

(8 December 2014 – to date)

## **NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998**

*(Gazette No. 19519, Notice No. 1540. Commencement date: 29 January 1999*

*[Proc. No. 8, Gazette No. 19703])*

## **ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014**

*Government Notice R982 in Government Gazette 38282 dated 4 December 2014. Commencement date:*

*8 December 2014.*

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make the regulations pertaining to environmental impact assessments, under sections 24(5) and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as set out in the Schedule hereto.

(Signed)

**BOMO EDITH EDNA MOLEWA**

**MINISTER OF ENVIRONMENTAL AFFAIRS**

### **SCHEDULE**

#### **ARRANGEMENT OF REGULATIONS**

##### **CHAPTER 1**

##### **INTERPRETATION AND PURPOSE OF REGULATIONS**

1. Interpretation
2. Purpose of Regulations

##### **CHAPTER 2**

##### **TIMEFRAMES**

3. Timeframes
4. Notification of decision on application

##### **CHAPTER 3**

##### **GENERAL REQUIREMENTS FOR APPLICATIONS**

5. General
6. Where to submit application

Prepared by:

In partnership with:

**Part 1**

***Duties of competent authority***

7. Consultation between competent authority and organs of state administering a law relating to a matter affecting the environment
8. Guidance by competent authority to proponent or applicant
9. Format of forms

**Part 2**

***Duties of proponents and applicants***

10. Competent authorities' right of access to information
11. Combination of applications
12. Appointment of EAPs and specialists
13. General requirements for EAPs and specialists
14. Disqualification of EAPs and specialists
15. Determination of assessment process applicable to application

**CHAPTER 4**

**APPLICATION FOR ENVIRONMENTAL AUTHORISATION**

**Part 1**

***General***

16. General application requirements
17. Checking of application for compliance with formal requirements
18. Criteria to be taken into account by competent authorities when considering applications

**Part 2**

***Basic Assessment***

19. Submission of basic assessment report and environmental management programme, and where applicable closure plan, to competent authority
20. Decision on basic assessment application

**Part 3**

***S&EIR***

21. Submission of scoping report to competent authority
22. Consideration of scoping report
23. Submission and consideration of environmental impact assessment reports and environmental management programme

24. Decision on S&EIR application

#### ***Part 4***

#### ***Environmental authorisation***

25. Issue of environmental authorisation
26. Content of environmental authorisation

### **CHAPTER 5**

#### **AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING OF COMPLIANCE WITH ENVIRONMENTAL AUTHORISATION AND ENVIRONMENTAL MANAGEMENT PROGRAMME**

27. General
28. Application for amendment

#### ***Part 1***

#### ***Amendments where no change in scope or a change of ownership occur***

29. Amendments to be applied for in terms of Part 1
30. Process and consideration of application for amendment and decision

#### ***Part 2***

#### ***Amendment where a change in scope occurs***

31. Amendments to be applied for in terms of Part 2
32. Process and consideration of application for amendment
33. Decision on amendment application

#### ***Part 3***

#### ***Auditing and amendment of environmental authorisation, environmental management programme and closure plan***

34. Auditing of compliance with environmental authorisation, environmental management programme and closure plan
35. Amendment of environmental management programme or closure plan as a result of an audit

#### ***Part 4***

#### ***Other amendments of environmental management programme or closure plan***

36. Other amendments of environmental management programme or closure plan
37. Amendment of environmental management programme or closure plan on application by holder of environmental authorisation

## **Part 5**

### ***Suspension and withdrawal of environmental authorisation***

38. Suspension and withdrawal of environmental authorisation

## **CHAPTER 6**

### **PUBLIC PARTICIPATION**

39. Activity on land owned by person other than proponent
40. Purpose of public participation
41. Public participation process
42. Register of interested and affected parties
43. Registered interested and affected parties entitled to comment on reports and plans
44. Comments of interested and affected parties to be recorded in reports submitted to competent authority

## **CHAPTER 7**

### **GENERAL MATTERS**

45. Failure to comply with requirements for consideration of applications
46. Resubmission of similar applications
47. Assistance to people with special needs
48. Offences

## **CHAPTER 8**

### **TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT**

49. Definitions
50. Continuation of actions undertaken and authorisations issued under previous ECA regulations
51. Pending applications and appeals (ECA)
52. Continuation of actions undertaken and authorisations issued under previous NEMA regulations
53. Pending applications and appeals (NEMA)
54. Pending applications (MPRDA)
55. Continuation of regulations regulating authorisations for activities in certain coastal areas
56. Repeal of Environmental Impact Regulations, 2010
57. Short title and commencement

