

(2 August 2010 - to date)

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998**

*(Gazette No. 19519, Notice No. 1540. Commencement date: 29 January 1999 [Proc. No. 8, Gazette No.19703])*

**ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2010**

*Published under Government Notice R543 in Government Gazette 33306. Commencement date: 2 August 2010 [GNR 664, Gazette No. 33411]*

**As amended by:**

*Amendments to the Environmental Impact Assessment Regulations and Listing Notices – Government Notice R660 in Government Gazette 33411. Commencement date: 2 August 2010*

*Amendments to the Environmental Impact Assessment Regulations, 2010 and Listing Notices – Government Notice R1159 in Government Gazette 33842. Commencement date: deemed to have taken effect on 2 August 2010*

I, Buyelwa Patience Sonjica, Minister of Water and Environmental Affairs, hereby make the regulations pertaining to environmental impact assessments under sections 24(5), 24M and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) in the Schedule hereto.

(Signed)

**BUYELWA SONJICA**

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

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## CHAPTER 1 INTERPRETATION AND PURPOSE OF THESE REGULATIONS

### 1. Interpretation

- (1) In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise-

**"activity"** means an activity identified in any notice published by the Minister or MEC in terms of section 24D(1)(a) of the Act as a listed activity or specified activity;

**"alternatives"**, in relation to a proposed activity, means different means of meeting the general purpose and requirements of the activity, which may include alternatives to-

- (a) the property on which or location where it is proposed to undertake the activity;
- (b) the type of activity to be undertaken;
- (c) the design or layout of the activity;
- (d) the technology to be used in the activity;
- (e) the operational aspects of the activity; and
- (f) the option of not implementing the activity.

**"application"** means an application for-

- (a) an environmental authorisation in terms of Chapter 3 of these Regulations;
- (b) an amendment to an environmental authorisation in terms of Chapter 4 of these Regulations;
- (c) an amendment to an environmental management programme; or
- (c) an exemption from a provision of these Regulations in terms of Chapter 5 of these Regulations;

*(Note: Numbering as per the original Government Gazette)*

**"basic assessment report"** means a report contemplated in regulation 22;

**"cumulative impact"**, in relation to an activity, means the impact of an activity that in itself may not be significant, but may become significant when added to the existing and potential impacts eventuating from similar or diverse activities or undertakings in the area;

**"EAP"** means an environmental assessment practitioner as defined in section 1 of the Act;

**"environmental audit report"** means a document that provides verifiable findings and recommendations for improvement, in a structured and systematic manner, on the performance and compliance of an organisation and/or project against environmental policies, objectives, laws, regulations, licences, permits, conditions of authorisation, norms and standards;

**"environmental impact assessment"** means a systematic process of identifying, assessing and reporting environmental impacts associated with an activity and includes basic assessment and S&EIR;

**"environmental impact assessment report"** means a report contemplated in regulation 31;

**"exploration"** has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

**"independent"**, in relation to an EAP or a person compiling a specialist report or undertaking a specialised process or appointed as a member of an appeal panel, means-

- (a) that such EAP or person has no business, financial, personal or other interest in the activity, application or appeal in respect of which that EAP or person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that activity, application or appeal; or
- (b) that there are no circumstances that may compromise the objectivity of that EAP or person in performing such work;

**"linear activity"** means an activity that is undertaken across one or more properties and which affects the environment or any aspect of the environment along the course of the activity in different ways, and includes railways, roads, funiculars, pipelines, conveyor belts, cableways, powerlines, fences, runways, aircraft landing strips, and telecommunication lines;

**"mining"** has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

**"ocean-based activity"** means an activity in the territorial waters of the Republic;

"**plan of study for environmental impact assessment**" means a document contemplated in regulation 28(1)(n), which forms part of a scoping report and sets out how an environmental impact assessment must be conducted;

*(Definition of "plan of study for environmental impact assessment" substituted by section 2 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

"**production right**" has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

"**prospecting**" has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

"**reconnaissance**" has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

"**registered environmental assessment practitioner / registered EAP**" means an environmental assessment practitioner registered with an appointed registration authority contemplated in section 24H of the Act;

"**registered interested and affected party**", in relation to an application, means an interested and affected party whose name is recorded in the register opened for that application in terms of regulation 55;

"**respondent**" means a person submitting a responding statement in terms of regulation 63(2)(a);

"**scoping report**" means a report contemplated in regulation 28;

"**S&EIR**" means the scoping and environmental impact reporting process as contemplated in regulation 26 to regulation 35;

"**significant impact**" means an impact that by its magnitude, duration, intensity or probability of occurrence may have a notable effect on one or more aspects of the environment;

"**specialised process**" means a process to obtain information which-

- (a) is not readily available without undertaking the process; and
- (b) is necessary for informing an assessment or evaluation of the impacts of an activity, and includes risk assessment and cost benefit analysis;

"**State department**" means any department or administration in the national or provincial sphere of government exercising functions that involve the management of the environment; and

"**the Act**" means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

- (2) Subject to paragraphs (3), (4) and (5), when a period of days must in terms of these Regulations be reckoned from or after a particular day, that period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.
- (3) For any action contemplated in terms of these regulations for which a timeframe is prescribed, the period of 15 December to 2 January must be excluded in the reckoning of days.
- (4) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.
- (5) Where an objection on an application has been referred to the Regional Mining Development and Environmental Committee, in terms of regulation 6(5) or (6), the applicable timeframe is deemed to be extended by 45 days.
- (6) Any reference in these regulations to an environmental assessment practitioner will, from a date to be determined by the Minister by notice in the *Gazette*, be deemed to be a reference to a registered environmental assessment practitioner, as defined.

## **2. Purpose of Regulations**

The purpose of these Regulations is to regulate the procedure and criteria as contemplated in Chapter 5 of the Act relating to the submission, processing and consideration of, and decision on, applications for environmental authorisations for the commencement of activities in order to avoid detrimental impacts on the environment, or where it can not be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts, and for matters pertaining thereto.

## **CHAPTER 2 COMPETENT AUTHORITY**

### **3. Identification of competent authority**

- (1) All applications in terms of these Regulations must be decided upon by a competent authority.

- (2) The competent authority, who must consider and decide upon an application in respect of a specific activity, must be determined with reference to the notice published under section 24D(1) of the Act.
- (3) Any dispute or disagreement in respect of who the competent authority should be in relation to any specific application must be resolved by the Minister and the MEC of the relevant province, the Minister and the Minister of Mineral Resources, or by the Minister and the designated organ of state, as the case may be.

#### **4. Where to submit application**

- (1) If the Minister is the competent authority in respect of a specific application, the application must be submitted to the Department of Environmental Affairs.
- (2) If an MEC is the competent authority in respect of a particular application, the application must be submitted to the provincial department responsible for environmental affairs in that province.
- (3) If the Minister or MEC has, in terms of section 42 of the Act, delegated any powers or duties of a competent authority in relation to an application for the commencement of an activity, the application must be submitted to that delegated organ of state.
- (4) If the Minister of Mineral Resources is the competent authority in respect of a specific application, the application must be submitted to the relevant regional office of the Department of Mineral Resources.

#### **5. Assistance by competent authority to applicant**

- (1) A competent authority may, on its own initiative, or upon request by an applicant or an EAP managing an application, and subject to the payment of any reasonable charges, if applicable-
  - (a) give the applicant or EAP access to any guidelines, departmental policies, decision-making instruments and information on practices that have been developed or to any other information in the possession of the competent authority that is relevant to the application; or
  - (b) advise the applicant or EAP, either in writing or by way of discussions, of the nature and extent of any of the processes that must be followed in order to comply with the Act and these Regulations.
- (2) A competent authority must, on written request, furnish the applicant or EAP with officially adopted minutes of any meeting held or discussion that took place, as contemplated in subregulation (1)(b), between the competent authority and the applicant or EAP.

- (3) The competent authority and the applicant or EAP, must on written request by a registered interested or affected party, provide access to the officially adopted minutes of meetings as contemplated in subregulation (2), to such a registered interested or affected party.

**6. Consultation between competent authority and State departments administering a law relating to a matter affecting the environment**

- (1) Where an application in terms of these Regulations must also be made in terms of other legislation and that other legislation requires that information must be submitted or processes must be carried out that are substantially similar to information or processes required in terms of these Regulations, and where an agreement has been reached in order to give effect to Chapter 3 of the Constitution and sections 24(4)(a)(i), 24K and 24L of the Act, the application must be dealt with in accordance with such agreement.
- (2) If the Minister, MEC, Minister of Mineral Resources or identified competent authority considers an application for an environmental authorisation, the Minister, MEC, Minister of Mineral Resources or competent authority must take into account all relevant factors including any comments received from a relevant State department that administers a law relating to a matter affecting the environment relevant to that application for environmental authorisation.
- (3) The Minister, MEC, Minister of Mineral Resources or identified competent authority must consult with every State department that administers a law relating to a matter affecting the environment relevant to that application for an environmental authorisation when he or she considers the application.
- (4) A State department consulted in terms of subregulation (3) must submit its comments within 40 days from the date on which the Minister, MEC, Minister of Mineral Resources or identified competent authority requests such State department, in writing to, submit comments.
- (5) Where comments submitted in terms of subregulation (4) constitute an objection as contemplated in section 240(4) of the Act, the Minister of Mineral Resources must refer such objection to the Regional Mining Development and Environmental Committee and provide a copy of such objection to the applicant.
- (6) Where comments submitted by interested and affected parties to the EAP constitute an objection against an application for prospecting, mining, reconnaissance, exploration, production or related activities in a prospecting, mining, reconnaissance, exploration or production area, the EAP must-
  - (a) refer such objections to the Minister of Minerals Resources who in turn refers it to the Regional Mining Development and Environmental Committee; and
  - (b) provide a copy of such objections to the competent authority.

- (7) The Regional Mining Development and Environmental Committee must, within 45 days after the date of receiving such an objection, consider the objection and must make written recommendations to the Minister of Mineral Resources.

