Centre *for* Environmental Rights
Advancing Environmental Rights in South Africa

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Attention: Mr Anil Singh
DDG: Regulation Compliance Authorisation
By email: singha3@dwa.gov.za

Your ref: Mr Singh
Our ref: CH/MT
Date: 13 April 2015

Dear Ms Diedricks

**WRITTEN COMMENTS ON THE DRAFT REGULATIONS REGARDING THE PROCEDURAL REQUIREMENTS FOR LICENCE APPLICATIONS IN TERMS OF SECTION 26(1)(k) OF THE NATIONAL WATER ACT 36 OF 1998**

1. In this document, the Centre for Environmental Rights (CER) submits its written comments on the Draft Regulations regarding the Procedural Requirements for Licence Applications in terms of Section 26(1)(k) of the National Water Act, 1998 (NWA) (draft regulations) published for comment in Government Gazette 38465 of 12 February 2015 under Notice 126 (Draft Regulations).

2. The CER's mission is to advance environmental rights in South Africa, and its vision is stronger civil society participation in environmental governance. The CER makes submissions on the draft regulations based on our experience in applying the legislation in question, both in our own name and on behalf of numerous civil society and community clients.

3. We support the promulgation of the draft regulations as these make provision for public participation in water use licensing processes and aim to clarify the vague provisions in the NWA relating to appeals. However, the draft regulations themselves are extremely badly drafted: they are riddled with typographical errors, spelling errors, grammatical errors, duplications, contradictions, omissions and unintelligible provisions. On 16 March 2015, we sent an email to your Mr Singh pointing out this out and enquiring whether or not the Department of Water and Sanitation would consider publishing a fresh set of draft regulations for comment. We did not receive a reply to this email.

4. . The multitude of errors and vague provisions obscures the true issues that require public comment and have therefore frustrated meaningful commentary from the public. In this context, we submit our comments following the general structure of the draft regulations.

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5. While we are mindful that the draft regulations only purport to deal with water use and related licensing processes, we submit that a separate comprehensive set of regulations needs to be developed to give substance to section 30 of the Act, which deals with security by the applicant. This section has been underutilised by the Department of Water and Sanitation and its predecessors, to the detriment of South Africa's water resources.

6. Water users responsible for unacceptable pollution and degradation of water resources and aquatic ecosystems are not held accountable for the damage they cause to South Africa's freshwater resources. Enforcement action by the Department of Water and Sanitation and its predecessors is thwarted when those responsible for pollution and degradation do not have sufficient capital to implement mitigation measures or sell or abandon the operation without rehabilitating the damaged water resource. The cumulative effect of this is most apparent in the Witwatersrand area where the decant of acid mine drainage must be addressed by the state, rather than the (polluting) water users, and the cost of treatment is ultimately borne by taxpayers.

7. Financial guarantees, if implemented correctly, can be effective mitigation and enforcement measures. They provide a strong incentive to water users to implement good water use practices and to prevent pollution and degradation of water resources. They can also be utilised by the State to rehabilitate water resources if a water user fails effectively to mitigate water pollution and degradation of water resources.

8. We therefore suggest that the Department of Water and Sanitation prepares a comprehensive set of regulations dealing with security by the applicant. This would entail embarking on a process similar to the one currently being conducted by the Department of Environmental Affairs in respect of draft financial provision regulations under the National Environmental Management Act, 1998 (NEMA). Such regulations must ensure the sufficiency of security for the rehabilitation of impacts on water resources by prescribing the accurate scrutiny and assessment of security. The measurement of the failure or success of such regulations should therefore be based on environmental outcomes and not only the extent to which water users comply with the provisions of the proposed regulations. Such an approach will ensure that the full cost of water use is internalised into the workings of the economy.

## CHAPTER 1: INTERPRETATION AND DEFINITIONS

### Draft Regulation 1

9. The purpose of the draft regulations is stated to be "to regulate the procedure and criteria in Chapter 4 of the National Water Act relating to the submission, processing and consideration of, and decision on applications for water use licences in order to avoid or minimise detrimental impacts on water resources." Detrimental impacts must not only be avoided and minimised, but also remedied. Such an approach is prescribed in the national environmental management principles in NEMA. We therefore recommend the following amendment to this draft regulation:

   *The purposes of these Regulations are to regulate the procedure **[and criteria]** in Chapter 4 of the National Water Act, 1998 (Act No. 36 of 1998) relating to the submission**[,]** and processing **[and consideration]** of applications for water use licences; and to provide for criteria that must be considered by decision-makers in such application processes in order to **[avoid or minimise]** ensure that detrimental impacts on water resources are avoided, minimised and remedied.*

### Draft Regulation 2

10. As "water use" is already defined, the first sentence in subregulation (1) is unnecessary. We suggest that this sentence is removed.

11. The definition of "application" contains errors and does not accurately mirror the language of the Act. In order for it more accurately to align with the wording of the NWA, we suggest that the definition of "application" is amended as follows:

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

*a. a water use licence contemplated in section 22 of the Act and in terms of* ***[section 22,]*** *sections 40 and 41 of the Act;*

*b. the transfer of water use* ***[licence]*** *authorisations in terms of section 25 of the Act;*

*c. the* ***[a]*** *review and amendment of* ***[a water]*** *licences in terms of section 49* ***[and 50.]*** *of the Act* ***[including successors in title in terms of section 51]****;*

*(cA)a request for the amendment or substitution of a licence condition in terms of section 50 of the Act;*

*d. the earlier renewal or amendment of* ***[a water use]*** *licence****[s]*** *in terms of section 52 of the Act; and*

e. *a water use licence for a water use subject to compulsory licensing in terms of section 43 of the Act****[;]***

12. The definition of "competent person" is problematic for various reasons. Firstly, the preferred nomenclature in environmental legislation is "specialist," not "competent person." Secondly, the responsible authority appears to have been given discretion on whether not to recognise "requisite qualifications, training and experience in water resources management" for competent persons. We submit that it would be more appropriate for the criteria to be determined by the scientific community. Thirdly, the term "competent person" is not used in the Regulations. It is therefore unclear why this term is defined. We therefore suggest that the definition of "competent person" is removed from these Regulations. We also recommend that these Regulations require expert reports accompanying licence applications to be prepared by specialists and that the term "specialist" is defined as follows:

***["competent person" means a person who has the requisite qualifications, training and experience on water resources management and/or regulation as recognised by the responsible authority"]***