APPENDIX 1 BASIC ASSESSMENT REPORT

APPENDIX 2 SCOPING REPORT

APPENDIX 3 ENVIRONMENTAL IMPACT ASSESSMENT REPORT

APPENDIX 4 ENVIRONMENTAL MANAGEMENT PROGRAMME

APPENDIX 5 CLOSURE PLAN

Prepared by:

In partnership with:

## CHAPTER 1 INTERPRETATION AND PURPOSE OF REGULATIONS

### 1. Interpretation

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

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

**“Agreement”**, for the purpose of regulation 1(3) and (4) means the Agreement as contemplated in section 50A(2) of the Act;

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

- (a) property on which or location where the activity is proposed to be undertaken;
- (b) type of activity to be undertaken;
- (c) design or layout of the activity;
- (d) technology to be used in the activity; or
- (e) operational aspects of the activity;

and includes the option of not implementing the activity;

**“application”** means an application for an -

- (a) environmental authorisation in terms of Chapter 4 of these Regulations;
- (b) amendment to an environmental authorisation in terms of Chapter 5 of these Regulations;
- (c) amendment to an EMPr in terms of Chapter 5 of these Regulations; or
- (d) amendment of a closure plan in terms of Chapter 5 of these Regulations;

**“basic assessment report”** means a report contemplated in regulation 19;

**“closure plan”** means a plan contemplated in regulation 19;

**“cumulative impact”**, in relation to an activity, means the past, current and reasonably foreseeable future impact of an activity, considered together with the impact of activities associated with that activity, that in itself may not be significant, but may become significant when added to the existing and reasonably foreseeable impacts eventuating from similar or diverse activities;

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

**“EMPr”** means an environmental management programme contemplated in regulations 19 and 23;

**“environmental audit report”** means a report contemplated in regulation 34;

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

**“environmental impact assessment report”** means a report contemplated in regulation 23;

**“independent”**, in relation to an EAP, a specialist or the person responsible for the preparation of an environmental audit report, means -

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

excluding -

- (i) normal remuneration for a specialist permanently employed by the EAP; or
- (ii) fair remuneration for work performed in connection with that activity, application or environmental audit;

**“linear activity”** means an activity that is arranged in or extending along one or more properties and which affects the environment or any aspect of the environment along the course of the activity, and includes railways, roads, canals, channels, funiculars, pipelines, conveyor belts, cableways, power lines, fences, runways, aircraft landing strips, and telecommunication lines;

**“minimum information requirements”** means the minimum information requirements contemplated in section 24(5)(bA)(viiiA), if any are applicable at the time of the application;

**“mitigation”** means to anticipate and prevent negative impacts and risks, then to minimise them, rehabilitate or repair impacts to the extent feasible;

**“National Appeal Regulations”** means the national appeal regulations published in terms of section 43(4) and 44 of the Act;

**“ocean-based activity”** means an activity in the territorial waters of the Republic of South Africa;

**“plan of study for environmental impact assessment”** means a study contemplated in regulation 22 which forms part of a scoping report and sets out how an environmental impact assessment will be conducted;

**“proponent”** means a person intending to submit an application for environmental authorisation and is referred to as an applicant once such application for environmental authorisation has been submitted;

**“receipt”** means receipt on the date indicated -

- (a) on a receipt form if the application or document was hand delivered or sent via registered mail;
- (b) in an automated or computer generated acknowledgment of receipt;
- (c) on an acknowledgement in writing from the competent authority as the date of receipt if the application or document was sent via ordinary mail; or
- (d) on an automated or computer generated proof of transmission in the case of a facsimile message.

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

**“registered interested and affected party”**, in relation to an application, means an interested and affected party whose name is recorded in the register opened for that application in terms of regulation 42;

**“scoping report”** means a report contemplated in regulation 21;

“**S&EIR**” means the scoping and environmental impact reporting process contemplated in regulation 21 to regulation 24;

“**significant impact**” means an impact that may have a notable effect on one or more aspects of the environment or may result in non-compliance with accepted environmental quality standards, thresholds or targets and is determined through rating the positive and negative effects of an impact on the environment based on criteria such as duration, magnitude, intensity and probability of occurrence ;

“**specialist**” means a person that is generally recognised within the scientific community as having the capability of undertaking, in conformance with generally recognised scientific principles, specialist studies or preparing specialist reports, including due diligence studies and socio-economic studies;

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

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

- (2) Any reference in these Regulations to an environmental assessment practitioner will, from a date to be determined by the Minister by notice in the *Gazette*, be deemed to be a reference to a registered environmental assessment practitioner, as defined.

