Centre *for* Environmental Rights

Advancing Environmental Rights in South Africa

CER'S COMMENTS ON THE PROPOSED AMENDMENTS TO THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, LISTING NOTICE 1, LISTING NOTICE 2 AND LISTING NOTICE 3 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 FOR ACTIVITIES IDENTIFIED IN TERMS OF SECTION 24(2) AND 24D OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998, AS PUBLISHED IN GOVERNMENT GAZETTE NUMBER 43904 UNDER NOTICE NUMBER 1224 ON 13 NOVEMBER 2020

Abbreviations	
Proposed amendments	Proposed Amendments to the Environmental Impact Assessment Regulations, Listing Notice 1, Listing Notice 2 and Listing Notice 3 of the Environmental Impact Assessment Regulations, 2014 for Activities Identified in terms of Section 24 (2) and 24D of the National Environmental Management Act,1998
DEFF	Department of Environmental Affairs Forestry and Fisheries
DMRE	Department of Mineral Resources and Energy
EIA report	Environmental impact assessment report
EIA Regulations	Environmental Impact Assessment Regulations, 2014
EMPR	Environmental Management Programme
FP Regulations	Financial Provisioning Regulations
MPRDA	Mineral and Petroleum Resources Development Act, 2002
Gas Act	Gas Act, 48 of 2001
UPRD Bill	Draft Upstream Petroleum Resources Development Bill, published 24 December 2019

Clause/Section	**Proposed amendment/insertion**	**CER Comment**	**CER proposed amendment/insertion**
Regulation 16 General application		For purposes of integrated environmental decision-making, we submit that a general requirement for applications for environmental authorisations is that such applications must	

requirments		indicate all of the authorisations required for the proposed project and the competent authorities from whom such authorisations are being or will be sought. We submit further that an application for environmental authorisation must reflect the identity and contact details of all of the specialists consulted by the applicant in relation to the proposed project, including specialists whose services have been terminated and in relation to such specialists, a declaration by the applicant of the reason for the termination of their services.	
Regulation 19. Substitution of heading, subregulation 1	"Submission of basic assessment report and supporting documents to competent authority"; "(1) Where basic assessment must be applied to an application, the applicant must, within 90 days of receipt of the application by the competent authority, submit to the competent authority– (a) a basic assessment report, inclusive of any specialist reports, an EMPr, a closure plan in the case of a closure activity and where the application is a mining application, the plans, report and calculations contemplated in the Financial Provisioning Regulations, which have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority; or (b) a notification in writing that the documents contemplated in subregulation 1(a) will be submitted within 140 days of receipt of the application by the competent authority, as	We support the endorsement of a mandated public participation process regarding applications which require financial provisioning. However, by referring to a "mining application" and to the Financial Provisioning Regulations (as defined), the proposed provision limits the applicability of financial provisioning. A wider application is required and supported by (a) the definition of "financial provision" in s.1 of NEMA which refers to "sufficient funds to undertake the rehabilitation of the adverse environmental impacts of the listed or specified activities"; (b) s.24N which prescribes when an EMPr must be submitted and which must contain information on remedial measures, rehabilitation and closure; and (c) s.24(5) of NEMA which empowers the Minister or MEC to make regulations laying down the procedure to be followed in respect of (b)(ix) financial provision and "(d) requiring, after consultation with the	We recommend that there be an extension of the 30 day comment period by making the initial public participation process 60 days for interested and affected parties to make submissions or comments of the EIA process including comments on financial provisioning and closure plans.