***"specialist"*** *means a professionally registered person (in terms of the Natural Scientific Professions Act 27 of 2003) with the expertise to undertake specialist studies, or prepare and/ or evaluate specialist reports, on the assessment and management of ground and surface water resources. "*

13. The definition of "cumulative impact" must incorporate past, present and reasonably foreseeable future impacts. This definition should also reflect that activities associated with an authorised activity may exacerbate the impact. The impact of these activities on the environment are often not taken into account or are treated as separate or distinct activities thereby preventing an assessment of the cumulative impacts of an activity. It is moreover unclear what is meant by the word "undertakings." We suggest that the phrase "and undertakings" is removed from this definition. We therefore recommend that the definition of '"cumulative impact" is amended as follows:

***"cumulative impacts,"*** *in relation to a water use, means the past, current and reasonably foreseeable future impact of a water use, considered together with the impact of water uses and other activities impacting on water quality and quantity associated with that water use, that in itself may not be significant, but may become significant when added to the existing and potential impacts eventuating from similar or diverse water use activities* ***[or undertakings]*** *in the area.*

14. The term "days" is defined twice in these Regulations. The first definition of "days," appearing between the definitions for "cumulative impact" and "integrated water use licence application," is unclear, has errors and is

inconsistent with these draft regulations and the One Environmental System. We therefore strongly recommend that this definition is removed from these Regulations.

15. The definition for "integrated water use licence application" also contains errors and inappropriate words, is badly formulated and refers to an inappropriate section of the Act. We suggest that the definition is re-formulated as follows:

    ***"integrated water use licence application"*** *means**[a]** a water use licence application **[with]** involving two or more proposed interlinked water uses **[that are interlinked, provided that the application belongs to one person and the water uses are exercised by the one person – section 43(1) of the Act]** required for one operation.*

16. The Regulations define the terms "mining," "production right," "prospecting" and "reconnaissance." As these activities do not represent all of the activities in the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) that may require water use licences, we suggest that the term "exploration" is also defined in the same manner as the other activities are defined. For the sake of consistency, we also recommend that the term "production" is defined and not "production right." The following changes are suggested:

    ***"exploration"*** *has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002)*

    ***"production [right]"*** *has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002)*

17. We agree with the recommendation that the term "Record of Recommendation" is removed from these Regulations. This term is only used once in the Regulations, and in that instance its meaning is clear from the context.

18. The definition of "responsible authority" is badly formulated. As this term is already defined in the Act, it is recommended that this definition is removed from the Regulations for the sake of clarity and consistency.

19. In the definition of "sector," the phrase "for the purposes of" appears to have been omitted. We therefore suggest the following formulation of this definition:

    ***"sector"*** *means an economic sector in which water is used, and for the purposes of these Regulations, the sectors include mining, industry, agriculture, forestry, infrastructure and local government developments*

20. The definition of "timeframes" is vague and too narrow. "Timeframes," for instance, also relate to the prescribed time periods in which public participation must take place. We suggest that this definition is removed from these Regulations and that the phrase "prescribed in Regulation XXX" is used to qualify the word "timeframes" when it appears in these Regulations.

21. It is inappropriate for subregulations (2) to (4) in the definition of "Days" (the second definition) to appear under the "definitions" section of these Regulations. We recommend that these subregulations appear under a separate chapter, "Timeframes." Moreover, the use of "working days" is not in line with the calculation of days in terms of the 2014 Environmental Impact Assessment Regulations and the Mineral and Petroleum Development Act, 2002. We therefore recommend the following re-drafting of this definition:

    *["Days" working days excluding 15 December to 02 January]*

    *CHAPTER 2*

    *TIMEFRAMES*

    *…*

*(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.*

**CHAPTER 2: RESPONSIBLE AUTHORITY**

**Draft Regulation 4**

22. In subregulation (1)(a), there appears to be a typographical error: the word "maybe: should be "may be." We suggest the following correction:

*(a) the respective provincial office of the Department of Water and Sanitation, or such other offices as **[maybe]** may be specified by the provincial office, or…*

**Draft Regulation 5**

23. Subregulation (1) is incomprehensible. The intention of this subregulation appears to be to give effect to any agreement that may have been entered into between the Department of Water and Sanitation and other organs of state relating to water use licence applications. For the sake of simplicity and clarity, we suggest the following re-formulation of this subregulation:

*(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 between the Minister responsible for water affairs and another Cabinet member that aims**[in order]** to give effect to the principles of co-operative governance under Chapter 3 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and section 41 of the Act **[(as amended)]**, the application must be dealt with in accordance with such agreement.*

24. In terms of subregulation (4), a State department that objects to a water use licence application must provide the applicant for that water use licence with a copy of such objection. We submit that applicants must then make copies of objections from State departments available to interested and affected parties. This would promote the principles of administrative justice and transparency. We therefore suggest the insertion of the following subregulation after subregulation (4):

(5) The applicant must provide copies of the objections of State departments contemplated in subregulation (4) to all interested and affected parties.

**Draft Regulation 6**

25. Draft regulation 6(1) and (2) states that the "responsible authority is entitled to all information that reasonably has or may have the potential of influencing any decision with regard to an application" and that the applicant must disclose this information to the responsible authority "on request of the responsible authority." These subregulations should provide greater guidance on the conditions under which the responsible authority should require information. In particular, they should flesh out section 41 of the Act to provide for conditions under which the responsible authority should require:

a. other information, in addition to the information contained in the application;
b. on assessment by a competent person of the likely effect of the proposed licence on the resource quality; and
c. an independent review of the assessment by an independent specialist.

26. Draft regulation 6 furthermore does not make provision for access to information in respect of other stakeholders including information that is required to be disclosed to interested and affected parties. In our view, this is a lost opportunity to prescribe to applicants what information should be made available to interested and affected parties. This would alleviate the burden on the state to provide that information to interested and affected parties to render public participation is meaningful.

27. We submit that the draft regulations should specify that the full water use licence application, including technical reports and plain language summaries of those reports should be made available to interested and affected parties by:

    a. posting a digital copy of the application and related material on an accessible website;
    b. sending a copy of the application and all related material to all registered interested and affected parties by email, if possible;
    c. keeping a hard copy of the application at a venue in close proximity to the site where the proposed water use activity is to take place for inspection by members of the public, provided that such venue is accessible to the public; and
    d. making hard copies of the application and related material available to interested and affected parties upon request.