## **7. Competent authorities' right of access to information**

- (1) A competent authority is entitled to all information that reasonably has or may have the potential of influencing any decision with regard to an application unless access to that information is protected by law.
- (2) Unless access to the information contemplated in subregulation (1) is protected by law, an applicant or EAP or other person in possession of that information must, on request by the competent authority, disclose that information to the competent authority, whether or not such information is favourable to the applicant.

## **8. Criteria to be taken into account by competent authorities when considering applications**

When considering an application the competent authority must have regard to section 240 and 24(4) of the Act as well as the need for and desirability of the activity.

## **9. Timeframes for competent authorities**

- (1) A competent authority must meet timeframes applicable to competent authorities in terms of these Regulations.
- (2) Where the applicable timeframes contemplated in regulations 24(1)(a), 25(1), 30(1), 34(2) or 35, as the case may be, are not met, those applicable timeframes are automatically extended by 60 days.
- (3) Upon the lapsing of an extension contemplated in subregulation (2) for decisions contemplated in regulations 24(1)(a), 30(1)(a) or (c) or 34(2)(a) or (d), the competent authority must base his or her decision on the available information.
- (4) Upon the lapsing of an extension contemplated in subregulation (2) regarding decisions to grant or refuse authorisation contemplated in regulations 25 or 35, as the case may be, the provisions of section 6(2)(g) and (3) of the Promotion of Administrative Justice Act, 2000 will apply.

## **10. Notification of decision on application**

- (1) After a competent authority has reached a decision on an application, the competent authority must, in writing and within 2 days -
  - (a) notify the applicant of the decision;

- (b) give reasons for the decision to the applicant; and
  - (c) draw the attention of the applicant to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.
- (2) The applicant must, in writing, within 12 days of the date of the decision on the application-
- (a) notify all registered interested and affected parties of-
    - (i) the outcome of the application; and
    - (ii) the reasons for the decision;
  - (b) draw the attention of all registered interested and affected parties to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision;
  - (c) draw the attention of all registered interested and affected parties to the manner in which they can access the decision; and
  - (d) publish a notice-
    - (i) informing interested and affected parties of the decision;
    - (ii) informing interested and affected parties where the decision can be accessed; and
    - (iii) drawing the attention of interested and affected parties to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available under the circumstances of the decision,

in the newspapers contemplated in regulation 54(2)(c) and (d) and which newspaper was used for the placing of advertisements as part of the public participation process.

## **11. Registry of applications and record of decisions**

A competent authority must keep-

- (a) a register of all applications received by the competent authority in terms of these Regulations; and

- (b) records of all decisions in respect of environmental authorisations.

## **CHAPTER 3 APPLICATIONS FOR ENVIRONMENTAL AUTHORISATION**

### **Part 1: General matters**

#### **12. Applications**

- (1) An application for an environmental authorisation for the commencement of an activity must be made to the competent authority referred to in regulation 3.
- (2) An application must-
  - (a) be made on an official application form obtainable from the relevant competent authority; and
  - (b) when submitted in terms of regulation 21(1) or 26(b), be accompanied by-
    - (i) the written notice referred to in regulation 15(1) as well as proof of serving of such notice on the owner or person in control of the land, if the applicant is not the owner or person in control of the land on which the activity is to be undertaken; and
    - (ii) the prescribed application fee, if any.
- (3) An application for an environmental authorisation may-
  - (a) be submitted simultaneously with an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;
  - (b) where section 24L of the Act applies, be submitted in the manner as agreed to by the relevant authorities.

#### **13. Checking of applications for compliance with formal requirements**

- (1) Upon receipt of an application, the competent authority to which the application is submitted must check whether the application-
  - (a) is properly completed and that it contains the information required in the application form; and
  - (b) is accompanied by any reports, other documents and fees as required in terms of these Regulations; and

- (c) has taken into account any guideline applicable to the submission of applications.
- (2) The competent authority must, within 14 days of receipt of the application, and in writing-
  - (a) acknowledge receipt of and accept the application, if the application is in order; or
  - (b) acknowledge receipt and reject, in writing, the application, if is not in order.
- (3) The applicant or EAP managing an application that has been rejected in terms of subregulation (2) may correct that application and resubmit it to the competent authority.
- (4) Subregulations (1) and (2) apply afresh to a corrected application submitted to the competent authority in terms of subregulation (3).

#### **14. Combination of applications**

- (1) If an applicant intends undertaking more than one activity of the same type at different locations within the area of jurisdiction of the competent authority, different applications in respect of the different locations must be submitted, but the competent authority may, at the written request of the applicant, grant permission for the submission of a single application in respect of all those activities, whether or not the application is submitted on one or more application forms.
- (2) If the competent authority grants permission in terms of subregulation (1), the application must be dealt with as a consolidated process in respect of all the activities covered by the application, but the potential environmental impacts of each activity must be considered in terms of the location where the activity is to be undertaken.

#### **15. Activity on Sand owned by person other than applicant**

- (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.
- (2) In circumstances where a notice as contemplated in subregulation (1) will not serve the purpose of notifying the owner or person in control of the land as that person is unable to understand the content of the notice due to-
  - (i) illiteracy;
  - (ii) disability; or
  - (iii) any other disadvantage,

alternative means of notifying the owner or person in control of the land must be agreed to with the competent authority and a record of such agreement as well as proof of compliance with the requirement to give notice must be provided.

- (3) Proof of the notice contemplated in subregulation (1) must be submitted with the application form as contemplated in regulation 12(2).
- (4) The format of a notice contemplated in subregulation (1) or (2) may be determined by the competent authority and ~~proof of service of such notice~~ proof of having notified such owner or person must be submitted to the competent authority.

*(Regulation 15(4) substituted by section 3(a) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (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.

*(Regulation 15(5) inserted by section 3(b) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

## **16. Appointment of EAPs to manage applications**

- (1) Before conducting basic assessment or S&EIR, an applicant must appoint an EAP at own cost to manage the application.
- (2) The applicant must-
  - (a) take all reasonable steps to verify whether the EAP to be appointed complies with regulation 17(a) and (b); and
  - (b) provide the EAP with access to all information at the disposal of the applicant regarding the application, whether or not such information is favourable to the applicant.

## **17. General requirements for EAPs or a person compiling a specialist report or undertaking a specialised process**

An EAP or person compiling a specialist report or undertaking a specified process appointed in terms of regulation 16(1) must-

*(Words preceding paragraph 17(a) amended by section 4(a) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (a) be independent;
- (b) have expertise in conducting environmental impact assessments, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;
- (c) perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;
- (d) comply with the Act, these Regulations and all other applicable legislation;
- (e) take into account, to the extent possible, the matters referred to in regulation 8 when preparing the application and any report relating to the application; and
- (f) disclose to the applicant and the competent authority all material information in the possession of the EAP or person compiling a specialist report or undertaking a specified process that reasonably has or may have the potential of influencing-

*(Regulation 17(f) amended by section 4(b) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or
- (ii) the objectivity of any report, plan or document to be prepared by the EAP or person compiling a specialist report or undertaking a specified process in terms of these Regulations for submission to the competent authority.

*(Regulation 17(f)(ii) amended by section 4(c) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

**18. Disqualification of EAPs or a person compiling a specialist report or undertaking a specialised process**

- (1) If the competent authority at any stage of considering an application has reason to believe that the EAP managing an application or a person compiling a specialist report or undertaking a specialised process may not comply with the requirements of regulation 17 in respect of the application, the competent authority must-
  - (a) notify the EAP and applicant of the reasons therefore and that the application is suspended until the matter is resolved; and

- (b) afford the EAP and applicant an opportunity to make representations to the competent authority regarding the independence of the EAP, in writing.
- (2) An interested and affected party may notify the competent authority of suspected non-compliance with regulation 17.
  - (3) Where an interested and affected party notifies the competent authority of suspected non-compliance with regulation 17, the competent authority must investigate the allegation.
  - (4) The notification referred to in subregulation (2) must be submitted in writing and must contain documentation supporting the allegation, which is referred to in the notification.
  - (5) If, after considering the matter, the competent authority is unconvinced of compliance with regulation 17 by the EAP or person compiling a specialist report or undertaking a specialised process, the competent authority must in writing, inform the EAP or person compiling a specialist report or undertaking a specialised process and the applicant accordingly and may-
    - (a) refuse to accept any further reports or input from the EAP or person compiling a specialist report or undertaking a specialised process in respect of the application in question;
    - (b) request the applicant to -
      - (i) commission, at own cost, an external review by an independent person or persons of any reports prepared or processes conducted by the EAP or person compiling a specialist report or undertaking a specialised process in connection with the application;
      - (ii) redo any specific aspects of the work done by the previous EAP or person compiling a specialist report or undertaking a specialised process in connection with the application; and
      - (iii) to complete any unfinished work in connection with the application; or
    - (c) request the applicant to take such action as the competent authority requires to remedy the defects.
  - (6) If the application has reached a stage where a register of interested and affected parties has been opened in terms of regulation 55, the applicant must inform all registered interested and affected parties of any suspension of the application as well as of any decisions taken by the competent authority in terms of subregulation (5).

**19. Determination of assessment process applicable to application**

- (1) When appointed in terms of regulation 16(1), an EAP must in accordance with regulation 20 determine whether basic assessment or scoping must be applied to the application, taking into account-
  - (a) any guidelines applicable to the activity which is the subject of the application; and
  - (b) any advice given by the competent authority in terms of regulation 5.
- (2) An application must be managed in accordance with-
  - (a) Part 2 of this Chapter if basic assessment must be applied to the application; or
  - (b) Part 3 of this Chapter if S&EIR must be applied to the application.