## 2. Purpose of Regulations

The purpose of these Regulations is to regulate the procedure and criteria as contemplated in Chapter 5 of the Act relating to the preparation, evaluation, submission, processing and consideration of, and decision on, applications for environmental authorisations for the commencement of activities, subjected to environmental impact assessment, in order to avoid or mitigate detrimental impacts on the environment, and to optimise positive environmental impacts, and for matters pertaining thereto.

## CHAPTER 2 TIMEFRAMES

### 3. Timeframes

- (1) Subject to subregulations (2) and (3), when a period of days must in terms of these Regulations be reckoned from or after a particular day, that period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.



- (2) For any action contemplated in terms of these Regulations for which a timeframe is prescribed, the period of 15 December to 5 January must be excluded in the reckoning of days.
- (3) Unless justified by exceptional circumstances, as agreed to by the competent authority, the proponent and applicant must refrain from conducting any public participation process during the period of 15 December to 5 January.
- (4) When a State department is requested to comment in terms of these Regulations, such State department must submit its comments in writing within 30 days from the date on which it was requested to submit comments and if such State department fails to submit comments within such 30 days, it will be regarded that such State department has no comments.
- (5) 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.
- (6) The competent authority must acknowledge receipt of all applications and documents contemplated in regulations 16, 19, 21, 23, 29, 30, 31, 32 and 34 within ten days of receipt thereof.
- (7) In the event where the scope of work must be expanded based on the outcome of an assessment done in accordance with these Regulations, which outcome could not be anticipated prior to the undertaking of the assessment, or in the event where exceptional circumstances can be demonstrated, the competent authority may, prior to the lapsing of the relevant prescribed timeframe, in writing, extend the relevant prescribed timeframe and agree with the applicant on the length of such extension.
- (8) Any public participation process must be conducted for a period of at least 30 days.

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

- (1) Unless indicated otherwise, after a competent authority has reached a decision on an application, the competent authority must, in writing and within five days -
  - (a) provide the applicant with the decision;
  - (b) give reasons for the decision to the applicant; and
  - (c) where applicable, draw the attention of the applicant to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.
- (2) The applicant must, in writing, within fourteen days of the date of the decision on the application ensure that -

- (a) all registered interested and affected parties are provided with access to the decision and the reasons for such decision; and
  - (b) the attention of all registered interested and affected parties is drawn to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.
- (3) For the purpose of this regulation, the decision includes the complete environmental authorisation granted or refused.

### **CHAPTER 3**

#### **GENERAL REQUIREMENTS FOR APPLICATIONS**

##### **5. General**

- (1) All applications in terms of these Regulations must be decided upon by a competent authority.
- (2) The competent authority, who must consider and decide upon an application in respect of a listed activity or specified activity, must be determined with reference to the notice published under section 24D(1) and any agreement in terms of section 24C(3) of the Act.
- (3) A competent authority must keep -
  - (a) a register of all applications received by the competent authority in terms of these Regulations;
  - (b) a register of all decisions in respect of environmental authorisations;
  - (c) copies of all applications; and
  - (d) copies of all decisions.
- (4) When a national electronic system is provided for the recording of applications for environmental authorisation, this system must be used by all competent authorities to keep the records referred to in subregulation (3)(a) and (b).
- (5) When a national electronic system is provided for the submission of applications for environmental authorisation, this system must be used by all applicants.
- (6) When providing coordinates as part of the information submitted regarding the location of an activity as part of an application for environmental authorisation, such coordinates must be provided in degrees, minutes and seconds using the Hartebeesthoek94 WGS84 co-ordinate system.

## **6. Where to submit application**

- (1) An application for an environmental authorisation or environmental authorisations for the commencement of an activity must be made to the competent authority referred to in regulation 5.
- (2) If the Minister is the competent authority in respect of an application, the application must be submitted to the Department.
- (3) If an MEC is the competent authority in respect of an application, the application must be submitted to the provincial department responsible for environmental affairs in that province.
- (4) If the Minister, Minister responsible for mineral resources or MEC has, in terms of section 42, 42B or 42A respectively of the Act, delegated any powers or duties of a competent authority in relation to an application, the application must be submitted to the person or authority to whom the powers had been delegated.
- (5) If the Minister responsible for mineral resources is the competent authority in respect of an application, the application must be submitted to the relevant office of the Department responsible for mineral resources as identified by that Department.

