



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

GUIDELINE FOR THE COMPILATION OF A SCOPING REPORT

WITH DUE REGARD TO

**CONSULTATION WITH COMMUNITIES AND
INTERESTED AND AFFECTED PARTIES**

**AS REQUIRED IN TERMS OF SECTIONS 10(1)(b), 22(4)(b), and 39, READ
TOGETHER WITH REGULATION 49 (2) OF THE MINERAL AND
PETROLEUM RESOURCES DEVELOPMENT ACT (ACT 28 of 2002)**

STANDARD DIRECTIVE

All applicants for, mining rights, in terms of the provisions of Section 29 (a) and in terms of Regulation 49 (4) of the Mineral and Petroleum Resources Development Act, are herewith directed to submit a Scoping Report strictly in accordance with parts G and H of this guideline, within 30 days of notification by the Regional Manager of the acceptance of such application.

A. PREAMBLE

The scoping report contemplated in Regulation 49 is founded on the principle of consultation with interested and affected parties, which consultation process and its result is an integral part of the fairness process. The decision to grant a mining right cannot be fair if the administrator did not have full regard to precisely what happened during the consultation process in order to determine whether the consultation was sufficient to render the grant of the application procedurally fair.

The State acknowledges the importance of the involvement of communities where mining is taking place at the earliest stages of applications for prospecting and mining rights and permits. This entails the communities being informed and consulted on any mining activities applied for by mining companies in their area

Issues around consultation have been problematic in that there have been no guidelines on how it should be conducted, and as a result there has been resistance on the part of many landowners and communities against mining activities in their land. This has been exacerbated by the lack of clarity concerning the relationship between the provisions of section 10 of the Act and those in sections 16, 22 and 27 regarding the notification of and consultation with interested and affected parties, and the submission of the results of such consultation.

B. PURPOSE

To provide clarity on the implementation of the sections of the Act (sections 10(1)(b), 16(4)(b), 22(4)(b), 27(5)(b) and 39) that require notification and consultation with communities by the Regional Managers and applicants for rights in terms of the Act respectively, and in that context to provide a guideline for the submission of the prescribed scoping report.

C. LEGISLATIVE FRAMEWORK

Section 10(1)(b) requires the Regional Manager to call upon **interested and affected** parties to **submit their comments** regarding an application within 30 days from the date of the notice.

Sections 16(4)(b) and 27(5)(b) require the applicant for a right or permit to notify in writing and consult with the landowner or lawful occupier and any other affected party and **submit the result of consultation within 30 days** of the date of the notice. The specific requirement for the submission of the result of consultation within 30 days, is because it is to be submitted in place of a scoping report, which normally includes consultation, but which scoping report is not required in these instances.

Section 22 (4) (b) requires the applicant to notify and consult with interested and affected parties within 180 days from the date of the notice. In this instance no reference is made to the submission of the result of consultation. The reason is that in accordance with regulation 49 (2), read with regulations 49 (1) (c) and (f), the envisaged results are expected to be included in the **scoping report to be submitted within 30 days** of the date of the notice. The reference to 180 days, however, means that the consultation process is not expected to be discontinued after the 30 day deadline for the submission of the scoping report because a high level report is required initially, and further in-depth consultation is required to more substantially inform the Environmental Impact Assessment and Environmental Management Programme in order to comply with section 39 (3) (b) (ii) and (iii) of the Act read with regulations 50 (c) (d) and (f).

D. Definitions

'consultation' means a two way communication process between the applicant and the community or interested and affected party wherein the former is seeking, listening to, and considering the latter's response, which allows openness in the decision making process.

'community' means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of the Act negotiations or consultations with the community are required, the community shall include the members or part of the community, directly affected by prospecting or mining, on land occupied by such members or part of the community.

'Interested and affected' parties include, but are not limited to; –

- (i) Host Communities
- (ii) Landowners (Traditional and Title Deed owners)
- (iii) Traditional Authority
- (iv) Land Claimants
- (v) Lawful land occupier
- (vi) The Department of Land Affairs,
- (vii) Any other person (including on adjacent and non-adjacent properties) whose socio-economic conditions may be directly affected by the proposed prospecting or mining operation
- (viii) The Local Municipality,
- (ix) The relevant Government Departments, agencies and institutions responsible for the various aspects of the environment and for infrastructure which may be affected by the proposed project.

E. RATIONALE FOR CONSULTATION

The purpose of consultation with the landowner, affected parties and communities is to provide them with the necessary information about the proposed prospecting or mining project so that they can make informed decisions, and to see whether some accommodation with them is possible insofar as the interference with their rights to use the affected properties is concerned. Consultation under the Act's provisions requires engaging in good faith to attempt to reach such accommodation.