## **20. Determining whether basic assessment or S&EIR is to be applied to application**

- (1) Basic assessment must be applied to an application if the authorisation applied for is in respect of an activity-
  - (a) listed in a notice issued by the Minister or an MEC in terms of section 24D of the Act identifying further activities for which environmental authorisation is required and stipulating that the procedure described in Part 2 of this Chapter must be applied to applications for environmental authorisation in respect of those activities; or
  - (b) for which permission has been granted in terms of subregulation (4) for basic assessment instead of S&EIR to be applied to the application.
- (2) S&EIR must be applied to an application if-
  - (a) the authorisation applied for is in respect of an activity listed in a notice issued by the Minister or an MEC in terms of section 24D of the Act, identifying further activities for which environmental authorisation is required, and stipulating that the procedure described in Part 3 of this Chapter, must be applied to applications for environmental authorisation in respect of those activities;
  - (b) permission has been granted in terms of subregulation (3) for scoping instead of basic assessment to be applied to the application; or
  - (c) the application is for two or more activities as part of the same development and S&EIR must in terms of paragraph (a) or (b) be applied in respect of any of the activities.
- (3) If an applicant intends undertaking an activity to which basic assessment must be applied in terms of subregulation (1) and the applicant, on the advice of the EAP managing the application, is for any reason of the view that it is unlikely that the competent authority will be able to reach a decision on the

basis of information provided in a basic assessment report, the applicant may apply, in writing, to the competent authority for permission to apply S&EIR instead of basic assessment to the application.

- (4) If an applicant intends undertaking an activity to which S&EIR must be applied in terms of subregulation (2) and the applicant, on the advice of the EAP managing the application, is for any reason of the view that it is likely that the competent authority will be able to reach a decision on the basis of information provided in a basic assessment report, the applicant may apply, in writing, to the competent authority for permission to apply basic assessment instead of S&EIR to the application.

## **Part 2: Application subject to basic assessment**

### **21. Submission of application to competent authority and steps to be taken after submission of application**

- (1) If a basic assessment must be applied to an application, the applicant or EAP managing the application must submit an application form, including a declaration of interest by the EAP and any documents referred to in regulation 12(2)(b), to the competent authority before conducting basic assessment.
- (2) After having submitted an application, the EAP managing the application, must-
  - (a) conduct at least a public participation process as set out in regulation 54;
  - (b) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 55;
  - (c) consider all comments and representations received from interested and affected parties following the public participation process conducted in terms of paragraph (a), and subject the proposed application to basic assessment;
  - (d) prepare a basic assessment report in accordance with regulation 22; and
  - (e) give all registered interested and affected parties an opportunity to comment on the basic assessment report in accordance with regulation 56.
- (3) The format of an application form as contemplated in subregulation (1) may be determined by the competent authority.

### **22. Content of basic assessment reports**

- (1) The EAP managing an application to which this Part applies must prepare a basic assessment report in a format that may be determined by the competent authority.

- (2) A basic assessment report must contain all the information that is necessary for the competent authority to consider the application and to reach a decision contemplated in regulation 25, and must include-
- (a) details of-
    - (i) the EAP who prepared the report; and
    - (ii) the expertise of the EAP to carry out basic assessment procedures;
  - (b) a description of the proposed activity;
  - (c) a description and a map of the property on which the activity is to be undertaken and the location of the activity on the property, or, if it is-
    - (i) a linear activity, a description of the route of the activity; or
    - (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken;
  - (d) a description of the environment that may be affected by the proposed activity and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
  - (e) an identification of all legislation and guidelines that have been considered in the preparation of the basic assessment report;
  - (f) details of the public participation process conducted in terms of regulation 21(2)(a) in connection with the application, including-
    - (i) the steps that were taken to notify potentially interested and affected parties of the proposed application;
    - (ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the proposed application have been displayed, placed or given;
    - (iii) a list of all persons, organisations and organs of state that were registered in terms of regulation 55 as interested and affected parties in relation to the application; and
    - (iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;

- (g) a description of the need and desirability of the proposed activity;
- (h) a description of any identified alternatives to the proposed activity that are feasible and reasonable, including the advantages and disadvantages that the proposed activity or alternatives will have on the environment and on the community that may be affected by the activity;
- (i) a description and assessment of the significance of any environmental impacts, including-
  - (i) cumulative impacts, that may occur as a result of the undertaking of the activity or identified alternatives or as a result of any construction, erection or decommissioning associated with the undertaking of the activity;
  - (ii) the nature of the impact;
  - (iii) the extent and duration of the impact;
  - (iv) the probability of the impact occurring;
  - (v) the degree to which the impact can be reversed;
  - (vi) the degree to which the impact may cause irreplaceable loss of resources; and
  - (vii) the degree to which the impact can be mitigated;
- (j) any environmental management and mitigation measures proposed by the EAP;
- (k) any inputs and recommendations made by specialists to the extent that may be necessary;
- (l) a draft environmental management programme containing the aspects contemplated in regulation 33;
- (m) a description of any assumptions, uncertainties and gaps in knowledge;
- (n) a reasoned opinion as to whether the activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation
- (o) any representations, and comments received in connection with the application or the basic assessment report;

- (p) the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants;
  - (q) any responses by the EAP to those representations, comments and views;
  - (r) any specific information required by the competent authority; and;
  - (s) any other matters required in terms of sections 24(4)(a) and (b) of the Act.
- (3) In addition, a basic assessment report must take into account-
- (a) any relevant guidelines; and
  - (b) any departmental policies, environmental management instruments and other decision making instruments that have been developed or adopted by the competent authority in respect of the kind of activity which is the subject of the application.
- (4) The EAP managing the application must provide the competent authority with detailed, written proof of an investigation as required by section 24(4)(b)(i) of the Act and motivation if no reasonable or feasible alternatives, as contemplated in subregulation 22(2)(h), exist.

**23. Submission of basic assessment report to competent authority**

- (1) After having complied with regulation 21, the EAP managing the application must submit to the competent authority, where applicable, within the timeframes stipulated by the competent authority, the prescribed fee, and at least 5 copies of -
- (a) the basic assessment report;
  - (b) any representations, and comments received in connection with the application or the basic assessment report;
  - (c) the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants; and
  - (d) any responses by the EAP to those representations, comments and views.

*(Numbering of Regulation 23(1) by section 5 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (2) The competent authority must, within 14 days of receipt of the basic assessment report, and in writing, acknowledge receipt thereof.

## **24. Consideration of application**

- (1) A competent authority must within 30 days of acknowledging receipt of the basic assessment report and in writing-
  - (a) accept the basic assessment report, if the basic assessment report complies with the requirements of regulation 22;
  - (b) reject the basic assessment report, if it
    - (i) does not contain material information required in terms of these Regulations; or
    - (ii) has not taken into account guidelines applicable in respect of basic assessment reports.
- (2) If the basic assessment report is rejected, the competent authority must request the EAP managing the application-
  - (a) to submit such additional information as the competent authority may require;
  - (b) to submit a report on any specialist study or specialised process as the competent authority may require in relation to any aspect of the proposed activity;
  - (c) to suggest, consider or comment on feasible and reasonable alternatives; or
  - (d) to subject the application to S&EIR.
- (3) The competent authority may reject the basic assessment report if it does not substantially comply with regulation 21 or 22.
- (4) A basic assessment report that has been rejected in terms of subregulation (3) may be amended and resubmitted by the EAP to the competent authority.
- (5) Comments that are made by interested and affected parties in respect of an amended basic assessment report must be attached to the report, but the EAP need not make further changes to the report in response to such comments.
- (6) Upon receipt of any information, reports, suggestions or comments requested in terms of subregulation (2)(a), (b) or (c) or any amended basic assessment report submitted in terms of subregulation (4), the competent authority must reconsider the application as per regulation 24(1).

- (7) If the competent authority requests in terms of subregulation (2)(d) that the application be subjected to S&EIR, the application must be proceeded with in accordance with regulations 26 to 35.

## **25. Decision on application**

- (1) A competent authority must-
- (a) within 30 days of accepting a basic assessment report in terms of regulation 24(1), or within 30 days of the lapsing of the 60 days contemplated in regulation 9(2); or
  - (b) if paragraphs (a), (b) or (c) of regulation 24(2) are applicable or if the basic assessment report has been rejected in terms of regulation 24(3), within 30 days of ~~receipt~~ acceptance of the required information, reports, suggestions or comments or the amended basic assessment report, consider the application and basic assessment report and in writing-

*(Regulation 25(1)(b) amended by section 6 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (i) grant the authorisation in respect of all or part of the activity applied for; or
  - (ii) refuse the authorisation in respect of all or part of the activity.
- (2) To the extent that authorisation is granted for an alternative, such alternative must, for the purposes of subregulation (1), be regarded as having been applied for.
- (3) On having reached a decision, the competent authority must comply with regulation 10(1), after which an applicant must comply with regulation 10(2).

### **Part 3: Application subject to scoping and environmental impact reporting**

## **26. Submission of application to competent authority**

If S&EIR must be applied to an application, the applicant or EAP managing the application must-

- (a) complete the application form for environmental authorisation of the relevant activity; and
- (b) submit the completed application form to the competent authority, together with-
  - (i) a declaration of interest by the EAP on a form determined by the competent authority; and
  - (ii) any documents referred to in regulation 12(2)(b).

## **27. Steps to be taken after submission of application**

After having submitted an application, the EAP managing the application must-

- (a) conduct at least the public participation process set out in regulation 54;
- (b) give notice, in writing, of the proposed application to any organ of state which has jurisdiction in respect of any aspect of the activity;
- (c) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 55;
- (d) consider all comments and representations received from interested and affected parties following the public participation process;
- (e) subject the application to scoping by identifying-
  - (i) issues that will be relevant for consideration of the application;
  - (ii) the potential environmental impacts of the proposed activity; and
  - (iii) alternatives to the proposed activity that are feasible and reasonable;
- (f) prepare a scoping report in accordance with regulation 28;
- (g) give all registered interested and affected parties an opportunity to comment on the scoping report in accordance with regulation 56;
- (h) where applicable, submit the scoping report within the timeframes stipulated by the competent authority; and
- (i) submit at least five copies of the scoping report contemplated in paragraph (f) simultaneously to the competent authority.