### ***Part 1***

#### ***Duties of competent authority***

## **7. Consultation between competent authority and organs of state administering a law relating to a matter affecting the environment**

- (1) Where an agreement has been reached in order to give effect to Chapter 3 of the Constitution of the Republic of South Africa, 1996 and sections 24(4)(a)(i), 24K and 24L of the Act, and where such agreement is applicable to an application, such application must be dealt with in accordance with such agreement.
- (2) The competent authority or EAP must consult with every organ of state that administers a law relating to a matter affecting the environment relevant to that application for an environmental authorisation when such competent authority considers the application and unless agreement to the contrary has been reached the EAP will be responsible for such consultation.
- (3) Where an applicant submits an application for environmental authorisation in terms of these Regulations and an application for an authorisation, permit or licence in terms of a specific environmental management Act or any other legislation, the competent authority and the authority empowered under such specific environmental management Act or other legislation must manage the respective processes in a cooperative governance manner.

- (4) Where the processes prescribed in terms of these Regulations are used to inform applications in terms of other legislation, application processes must be aligned to run concurrently.
- (5) Where a competent authority is requested by an applicant to comment in terms of these Regulations, such competent authority must submit its comments within 30 days.

#### **8. Guidance by competent authority to proponent or applicant**

A competent authority, subject to the payment of any reasonable charges, if applicable -

- (a) may advise or instruct the proponent or applicant of the nature and extent of any of the processes that may or must be followed or decision support tools that must be used in order to comply with the Act and these Regulations;
- (b) must advise the proponent or applicant of any matter that may prejudice the success of an application;
- (c) must, on written request, furnish the proponent or applicant with officially adopted minutes of any official meeting held between the competent authority and the proponent, applicant or EAP; and
- (d) must, on written request, provide access to the officially adopted minutes of meetings contemplated in paragraph (c), to any registered interested or affected party.

#### **9. Format of forms**

The format of any application form must be determined by the competent authority and must include, once established, the national sector classification of the activity applied for.

### ***Part 2***

#### ***Duties of proponents and applicants***

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

An applicant must -

- (a) use the application form contemplated in regulation 9 when submitting an application in terms of these Regulations;
- (b) comply with any minimum information requirements for the application; and

- (c) provide the competent authority with all information that reasonably has or may have the potential of influencing any decision with regard to an application.

## **11. Combination of applications**

- (1) If a proponent or proponents intend to undertake one or more than one activity of the same type at different locations within the area of jurisdiction of a competent authority, the competent authority may, on written request, grant permission for the submission of a single application.
- (2) If the competent authority grants permission in terms of subregulation (1), the application must be dealt with as a consolidated assessment process, but the potential environmental impacts of each activity must be considered in terms of the location where the activity is to be undertaken.
- (3) If a proponent or applicant intends undertaking more than one activity as part of the same development within the area of jurisdiction of a competent authority, a single application must be submitted for such development and the assessment of impacts, including cumulative impacts, where applicable, and consideration of the application, undertaken in terms of these Regulations, will include an assessment of all such activities forming part of the development.
- (4) If one or more proponents intend undertaking interrelated activities at the same or different locations within the area of jurisdiction of a competent authority, the competent authority may, in writing, agree that the proponent or proponents submit a single application in respect of all of those activities and to conduct a consolidated assessment process but the potential environmental impacts of each activity, including its cumulative impacts, must be considered in terms of the location where the activity is to be undertaken.
- (5) Where a combined application is submitted as contemplated in these Regulations, the proponent must, prior to submission of the application, confirm with the competent authority the fee payable in terms of the applicable regulations for such combined application.

## **12. Appointment of EAPs and specialists**

- (1) A proponent or applicant must appoint an EAP at own cost to manage the application.
- (2) In addition to the appointment of an EAP, a specialist may be appointed, at the cost of the proponent or applicant, if the level of assessment is of a nature requiring the appointment of a specialist.
- (3) The proponent or applicant must -
  - (a) take all reasonable steps to verify whether the EAP and specialist complies with regulation 13(1)(a) and (b); and

- (b) provide the EAP and specialist with access to all information at the disposal of the proponent or applicant regarding the application, whether or not such information is favourable to the application.