	significant changes have been made or significant new information has been added to the documents which changes or information was not contained in the original documents consulted on during the initial public participation process contemplated in subregulation (1)(a) and that the revised documents will be subjected to another public participation process of at least 30 days."; (c) by the substitution for subregulation (2) of the following subregulation: "(2) In the event where subregulation (1)(b) applies, the documents contemplated in subregulation 1(a), which reflects the incorporation of comments received, including any comments of the competent authority, must be submitted to the competent authority within 140 days of receipt of the application by the competent authority."; (d) by the deletion in subregulation (3) of the words ", and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including primary processing, or activities directly related thereto, the basic assessment report must address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act"; (e) by the deletion in subregulation (4) of the words "and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including	Minister of Finance, the provision of financial provision or other security to cover the risks to the State and the environment of non-compliance with conditions attached to environmental authorisations." Neither of these empowering provisions limit the application of financial provisioning to mining operations. We remain concerned about the prescribed maximum time periods allowed for the basic assessment process and scoping and environmental impact reporting ("S&EIR") process which we consider to be, and in our experience has been, too short to allow for adequate investigation, assessment and consideration of the potential consequences for or impacts on the environment, particularly sensitive environments, and adequate opportunity for public comment for the purposes of financial provisioning for mine rehabilitation and closure.	

	primary processing, or activities directly related thereto, the EMPr must contain attachments that address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act"; (f) by the deletion in subregulation (5) of the words "decommissioning or"; (g) by the deletion in subregulation (6) of the words ", and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including primary processing, or activities directly related thereto, the closure plan must address the requirements as set in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act"; and (h) by the deletion of subregulation 7A.		
Regulation 20	(1) The competent authority must within 107 days of receipt of the basic assessment report and the documents contemplated in regulation 19(1)(a), in writing— (a) grant environmental authorisation in respect of all or part of the activity applied for; or (b) refuse environmental authorisation."; and (b) by the deletion of subregulation (4).	We note that this provision only allows for the granting or refusal of environmental authorisations and does not provide the competent authority with the discretion to request additional information after receipt of the basic assessment report and EMPr, or where relevant the closure plan, and before making a decision.	We recommend that a mechanism be provided for in the regulations to allow for timeframes to be extended and for the competent authority to be empowered to direct for certain steps or information to be provided within specified timeframes to allow it to properly consider the application. This includes

			an opportunity for additional information based on the comments contained in the public participation process to be requested.
Regulation 23, by substitution of the heading and subregulation (1)	"Submission and consideration of environmental impact assessment reports and supporting documents to competent authority" "(1) The applicant must within 106 days of the acceptance of the scoping report, or, where regulation 21(2) applies, within 106 days of the date of receipt of the application by the competent authority, submit to the competent authority— (a) an environmental impact assessment report inclusive of any specialist reports, an EMPr, and where the application is a mining application, the plans, report and calculations contemplated in the Financial Provisioning Regulations, which must have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority; or (b) a notification in writing that the documents contemplated in subregulation 1(a), will be submitted within 156 days of acceptance of the scoping report by the competent authority or where regulation 21(2) applies, within 156 days of receipt of the application by the competent	We reiterate here our comment on the proposed revision to regulation 19. We note a need for a clear meaning/interpretation of "public participation process" this will allow for legal certainty to applicants, Environmental Assessment Practitioners ("EAPs") and competent authorities together with interested and affected parties as to whether a public participation process for financial provisioning means the entire process collectively or whether, for example, notification of the application or the opportunity for comment on a report can be interpreted as processes in their own right. This has significant bearing on the timeframes that are being imposed, together with the time frames imposed for the final granting or rejection of an environmental authorisation.	

	authority, as significant changes have been made or significant new information has been added to the documents, which changes or information was not contained in the original documents consulted on during the initial public participation process contemplated in subregulation (1)(a), and that the revised documents contemplated in subregulation 1(a) will be subjected to another public participation process of at least 30 days.". (c) by the substitution for subregulation (2) of the following subregulation: "(2) In the event where subregulation (1)(b) applies, the environmental impact assessment report inclusive of the documents contemplated in subregulation (1)(a), which reflects the incorporation of comments received, including any comments of the competent authority, must be submitted to the competent authority within 156 days of the acceptance of the scoping report by the competent authority."; (d) by the deletion in subregulation (3) of the following words "and, where the application is for an environmental authorisation for prospecting, exploration, extraction of a mineral or petroleum resource, including primary processing or activities directly related thereto, the environmental impact assessment report must contain attachments that address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act"; and		

