOI) TO CONDUCT A SCOPING AND ENVIRONMENTAL IMPACT REPORTING PROCESS AS PART OF THE WASTE MANAGEMENT LICENCE APPLICATION FOR THE PROPOSED ADAPTATION OF THE EXISTING BRENN-O-KEM WASTE RECOVERY PLANT ON FARM 268/38, TULBAGH

1. This letter serves as an acknowledgment of receipt of the Notice of Intent (NoI) to Develop a Waste Management Facility, dated and received by the Department of Environmental Affairs and Development Planning, Sub-Directorate: Waste Management (the 'Department') on 15 October 2018.
2. The Department notes that a pre-application meeting was not requested.
3. This Department has reviewed the NoI and has the following comments:
   3.1. The Project Description is too brief and does not describe, to this Sub-Directorate: Waste Management Licensing, what the proposed project entails. For this Sub-Directorate to provide accurate advice on how to proceed with the eventual submission of the Application for a Waste Management Licence, the project description at this stage needs to explain in more detail, what activities will be carried out and what the proposed project entails. Specific details will be required.
4. The Department agrees with the following Category B listed activities applied for, as listed in Government Notice (GN) No. 921 of 29 November 2013 of the National Environmental Management: Waste Act (NEM:WA), 2008 (Act No. 59 of 2008), as amended, *'List of waste management activities that have, or are likely to have, a detrimental effect on the environment'* namely,

   4(3) 'The recovery of waste including the refining, utilisation, or co-processing of waste at a facility that processes in excess of 100 tons of general waste per day or in excess of 1 ton of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.'

4(6) 'The treatment of general waste in excess of 100 tons per day calculated as a monthly average, using any form of treatment'

5. Having considered the information contained in the NoI, this Department has identified the following GN No. 921 listed activities in Category C, that could potentially be applicable to the proposed development:

   5(1) 'The storage of general waste at a facility that has the capacity to store in excess of 100m³ of general waste at any one time, excluding the storage of waste in lagoons or temporary storage of such waste.'

   5(2) 'The storage of hazardous waste at a facility that has the capacity to store in excess of 80m³ of hazardous waste at any one time, excluding the storage of hazardous waste in lagoons or temporary storage of such waste.'

   Kindly note, the Category C activities do not require a Waste Management Licence, but the Licence Holder must comply with the relevant requirements or standards i.e. NEM:WA, *'National Norms and Standards for the Storage of Waste'*, GN No. 926 of 29 November 2013.

6. You are hereby advised that only those activities applied for will be considered for authorisation. The onus is on the applicant to ensure that all the applicable listed activities are applied for and are assessed as part of the Environmental Impact Assessment (EIA) process.

7. Please take note of the following advice of the nature and extent of the processes that must be followed in order to comply with the National Environmental Management Act (NEMA), 1998 (Act No. 107 of 1998), as amended, the NEM:WA and the Environmental Impact Assessment (EIA) Regulations, 2014 as published in GN No. R. 982 of 4 December 2014 as amended.

8. Exemption

   8.1. It is evident that you do not intend to apply for exemption from any provisions contained in the EIA Regulations, NEM:WA or NEMA. Please note that should you fail to meet a requirement of the EIA Regulations or NEMA and if no exemption from that provision was applied for, your Scoping and Environmental Impact Assessment reports may be rejected.

   8.2. Should you therefore still wish to apply for exemption from any provisions of the EIA Regulations, then you need to complete the separate Exemption Application form available on the Department's website (https://www.westerncape.gov.za/eadp/your-resource-library).

   8.3. Please note further that prior to completing and submitting such application for exemption, you must first comply with Regulation 4(4) of GN No. R 994 of 8 December 2014. Regulation 4(4) requires that the Applicant or Environmental Assessment Practitioner (EAP) must communicate his or her intention to apply for exemption by giving notice in the manner prescribed in sub-regulation 4, to the land owner or person in control of the land and all potential or registered interested and affected parties, as the case may be. If an application for exemption is to be applied for from a provision that needs to be met prior to a waste management licence being issued then you may not continue with the EIA Process without having received an exemption notice from the Competent Authority exempting you from having to meet that legislative requirement.