## **28. Content of scoping report**

- (1) A scoping report must contain all the information that is necessary for a proper understanding of the nature of issues identified during scoping, and must include-
  - (a) details of-

- (i) the EAP who prepared the report; and
  - (ii) the expertise of the EAP to carry out scoping procedures;
- (b) a description of the proposed activity;
- (c) a description of any feasible and reasonable alternatives that have been identified;
- (d) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is-
- (i) a linear activity, a description of the route of the activity; or
  - (ii) an ocean-based activity, the coordinates where the activity is to be undertaken;
- (e) a description of the environment that may be affected by the activity and the manner in which activity may be affected by the environment;
- (f) an identification of all legislation and guidelines that have been considered in the preparation of the scoping report;
- (g) a description of environmental issues and potential impacts, including cumulative impacts, that have been identified;
- (h) details of the public participation process conducted in terms of regulation 27(a), including-
- (i) the steps that were taken to notify potentially interested and affected parties of the application;
  - (ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the application have been displayed, placed or given;
  - (iii) a list of all persons or organisations that were identified and registered in terms of regulation 55 as interested and affected parties in relation to the application; and
  - (iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;
- (i) a description of the need and desirability of the proposed activity;

- (j) a description of identified potential alternatives to the proposed activity, including advantages and disadvantages that the proposed activity or alternatives may have on the environment and the community that may be affected by the activity;
  - (k) copies of any representations, and comments received in connection with the application or the scoping report from interested and affected parties;
  - (l) copies of the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants; and
  - (m) any responses by the EAP to those representations and comments and views;
  - (n) a plan of study for environmental impact assessment which sets out the proposed approach to the environmental impact assessment of the application, which must include-
    - (i) a description of the tasks that will be undertaken as part of the environmental impact assessment process, including any specialist reports or specialised processes, and the manner in which such tasks will be undertaken;
    - (ii) an indication of the stages at which the competent authority will be consulted;
    - (iii) a description of the proposed method of assessing the environmental issues and alternatives, including the option of not proceeding with the activity; and
    - (iv) particulars of the public participation process that will be conducted during the environmental impact assessment process;
  - (o) any specific information required by the competent authority; and
  - (p) any other matters required in terms of sections 24(4)(a) and (b) of the Act.
- (2) In addition, a scoping report must take into account any guidelines applicable to the kind of activity which is the subject of the application.
- (3) The EAP managing the application must provide the competent authority with detailed, written proof of an investigation as required by section 24(4)(b)(i) of the Act and motivation if no reasonable or feasible alternatives, as contemplated in subregulation (1)(c), exist.

**29. Submission of scoping reports to competent authority**

The EAP managing an application must submit 5 copies of the scoping report compiled in terms of regulation 28 to the competent authority, together with -

- (a) copies of any representations, and comments received in connection with the application or the scoping report from interested and affected parties;
- (b) copies of the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants; and
- (c) any responses by the EAP to those representations and comments and views.

### **30. Consideration of scoping reports**

- (1) The competent authority must, within 30 days of **acknowledging** receipt of a scoping report, or receipt of the required information, reports, or comments or the amended scoping report, consider it, and in writing-
  - (a) accept the report and advise the EAP to proceed with the tasks contemplated in the plan of study for environmental impact assessment;
  - (b) request the EAP to make such amendments to the report as the competent authority may require; or
  - (c) reject the scoping report if it-
    - (i) does not contain material information required in terms of these Regulations; or
    - (ii) has not taken into account guidelines applicable in respect of scoping reports and plans of study for environmental impact assessment.

*(Regulation 30(1) amended by section 2 of Government Notice R660, Gazette No. 33411 dated 30 July 2010 – with effect from 2 August 2010)*

- (2) In addition to complying with subregulation (1), the competent authority may advise the EAP of any matter that may prejudice the success of the application.
- (3) A scoping report that has been rejected by the competent authority in terms of subregulation (1)(c) may be amended and resubmitted by the EAP.
- (4) On receipt of the amended scoping, the competent authority must reconsider the scoping **report** in accordance with subregulation (1).

*(Regulation 30(4) amended by section 7 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

### 31. Environmental impact assessment reports

- (1) If a competent authority accepts a scoping report and advises the EAP in terms of regulation 30(1)(a) to proceed with the tasks contemplated in the plan of study for environmental impact assessment, the EAP must proceed with those tasks, including the public participation process for environmental impact assessment referred to in regulation 28(1)(~~g~~)(h)(i)-(iv) and prepare an environmental impact assessment report in respect of the proposed activity.

*(Regulation 31(1) amended by section 8 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (2) An environmental impact assessment report must contain all information that is necessary for the competent authority to consider the application and to reach a decision contemplated in regulation 35, and must include-
- (a) details of-
    - (i) the EAP who compiled the report; and
    - (ii) the expertise of the EAP to carry out an environmental impact assessment;
  - (b) a detailed description of the proposed activity;
  - (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is-
    - (i) a linear activity, a description of the route of the activity; or
    - (ii) an ocean-based activity, the coordinates where the activity is to be undertaken;
  - (d) a description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
  - (e) details of the public participation process conducted in terms of subregulation (1), including-
    - (i) steps undertaken in accordance with the plan of study;
    - (ii) a list of persons, organisations and organs of state that were registered as interested and affected parties;

- (iii) a summary of comments received from, and a summary of issues raised by registered interested and affected parties, the date of receipt of these comments and the response of the EAP to those comments; and
- (iv) copies of any representations and comments received from registered interested and affected parties;
- (f) a description of the need and desirability of the proposed activity;
- (g) a description of identified potential alternatives to the proposed activity, including advantages and disadvantages that the proposed activity or alternatives may have on the environment and the community that may be affected by the activity;
- (h) an indication of the methodology used in determining the significance of potential environmental impacts;
- (i) a description and comparative assessment of all alternatives identified during the environmental impact assessment process;
- (j) a summary of the findings and recommendations of any specialist report or report on a specialised process;
- (k) a description of all environmental issues that were identified during the environmental impact assessment process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures;
- (l) an assessment of each identified potentially significant impact, including-
  - (i) cumulative impacts;
  - (ii) the nature of the impact;
  - (iii) the extent and duration of the impact;
  - (iv) the probability of the impact occurring;
  - (v) the degree to which the impact can be reversed;
  - (vi) the degree to which the impact may cause irreplaceable loss of resources; and
  - (vii) the degree to which the impact can be mitigated;
- (m) a description of any assumptions, uncertainties and gaps in knowledge;
- (n) a reasoned opinion as to whether the activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;

- (o) an environmental impact statement which contains-
    - (i) a summary of the key findings of the environmental impact assessment; and
    - (ii) a comparative assessment of the positive and negative implications of the proposed activity and identified alternatives;
  - (p) a draft environmental management programme containing the aspects contemplated in regulation 33;
  - (q) copies of any specialist reports and reports on specialized processes complying with regulation 32;
  - (r) any specific information that may be required by the competent authority; and
  - (s) any other matters required in terms of sections 24(4)(a) and (b) of the Act.
- (3) The EAP managing the application must provide the competent authority with detailed, written proof of an investigation as required by section 24(4)(b)(i) of the Act and motivation if no reasonable or feasible alternatives, as contemplated in subregulation 31(2)(g), exist.

### **32. Specialist reports and reports on specialised processes**

- (1) An applicant or the EAP managing an application may appoint a person to carry out a specialist study or specialised process.
- (2) The person referred to in subregulation (1) must comply with the requirements of regulation 17.
- (3) A specialist report or a report on a specialised process prepared in terms of these Regulations must contain-
  - (a) details of-
    - (i) the person who prepared the report; and
    - (ii) the expertise of that person to carry out the specialist study or specialised process;
  - (b) a declaration that the person is independent in a form as may be specified by the competent authority;
  - (c) an indication of the scope of, and the purpose for which, the report was prepared;

- (d) a description of the methodology adopted in preparing the report or carrying out the specialised process;
- (e) a description of any assumptions made and any uncertainties or gaps in knowledge;
- (f) a description of the findings and potential implications of such findings on the impact of the proposed activity, including identified alternatives, on the environment;
- (g) recommendations in respect of any mitigation measures that should be considered by the applicant and the competent authority;
- (h) a description of any consultation process that was undertaken during the course of carrying out the study;
- (i) a summary and copies of any comments that were received during any consultation process; and
- (j) any other information requested by the competent authority.

### **33. Content of draft environmental management programme**

A draft environmental management programme must comply with section 24N of the Act and include -

- (a) details of-
  - (i) the person who prepared the environmental management programme; and
  - (ii) the expertise of that person to prepare an environmental management programme;
- (b) information on any proposed management or mitigation measures that will be taken to address the environmental impacts that have been identified in a report contemplated by these Regulations, including environmental impacts or objectives in respect of-
  - (i) planning and design;
  - (ii) pre-construction and construction activities;
  - (iii) operation or undertaking of the activity;
  - (iv) rehabilitation of the environment; and
  - (v) closure, where relevant.
- (c) a detailed description of the aspects of the activity that are covered by the draft environmental management programme;

- (d) an identification of the persons who will be responsible for the implementation of the measures contemplated in paragraph (b);
- (e) proposed mechanisms for monitoring compliance with and performance assessment against the environmental management programme and reporting thereon;
- (f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development, including, where appropriate, concurrent or progressive rehabilitation measures;
- (g) a description of the manner in which it intends to-
  - (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
  - (ii) remedy the cause of pollution or degradation and migration of pollutants;
  - (iii) comply with any prescribed environmental management standards or practices;
  - (iv) comply with any applicable provisions of the Act regarding closure, where applicable;
  - (v) comply with any provisions of the Act regarding financial provisions for rehabilitation, where applicable;
- (h) time periods within which the measures contemplated in the environmental management programme must be implemented;
- (i) the process for managing any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of undertaking a listed activity;
- (j) an environmental awareness plan describing the manner in which-
  - (i) the applicant intends to inform his or her employees of any environmental risk which may result from their work; and
  - (ii) risks must be dealt with in order to avoid pollution or the degradation of the environment;
- (k) where appropriate, closure plans, including closure objectives.