	(e) by the deletion in subregulation (4) of the following words "and, where the application for an environmental authorisation is for prospecting, exploration, or extraction of a mineral or petroleum resource, including primary processing or activities directly related thereto, the EMPr must contain attachments that address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, made in terms of the Act".		
Regulation 24. Substitution of subregulation (1)	"(1) The competent authority must within 107 days of receipt of the environmental impact assessment report and the documents contemplated in regulation 23(1)(a), in writing, — (a) grant environmental authorisation in respect of all or part of the activity applied for; or (b) refuse environmental authorisation.".	We reiterate here our comment above in relation to regulation 20.	
Regulation 26	By the substitution for subparagraph (iv) of paragraph (d) of the following subparagraph: "requirements for the avoidance, management, mitigation, monitoring and reporting of the impacts of the activity on the environment throughout the life of the activity additional to those contained in the approved EMPr, and the closure plan in the case of a closure activity; and (b) by the substitution for paragraph (e) of the following paragraph: "(e) the frequency of auditing of compliance with the conditions of the environmental authorisation and	We support the inclusion of a clause that ensures that the frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the approved EMPr, and in the case of a closure activity, the closure plan is calculated in order to determine whether such EMPr and closure plan continuously meet mitigation requirements and addresses environmental impacts having taken into account processes for such auditing prescribedin terms of the EIA Regulations	We recommend that subparagraph (iv) of paragraph (d) be amended to read as follows: "requirements for the avoidance, management, mitigation, monitoring and reporting of the impacts of the activity on the environment, the offset

	of compliance with the approved EMPr, and in the case of a closure activity, the closure plan, in order to determine whether such EMPr and closure plan continuously meet mitigation requirements and addresses environmental impacts, taking into account processes for such auditing prescribed in terms of these Regulations: provided that the frequency of the auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr may not exceed intervals of 5 years;"; (c) by the substitution for paragraph (g) of the following paragraph: "(g) the frequency of updating the approved EMPr, and in the case of a closure activity, the closure plan, and the manner in which such updated EMPr and closure plan will be approved, taking into account processes for such amendments prescribed in terms of these Regulations;"; and (d) by the substitution for paragraph (h) of the following paragraph: "(h) a requirement that the environmental authorisation, approved EMPr, and closure plan in the case of a closure activity, audit reports including the environmental audit report contemplated by regulation 34, and all compliance monitoring reports be made available for inspection and copying— (i) at the site of the authorised activity; (ii) to anyone on request; and (iii) where the holder of the environmental authorisation has a website, on such publicly accessible website; and".	provided that the frequency of the auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr will not exceed intervals of 5 years. However, draft subregulation 26(d)(iv) fails to provide expressly for the offset and rehabilitation of environmental impacts. Furthermore, we do not support the deletion of the following phrase from regulation 26(h): "any independent assessments of financial provision for rehabilitation and environmental liability,"	of impacts of the activity on the environment; the rehabilitation of the impact of the activity on the environment throughout the life of the activity additional to those contained in the approved EMPr, and the closure plan in the case of a closure activity; and" We recommend that regulation 26(h) reads as follows: "a requirement that the environmental authorisation, approved EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, , and closure plan in the case of a closure activity, audit reports including the environmental audit report contemplated by regulation 34, and all compliance monitoring reports be made available for inspection

			and copying— (i) at the site of the authorised activity; (ii) to anyone on request; and (iii) where the holder of the environmental authorisation has a website, on such publicly accessible website; and".
Regulation 34	(1) The holder of an environmental authorisation must, after commencement of the activity or activities authorised in such environmental authorisation, for the period during which the environmental authorisation, EMPr, and in the case of a closure activity, the closure plan, remain valid— (a) ensure that the compliance with the conditions of the environmental authorisation, the EMPr and in the case of a closure activity, the closure plan, is audited; and (b) submit an environmental audit report to the relevant competent authority."; (b) by the substitution for paragraph (b) of subregulation (2) of the following paragraph: "(b) provide verifiable findings, in a structured and systematic manner, on— (i) the level of performance against and compliance of an organisation or project with the provisions of the requisite environmental authorisation, EMPr or in the case of a closure activity, the closure plan; and (ii) the ability of the measures contained in such EMPr or closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity;"; (c) by the substitution for subregulation 3 of the following subregulation: "(3) The environmental audit report contemplated in subregulation (1) must determine— (a) the ability of the EMPr, or in the case of a closure activity, the closure plan, to sufficiently provide for the avoidance,	We support the mechanisms put in place by the amendment of this clause which ensures that audits to the provisions of an environmental authorisation, EMPr and where applicable, the closure plan are conducted in a structured and systematic manner, and measured by the level of performance against and compliance of an organisation or project with the provisions of the ability of the measures contained in such EMPr or closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the activities. These avoidance, management and mitigation measures are to be assessed and audited on an ongoing basis. However, although the regulation provides that the ability of an EMPr or closure plan to sufficiently provide for the avoidance, management and mitigation of environmental impacts should be assessed, a guideline has not been provided showing how such an assessment	