9. Alternatives

   9.1. Please be advised that in terms of the EIA Regulations and NEMA the investigation of alternatives is mandatory. All alternatives identified must therefore be investigated to determine if they are feasible and reasonable.

In this regard it must be noted that the Department may grant a waste management licence for an alternative as if it has been applied for or may grant a waste management licence in respect of all or part of the activity applied for as specified in the NEMA EIA Regulations, 2014.

9.2. Alternatives are not limited to activity alternatives, but include layout alternatives, design, activity, operational and technology alternatives. You are hereby reminded that it is mandatory to investigate and assess the option of not proceeding with the proposed activity (i.o.w. the "no-go" option) in addition to other alternatives identified. Every EIA process must therefore identify and investigate alternatives, with feasible and reasonable alternatives to be comparatively assessed. If, however, after having identified and investigated alternatives, no feasible and reasonable alternatives were found, no comparative assessment of alternatives, beyond the comparative assessment of the preferred alternative and the option of not proceeding, is required during the assessment. What would, however, be required in this instance is that proof of the investigation undertaken and motivation indicating that no reasonable or feasible alternatives other than the preferred option and the no-go option exist must be provided to the Department. Refer to the Department's Guideline on Alternatives available on the Department's website.

10. Public Participation

10.1. Please be advised that according to Regulation 41(2) of GN 982 of 4 December 2014 the person conducting a public participation process must "take into account any guidelines applicable to public participation". The Department's Guideline on Public Participation (March 2013) must therefore be studied and must be taken into account. This guideline was compiled to provide guidance on the procedure to be followed when conducting the public participation process and includes, *inter alia*, notification of interested and affected parties (I&APs).

10.2. The EAP has listed the State Departments and Organs of State that will be notified and reports submitted to, in the NoI document.

10.3. In terms of good environmental practise you are encouraged to engage with State Departments and other Organs of State in the pre-application phase or early in the EIA process to solicit their inputs on any of their requirements to be addressed in the EIA process. Please note that this does not replace the requirement of making the Scoping and Environmental Impact Report available to State Departments as stipulated above.

10.4. The EAP must record and respond to all comments received. The comments and responses must be captured in a Comments and Responses Report and must also include a description and chronological order of the public participation process followed. This report must also be included in the public participation information to be attached to the Scoping and Environmental Impact Reports.

10.5. It must, however, be noted that the NEM:WA specifies additional requirements that must be met in addition to the requirements specified in the NEMA and the EIA Regulations for a Basic Assessment or Scoping and Environmental Impact Reporting process (e.g. in taking steps to bring the application to the attention of the relevant Organs of State, interested persons and the public, one of the steps must include the publication of a notice in at least two newspapers circulating in the area in which the waste management activity applied for is to be carried out).

11. Plan of Study

11.1. You are hereby reminded that a Plan of Study for EIA, which sets out the approach to the EIA of the application in accordance with Appendix 2 of GN No. R. 982 of 4 December 2014 must be compiled and submitted together with the Scoping Report.

12. Environmental Management Programme (EMPr)

12.1. In accordance with Section 24N of NEMA and the Regulation the Competent Authority hereby requires the submission of an Environmental Management Programme (EMPr). The contents of such an EMPr must meet the requirements outlined in Section 24N (2) and (3) of the NEMA and Appendix 4 of the EIA Regulations. The EMPr must address the potential environmental impacts of the activity throughout the project life cycle including an assessment of the effectiveness of monitoring and management arrangements after implementation (auditing). The EMPr must be submitted together with the Environmental Impact Report (EIR).

13. Guidelines

13.1. You are advised that when undertaking the EIA process you must take into the account the applicable guidelines including the guidelines developed by the Department. The Department's guidelines can be downloaded from the Department's website. In particular, the guidelines that may be applicable to the proposed development include, inter alia, the following:

- Guideline for Environmental Management Plans (June 2005)
- Guideline on Public Participation (March 2013)
- Guideline on Alternatives (March 2013)
- Guideline on Need and Desirability (March 2013)
- Guideline on Exemption Applications (March 2013)

14. Services

14.1. Since water supply, solid waste disposal and electricity services will be provided by the Municipality, you are requested to provide this office with written proof that the Municipality has sufficient capacity to provide the necessary services to the proposed development. Confirmation of the availability of services from the service providers must be provided together with the Scoping and Environmental Impact Reports.