**Draft Regulation 7**

28. Draft regulation 7 provides that the criteria to be considered by the responsible authority when processing an application is contained in specific sections of the Act. We recommend that this section provides for a set of minimum criteria that is distilled from the Act and the national environmental management principles and does not merely refer to sections in the Act. We therefore recommend the following re-formulation of this draft regulation:

    *When considering an application the responsible authority must have regard to the criteria in sections 27, 28, 29, 30, 40 and 41 of the Act* ***[, as amended by Act no 27of 2014as well as the need and desirability of the water uses contemplated]*** *as well as at least the following criteria:*

    *(a) strategic and contextual considerations related to the proposed water use, including, but not limited to:*

        *(i) any international or regional agreements or conventions which apply to the area, or could be affected should the proposed water use be authorized;*

        *(ii) the class and the resource quality objectives of the water resource;*

        *(iii) existing lawful water use and users;*

        *(iv) water use licenses in the same catchment that have been issued for activities that have not yet commenced;*

        *(v) the strategic importance of the water use for which application is being made;*

        *(vi) any catchment management strategy applicable to the relevant water resource;*

        *(vii) water flow requirements to meet the Reserve (both in terms of meeting basic human needs and protecting aquatic ecosystems to secure sustainable development).*

        *(viii) water quality requirements to meet the Reserve (both in terms of meeting basic human needs and protecting aquatic ecosystems to secure sustainable development).*

*(b) social equity, health, safety and livelihood implications of the proposed water use, including, but not limited to:*

*(i) impacts on, and risks, to, existing lawful water uses and users of authorizing the proposed water use, taking into account cumulative effects on water quality, water supply and access to water resources, and any effects on health, safety and livelihoods of affected parties, in particular any adverse effects on vulnerable parties;*

*(ii) the need to redress past inequalities in terms of racial and gender discrimination (i.e. pursue equitable access to water resources);*

*(iii) the need to take a risk-averse and cautious approach when there are gaps in information or uncertainties related to the likely effects of authorizing the proposed water use.*

*(c) environmental and ecological integrity implications of the proposed water use, including:*

*(i) any international responsibilities or obligations related to the water resource that would be affected;*

*(ii) any impacts on, or risks to, natural landscapes of heritage or freshwater ecosystem priority areas (i.e. of conservation significance);*

*(iii) any harm to aquatic ecosystems, their associated biota, and ecological integrity, directly, indirectly and cumulatively, at and downstream of the affected area;*

*(iv) any impacts on areas known to be significant in terms of providing a reliable supply of freshwater to the country's people now and in future; and*

*(v) the need for specific attention to any sensitive, vulnerable, highly dynamic or stressed aquatic ecosystems, and to ensure ecologically sustainable development.*

*(d) measures taken by the applicant to mitigate likely impacts of, and risks to, existing and potential water users, and the integrity of aquatic ecosystems, including:*

*(i) measures to avoid or prevent negative impacts and risks;*

*(ii) measures to minimize negative impacts and risks;*

*(iii) measures to rehabilitate or repair damage;*

*(iv) measures to compensate for potentially significant impacts and risks that remain after avoidance and minimization; and*

*(v) the extent to which these impacts and risks would lead to irreversible effects and/ or loss of irreplaceable resources.*

(e) *assurance and/ or guarantees that proposed mitigation measures could and would be effectively and timeously implemented.*

## CHAPTER 3: APPLICATION FOR A WATER USE LICENCE

### Draft Regulation 8

29. In terms of draft subregulation (1), a notice of intention to apply for a water use licence must only be submitted to the "department." We submit that the phrase "the department" is not aligned with draft regulation 3(1), which

provides that all applications must be submitted to the responsible authority. Furthermore, we submit that an applicant must also provide all potential interested and affected parties with a copy of his or her notice of intention to apply. We therefore suggest that this draft subregulation is re-formulated as follows:

*(1) Any person intending to apply for a water use licence shall submit a written notice of such intent to apply to the **[department]** responsible authority and all potential interested and affected parties.*

30. Draft subregulation (3) contains terms that are not defined in these draft regulations. The terms in question are "mining activities," "prospecting permit" and "mineral rights." We suggest that "prospecting permit" and "mineral rights" are substituted by terms that are already defined in the draft regulations, namely "mining right" and "prospecting right." Furthermore, in order to cover all extractive activities governed under the Mineral and Petroleum Resources Development Act, 2002, we suggest that the terms "exploration right" and "exploration rights" is inserted in this subregulation. We moreover recommend that the term "mining activities" is substituted by the phrase "activities governed under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)." In this way, this draft subregulation covers prospecting, mining, exploration and production. Lastly, it is not clear why an applicant must submit a letter of acceptance of an extractives right application from the Department of Mineral Resources to the Department of Water and Sanitation as contemplated in subregulation (3)(b) if an applicant is already required to submit such a letter to the Department of Water and Sanitation as part of the water use licence application. We therefore suggest that subregulation (3)(b) is amended to state that the notice of intention to apply for a water use licence should be submitted to the Department of Water and Sanitation within 5 days of receipt of the letter of acceptance from the Department of Mineral Resources. We recommend the following re-formulation of subregulation (3):

*(3) For a water use licence application related to [mining] activities governed under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);*

*(a) a written letter of acceptance of the relevant **[respective]** prospecting **[permit]**, **[or mineral]** mining **[rights]**, exploration or production right application from the Department of Mineral Resources shall form part of the notice of intent to apply for the water use licence**[.]**;*

*(b) the written notice of intention to apply for a water use licence **[from the Department of Mineral Resources]** must be submitted to the responsible authority within a period of 5 days of **[from]** the date of **[issuance by]** receipt of the letter of acceptance contemplated in subregulation (3)(a) from the Department of Mineral Resources**[.]**; and*

*(c) water use licence applications shall only be processed on submission of proof of acceptance by [from] the Department of Mineral Resources of the relevant prospecting, **[or]** mining, exploration or production right**[s]** application.*

## Draft Regulation 9

31. Draft regulation 9 provides that a site inspection must be conducted by the applicant together with the responsible authority. We submit that interested and affected parties should also be invited to be present at site inspections. This would ensure that the pre-application process is open and transparent and would furthermore promote the principles of administrative justice. By allowing public input before the application is submitted may well also result in inappropriate proposed applications being discarded before any time is spent or effort is expended by the Department of Water and Sanitation in processing these applications. We therefore recommend that the following amendment to subregulation (1):

(1) The applicant must conduct compulsory pre-application processes with the responsible authority and potential interested and affected parties, involving meetings and site inspections of **[facilities]** areas affected by **[of]** the proposed water use**[s]** application following from the notice of intent to apply in Regulation 8.