#### **34. Consideration of environmental impact assessment reports**

- (1) (a) Where applicable, the EAP must submit the environmental impact assessment report within the timeframes stipulated by the competent authority.
  - (b) On completion of the environmental impact assessment report, the EAP must submit at least 5 copies of the environmental impact assessment report to the competent authority.
- (2) The competent authority must, within 60 days of **acknowledging** receipt of an environmental impact assessment report, in writing-
- (a) accept the report; or
  - (b) reject the report if it does not substantially comply with regulation 31(2) and
    - (i) notify the applicant that the report has been referred for specialist review in terms of section 24I of the Act; or
    - (ii) request the applicant to make such amendments to the report as the competent authority may require for acceptance of the environmental impact assessment report.

**(Regulation 34(2) amended by section 3 of Government Notice R660, Gazette No. 33411 dated 30 July 2010 – with effect from 2 August 2010)**

- (3) The acceptance of the environmental impact assessment report in subregulation (2)(a) may include acceptance of the environmental management programme if it meets the requirements.
- (4) (a) An environmental impact assessment report that is rejected in terms of subregulation (2)(b)(ii) may be amended and resubmitted by the EAP.

***(Regulation 34(4)(a) amended by section 9(a) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)***

- (b) On receipt of the amended report **in terms of subregulation (2)(b)(ii)**, the competent authority must reconsider the report in accordance with subregulation (2).

***(Regulation 34(4)(b) amended by section 9(b) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)***

### **35. Decision on applications**

- (1) A competent authority must within 45 days of acceptance of an environmental impact assessment report in terms of regulation 34 or, if the report was referred for specialist review in terms of section 24I

of the Act, within 45 days of receipt of the findings of the specialist reviewer, or within 30 days of the lapsing of the 60 days contemplated in regulation 9(2), in writing-

- (a) grant authorisation in respect of all or part of the activity applied for; or
  - (b) refuse authorisation in respect of all or part of the activity.
- (2) To the extent that authorisation is granted for an alternative, such alternative must for the purposes of subregulation (1) be regarded as having been applied for.
- (3) On having reached a decision, the competent authority must comply with regulation 10(1).
- (4) The Minister of Mineral Resources may only issue an authorisation if the provisions of section 24P(1) of the Act have been complied with.

#### **Part 4: Environmental authorisation**

##### **36. Issue of environmental authorisation**

- (1) If the competent authority decides to grant authorisation, the competent authority must issue an environmental authorisation complying with regulation 37 to, and in the name of, the applicant.
- (2) If in the case of an application referred to in regulation 14, the competent authority decides to grant authorisation in respect of more than one activity, the competent authority may issue a single environmental authorisation covering all the activities for which authorisation was granted.
- (3) A competent authority may issue an integrated environmental authorisation as contemplated in section 24L of the Act.

##### **37. Content of environmental authorisation**

- (1) An environmental authorisation must specify-
- (a) the name, address and telephone number of the person to whom the authorisation is issued;
  - (b) a description of the activity that is authorised;
  - (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is-
    - (i) a linear activity, a description of the route of the activity; or

- (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken;
- (d) the conditions subject to which the activity may be undertaken, including conditions determining-
  - (i) the period for which the environmental authorisation is valid, if granted for a specific period;
  - (ii) requirements for the management, monitoring and reporting of the impacts of the activity on the environment throughout the life cycle of the activity as contained in the approved environmental management programme; and
  - (iii) the transfer of rights and obligations when there is a change of ownership in the property on which the activity is to take Place; and
- (e) where applicable, **indicate** the manner in which and when the competent authority will approve the environmental management programme; and

*(Regulation 37(1)(e) amended by section 10 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (f) the requirements on the manner in which and the frequency when the environmental management programme will be approved, amended or updated.

(2) An environmental authorisation may-

- (a) provide that the authorised activity may not commence before specified conditions are complied with;
- (b) require the holder of the authorisation to furnish the competent authority with reports prepared by the holder of the authorisation or a person who is independent, at specified times or intervals-
  - (i) indicating the extent to which the conditions of the authorisation are or are not being complied with;
  - (ii) providing details of the nature of, and reasons for, any noncompliance with a condition of the authorisation; and
  - (iii) describing any action taken, or to be taken, to mitigate the effects of any non-compliance or to prevent any recurrence of the non-compliance;

- (c) require the holder of the authorisation to furnish the competent authority with environmental audit reports on the impacts of the authorised activity on the environment, at specified times or intervals or whenever requested by the competent authority;
- (d) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with the requirements regarding financial provision;
- (e) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with the applicable requirements regarding closure; and
- (f) include any other condition that the competent authority considers necessary for the protection of the environment.

## **CHAPTER 4**

### **AMENDMENT AND SUSPENSION OF ENVIRONMENTAL AUTHORISATION AND ENVIRONMENTAL MANAGEMENT PROGRAMME**

#### **38. General**

- (1) The competent authority that issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment of that authorisation.
- (2) An environmental authorisation may be amended-
  - (a) on application by the holder of the authorisation in accordance with Part 1 of this Chapter; or
  - (b) on the initiative of the competent authority in accordance with Part 2 of this Chapter.
- (3) An environmental authorisation may be amended by-
  - (a) attaching an additional condition or requirement;
  - (b) substituting a condition or requirement;
  - (c) removing a condition or requirement;
  - (d) changing a condition or requirement;
  - (e) updating or changing any detail on the authorisation; or
  - (f) correcting a technical or editorial error.

#### **Part 1: Amendment on application by holders of environmental authorisation**

#### **39. Applications for amendment**

- (1) The holder of an environmental authorisation may at any time apply to the relevant competent authority for the amendment of the authorisation.
- (2) An application contemplated in subregulation (1) may be submitted if
  - (a) there is a material change in the circumstances which existed at the time of the granting of the environmental authorisation;
  - (b) there has been a change of ownership in the property and transfer of rights and obligations must be provided for; or
  - (c) ~~a condition~~ any detail contained in the environmental authorisation must be amended, added, substituted, corrected, removed or updated.

*(Regulation 39(2)(c) amended by section 11 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

#### **40. Submission of application for amendment**

- (1) An application in terms of regulation 39 must be in writing and accompanied by a motivation for such amendment.
- (2) The competent authority must, within 14 days of receipt of an application, acknowledge receipt of the application, in writing.

#### **41. Consideration of application and decision on ~~non-substantive~~ amendments**

*(Heading of regulation 41 amended by section 12 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (1) Upon receipt of an application made in terms of regulation 39, the competent authority-
  - (a) must consider whether granting the application is likely to adversely affect the environment or the rights or interests of other parties; and
  - (b) may for that purpose request the applicant to furnish additional information and such request must accompany the acknowledgement of receipt of the application.
- (2) The competent authority must within 30 days of acknowledging receipt of the application decide the application if-
  - (a) the application is for a non-substantive amendment to the environmental authorisation; or

- (b) the environment or the rights or interests of other parties are not likely to be adversely affected.
- (3) If the application is for a substantive amendment, or if the environment or the rights or interests of other parties are likely to be adversely affected, the competent authority must, before deciding the application, request the applicant to the extent appropriate-
- (a) to conduct a public participation process as referred to in regulation 54 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity;
  - (b) to conduct such investigations and assessments as the competent authority may direct, to prepare reports on those investigations and assessments, and, if the competent authority so directs, to make use of an EAP for this purpose; and
  - (c) to submit to the competent authority those reports, together with any comments on those reports from registered interested and affected parties.

#### **42. Decision on application**

- (1) Within 30 days of completion of the process contemplated for substantive amendments in regulation 41(3), the competent authority must accept or reject the information contemplated in regulation 41(3)(c).
- (2) On having accepted the information, the competent authority must reach a decision regarding the application for amendment
- (3) If the information contemplated in regulation 41(3)(c) was rejected, it may be amended and resubmitted, whereupon the competent authority must act in accordance with subregulation (1).
- (4) On having reached a decision on whether or not to grant the application, the competent authority must comply with regulation 10.
- (5) If an application is approved, the competent authority must issue an amendment to the environmental authorisation either by way of a new environmental authorisation or an addendum to the existing environmental authorisation.

### **Part 2: Amendment on initiative of competent authority**

#### **43. Purposes for which competent authority may amend environmental authorisations**

The relevant competent authority may on own initiative amend an environmental authorisation if it is necessary or desirable-

- (a) to prevent deterioration or further deterioration of the environment;
- (b) to achieve prescribed environmental standards; or
- (c) to accommodate demands brought about by impacts on socioeconomic circumstances and it is in the public interest to meet those demands.

#### **44. Process**

- (1) If a competent authority intends amending an environmental authorisation in terms of regulation 43, the competent authority must first-
  - (a) notify the holder of the environmental authorisation, in writing, of the proposed amendment;
  - (b) give the holder of the environmental authorisation an opportunity to submit representations on the proposed amendment, in writing; and
  - (c) if necessary, conduct a public participation process as referred to in regulation 54 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.
- (2) The process referred to in subregulation (1) must afford an opportunity to-
  - (a) potential interested and affected parties to submit to the competent authority written representations on the proposed amendment; and
  - (b) the holder of the environmental authorisation to comment on any representations received in terms of paragraph (a) in writing.
- (3) Subregulation (1)(c) need not be complied with if the proposal is to amend the environmental authorisation in a non-substantive way.

#### **45. Decision**

- (1) The competent authority must, within 30 days of completing the actions in regulation 44(1), reach a decision to amend or not amend the environmental authorisation.

- (2) Within 30 days of completion of the process contemplated in regulation 44 and where the competent authority decides to amend the environmental authorisation, the competent authority must issue an amendment to the environmental authorisation either by way of a new environmental authorisation or an addendum to the relevant environmental authorisation.
- (3) On having made a decision, the competent authority must in writing and within 2 days-
  - (a) notify the holder of the environmental authorisation of the decision;
  - (b) give reasons for the decision to the holder of the environmental authorisation; and
  - (c) draw the attention of the holder of the environmental authorisation to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.
- (4) The competent authority must, in writing, within 12 days of the date of the decision-
  - (a) notify all registered interested and affected parties, if any, of-
    - (i) the decision;
    - (ii) the reasons for the decision;
  - (b) draw the attention of all registered interested and affected parties, if any, to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision, and
  - (c) draw the attention of all registered interested and affected parties, if any, to the manner in which they could access the decision.