15. Climate change: Energy efficiency / Water saving

15.1. One of the objectives of the Western Cape Provincial Spatial Development Framework published by this Department is to minimise the consumption of scarce environmental resources such as water, fuel, building materials, mineral resources, electricity and land. To this effect and as part of the efforts to reduce the effects of climate change, you must as part of the waste management licence process identify energy efficient technologies (e.g. the use of low voltage or compact fluorescent lights instead of incandescent globes, maximising the use of solar heating, etc.) that could be implemented for the proposed development. Considering that South Africa is a water scarce country and that many catchments in the Western Cape are already water stressed, you must also consider implementing the use of water saving devices and technologies (e.g. dual flush toilets, low-flow shower heads and taps, etc.) for the proposed development. The above must be reported on in the Scoping and Environmental Impact Report.

15.2. It is also recommended that you prepare a water demand management, water conservation and storm water management plan and submit this plan with the Scoping and Environmental Impact Report. This plan must include, but not be limited to: the management of storm water; the capture and use of rainwater from gutters and roofs; use of locally indigenous vegetation during landscaping and the training of staff to implement good housekeeping techniques.

15.3. This Department further wish to inform you that consideration must be given to ways to minimise waste and wastage in the design, construction and operational phase of the proposed development. Your attention is therefore drawn to the Department's Waste Minimisation Guideline for Environmental Impact Assessment Reviews (May 2003), available from the Competent Authority on request. The Guideline raises awareness to waste minimisation issues and highlights waste and wastage minimisation practices. In particular, it is recommended that Part B be considered as it covers general waste and wastage minimisation and general construction activities. It is important to remember that a recycling programme must adopt the cradle-to-grave approach.

16. Need & desirability, including the strategic context

16.1. In terms of the EIA Regulations, when considering an application, the Competent Authority must take into account a number of specific considerations including inter alia, the need for and desirability of any proposed development. As such, the need for and desirability of the proposed activity must be considered and reported on in the Scoping and Environmental Impact Report. The Scoping and Environmental Impact Report must reflect how the strategic context of the site in relation to the broader surrounding area, has been considered in addressing need and desirability. Refer to the Department's Guideline on Need and Desirability (March 2013) available on the Department's website.

16.2. In terms of having to consider need and desirability, it must be noted the final environmental decision will, *inter alia*, be informed by town planning considerations, informed by inter alia the Provincial Urban Edge Guideline (December 2005) and the Western Cape Provincial Spatial Development Framework (2014) (WCPSDF). The Competent Authority requires that you demonstrate in the Scoping and Environmental Impact Reports the strategic context of the site specific proposed development in relation to the broader surrounding area. You will need to demonstrate, amongst others, whether the proposed development is line with Departmental policies/guidelines such as the Western Cape Provincial Spatial Development Framework, urban edge for the area or whether, if in the absence of an urban edge, whether it is located within the built-up edge of the town.

17. General

17.1. In addition to the above, you must clearly show how the proposed development complies with the principles contained in Section 2 of the NEMA and show how the proposed development meets the requirements of sustainable development.

17.2. The Waste Management Additional Information Annexure must be completed and submitted together with the Scoping and the Environmental Impact Report.

17.3. You are hereby advised that the Scoping and the Environmental Impact Report must contain all the information outlined in Appendices 2 and 3 of the EIA Regulations and must also include the information requested in this letter; omission of any of the said information may result in the Scoping and Environmental Impact Report being refused.

17.4. Kindly quote the above-mentioned reference number in any future correspondence in respect of the application.

17.5. Please note that the activity may not commence prior to a Waste Management License being issued by the Department. It is an offence in terms of Section 20 (b) of the NEM:WA for a person to commence, undertake or conduct a waste management activity, except in accordance with a Waste Management License issued in respect of that activity, if a License is required. Failure to comply with the requirements of Section 20 (b) of the NEM:WA will result in the matter being referred to the Directorate: Environmental Law Enforcement of this Department. A person convicted of an offence in terms of the above is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

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

Yours faithfully

LANCE MCBAIN-CHARLES
DEPUTY DIRECTOR: WASTE MANAGEMENT LICENSING
DATE: 2018/10/25

CC: (1) Nicolaas Hanekom (Eco Impact Legal Consulting (Pty) Ltd) Email: admin@ecoimpact.co.za

COMMENTS - SITE INSPECTION

Western Cape Government
Environmental Affairs and Development Planning
BETTER TOGETHER.