**Draft Regulation 10**

32. The proposed timeframe of 100 days to compile and submit a water use licence application does not allow applicants sufficient time to fulfil all of their obligations in terms of the draft regulations. In this short timeframe, applicants are required to:

    a. collect sufficient information to underpin baseline studies;
    b. scope a proposed water use;
    c. conduct an impact assessment study;
    d. commission and conduct specialist reports;
    e. diligently identify alternatives;
    f. determine the best practicable environmental option; and
    g. design and implement an adaptive water management system for a proposed water use.

33. Also within this short timeframe, applicants must diligently and meaningfully engage in public participation around the impacts of the proposed water use. Water use licence applications must, if they are to be scientifically sound, take into account natural cycles in affected areas induced by changes in seasons, weather, rainfall, evaporation, the seasonal presence of species in the area, etcetera. It will be impossible to accomplish this within the proposed timeframe.

34. Moreover, different water uses will necessitate different timeframes for the completion of water use licence applications. Longer periods of study may for instance be required to gauge the impact of a proposed water use on sensitive, vulnerable, highly dynamic or stressed ecosystems. In addition, periods of study longer than 100 days may well be necessary to better understand the likely impacts of the water use on climate change and the likely impact of climate change on the water use. Standard and largely rigid timeframes are thus also inappropriate for this reason.

35. The insufficient timeframe will furthermore prevent specialists from properly performing their duties in terms of draft regulations 11-15.

36. The short timeframe may well also result in incomplete or inadequate water impact assessment studies that then inform erroneous decisions on granting or refusing water use licence applications. This, in turn, could lead to inadequate or vague mitigation and management conditions in water use licences that are un-auditable and unenforceable. Those responsible for the pollution or environmental degradation caused by the project would not bear the costs of remediation, leaving the public to shoulder that burden.

37. Importantly, inadequate timeframes for assessment will lead to poor quality decisions and therefore more appeals, and more litigation – with costs implications for the fiscus – and protracted delays.

38. It is therefore submitted that this timeframe violates at least the following National Environmental Management Principles in section 2 of NEMA (own emphasis):

    a. *"(4)(a)(viii) that negative impacts on the environment and people's environmental rights be **anticipated** and prevented, and where they cannot be altogether prevented, are minimised and remedied;"*

    b. *"(4)(b) [e]nvironmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must **take into account the effects of a decision on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option;"***

    c. *"(4)(i) [t]he social, economic and environmental impacts of activities, including disadvantages and benefits, must be **considered, assessed and evaluated**, and decisions must be appropriate in the light of such consideration and assessment;"*

d. *(4)(p) "[t]he costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse helath effects must be paid for by those responsible for harming the environment; and*

e. *"(4)(r) [s]ensitive, vulnerable, highly dynamic and stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems* ***require specific attention in management and planning procedures****, especially where they are subject to significant human resource usage and development pressure."*

39. As a violation of section 2 of NEMA could be argued to be a limitation of section 24 of the Constitution, we strongly urge the Department to reconsider the timeframes prescribed in the Draft Regulations and the "One Environmental System."

40. It is furthermore not clear from this draft regulation whether or not public participation must be conducted within this timeframe.

**Draft Regulation 11**

41. Subregulation (2) sets out the requirements for a water use licence application. Subregulation (2)(b) states that an application must be supported by "technical documents as specified and required by the responsible authority." This subregulation implies that the responsible authority has a discretion to request supporting technical documents. As this discretion is not guided by any objective standards or criteria, it is subjective and therefore unconstitutional. We therefore suggest that a more objective standard is built into this draft regulation. We recommend the following re-formulation of this draft regulation:

*(2) An application must…*

*(b) be supported by supporting technical documents as are reasonably necessary under the circumstances and as are* ***[specified and]*** *required by the responsible authority…*

**Draft Regulation 13**

42. The terms "suitably qualified person" and "requisite professional body" are not defined in the draft regulations. Since the term "specialist" is already defined and not used in the draft regulations, we suggest that this term replaces these two terms. We submit that our recommended amendment to the definition of "specialist" is appropriate for the purposes of this provision. We recommend that draft regulation 13 is amended as follows:

***[Suitably qualified person]*** *Specialists to compile specialist reports*

*13. Specialist reports must be compiled by* ***[a suitably qualified person who must be registered with the requisite professional body]*** *specialists.*

43. It is furthermore not clear whether or not draft regulation 13 relates to section 41(2) of the Act, in which case the draft regulations should provide guidance in complying with section 41(2) of the Act. It is also uncertain whether "specialist studies" contemplated in draft regulation 13 and "supporting technical documents" contemplated in regulation 11. If it is the intention to use these two terms interchangeably, we recommend, for the sake of consistency, that both terms are used in both draft regulation 11 and draft regulation 13.

**Draft regulation 15**

44. Subregulation (1)(b) ends with "; and" and nothing follows. We recommend that the "; and" is deleted from this draft subregulation as follows:

*(b) Is accompanied by any reports, other documents and fees as required in terms of these Regulations**[; and]**.*

Draft subregulation (5) provides that if an applicant cannot provide a responsible authority with a corrected application within 10 days of receiving the notice of rejection, the application shall be decided "on the available information." This subregulation flies in the face of the purpose of the regulation. If the application does not meet the information requirements a second time around, it should be finally rejected. On the current version, considerable departmental resources will be utilised to consider an application that doesn't clear the first hurdle of information requirements.