F. SECTION 10 (1) (a): NOTIFICATION BY THE REGIONAL MANAGER

To comply with this provision, the Regional Manager or designated agency, as the case may be,

- (1) must as prescribed in Regulation 3, make known by way of a notice, that an application contemplated in Regulation 2 has been accepted in respect of the land or offshore area, which notice must be placed on a notice board at the office of the Regional Manager or designated agency as the case may be, and in addition also make the application known by at least one of the following methods-
- a. publication in the applicable Provincial Gazette
 - b. notice in the magistrates court in the magisterial district applicable to the land in question; or
 - c. advertisement in a local or national newspaper circulating in the area where the land or offshore area to which the application relates, is situated.

Since the intention of the Act is to make the application known in order to afford communities and interested and affected parties an opportunity to raise comments and concerns before the application can be processed further, the prescribed notifications do not preclude the Regional Manager from placing notices at other venues such as the relevant local Municipality, the Department of Traditional Affairs, or on the Departments official website, or from causing the application to be brought to the attention of other directly affected parties identified in the consultation process.

G. OBLIGATIONS OF THE APPLICANT

Having been notified by the Regional Manager of the acceptance of the application, the applicant must:

1. **Identify** the landowner or lawful occupier of the land in question, and any other interested and affected party, including the community, who may be affected by the application and retain a list specifying the names and describing the role of such parties identified for submission to the Regional Manager. Such identification list must:-
 - 1.1. Include the identification of any affected community as defined in section D above.
 - 1.2. Include the identification of any interested parties as defined in section D above,
 - 1.3. Specifically state whether or not the Community is also the landowner.
 - 1.4. Specifically state whether or not a land claim is involved.

2. **Notify** the landowner or lawful occupier of the land in question, and any other interested and affected party, including the community, of the application and retain proof of such notification for submission to the Regional Manager.
 - 2.1. In notifying the Traditional Leader, such notification should observe protocol, values and traditions applicable in the area

3. **Consult** with such landowner or lawful occupier, including the community, and any other identified interested and affected party, which consultation must include;
 - 3.1. The observance of the guidelines published by the Department of Land Affairs in cases where consultation with communities is concerned
 - 3.2. Meeting with the community and landowner and the interested and affected parties, which meetings must include;

- 3.2.1. Informing the community, landowners, and interested and affected parties in sufficient detail of what the prospecting operation will entail on the land, in order for them to assess what impact the prospecting will have on them or on the use of their land;
- 3.2.2. Consulting with the community, landowners, and interested and affected parties with a view to reaching agreement to the satisfaction of both parties in regard to the existing cultural, socio-economic or biophysical environment, as the case may be, and how potentially that will be impacted on by the proposed prospecting or mining operation;
- 3.2.3. Ascertaining specifically whether or not a land claim is involved, or whether or not the community is also the landowner.
- 3.2.4. Taking minutes to record the outcome of the meeting, which minutes must include the agenda (outlining date and venue), where applicable a stamped tribal resolution in line with the guidelines provided by Land Affairs, and a signed attendance register (with telephone numbers) of the attendees. Where possible, video (DVD) recordings can be used and submitted as further proof.

4. **Submit the scoping report contemplated in Regulation 49 (2)** which report must include the result of consultations and the following:-

- 4.1. **The methodology applied to conduct scoping**, wherein the applicant must
 - 4.1.1. Name the community as defined in the guideline, or explain why no such community was identified.
 - 4.1.2. Specifically state whether or not the Community is also the landowner.
 - 4.1.3. State whether or not the Department of Land Affairs been identified as an interested and affected party

- 4.1.4. State specifically whether or not a land claim is involved
- 4.1.5. Name the Traditional Authority identified by the applicant.
- 4.1.6. List the landowners identified by the applicant. (Traditional and Title Deed owners)
- 4.1.7. List the lawful occupiers of the land concerned
- 4.1.8. Explain whether or not other persons' (including on adjacent and non-adjacent properties) socio-economic conditions will be directly affected by the proposed prospecting or mining operation and if not, explain why not.
- 4.1.9. Name the Local Municipality identified by the applicant
- 4.1.10. Name the relevant Government Departments, agencies and institutions responsible for the various aspects of the environment , land and infrastructure which may be affected by the proposed project.
- 4.1.11. Submit evidence that the landowner or lawful occupier of the land in question, and any other interested and affected parties including all those listed above, were notified.