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Reference: 19/2/5/R Brenn-O-Kem

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For Attention: Mr Jacques Jonker

COMMENTS ON THE ENQUIRY RELATED TO MANAGEMENT OF WINERY WASTE AT BRENN-O-KEM, WOLSELEY

Background

The Department of Environmental Affairs and Development Planning, Sub-Directorate: Waste Management Licensing ('the Department') conducted a site visit on 13 September 2018 at the Brenn-O-Kem Facility after receiving an email regarding the storage of pressed material from wine cellars in silo bags on their property. The Facility arranged the site visit for the purpose of clarifying to the Department what the process entails and to seek advice on the authorisation(s) that would be required from a Waste Management perspective for the operation.

The company has been operating since 2000. The waste management activities started prior to the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEM:WA) being promulgated and the throughput capacity has not increased since, consequently the Facility did not need the Waste Management Licence (WML). During the site visit it was evident that the pressed material of wine cellars should be viewed as waste. The Facility receive the waste by trucks, bag the pressed material in silo bags (50m and 100m in length) and store the bags separately from the Facility. The Facility distill the raw material to extract the alcohol, and sell the alcohol to Distell Pty (Ltd). Tartaric acid and grape seed oil is also produced at the Facility. The residual material are used as fertiliser or animal feed. The Facility plan to upgrade their equipment to make the current distillation process more effective.

The Department was not aware that written comment was needed after the meeting, however, Ms. Lauren Abrahams from Eco Impact contacted the Department on 28 March 2019 to request such comment.

Comments

The Department has the following comments:

- Upon expansion, the Facility could possibly trigger the waste management listed activities Category A 3(5)(6)(12) or Category B 4(3)(4)(10) of the NEM:WA *'List of Waste Management Activities that Have, or are Likely to Have, a Detrimental Effect on the Environment'*, published under Government Notice (GN) No. 921 of 29 November 2013, namely:

'3(5) The recovery of waste including the refining, utilisation or co-processing of waste in excess of 10 tons but less than 100 tons of general waste per day or in excess of 500kg but less than 1 ton of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.'

'3(6) The treatment of general waste using any form of treatment at a facility that has the capacity to process in excess of 10 tons but less than 100 tons.'

'3(12) The construction of a facility for a waste management activity listed in Category A of this Schedule (not in isolation to associated waste management activity.

'4(3) The recovery of waste including the refining, utilisation, or co-processing of the waste at a facility that processes in excess of 100 tons of general waste per day or in excess of 1 tons of hazardous waste per day, excluding recovery that takes place as an integral part of an internal manufacturing process within the same premises.'

'4(4) The treatment of hazardous waste in excess of 1 ton per day calculated as a monthly average, using any form of treatment excluding the treatment of effluent, wastewater or sewage.'

'4(10) The construction of a facility for a waste management activity listed in Category B of this Schedule (not in isolation to associated waste management activity).'

- The Facility currently triggers the waste management activity Category C 5(A) under the GN No. 921, namely:

  '5(A) The storage of general waste at a facility that has the capacity to store in excess of 100m³ of general waste at any one time, excluding the storage of waste in lagoons or temporary storage of such waste.'

Recommendations

The Department recommends the following:

- The Facility is required to comply with the NEM:WA *'National Norms and Standards for the Storage of Waste'* (GN No. 926 of 29 November 2013) and register on the Department's Integrated Pollutant and Waste Information System (IPWIS), which can be accessed on the URL: http://ipwis.pgwc.gov.za/ipwis3/public/.
- Once the Facility increases the throughput capacity, it must apply and obtain a WML prior to the planned increase in throughput capacity.
- The installation of new technology to optimise the percentage of alcohol that are extracted from the current volumes of material will not be seen as being in furtherance of the listed activities that they will trigger upon expansion of the throughput capacity.

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

Yours Faithfully

EUGENE PIENAAR
ACTING DEPUTY DIRECTOR: WASTE MANAGEMENT LICENSING
DATE: 17/4/19

Cc: Ms Lauren Abrahams Email: Lauren@ecoimpact.co.za