	management and mitigation of environmental impacts associated with the undertaking of the activity on an ongoing basis and to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the closure of the facility; (b) the level of compliance with the provisions of such environmental authorisation, EMPr, or closure plan."; (d) by the substitution for subregulation (4) of the following subregulation: "(4) Where the findings of the environmental audit report contemplated in subregulation 1 indicate— (a) insufficient mitigation of environmental impacts associated with the undertaking of the activity; or (b) insufficient levels of compliance with such environmental authorisation, EMPr or closure plan;". the holder must, when submitting the environmental audit report to the competent authority in terms of subregulation (1), submit recommendations to amend such EMPr or closure plan in order to rectify the shortcomings identified in the environmental audit report."; and (e) by the deletion in subregulation (5) of the words ", where applicable the".	will be carried out and also what will be considered as "sufficient" in each case.	
Regulation 35	"(1) The competent authority must consider the environmental audit report and amended documents contemplated in regulation 34 and approve such amended documents if it is satisfied that it sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity, or in the case of a closure activity, the closure of the facility, and that it has been subjected to an appropriate public participation process."; and (b) by the insertion in subregulation (2) of the words "in the case of a closure activity" at the end of the subregulation	We support the proposed amendment. We submit that the increase in financial provisioning as a result of an audit should be an express requirement in this regulation. We reiterate our comment on regulation 34 that it is not clear when an EMPr or closure plan will be regarded as "sufficiently" providing for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity or closure.	

Regulation 37, sub regulation 2	(a) the insertion in subregulation (2) of the words “in the case of a closure activity,” between the words “the closure plan” and “from potentially”; (b) by the substitution for subregulation (5) of the following subregulation: “(5) If no comments are received, the holder of the environmental authorisation may amend the EMPr or closure plan in the case of a closure activity, in accordance with its intention contemplated in subregulation (2) and submit such amended EMPr or closure plan to the competent authority for approval within 60 days of inviting comments.”; (c) by the insertion in subregulation (7) of the words “in the case of a closure activity” at the end of the subregulation; (d) by the substitution for subregulation (8) of the following subregulation: “(8) The competent authority must, within 30 days of receipt of the information contemplated in subregulation (7), consider such information and issue a decision to approve the amended EMPr or the closure plan in the case of a closure activity, or not.”; and (e) by the substitution for paragraph (a) of subregulation (9) of the following paragraph: “(a) provide the holder of the environmental authorisation with its decision, including the amended EMPr or closure plan in the case of a closure activity, if the decision was to approve such amended EMPr or closure plan, as well as reasons for the decision;”	We support the proposed amendment and time frames for the consideration of amending an EMPr or closure plan.	
Regulation 39	No amendment proposed.	Regulation 39(2)(b) has the effect of absolving an applicant for environmental authorisation from the requirement of having to obtain the written consent of the landowner or the person in	We recommend that Regulation 39(2)(b) is deleted.

		control of the land to undertake a proposed activity on the land when such activity constitutes or is directly related to "…prospecting or exploration of a mineral and petroleum resource or extraction and primary processing of a mineral resource." This provision is in conflict with customary law and the Interim Protection of Informal Land Rights Act, 1996 (IPILRA). It will furthermore have serious implications for historically disadvantaged small-scale farmers. In terms of customary law, which is recognised as an independent source of law in the Constitution[1], consent has to be given for the disposal of any land. Communities residing on communal land therefore, in terms of customary law, have the right to veto the decision to dispose of land by, for instance, giving it up for the purposes of an extractive activity contemplated in the MPRDA. This position is supported by the provisions of the Interim Protection of Land Rights Act, 1996 (IPILRA), which provides that: 1. no person may be deprived of any informal right to land without his or her consent; 2. where land is held on a communal basis, a person may be deprived of such land or right in land in accordance with the custom and usage of that community; and	