Furthermore, this subregulation appears to contain a typographical error: "applicant" presumably should be "application." We suggest the following amendment:

*(5) Should the applicant fail to submit the corrected application in sub-regulation (3) within the timeframe stipulated in sub-regulation (4), the applica**[n]**tion shall be **[decided on the available information]** refused.*

45. We furthermore submit that it is a requirement of fairness that interested and affected parties are given access to the application as soon as it is submitted to the responsible authority. This would put interested and affected parties in a position to point out deficiencies in the application to the responsible authority at an early stage in the process. We therefore recommend the insertion of a subregulation between draft subregulation (2) and draft subregulation (3) to the effect of:

*"The applicant shall make a copy of the application submitted to the responsible authority available to all registered interested and affected parties immediately after the application has been submitted to the responsible authority by:*

*(a) posting a digital copy of the application on an accessible website;*
*(b) sending a copy of the application to all registered interested and affected parties by email, if possible;*
*(c) keeping a hard copy of the application at a venue in close proximity to the site where the proposed water use activity is to take place, provided that such venue is accessible to the public; and*

*(d) providing interested and affected parties with hard copies of the application upon request"*

(This proposed subregulation shall hereinafter be referred to as "**draft regulation xxx.**")

46. We further submit that it should also be the applicant's responsibility to inform all interested and affected parties of any subsequent amendments or supplements to the application as contemplated in draft regulation 15 and to provide interested and affected parties with copies of "corrected applications." We therefore suggest that an additional subregulation is inserted after draft subregulation (6) in the following terms:

*(7) "The applicant shall make a copy of the corrected application available to interested and affected parties in the same manner as contemplated in sub-regulation XXX."*

47. **We reiterate that all information, including, but not limited to the application; specialist reports; technical documents; amendments to the application, amended specialist reports or amended technical documents; and additional information submitted at the behest of the responsible authority must be made available to all interested and affected parties as soon as they are submitted to the responsible authority**. As pointed out in the Earthlife Africa (Cape Town) v Director-General: Department of Environmental Affairs and Tourism [1], an administrative process is not fair if an interested and affected does not have access to all the material information before the decision-maker.

[1] Earthlife Africa (Cape Town) v Director-General: Environmental Affairs and Tourism and another 2005 (3) SA 156 (C)

**Draft Regulation 17**

48. This draft regulation is entitled "criteria for consideration of applications." Draft regulation 7 is entitled "criteria to be taken into account by responsible authority when considering applications." Although the wording of the headings of these draft regulations differ slightly, it is not clear what the difference is between the two of these draft regulations. We therefore submit that draft regulation 17 is an unnecessary repetition of draft regulation 7 and should be deleted. In the event that the decision is taken to preserve this draft regulation, we submit that the content of this draft regulations should be the same as the content we proposed for draft regulation 7.

**Draft Regulation 18**

49. In terms of subregulation (2), the assessment of an application shall be finalised within 153 days. This short timeframe afforded to decision-makers is also inappropriate and arguably unlawful. Taking into account the constrained capacity in the Department of Water and Sanitation, expecting decision-makers to apply their minds properly to applications, specialist reports and technical documents; request additional information; conduct site inspections; cause a peer review of the application to be done, draft necessary conditions for water use licences and make decisions that comply with the Constitutional standards for decision-making, is simply not reasonable or advisable. It is submitted that this short timeframe will lead to bad decision-making, resulting in a flood of appeals and litigation.

50. The short timeframes for the finalisation of decisions furthermore violate National Environmental Management Principle 2(4)(i), which provides that "*[t]he social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and* ***decisions must be appropriate in the light of such consideration and assessment***" (own emphasis). As already mentioned, a violation of the national environmental management principles constitutes a limitation to section 24 of the Constitution, which may well be found to unreasonable and unjustifiable and therefore unconstitutional.

51. International experience shows that the strongest environmental laws do not include a set timeframe for decision-making, or at least provide for more flexible timeframes. In British Columbia for example, the Environmental Assessment Act, 2002 provides that an administrator has 30 days to decide to accept an application for review. If an application has been accepted by the administrator, a recommendation to grant or refuse the application must be made to the decision-maker within 180 days of the decision to accept the application. The decision-maker is then granted a further 30 days to make a decision to grant or refuse an application. However, if the decision-maker requests further information, the project proponent has three years to provide the information. Moreover, and most significantly, the decision-maker has the authority to suspend the prescribed time limits. An approach similar to this one would most certainly pass Constitutional muster.

52. It furthermore appears that the 153 day period contradicts the 143 day period given in draft regulation 23(1). Please see our comment on draft regulation 23(1) below.

53. In subregulation (4), reference is made to "6 broad steps" when there are only five steps listed under this subregulation.

**Draft Regulation 19**

54. This draft regulation fails to specify that interested and affected parties must be notified of any extension granted by the responsible authority or that interested and affected parties are entitled to a copy of any additional information provided to the responsible authority by the applicant. We recommend the insertion of two subregulations after subregulation (4) along the following lines:

    *(5) The applicant shall notify interested and affected parties of any extension granted by the responsible authority immediately after being notified of any such extension.*

*(6) The applicant shall make any additional information submitted to the responsible authority available to all interested and affected parties in the manner contemplated in Regulation 15(xxx) immediately on submission of such information to the responsible authority.*

**Draft Regulation 23**

55. Draft subregulation (1), which provides that "[t]he responsible authority shall process and make a decision on the applications (sic) as complete in terms of Regulation 15(3)(a), in a period of 143 days from the date of acknowledgement of the application acceptance," appears to be in conflict with draft regulation 18(2), which provides that "… the assessment shall be finalised in 153 days." While we are mindful of the 10 day period referred to in draft regulation15(3)(a) within which a responsible authority must accept or reject an application, neither draft regulation 18(2) nor subregulation (1) stipulates that this 10 day period is included here. We recommend that this ambiguity is addressed in either draft regulation 18(2) or draft subregulation (1).

56. The content of Table 1 is vague, and does not mirror the content of the draft regulations and omits important information.

57. Firstly, Table 1 purports to deal with both applications dealt with under the integration process and applications not dealt with under the integration process. We submit that separate tables should be made for each process to avoid confusion.

58. Secondly, Table 1 does not contain all of the timeframes provided for in the draft regulations. There is for instance no reference to the extensions provided for in draft regulation 19. Thirdly, there is no reference to the public participation process (Chapter 8) or comments from other organs of state (draft regulation 21) and the water use assessment advisory committee (draft regulation 22) in Table 1. It is therefore unclear at which stage of the application process these processes must take place. Fourthly, the appeal process must also be provided for in Table 1 for the sake of completeness. Finally, Table 1 should set out which party in the application process is responsible for which action referred to in Table 1.