### **Part 3: Amendment of environmental management programme**

#### **46. Amendment of environmental management programme**

- (1) The competent authority may, on own initiative or upon application, amend an environmental management programme if it is necessary or desirable-
  - (a) to prevent deterioration or further deterioration of the environment;
  - (b) to achieve prescribed environmental standards;
  - (c) to accommodate demands brought about by impacts on socioeconomic circumstances and it is in the public interest to meet those demands;

- (d) to ensure compliance with the conditions of the environmental authorisation;
  - (e) in order to assess the continued appropriateness and adequacy of the environmental management programme; or
  - (f) when an environmental management programme is in conflict with the principles set out in the Act
- (2) An application contemplated in subregulation (1) must be in writing and must be supported by the necessary motivation.
- (3) A competent authority must acknowledge receipt of an application for amendment within 14 days.
- (4) (a) If a competent authority initiates the amendment of an environmental management programme, the competent authority must first-
- (i) notify the holder of the environmental management programme, in writing, of the proposed amendment;
  - (ii) give the holder of the environmental management programme an opportunity to submit representations on the proposed amendment, in writing; and
  - (iii) where appropriate, conduct a public participation process as referred to in regulation 54 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.
- (b) The process referred to in subregulation (4)(a) must, where applicable, afford an opportunity to-
- (i) potential interested and affected parties to submit to the competent authority written representations on the proposed amendment; and
  - (ii) the holder of the environmental management programme to comment on any representations received in terms of ~~paragraph (a)~~ subparagraph (i) in writing.

*(Regulation 46(4)(b)(ii) amended by section 13(1) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (c) Subregulations (4)(a)(iii) and (b) need not be complied with if the proposal to amend the environmental management programme is for a non-substantive amendment.

- (5) (a) If the holder of an environmental authorisation applies for the amendment of an environmental management programme, such holder must first, where appropriate, conduct a public participation process as referred to in regulation 54 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.
- (b) ~~Subregulation (a)~~ Paragraph (a) need not be complied with if the application to amend the environmental management programme is for a non-substantive amendment.

*(Regulation 46(5)(b) amended by section 13(2) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (6) The competent authority must, within 30 days of receiving all information and, where applicable, completing all prescribed processes-
- (a) in the case of an application to amend an environmental management programme that was approved in terms of the Act through the issuing of an environmental authorisation, refuse the application or approve the application by issuing an addendum to the relevant environmental authorisation; or
- (b) in the case of an application to amend an environmental management programme that was approved in terms of the Minerals and Petroleum Resources Development Act, refuse or approve the application to amend the environmental management programme and communicate the decision in writing to the holder of the prospecting, mining, reconnaissance, exploration or production right or permit.
- (7) Where an environmental management programme was amended, the competent authority must in writing and within 2 days-
- (a) notify the holder of the environmental management programme of the amendment;
- (b) give reasons for the amendment to the holder of the environmental management programme; and
- (c) draw the attention of the holder of the environmental management programme to the fact that an appeal may be lodged against the amendment in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.

- (8) Where the amendment was initiated by the competent authority and where a public participation process was undertaken as per subregulation (4)(a)(iii), the competent authority must, in writing, within 12 days of the date of the amendment-
- (a) notify all registered interested and affected parties of-
    - (i) the amendment;
    - (ii) the reasons for the amendment;
  - (b) draw the attention of all registered interested and affected parties to the fact that an appeal may be lodged against the amendment in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision, and (c) draw the attention of all registered interested and affected parties to the manner in which they could access the amendment.
- (9) Where the amendment was applied for by the holder of the environmental management programme and where a public participation process was undertaken as per subregulation (5)(a), the applicant or EAP must, in writing, within 12 days of the date of the amendment-
- (a) notify all registered interested and affected parties of-
    - (i) the amendment;
    - (ii) the reasons for the amendment;
  - (b) draw the attention of all registered interested and affected parties to the fact that an appeal may be lodged against the amendment in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision, and
  - (c) draw the attention of all registered interested and affected parties to the manner in which they could access the amendment.

#### **Part 4: Suspension of environmental authorisation**

##### **47. Suspension of environmental authorisation**

- (4) The competent authority may by written notice, providing the reasons for the suspension, to the holder of an environmental authorisation suspend with immediate effect an environmental authorisation ~~which may or may not be the subject of proceedings in terms of this Part~~ if-

*(Numbering removed and words preceding regulation 47(a) amended by section 14(a) & (b) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (a) there are reasonable grounds for believing that the contravention or non-compliance with a condition of the authorisation is causing harm to the environment; or
- (b) suspension of the authorisation is necessary to prevent harm or further harm to the environment; or
- (c) a condition of the authorisation has been contravened or is not being complied with;
- (d) the authorisation was obtained through-
  - (i) fraudulent means; or
  - (ii) the misrepresentation or non-disclosure of material information; or
- (e) the activity has permanently or indefinitely been discontinued; or
- (f) unforeseen circumstances lead to potential significant detrimental effects on the environment or on human rights.

#### **48. Suspension procedures**

- (1) If the competent authority considers the suspension of an environmental authorisation, the competent authority must-
  - (a) notify the holder of the authorisation, in writing, of the proposed suspension and the reasons why suspension of the authorisation is considered;
  - (b) give the holder of the authorisation an opportunity-
    - (i) to comment on any environmental audit report submitted to or obtained by the competent authority in terms of regulation 69(2); and
    - (ii) to submit any representations on the proposed suspension which the holder of the authorisation wishes to make.
- (2) Subregulation (1)(a) and (b) may be complied with either before or after a suspension.
- (3) Subregulation 1(a) and (b) may be complied with after a suspension only where suspension of the authorisation is necessary to prevent harm or further harm to the environment or where the procedures contemplated in subregulation 1(a) or (b) will defeat the purpose of the suspension.

#### **49. Decision**

- (1) Upon having reached a decision on whether or not to suspend the environmental authorisation, the competent authority must notify the holder of the authorisation of the decision in writing.
- (2) If the decision is to suspend the environmental authorisation, the competent authority must-
  - (a) give to the holder of the authorisation the reasons for the decision; and
  - (b) draw the attention of the holder of the environmental authorisation to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.
- (3) The provisions of this Part do not affect the institution of criminal proceedings against the holder of an environmental authorisation in terms of section 24F(2) of the Act.

### **CHAPTER 5 EXEMPTION FROM PROVISIONS OF REGULATIONS**

#### **50. Applications for exemption**

Any person to whom a provision of these Regulations applies may, subject to the provisions of section 24M of the Act, apply to the Minister or the MEC, or the Minister of Mineral Resources, where appropriate, for an exemption from any provision of the Act as it relates to environmental impact assessment or from any provision of these regulations.

#### **51. Submission of application**

- (1) An application in terms of regulation 50 must be in writing, and must be accompanied by-
  - (a) an explanation of the reasons for the application;
  - (b) any applicable supporting documents; and
  - (c) the prescribed application fee, if any.
- (2) The Minister, MEC or Minister of Mineral Resources where appropriate must, within 14 days of receipt of an application, acknowledge receipt of the application in writing.
- (3) The applicant or EAP must communicate his or her intention to apply for exemption **or the application for exemption** in terms of regulation 50 by giving notice in the manner prescribed in subregulation 54(2)(a), (b), (c) or (d) or a combination thereof which is appropriate in the circumstances and as agreed to with the Minister, MEC or Minister of Mineral Resources, 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.

*(Regulation 51(3) amended by section 15 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (4) The notice contemplated in subregulation (3), must, as a minimum, contain-
- (a) the provisions from which exemption is applied for;
  - (b) the manner in which and the person to whom comments on the application for such exemption must be submitted; and
  - (c) the date on which comments on the application for exemption must be submitted.

## **52. Consideration of application**

- (1) Upon receipt of an application in terms of regulation 50, the Minister or MEC or Minister of Mineral Resources, where appropriate, may request the applicant to furnish additional information or may advise the applicant of any matter that may prejudice the success of the application.
- (2) The Minister, MEC or Minister of Mineral Resources must consider the application, additional information, if such information was submitted in terms of subregulation (1), and any comments and reach a decision within 30 days of receipt of all information, except where an application for exemption relates to an action to be taken after the granting or refusal of the environmental authorisation, in which case the decision on the exemption and environmental authorisation may be combined.

## **53. Decision on application**

- (1) On having reached a decision on whether to grant or refuse the application, the Minister, MEC or Minister of Mineral Resources, where appropriate, must comply with regulation 10.
- (2) If an application is approved, the Minister, MEC or Minister of Mineral Resources, where appropriate, must issue a written exemption notice to the applicant, stating-
  - (a) the name, address and telephone number of the person to whom the exemption is granted;
  - (b) the provision of these Regulations from which exemption is granted;
  - (c) the conditions subject to which exemption is granted, including conditions relating to the transfer of the written exemption notice; and
  - (d) the period for which exemption is granted, if the exemption is granted for a period.

## **CHAPTER 6**

## PUBLIC PARTICIPATION PROCESS

### 54. Public participation process

- (1) This regulation only applies in instances where adherence to the provisions of this regulation is specifically required.
- (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;
  - (c) placing an advertisement in-
    - (i) one local newspaper; or
    - (ii) any official Gazette that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these Regulations;

- (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is or will be undertaken: Provided that this paragraph need not be complied with if an advertisement has been placed in an official Gazette referred to in ~~subregulation~~ paragraph (c)(ii); and

*(Regulation 54(2)(d) amended by section 16(1) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (e) using reasonable alternative methods, as agreed to by the competent authority, in those instances where a person is desiring of but unable to participate in the process due to-
  - (i) illiteracy;
  - (ii) disability; or
  - (iii) any other disadvantage.

(3) A notice, notice board or advertisement referred to in subregulation (2) must-

- (a) give details of the application which is subjected to public participation; and
- (b) state-
  - (i) that the application has been submitted to the competent authority in terms of these Regulations ~~as the case may be~~;

*(Regulation 54(3)(b)(i) amended by section 16(2) of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (ii) whether basic assessment or scoping procedures are being applied to the application, in the case of an application for environmental authorisation;
- (iii) the nature and location of the activity to which the application relates;
- (iv) where further information on the application or activity can be obtained; and
- (vi) the manner in which and the person to whom representations in respect of the application may be made.