[1] Constitution of the Republic of South Africa, 1996

		3. the custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights. Therefore, in terms of customary law and in terms of IPILRA, the basis for any disposal of land, including giving up land temporarily for the extraction of resources, the diminution of the value of land through extraction of resources and the extraction of resources itself, must be **free, prior and informed consent**. Regulation 39(2)(b) is therefore in conflict with customary law and the IPILRA.	
Regulation 40, subregulation 1	"(1) The public participation process to which the— (a) basic assessment report and EMPr, and in the case of a closure activity, the closure plan, submitted in terms of regulation 19; and (b) scoping report submitted in terms of regulation 21 and the environmental impact assessment report and EMPr submitted in terms of regulation 23; was subjected to must give all potential or registered interested and affected parties, including the competent authority, a period of at least 30 days to submit comments on each of the basic assessment report, EMPr, scoping report and environmental impact assessment report, and in the case of a closure activity, the closure plan, as well as the report contemplated in regulation 32, if such reports or plans are submitted at different times.".	We note that despite the heading of this regulation, it does not in fact regulate the *purpose* of public participation. We submit that this regulation should articulate that it is intended to give effect to some of the fundamental principles of NEMA – "to place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably"[2]; and "(f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation,	We recommend allowing for a period of 60 days for comments by potential and registered interested and affected parties including the competent authority. We also recommend that this regulation stipulates requirements for the manner in which BARs, EMPRs and the like are consulted on including stipulating requirements

[2] Section 2(2)

		and participation by vulnerable and disadvantaged persons must be ensured. (g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge. (h) Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means. (i) The 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."[3] We reiterate that the time period stipulated for public participation process should be longer to allow all potential interested and affected parties the opportunity to participate rather than prioritising streamlining with the objective of fast-tracking of granting of licenses.	for plain language summaries and the provision of independent expert advice for IAPs where needed.
Regulation 41, subregulation (5)	(5) of the following paragraph: "(b) written notice is given to registered interested and affected parties regarding where the— (i) revised documents as contemplated in regulation 19(1)(b); (ii) revised documents contemplated in regulation 23(1)(b); or (iii) environmental impact assessment report and documents contemplated in regulation 21(2)(d); may be obtained, the manner in which and the person to whom	We welcome the proposed amendment obliging persons conducting public participation processes to direct interested and affected parties on where documents can be obtained and when representations are due for submission.	

[3] Section 2(4)

	representations on these reports or plans may be made and the date on which such representations are due.".	We submit that that following phrase should be **deleted** from regulation 41(2)(d): "Provided that this paragraph need not be complied with if an advertisement has been placed in an official Gazette referred to in paragraph (c)(ii)" as the forms of notice are quite distinct. We submit that the following phrase should be **inserted** into regulation 41(6)(a): "…parties <u>in plain language</u>; and" We submit that the following phrase should be **inserted** into regulation 41(6)(b): "…application, <u>including where necessary facilitating access to independent expert advice</u>." We submit that the following phrase should be **inserted** into regulation 41(7): "…processes<u>, and provided that each authorisation sought is identified at the outset of the public participation process and the combined purpose of such public participation process for each identified authorisation is expressly stipulated and extrapolated.</u>"	
Regulation 54A, subregulation (2)	No proposed amendment to regulation 54A(1) "(2) Where a right or permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and the associated environmental management programme or environmental management plan approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) is still in effect after 8 December 2014, the requirements contained in Part 3 of Chapter 5 of these Regulations apply to the environmental management programme or environmental management plan, and where– (a) the audit cycle of the environmental	Regulation 54A(1) is ambiguous and requires amendment: • Why would the EA referred to in (1)(a) need to be "regarded as fulfilling the requirements of the Act" when presumably such EA would not have been approved to begin with had it not fulfilled those requirements on application? • Why is the clause limited to licences under which activities commenced only after 8 December 2014? What of similar licences under which activities commenced prior to 8 December 2014?	**<u>54A(1) An environmental management plan or environmental management programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) shall be deemed to have been approved in terms of the National Environmental Management Act, 1998</u>**