**Draft Regulation 24**

59. The draft regulations nowhere provide that a copy of the water use licence must be provided to interested and affected parties. We reiterate our comment relating to access by interested and affected parties to applications and related information that it would be unlawful and unfair not to provide interested and affected parties with a copy of the water use licence immediately on issue thereof. We therefore recommend that a subregulation is inserted after subregulation (3) to the following effect:

*(4) <u>The applicant shall notify interested and affected parties that its application has been granted and shall make a copy of the water use licence available to interested and affected parties immediately after it has been issued by:</u>*

*(a) <u>posting a digital copy of the application on an accessible website;</u>*
*(b) <u>sending a copy of the application to all registered interested and affected parties by email, if possible;</u>*
*(c) <u>keeping a hard copy of the application at a venue in close proximity to the site where the proposed water use activity is to take place, provided that such venue is accessible to the public; and</u>*

*(d) <u>providing interested and affected parties with hard copies of the application upon request"</u>*

**Draft Regulation 25**

60. We submit that the prescribed minimum content of water use licences in these draft regulations is insufficient and must be supplemented. We submit that it must stipulate all measures that are required to avoid, minimise and/or compensate for the impacts and risks that would be associated with the authorised water use, including, but not

limited to, conditions relating to the location of the water use, manner and rate of use, volumes, timing and frequency of use, as well as release or discharge of used water. It must furthermore provide for specific outcomes for the measures in subregulation (1)(f) to be attained by specific date or according to a timeline. We also submit that the list under subregulation one should be an open-ended one, not a restrictive one. We therefore recommend that this draft regulation is amended and that subregulations are inserted following subregulation (1)(e):

(1) A *water use licence must specify <u>at least</u>: …*

*(f) any measures to ensure that international obligations will be met;*
*(g) any measures to avoid, minimize and/or manage impacts on water flow to- fff*
*(i) meet the Reserve requirements*
*(ii) maintain aquatic ecosystems; and*
*(iii) protect the rights of other water users;*
*(h) any measures to avoid, minimise and/or manage the impacts on water quality to-*
*(i) meet the Reserve requirements;*
*(ii) maintain aquatic ecosystems;*
*(iii) protected the rights of other water users; and*
*(iv) meet the prescribed water quality standards;*
*(i) any measure to avoid, minimise and manage impacts on aquatic ecosystems and associated biota to protect important habitats for threatened species of fauna and flora;*
*(j) any measure to compensate for unavoidable impacts on-*
*(i) fauna and flora;*
*(ii) water flow;*
*(iii) water quality;*
*(iv) aquatic ecosystems or habitats for threatened fauna or flora; and*
*(v) livelihoods, health and/or safety;*
*(k) a water management plan prepared by a specialist that covers all required mitigation measures, setting out actions to be taken, responsibilities for undertaking those actions, as well as monitoring and analysis, using relevant indicators, and reporting schedule; and*
*(l) financial provision to cover the costs associated with all mitigation and management measures, including compensation, must be made, and performance bonds or equivalent guarantees*

**CHAPTER 4: TRANSFER OF A WATER USE LICENCE**

(6) No provision is made in this Chapter for public participation. The transfer of water use licence constitutes administrative action. We therefore submit that such an omission is not compatible with section 33 of the Constitution of the Republic of South Africa, 1996 or the Promotion of Administrative Justice Act, 2000 (PAJA).I If any rights are affected by a proposed decision to transfer a water use licence, notice should be given of (or require the applicant to give notice of) such proposed decision to interested and affected parties, and provide a reasonable opportunity to comment. This would include, by law, giving interested and affected parties access to sufficient information to allow them to comment on the proposed transfer. This process should be provided for expressly in the draft regulations. It is our view, supported by that of senior counsel, that granting an application for the transfer of a water use licence without complying with the provisions of PAJA would make that decision reviewable by a competent Court.

(7) We therefore recommend that public participation provisions are built into this Chapter. We make specific recommendations for the insertion of additional draft regulations below.

**Draft Regulation 27**

(8) In draft subregulation (2), there also appears to be an omission. We recommend that the phrase “follow the” is inserted between the words “shall” and “precedures” as follows:

*(2) The application shall follow the procedures as set and determined by the relevant water management institution.*

(9) We recommend the insertion of a subregulation (3) in the following terms:

*(3) Notwithstanding sub-regulation (2), the applicant must follow the procedures set out in Chapter 8 of the Regulations and make copies of the application available to interested and affected parties.*

**Draft Regulation 29**

(10) We recommend the amendment of subregulation (1) as appears below and the deletion of subregulation (2) as it is nonsensical. .

*(1) The procedural process for applications for a permanent transfer of a water use as contemplated in section 25(2) of the Act shall be as prescribed in Chapter 3 and Chapter 8 of these Regulations.*

**CHAPTER 6: REVIEW AND AMENDMENT OF A WATER USE LICENCE**

(11) No provision is made in this Chapter for public participation. Since the review and amendment of a water use licence constitutes administrative action, we submit that such an omission is not compatible with section 33 of the Constitution of the Republic of South Africa, 1996 or PAJA. If any rights will be affected by anapplication to review or amend a water use licence, notice of such application should be given to interested and affected parties, providing a reasonable opportunity to comment. This would include, by law, giving interested and affected parties access to sufficient information to allow them to comment on the application. As indicated above, it is our view, supported by that of senior counsel, that granting an application for the amendment or review of a water use licence without complying with the provisions of PAJA would make that decision reviewable by a competent Court.

(12) This Chapter furthermore does not provide any guidance on the procedure to be followed in application for the review and amendment of a water use licence. It merely states that an application may not be made before the expiry of 90 days from the date that the water use licence was issued and that an application must be made to the responsible authority.

(13) We therefore recommend that public participation provisions are built into this Chapter. We make specific recommendations for the insertion of additional draft regulations below.

**Draft Regulation 32**

(14) It is unclear why the holder of a water use licence "shall" submit an application for an amendment of a water use licence after 90 days of the licence having been issued. Presumably, "shall" is an error and should be replaced with "may." "Maybe" in the heading presumably should be "may be." We recommend that the content of draft regulation 32 is renumbered draft regulation 32(1), that draft regulation 32(1) is amended and a draft subregulation (2) is inserted after draft subregulation (1) as follows:

*Period after which an amendment **[maybe]** may be submitted*

*(1) A holder of a water use licence **[shall]** may submit an application for an amendment to a water use licence only after 90 days from the date of issuance of that licence.*

*(2) The applicant shall follow the public participation procedures set out in Chapter 8 of these Regulations and make copies of the application and all other relevant material available to interested and affected parties.*

## CHAPTER 7: RENEWAL OF A WATER USE LICENCE

(15) No provision is made in this Chapter for public participation. Since the renewal of a water use licence constitutes administrative action, we submit that such an omission is not compatible with section 33 of the Constitution of the Republic of South Africa, 1996 or PAJA. If any rights are affected by an application to renew a water use licence, notice should be given of such application to interested and affected parties, providing a reasonable opportunity to comment. This would include, by law, giving interested and affected parties access to sufficient information to allow them to comment on the proposed decision. As indicated above, it is our view, supported by that of senior counsel, that granting an application for the renewal of a water use licence without complying with the provisions of PAJA would make that decision reviewable by a competent Court.