(4) A notice board referred to in subregulation (2) must-

- (a) be of a size at least 60cm by 42cm; and

- (b) display the required information in lettering and in a format as may be determined by the competent authority.
- (5) Where deviation from subregulation (2) may be appropriate, the person conducting the public participation process may deviate from the requirements of that subregulation to the extent and in the manner as may be agreed to by the competent authority.
- (6) Where a basic assessment report, scoping report or environmental impact assessment report as contemplated in regulations 22, 28 and 31 respectively is amended because it has been rejected or because of a request for additional information by the competent authority, and such amended report contains new information, the amended basic assessment report, scoping report or environmental impact assessment report must be subjected to the processes contemplated in regulations 21, 27 and 31, as the case may be, on the understanding that the application form need not be resubmitted.
- (7) When complying with this regulation, the person conducting, the public participation process must ensure that-
  - (a) information containing all relevant facts in respect of the application is made available to potential interested and affected parties; and
  - (b) participation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application.
- (8) Unless justified by exceptional circumstances, as agreed to by the competent authority, the applicant and EAP managing the environmental assessment process must refrain from conducting any public participation process during the period of 15 December to 2 January.

**55. Register of interested and affected parties**

- (1) An EAP managing an application must open and maintain a register which contains the names, contact details and addresses of-
  - (a) all persons who, as a consequence of the public participation process conducted in respect of that application in terms of regulation 54, have submitted written comments or attended meetings with the applicant or EAP;
  - (b) all persons who, after completion of the public participation process referred to in paragraph (a), have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and

- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.
- (2) An EAP managing an application must give access to the register to any person who submits a request for access to the register in writing.

**56. Registered interested and affected parties entitled to comment on submissions**

- (1) A registered interested and affected party is entitled to comment, in writing, on all written submissions, including draft reports made to the competent authority by the applicant or the EAP managing an application, and to bring to the attention of the competent authority any issues which that party believes may be of significance to the consideration of the application, provided that-
- (a) comments are submitted within-
    - (i) the timeframes that have been approved or set by the competent authority; or
    - (ii) any extension of a timeframe agreed to by the applicant or EAP;
  - (b) a copy of comments submitted directly to the competent authority is served on the EAP; and
  - (c) the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.
- (2) Before the EAP managing an application for environmental authorisation submits a final report compiled in terms of these Regulations to the competent authority, the EAP must give registered interested and affected parties access to, and an opportunity to comment on the report in writing.
- (3) The report referred to in subregulation (2) include-
- (a) basic assessment reports;
  - (b) basic assessment reports amended and resubmitted in terms of regulation 24 (4);
  - (c) scoping reports;
  - (d) scoping reports amended and resubmitted in terms of regulation 30(3);
  - (e) specialist reports and reports on specialised processes compiled in terms of regulation 32;
  - (f) environmental impact assessment reports submitted in terms of regulation 31;

- (g) environmental impact assessment reports amended and resubmitted in terms of regulation 34(4); and
  - (h) draft environmental management programmes compiled in terms of regulation 33.
- (4) The draft versions of reports referred to in subregulation (3) must be submitted to the competent authority prior to awarding registered interested and affected parties an opportunity to comment.
  - (5) Registered interested and affected parties must submit comments on draft reports contemplated in subregulation (4) to the EAP, who should record it in accordance with regulations 21, 28 or 31.
  - (6) Registered interested and affected parties must submit comments on final reports contemplated in subregulation (3) to the competent authority and provide a copy of such comments to the applicant or EAP.
  - (7) The competent authority must, in order to give effect to section 240 of the Act, on receipt of the draft reports contemplated in subregulation (5), request any State department that administers a law relating to a matter affecting the environment to comment within 40 days.
  - (8) The timeframe of 40 days as contemplated in subregulation (7) must be read as 60 days in the case of waste management activities as contemplated in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), on which the Department of Water Affairs must concur and issue a record of decision in terms of section 49(2) of the National Environmental Management: Waste Management Act, 2008 (Act No. 59 of 2008).
  - (9)
    - (a) When a State department is requested by the competent authority to comment, such State department must, within 40 days or in the case of Department of Water Affairs, 60 days for waste management activities, of being requested to comment by the competent authority, provide comments to the competent authority.
    - (b) If a State department fails to submit comments within 40, or 60 days for waste management activities, from the date on which the Minister, MEC, Minister of Mineral Resources or identified competent authority requests such State department in writing to submit comment, it will be regarded that there are no comments.

**57. Comments of interested and affected parties to be recorded in reports submitted to competent authority**

- (1) The EAP managing an application for environmental authorisation must ensure that the comments of interested and affected parties are recorded in reports and that such written comments, including records of meetings, are attached to the report, submitted to the competent authority in terms of these Regulations.

- (2) Where a person is desiring but unable to access written comments as contemplated in subregulation (1) due to-
- (i) a lack of skills to read or write;
  - (ii) disability; or
  - (iii) any other disadvantage,

reasonable alternative methods of recording comments must be provided for.

## **CHAPTER 7 APPEALS**

### **58. Application of this Chapter**

- (1) This Chapter applies to decisions that-
- (a) are subject to an appeal to the Minister or MEC in terms of section 43 (1) or (2) of the Act; and
  - (b) were taken by an organ of state acting under delegation in terms of section 42 or 42A of the Act in the exercise of a power or duty vested by the Act or these Regulations in a competent authority.
- (2) No appeal in terms of this Chapter is available if the Minister or MEC took decisions themselves in their capacity as the competent authority for the application for an environmental authorisation.

### **59. Jurisdiction of Minister and MEC to decide appeals**

An appeal must be decided as provided for in section 43 of the Act.

### **60. Notice of intention to appeal**

- (1) A person affected by a decision referred to in these regulations who wishes to appeal against the decision, must submit a notice of intention to appeal with the Minister, MEC, or delegated organ of state, as the case may be, within 20 days after the date of the decision.
- (2) If the appellant is an applicant, the appellant must provide each person and organ of state which was a registered interested and affected party in relation to the applicant's application, within 10 days of having submitted the notice contemplated in subregulation (1), with-
- (a) a copy of the notice referred to in subregulation (1); and

- (b) a notice indicating that the appeal submission will be made available on the day of lodging it with the Minister or MEC and where and for what period the appeal submission will be available for inspection by such person or organ of state.
- (3) If the appellant is a person other than an applicant, the appellant must provide the applicant, within 10 days of having lodged the notice contemplated in subregulation (1), with-
  - (a) a copy of the notice referred to in subregulation (1); and
  - (b) a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.
- (4) The Minister, MEC or designated organ of state, may, as the case may be, in writing, on good cause extend the period within which a notice of intention to appeal must be submitted.

**61. Submission of appeal**

- (1) An appeal lodged must be submitted to the appeal authority as indicated in section 43 of the Act.
- (2) An appeal must be-
  - (a) submitted in writing; and
  - (b) accompanied by-
    - (i) a statement setting out the grounds of appeal;
    - (ii) supporting documentation which is referred to in the appeal and which is not in the possession of the Minister, MEC, Minister of Mineral Resources or designated organ of state;
    - (iii) a statement by the appellant that regulation 60(2) or (3) has been complied with together with copies of the notices referred to in that regulation; and
    - (iv) the prescribed appeal fee, if any.
- (3) The appellant must take into account any guidelines applicable to appeals as contemplated in section 24J of the Act.

**62. Time within which appeal must be lodged**

- (1) An appeal as contemplated in regulation 61(1), must be submitted within 30 days after the lapsing of the 20 days contemplated in regulation 60(1).
- (2) The Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, may, in writing, on good cause extend the period within which an appeal must be submitted.

### **63. Responding statement**

- (1) A person or organ of state that receives a notice in terms of regulation 60(2), or an applicant who receives a notice in terms of regulation 60(3), may submit to the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, a responding statement within 30 days from the date the appeal submission was lodged with the Minister, MEC or Minister of Mineral Resources.
- (2)
  - (a) A person, organ of state or applicant who submits a responding statement in terms of subregulation (1), must within 10 days of having submitted the responding statement, serve a copy of the statement on the appellant.
  - (b) If the responding statement introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, within 30 days of being served a copy in accordance with subregulation (2)(a).
  - (c) The appellant must, within 10 days of having submitted the answering statement, serve a copy of the answering statement on the respondent who submitted the new information.
- (3) The Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, may, in writing, on good cause extend the period within which responding statements in terms of subregulation (1) or an appellant's answering statement in terms of subregulation (2)(b) must be submitted.

### **64. Processing of appeal**

- (1) Receipt by the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, of an appeal, responding statement or answering statement must be acknowledged within 10 days of receipt of the appeal, responding statement or answering statement.
- (2) An appellant and each respondent is entitled to be notified of-
  - (a) a ~~direction~~ directive in terms of section 43(7) of the Act, if the Minister, MEC or delegated organ of state, as the case may be, issues such a ~~direction~~ directive; and

*(Regulation 64(2)(a) amended by section 17 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010)*

- (b) the appointment of an appeal panel in terms of section 43(5) of the Act, if the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, appoints an appeal panel for purposes of the appeal.
- (3) The Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, may request the appellant or a respondent to submit such additional information in connection with the appeal as the Minister, MEC or Minister of Mineral Resources may require.

#### **65. Appeal panel**

- (1) If the Minister, MEC or the Minister of Mineral Resources appoints an appeal panel, the Minister, MEC or Minister of Mineral Resources must furnish the panel with a written instruction concerning-
- (a) the issues in respect of which the panel must make recommendations; and
  - (b) the period within which recommendations must be submitted to the Minister, MEC or Minister of Mineral Resources.
- (2) A member of an appeal panel must be independent.
- (3) If an appeal panel introduces any new information not dealt with in the appeal submission of the appellant or in the statements of the respondents, the appellant, each respondent and the applicant, if that applicant is not the appellant nor a respondent, are entitled to submit to the panel, within a period determined by the panel, any additional statements rebutting or supporting such new information.
- (4) An appeal panel must submit its recommendations to the Minister, MEC or Minister of Mineral Resources in writing.