	management programme or environmental management plan exceeds five years, an audit report will be required to be submitted at least every five years commencing from the date of submission of the last audit, for the period during which the right or permit remains in effect; or (b) no audit requirement was set in the environmental management programme or environmental management plan, an audit report will be required to be submitted to the competent authority no later than 7 December 2021 and at least every 5 years thereafter for the period during which the right or permit remains in effect.".	• Why does the clause purport to deal with applications for EAs that were refused when presumably nothing came of these applications anyway? • Does (1)(b) contemplate and include MPRDA-approved EMPRs and EMPs and if so, why are these not specified? If those EMPRs and EMPs are contemplated and included, is the phrase "regarded as fulfilling the requirements of the Act" intended to mean something other than "deemed to be EAs issued under the Act"? We welcome the extension of the transitional provision and the incorporation of the audit cycle time period allowing for an audit report at least every 5 years.	**(Act No. 107 of 1998), provided that within 18 months of the coming into force of this Act, the holder of the environmental management plan or environmental management programme has submitted an application for an environmental authorisation in which such holder has upgraded its environmental management plan or environmental management programme to address any deficiencies in such environmental management plan or environmental management programme to meet the requirements in Chapter 5 of the National Environmental Management Act, 1998.** **12(4) Where, prior to 8 December 2014 an environmental authorisation was required for activities ancillary to (i) prospecting or exploration of a mineral or petroleum resource; or (ii) extraction**

			and primary processing of a mineral or petroleum resource, and such environmental authorisation or waste management licence was not obtained and such activities were commenced or continued, the provisions of sections 24F and 24G of this Act apply.
Appendix 1, deletion of para 1 (s) of para 3		In light of the various proposed amendments to the Financial Provision Regulations published for comment since the 2015 Regulations were gazetted, without closure in respect of most of those proposed amendments, we do not support the deletion of this subregulation.	
Appendix 3 deletion of para 1(t) of para 3		In light of the various proposed amendments to the Financial Provision Regulations published for comment since the 2015 Regulations were gazetted, without closure in respect of most of those proposed amendments, we do not support the deletion of this subregulation.	
Appendix 4, deletion of para 1 (f) (iv)		In light of the various proposed amendments to the Financial Provision Regulations published for comment since the 2015 Regulations were gazetted, without closure in respect of most of those proposed amendments, we do not support the deletion of this subregulation.	
Appendix 5, deletion of para 1 (j)		In light of the various proposed amendments to the Financial Provision Regulations published for comment since the 2015 Regulations were	

		gazetted, without closure in respect of most of those proposed amendments, we do not support the deletion of this subregulation.	
Appendix 6, 1 (n) (ii)	substitution in subparagraph (1)(n)(ii) in paragraph 1 for the words “where applicable” of the words “in the case of a closure activity”.	We support the substitution as it gives certainty to the nature of the specialist report required and on what it is required for.	
Appendix 7	(a) by the substitution in paragraph 1 for the words “where applicable” of the words “in the case of a closure activity”; (b) by the substitution for paragraph 2 of the following paragraph: “(2) The objective of the environmental audit report is to— (a) report on— (i) the level of compliance with the conditions of the environmental authorisation and the EMPr, and in the case of a closure activity, the closure plan; and (ii) the extent to which the avoidance, management and mitigation measures provided for in such EMPr or closure plan achieves the objectives and outcomes of the EMPr, and closure plan; (b) identify and assess any new impacts and risks as a result of undertaking the activity; (c) evaluate the effectiveness of the EMPr, and in the case of a closure activity, the closure plan; (d) identify shortcomings in the EMPr, and in the case of a closure activity, the closure plan; and (e) identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr, and in the case of a closure activity, the closure plan.”; and (c) by the substitution for subparagraph (e) of paragraph (3) of the following subparagraph: “(e) an indication of the ability of the EMPr, and in the case of a closure activity, the closure plan to— (i) sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity on an on-going basis; (ii) sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the closure of the facility in the case of a closure activity; and (iii)	We welcome the clarity regarding objectives of the audit report and its intended purpose.	