(16) This Chapter furthermore does not provide any guidance on the procedure to be followed in application for the renewal of a water use licence. It merely states that an application may not be made before the expiry of the water use licence and that an application must be made to the responsible authority.

(17) We therefore recommend that public participation provisions are built into this Chapter. We make specific recommendations for the insertion of additional draft regulations below.

### Draft Regulation 35

(18) We recommend that the heading be amended as follows:

*Responsible authority <u>and procedure</u>*

(19) We further recommend that the content of draft regulation 35 is renumbered as draft regulation 35(1) and that subregulations (2) and (3) are inserted after subregulation (1) as follows:

*(2) The procedural process for applications for the renewal of a water use licence shall be the one prescribed in Chapters 3 and 8 of the Regulations.*

*(3) The applicant shall provide interested and affected parties with copies of the application and related material in the manner contemplated in Regulation xxx.*

### Draft Regulation 36

(20) The heading of this draft regulation suggests that an application for the renewal of a water use licence must be made before the expiry of a water use licence. However, this requirement is not reflected in the content of draft subregulation (1). We suggest that subregulation (1) is amended as follows:

(1) A holder of a water use licence<u>, who wishes to renew his or her water use licence,</u> **[shall]** <u>must</u> submit an application for the renewal of <u>his or her</u> water use licence <u>before the expiry of such licence</u>.

## CHAPTER 8: PUBLIC PARTICIPATION PROCESS

### Draft Regulation 38

(21) As a general comment, we welcome the content of Chapter 8. We believe that it will encourage responsible authorities to require applicants to conduct public participation processes. However, since the granting or refusing of water use licence application is administrative action, public participation processes must be conducted for every water use licence application. This is a Constitutional imperative under section 33 and prescribed by PAJA.

(22) In terms of section 41(4) of the Act, the Minister has a discretion to allow a public participation process or not. We submit that this is unconstitutional for reasons indicated above. The draft regulations unfortunately follow

this unconstitutional approach. In the Constitutional Court case of Zondi v Member of the Executive Council for Traditional and Local Government Affairs and others[2], Ngcobo J held that

*"[a]ll decision-makers who are entrusted with the authority to make administrative decisions by any statute are… required to do so in a manner that is consistent with [the Promotion of Administrative Justice Act, 2000]. The effect of this is that* ***statutes that authorise administrative action must now be read together with the [Promotion of Administrative Justice Act, 2000]*** *unless, upon a proper construction, the provisions of the statutes in question are inconsistent with the [Promotion of Administrative Justice Act, 2000]*" (own emphasis).

(23)We submit that public participation processes are compulsory for every application for a water use licence in terms of the Act. We therefore recommend that draft regulation 38(1) is re-formulated as follows:

*(1) Following the site inspection during the pre-consultation meeting, the responsible authority* ***[may]*** *must require the applicant to undertake a public* ***[consultation]*** *participation process contemplated in section 41(4) of the Act****[,]. [including land claimants]***

*(4) Notice of the application must be provided to interested and affected parties by…*

*(b) Giving written notice to*

*(v) any organ of state having jurisdiction in respect of any aspect of the water use activity; [and]*

*(vi)* ***[any other party as the responsible authority may require]*** *any person who has submitted a land claim in respect of the area in which the water use activity will be conducted; and*

*(vii) any other interested and affected party .*

(24)Subregulation (5) does not sufficiently detail notice requirements. We submit that in addition to the current requirements, the following must be inserted:

(a) a specified date, more than 560 days after the last publication of a notice, before which a written objection may be lodged;

(b) an address where written objections may be lodged and/or an email address/fax number to where written objections may be sent.

(25)Also in subregulation (5), there appears to be a typographical error: "maybe" in subregulations (5)(b)(i) and (iv) should be "may be." We therefore recommend the following re-formulation of subregulation (5):

*(5) A notice, notice board or advertisement referred to in sub-regulation (4) must –*

*(a) give details of the application which is subject to public participation; and*

*(b) state*

*(i) that the application has been submitted to the responsible authority in terms of these R****[r]****egulations as the case* ***[maybe]*** *may be;*

*(ii) the nature and locality of the water uses to which the application refers;*

*(iii) the water uses;*

[2] Zondi v MEC for Traditional Affairs and Local Government and others 2005 (3) SA 589 (CC)

(iv) *where further information on the application or water uses **[maybe]** may be obtained; **[and]***

(v) *the manner in which and the person to whom representations in respect of the application can be made**[.]**;*

(vi) *a specified date, more than 560 days after the last publication of a notice, before which a written objection may be lodged; and*

(vii) *an address where written objections may be lodged and/or an email address/fax number to where written objections may be sent.*

**Draft Regulation 40**

(26) Draft Regulation 40 does not prescribe a timeframe for the completion of the public participation process – it simply provides that interested and affected parties must make comments on submissions in the water use licence application within "the approved timeframes" or within "any extensions of a timeframe set by the responsible authority."

(27) Regulation 40 does not provide any timeframes in which comments by interested and affected parties must be made. If ad hoc determination of timeframes is intended, our submission is that this is arbitrary and not in compliance with PAJA. There is also a lack of clarity on procedures to be followed.

(28) There is a lack of clarity on Regulation 40 on whether an applicant submits a draft application with the required technical documents and specialist studies, which interested and affected parties may then comment on. Furthermore, this draft regulation fails to specify that interested and affected parties have access to supporting technical documents and specialist studies, not only the application.

(29) Draft regulation 40 furthermore does not make provision for other organs of state to make written comments on an application. In particular, there is no procedure or timeframes for "organs of state which have jurisdiction in respect of water use activity" to submit written comments.