#### **66. Decision on appeal**

- (1) The Minister, MEC, Minister of Mineral Resources or any other competent authority empowered under Chapter 5 of the Act to make a decision on an appeal, as the case may be, may combine his decision on appeals contemplated in regulation 60 where such appeals pertain to the same matter.
- (2) The Minister, MEC, Minister of Mineral Resources or any other competent authority empowered under Chapter 5 of the Act to make a decision on an appeal, as the case may be, must reach a final decision on an appeal or appeals submitted, within 90 days of receipt of all relevant information, including any statements, supporting documentation, reports or any other additional information requested, or

recommendations of an appeal panel which may assist the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, in the decision making process.

- (3) When the Minister, MEC or Minister of Mineral Resources has reached a decision on an appeal, the appellant and each respondent must be notified of the decision within 10 days of the decision being reached and of the extent to which the decision appealed against is upheld or overturned in writing.
- (4) The decision contemplated in subregulation (3) must contain reasons for such decision.

## **CHAPTER 8 GENERAL MATTERS**

### **67. Failure to comply with requirements for consideration of applications**

- (1) An application in terms of these Regulations lapses if the applicant, after having submitted the application fails, for a period of six months, to comply with a requirement in terms of these Regulations.
- (2) Subregulation (1) does not apply where reasons for failure have been communicated to the competent authority in writing and accepted by the competent authority.

### **68. Resubmission of similar applications**

No applicant may submit an application which is substantially similar to a previous application which has been refused, unless-

- (a) the new application contains new or material information not previously submitted to the competent authority; or
- (b) a period of three years has elapsed since the refusal.

### **69. Compliance monitoring**

- (1) If a competent authority reasonably suspects that the person who holds an environmental authorisation or who has been granted an exemption in terms of Chapter 5 of these Regulations has contravened or failed to comply with a condition of the authorisation or exemption, the competent authority may request that person, in writing, to submit an explanation for the alleged contravention or non-compliance.
- (2) If the competent authority reasonably suspects that the alleged contravention or failure has caused, or may cause, harm to the environment, the competent authority may request the person concerned, in

writing, to submit an environmental audit report on the harm or suspected harm to the environment or on any specific matter determined by the competent authority.

- (3) An explanation and environmental audit report requested in terms of subregulations (1) or (2) must be submitted in a form and within a period determined by the competent authority.
- (4) The competent authority may require a person contemplated in subregulation (1) to appoint an independent person approved by the competent authority to perform the environmental audit.
- (5) A person contemplated in subregulation (1) is liable for all costs in connection with the environmental audit, including the preparation and submission of the audit report.
- (6) If a person contemplated in subregulation (2) is requested to submit an environmental audit report and fails to submit the report within the period determined in terms of subregulation (3), the competent authority may-
  - (a) appoint an independent person to perform the audit; and
  - (b) recover the cost of the audit from that person.
- (7) Subregulations (1) to (6) must be read together with the provisions of chapter 7 of the Act.
- (8) Every holder of an environmental authorisation must conduct such monitoring and such performance assessment of the approved environmental authorisation and environmental management programme as may be prescribed through conditions of the environmental authorisation.

#### **70. Assistance to people with special needs**

The competent authority processing an application or the Minister or MEC or Minister of Mineral Resources processing an appeal in terms of these Regulations must give reasonable assistance to people with

- (a) illiteracy;
- (b) a disability; or
- (c) any other disadvantage

who can not, but desire to, comply with these regulations.

#### **71. Offences**

- (1) In addition to section 24F of the Act, a person is guilty of an offence if that person-

- (a) provides incorrect or misleading information in any document submitted in terms of these Regulations to a competent authority;
  - (b) fails to comply with regulation 7(2);
  - (c) fails to comply with a request in terms of regulation 69(2); or
  - (d) commences or continues with an activity where the environmental authorisation was suspended in terms of regulation 49.
- (2) A person convicted of an offence in terms of subregulation (1) is liable to a fine not exceeding R1 million or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

## **CHAPTER 9**

### **TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT**

#### **72. Definition**

In this Chapter-

"**ECA**" means the Environment Conservation Act, 1989 (Act No. 73 of 1989);

"**NEMA**" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"**previous ECA notices**" as contemplated in these transitional arrangements, means the previous notices in terms of ECA (Government Notice R. 1182 as amended by Government Notice R. 1355 of 17 October 1997, Government Notice R. 448 of 27 March 1998 and Government Notice R. 670 of 10 May 2002);

"**previous ECA regulations**" as contemplated in these transitional arrangements, means the previous regulations published in terms of sections 26 and 28 of the ECA, by Government Notice R. 1183 of 5 September 1997;

"**previous NEMA notices**" as contemplated in these transitional arrangements means the previous notices published in terms of section 24(2) of NEMA (Government Notices R. 386 and R. 387 in the Government Gazette of 21 April 2006);

"**previous NEMA regulations**" as contemplated in these transitional arrangements means the previous Environmental impact Assessment Regulations in terms NEMA (Government Notice No. R. 385 in the Government Gazette of 21 April 2006 refer).

**73. Continuation of things done and authorisations issued under previous EGA regulations**

- (1) Anything done in terms of the previous ECA regulations and which can be done in terms of a provision of these Regulations must be regarded as having been done in terms of the provision of these Regulations.
- (2) Any authorisation issued or exemption granted in terms of the previous ECA regulations, must be regarded to be an environmental authorisation issued in terms of these Regulations.

**74. Pending applications and appeals (ECA)**

- (1) An application submitted in terms of the previous ECA regulations and which is pending when these Regulations take effect, must despite the repeal of those regulations be dispensed with in terms of those previous regulations as if those previous regulations were not repealed.
- (2) If a situation arises where activities listed under the previous ECA Notices that are not listed similarly under the current lists of activities and competent authorities identified in terms of sections 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and where a decision on an application submitted under the previous ECA regulations is still pending, the competent authority will consider such application to be withdrawn.
- (3) Where an application submitted in terms of the previous ECA regulations is pending in relation to an activity of which a component of the same activity was not listed under the previous ECA Notices, but is now listed in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of those previous ECA regulations and may authorise the activity listed in terms of section 24(2) as if it was applied for, on condition that all impacts of the newly listed activity and requirements of these regulations have also been considered and adequately assessed by the applicant.
- (4) An appeal lodged in terms of the previous ECA regulations, which is pending when these Regulations take effect must despite the repeal of those previous ECA regulations be dispensed with in terms thereof as if those previous ECA regulations were not repealed.

**75. Continuation of things done and authorisations issued under previous NEMA regulations**

- (1) Anything done in terms of the previous NEMA regulations and which can be done in terms of a provision of these Regulations must be regarded as having been done in terms of the provision of these Regulations.
- (2) Any authorisation issued in terms of the previous NEMA Regulations must be regarded to be an environmental authorisation issued in terms of these Regulations.

- (3) Any environmental management programme or environmental management plan approved in terms of the Mineral and Petroleum Resources Development Act or regulations promulgated in terms thereof or any old order right approved in terms of the Minerals Act, 1991, prior to any provision relating to prospecting, mining, reconnaissance, exploration and production coming into effect in terms of the Act shall be deemed to be approved in terms of the Act.

## **76. Pending applications and appeals (NEMA)**

- (1) An application submitted in terms of the previous NEMA regulations and which is pending when these Regulations take effect, must despite the repeal of those regulations be dispensed with in terms of those previous NEMA regulations as if those previous NEMA regulations were not repealed.
- (2) If a situation arises where activities, listed under the previous NEMA Notices, are not listed similarly under the current lists of activities and competent authorities identified in terms of section 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), and where a decision on an application submitted under the previous NEMA regulations is still pending, the competent authority will consider such application to be withdrawn.
- (3) Where an application submitted in terms of the previous NEMA regulations, is pending in relation to an activity of which a component of the same activity was not listed under the previous NEMA Notices, but is now listed in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of the previous NEMA regulations and may authorise the activity listed in terms of section 24(2) as if it was applied for, on condition that all impacts of the newly listed activity and requirements of these regulations have also been considered and adequately assessed by the applicant.
- (4) An appeal lodged in terms of the previous NEMA regulations, and which is pending when these Regulations take effect must despite the repeal of those previous NEMA regulations be dispensed with in terms thereof as if those previous NEMA regulations were not repealed.
- (1) If an applicant has lodged a notice of intent to apply for an environmental authorisation and has already commenced with the process contemplated in regulation 22(a) to (f) of the Environmental Impact Assessment Regulations, 2006, but has not submitted the application form or the basic assessment report before 02 August 2010, the application must be dispensed with in terms of those previous NEMA regulations as if those previous regulations were not repealed unless:
  - (i) otherwise agreed to between the applicant and the competent authority; or
  - (ii) an application has been submitted in terms of the EIA regulations, 2010, and the notice of intent submitted in terms of the 2006 EIA regulations has been withdrawn;

and, where applicable, on condition that the application form and basic assessment report in terms of the 2006 EIA regulations are submitted before 1 April 2011.

*(Regulation 76(1) inserted by section 18 of Government Notice R1159, Gazette No. 33842 dated 10 December 2010 – deemed to have taken effect on 2 August 2010. **Note** – numbering as per the original Government Gazette)*

**77. Continuation of regulations regulating authorisations for activities in certain coastal areas**

These Regulations do not affect the continued application of the regulations published in terms of sections 26 and 28 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), by Government Notice R. 1528 of 27 November 1998.

**78. Repeal of Environmental Impact Regulations, 2006**

The Environmental Impact Assessment Regulations published in Notice No. R. 385, in the Gazette No. 28938 of 21 April 2006 is hereby repealed.

**79. Short title and commencement**

These Regulations are called the Environmental Impact Assessment Regulations, 2010, and take effect on a date determined by the Minister by notice in the Gazette.