	ensure compliance with the provisions of environmental authorisation, EMPr, and in the case of a closure activity, the closure plan;".			
Listing notice 1	'by the substitution for **activity 20** of the following activity: "20. Any activity including the operation of that activity which requires a prospecting right in terms of section 16 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the prospecting right."'	We object to the formulation of activity 20 as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly. The proposed listing has the effect of perpetuating the practice of special treatment for extractive industries, which while always inappropriate, given the extreme nature of the impact of this industry, is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	We recommend that the formulation ends at the word, "Act".	
	'by the substitution for **activity 21** of the following activity: "21. Any activity including the operation of that activity which requires a mining permit in terms of section 27 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the mining permit."'	We object to the formulation of activity 21 as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly. The proposed listing has the effect of perpetuating the practice of special treatment for extractive industries, which while always inappropriate, given the extreme nature of the impact of this industry,	We recommend that the formulation ends at the word, "Act".	

		is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	
	By the insertion after activity 21 of **activities 21A to 21E**	We object to the formulation of these activities as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly. The proposed listing has the effect of perpetuating the practice of special treatment for extractive industries, which while always inappropriate, given the extreme nature of the impact of this industry, is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	We recommend that each formulation ends at the word, "Act".
	By the insertion of **activity 21F**	We object to the formulation of this activity as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly. The proposed listing has the effect of perpetuating the practice of special treatment for extractive industries, which	We recommend that the description of the activity is as follows: "21F. Any activity including the operation of that activity required for the reclamation of a residue stockpile or a residue deposit."

		while always inappropriate, given the extreme nature of the impact of this industry, is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	
Listing Notice 2	'by the substitution for **activity 17** of the following activity: "17. Any activity including the operation of that activity, which requires a mining right as contemplated in section 22 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required to exercise the mining right."'	We object to the formulation of this activity as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly. The proposed listing has the effect of perpetuating the practice of special treatment for extractive industries, which while always inappropriate, given the extreme nature of the impact of this industry, is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	We recommend that the formulation ends at the word, "Act".
	'by the substitution for **activity 19** of the following activity: "19. The removal and disposal of a mineral, which requires a permission as contemplated in section 20 of the Mineral and Petroleum Resources Development Act as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing	We object to the formulation of this activity as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly. The proposed listing has the effect of perpetuating the practice of special	We recommend that the formulation ends at the word, "Act".

	Notice 3 of 2014, required to exercise the permission."'	treatment for extractive industries, which while always inappropriate, given the extreme nature of the impact of this industry, is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	
	'by the substitution for **activity 20** of the following activity: "20. Any activity including the operation of that activity which requires a production right as contemplated in section 83 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required to exercise the production right."'	We object to the formulation of this activity as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly. The proposed listing has the effect of perpetuating the practice of special treatment for extractive industries, which while always inappropriate, given the extreme nature of the impact of this industry, is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	We recommend that the formulation ends at the word, "Act".
	'by the insertion, after **activity 20**, of activity 20A: "20A. Any hydraulic fracturing including the operation as well as any other applicable activity as contained in this Listing Notice, in Listing Notice 1 of 2014 or Listing Notice 3 of 2014, required for hydraulic fracturing and related operation."'	We object to the formulation of this activity as it has the effect of a "catch all" listing for a host of activities each of which has the potential to have a seriously degrading impact on the environment, and therefore each of which must be dealt with distinctly.	We recommend the following formulation: "20A. Any hydraulic fracturing."

		The proposed listing has the effect of perpetuating the practice of special treatment for extractive industries, which while always inappropriate, given the extreme nature of the impact of this industry, is all the more inappropriate, and indeed irrational given the climate change impacts of the industry, the manner in which this industry displaces alternative livelihoods and economies, and contributes to rather than alleviates poverty and inequality.	