(30) There furthermore appears to be a number of errors in this draft regulation. Subregulation (1) erroneously refers to "registered and affected parties" where the intended reference is presumably to "registered interested and affected parties." "Maybe" in this draft regulation should presumably also be "may be." In subregulation (1)(b), "is made to" should be substituted with "delivered to." Subregulation (2) is incomplete: it only states "Registered interested and affected parties" and nothing follows. As a result of this omission a number of important potential provisions relating to commenting on submissions by interested and affected parties are excluded.

(31) We therefore recommend that draft regulation 40 is re-formulated as follows:

(1) **[A] [r]**Registered interested and affected part[y]ies and organs of state **[is]** are entitled to comment in writing on all written submissions made on the application, including submissions made in supporting technical documents and specialist reports, and to bring to the attention of the responsible authority issues which that party or organ of state, as the case may be, believe **[maybe]** may be of significance to the consideration of the application, provided that

(a) comments are submitted within –

(i) the approved timeframe**[s]**, which shall not be shorter than 60 days; or

(ii) any extension of a timeframe set by the responsible authority;

(b) a copy of the comments submitted directly to the responsible authority is **[made]** delivered to the applicant; and

(c) the interested and affected party discloses any direct business, financial, personal or other interest which that party **[that]** may have in the final decision of the application.

**Draft Regulation 41**

(32) Subregulation (3) does not belong in this Chapter. Draft regulation 41 generally refers to comments made by interested and affected parties in the application process, whereas subregulation (3) discusses appeals, relevant only after a decision on an application has been made. We therefore recommend that subregulation (3) is moved to Chapter 9, which deals with appeals.

**CHAPTER 9: APPEALS**

(33) It appears from Draft Regulation 42(1) that this Chapter only applies to appeals submitted to the Minister of Water and Sanitation in terms of section 41(6) read with sections 148(1)(f) and (h) of the Act.

(34) As a general comment, section 41(6) of the Act only applies to appeals by *an applicant* against a decision relating to a water use licence application arising out of the integration process contemplated in section 41(5) of the Act. Draft regulations 42(1) to (3) deal specifically with the application of Chapter 9 and also limit that application to appeals by applicants. However, the remaining provisions of the draft regulations under Chapter 9 contemplate appeals by interested and affected parties. Interested and affected parties still have standing to appeal decisions relating to all water use licence applications to the Water Tribunal. The limitation created by draft regulations 42(1) to (3) is therefore incorrect. In any event regulations cannot limit the ambit of legislation.

(35) Moreover, throughout this Chapter, reference is erroneously made to section 41(6) of the "*Amendment Act"* whereas the reference should be to "the Act" ("as amended" if necessary). We therefore recommend that all references in this Chapter to "the Amendment Act" are changed to "the Act".

**Draft Regulation 42**

(36) We are concerned that section 41(6) purports to grant a discretion to applicants to either appeal a decision on water use licence application to the Minister or to the Water Tribunal, whereas no such discretion is afforded to appellants other than applicants. However, draft regulation 42 appears to contradict the Act in this respect, providing for appeals to the Minister by both types of appellant. If it is truly the intention of the legislature to limit the appeals by appellants other than applicants to the Water tribunal, then the draft regulation may be rendered more comprehensible if the following formulation is used:

*(1) This Chapter applies to appeals by an applicant for a water use licence arising out of the integration process contemplated in section 41(5) of the Act who is aggrieved by a decision of a responsible authority to the Minister.*

*(2) No appeal in terms of this Chapter is available if the Minister took a decision in his or her capacity as the responsible authority on a water use licence application arising out if the integration process contemplated in section 41(5) of the Act.*

*(3) This Chapter does not apply to -*

*(a) appeals that do not arise out of the integration process contemplated in section 41(5) of the Act;*

*(b) appeals by interested and affected parties arising out of the integration process contemplated in section 41(5) of the Act;*

*(4) Appeals that are not governed by this Chapter shall be heard by the Water Tribunal in terms of section 148 of the Act.*

**Draft Regulation 43**

(37)draft regulation 43 is unnecessary and should be removed from the draft regulations.

**Draft Regulation 44**

*(38)*In draft regulation 44, a distinction is drawn between appeals submitted by an applicant and appeals submitted by a person affected by a decision other than the applicant. As referred to above, the Act does not authorise persons other than the applicant to submit appeals to the Minister; their appeal lies to the Water Tribunal in terms of section 148 of the Act. This distinction is patently an unfair one. Moreover, the terms of this subregulation contradict subregulation 42 in that provision is made herein for appeals by persons affected by a decision, other than applicants.

**Draft Regulation 45**

(39)We suggest that Subregulations 45(1) and (2) are re-formulated as follows:

*(1) **[Notwithstanding the provisions of section 148 of the Act an appeal lodged against a decision made in terms of the integrated licensing process must be submitted to the appeal authority as indicated in section 41(6) of the Amendment Act.]** An appeal must be submitted to the Minister.*

*(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;*

*(iii) a statement by the appellant that Regulation 44(2) **[or (3)]** has been complied with **[together with]**, supported by copies of the notices referred to in that subregulation; and*

*(iv) proof of payment of the prescribed appeal fee, if any.*

**Draft Regulation 47**

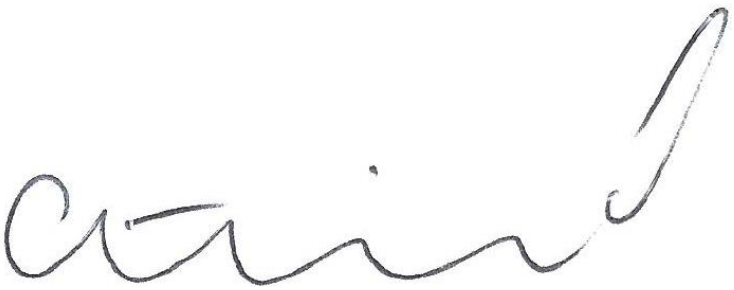
(40)We suggest that Subregulation 47(1) is amended as follows:

*(1) A **[person]** registered interested and affected party who, or organ of state that, receives a notice in terms of Subregulation 44(2), **[or applicant who receives a notice in terms of regulation 44(3),] [may]** submit to the Minister**[,]** a responding statement within 30 days from the date on which the appeal submission was **[lodged with the Minister or Minister of Mineral Resources]** received by him, her or it.*

*(2)*

*(a) A **[person]** registered interested and affected party or organ of state, as the case may be, 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.*

Yours faithfully
**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

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