4.2 A description of the existing status of the cultural, socio-economic and biophysical environment, as the case may be, prior to the proposed mining operation; which description must include:-

- 4.2.1 Confirmation that the identified and consulted interested and affected parties agree on the description of the existing status of the environment.
- 4.2.2 A description of the existing status of the cultural environment that may be affected
- 4.2.3 A description of the existing status of any heritage environment that may be affected
- 4.2.4 A description of the existing status of any current land uses and the socio-economic environment that may be directly affected
- 4.2.5 A description of the existing status of any infrastructure that may be affected

4.2.6 A description of the existing status of the biophysical environment that will be affected, including the main aspects such as water resources, flora, fauna, air, soil, topography etc.

4.3 An identification of the anticipated environmental, social or cultural impacts, including the cumulative impacts, where applicable. The applicant must:-

4.3.1 Provide a description of the proposed project including a map showing the spatial locality of infrastructure, extraction area, and any associated activities.

4.3.2 Describe any listed activities (in terms of the NEMA EIA regulations) which will be occurring within the proposed project.

4.3.3 Specifically confirm that the community and identified interested and affected parties have been consulted and that they agree that the potential impacts identified include those identified by them

4.3.4 Provide a list of potential impacts on the cultural environment.

4.3.5 Provide a list of potential impacts on the heritage environment, if applicable.

4.3.6 Provide a list of potential impacts on the socio- economic conditions of any person on the property and on any adjacent or non adjacent property who may be affected by the proposed mining operation.

4.3.7 Provide a list of potential impacts (positive & negative) on: employment opportunities, community health, community proximity, and links to the Social and Labour Plan.

4.3.8 Provide a list of potential impacts on the biophysical environment including but not be limited to impacts on: flora, fauna, water resources, air, noise, soil etc.

4.3.9 Provide a description of potential cumulative impacts that the proposed mining operation may contribute to considering other identified land uses which may have potential environmental linkages to the land concerned.

4.4 A description of any proposed land use or development alternatives, proposed alternative means of carrying out the proposed operation, and the consequences of not proceeding with the proposed operation. The applicant must:-

- 4.4.1 Provide a list of any alternative land uses that exist on the property or on adjacent or non-adjacent properties that may be affected by the proposed mining operation.
- 4.4.2 Provide a list of any land developments identified by the community or interested and affected parties that are in progress and which may be affected by the proposed mining operation.
- 4.4.3 Provide a list of any proposals made in the consultation process to adjust the operational plans of the mine to accommodate the needs of the community, landowners and interested and affected parties.
- 4.4.4 Provide information in relation to the consequences of not proceeding with proposed operation

4.5 a description of the most appropriate procedure to plan and develop the proposed mining operation The applicant must:-

- 4.5.1 Provide information on its response to the findings of the consultation process and the possible options to adjust the mining project proposal to avoid potential impacts identified in the consultation process.
- 4.5.2 Describe accordingly the most appropriate procedure to plan and develop the proposed mining operation with due consideration of the issues raised in the consultation process.

4.6 A description of the process of engagement referred to in 3.2.1 and 3.2.2 above with identified communities, landowners and interested and affected parties: The applicant must;

- 4.6.1 Provide a description of the information provided to the community, landowners, and interested and affected parties to inform them in sufficient detail of what the prospecting or mining operation will entail on the land, in order for them to assess what impact the prospecting will have on them or on the use of their land;
- 4.6.2 Provide a list of which of the identified communities, landowners, lawful occupiers, and other interested and affected parties were in fact consulted.

- 4.6.3 Provide a list of their views in regard to the existing cultural, socio-economic or biophysical environment, as the case may be,
- 4.6.4 Provide a list of their views raised on how their existing cultural, socio-economic or biophysical environment potentially will be impacted on by the proposed prospecting or mining operation;
- 4.6.5 Provide a list of any other concerns raised by the aforesaid parties.
- 4.6.6 Provide the applicable minutes and records of the consultations.
- 4.6.7 Provide information with regard to any objections received.

4.7 Describe the nature and extent of further investigations required in the environmental impact assessment report, including any specialist reports that may be required.

H. IDENTIFICATION OF THE REPORT

The report on the results of consultation must, at the end of the report include a certificate of identification as follows;

<p>Herewith I, the person whose name and identity number is stated below, confirm that I am the person authorised to act as representative of the applicant in terms of the resolution submitted with the application, and confirm that the above report comprises the results of consultation as contemplated in Section 16 (4) (b) or 27 (5) (b) of the Act, as the case may be.</p>	
<p>Full Names and Surname</p>	
<p>Identity Number</p>	

- END -