### **13. General requirements for EAPs and specialists**

- (1) An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must -
    - (a) be independent;
    - (b) have expertise in conducting environmental impact assessments or undertaking specialist work as required, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;
    - (c) ensure compliance with these Regulations;
    - (d) perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the application;
    - (e) take into account, to the extent possible, the matters referred to in regulation 18 when preparing the application and any report, plan or document relating to the application; and
    - (f) disclose to the proponent or applicant, registered interested and affected parties and the competent authority all material information in the possession of the EAP and, where applicable, the specialist, that reasonably has or may have the potential of influencing -
      - (i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or
      - (ii) the objectivity of any report, plan or document to be prepared by the EAP or specialist, in terms of these Regulations for submission to the competent authority;
- unless access to that information is protected by law, in which case it must be indicated that such protected information exists and is only provided to the competent authority.
- (2) In the event where the EAP or specialist does not comply with subregulation (1)(a), the proponent or applicant must, prior to conducting public participation as contemplated in chapter 5 of these Regulations, appoint another EAP or specialist to externally review all work undertaken by the EAP or specialist, at the applicant's cost.
  - (3) An EAP or specialist appointed to externally review the work of an EAP or specialist as contemplated in subregulation (2), must comply with subregulation (1).

#### 14. Disqualification of EAPs and specialists

- (1) If the competent authority at any stage of considering an application has reason to believe that the EAP or specialist is not complying or has not complied with the requirements of regulation 13 in respect of the application, other than circumstances where the requirement of independence in regulation 13(1)(a) has been met by compliance with regulation 13(2) and (3), the competent authority may -
  - (a) notify the EAP or specialist and the applicant of the reasons therefore, that the application is suspended until the matter is resolved and the extended timeframe for the processing of the application; and
  - (b) afford the EAP or specialist and the applicant an opportunity to make representations to the competent authority regarding the suspected non-compliance with the requirements of regulation 13 of the EAP or specialist, in writing.
- (2) Other than circumstances where the requirement of independence in regulation 13(1)(a) has been met by compliance with regulation 13(2) and (3), an interested and affected party may notify the competent authority of any suspected non-compliance with regulation 13.
- (3) Where an interested and affected party notifies the competent authority of suspected non-compliance in terms of subregulation (2), the competent authority must investigate the allegation promptly.
- (4) The notification referred to in subregulation (2) must be submitted in writing and must contain documentation supporting the allegation, which is referred to in the notification.
- (5) If, after considering the matter, there is reason for the competent authority to believe that there is non-compliance with regulation 13 by the EAP or specialist, the competent authority must, in writing, inform the interested and affected party who notified the competent authority in terms of subregulation (2), the EAP or specialist and the applicant accordingly and may -
  - (a) refuse to accept any further reports, plans, documents or input from the EAP or specialist in respect of the application in question;
  - (b) request the applicant to -
    - (i) commission, at own cost, an external review, by another EAP or specialist that complies with the requirements of regulation 13, of any reports, plans or documents prepared or processes conducted in connection with the application;

- (ii) appoint another EAP or specialist that complies with the requirements of regulation 13 to redo any specific aspects of the work done by the previous EAP or specialist in connection with the application or to complete any unfinished work in connection with the application; or
  - (iii) take such action as the competent authority requires to remedy the defects.
- (6) If the application has reached a stage where a register of interested and affected parties has been opened in terms of regulation 42, the applicant must, within 7 days from the suspension in terms of sub-regulation (1)(a) or decision in terms of subregulation (5), inform all registered interested and affected parties of such suspension or decision.

#### **15. Determination of assessment process applicable to application**

- (1) An EAP must identify whether basic assessment or S&EIR must be applied to the application, taking into account -
- (a) any notices published in terms of section 24D of the Act;
  - (b) any guidelines applicable to the application process or activity which is the subject of the application; and
  - (c) any advice given by the competent authority in terms of regulation 8.
- (2) An application must be managed in accordance with -
- (a) regulation 19 and 20 if basic assessment must be applied to the application; or
  - (b) regulation 21 to 24 if S&EIR must be applied to the application,
- (3) S&EIR must be applied to an application if the application is for two or more activities as part of the same development for which S&EIR must already be applied in respect of any of the activities.

## **CHAPTER 4 APPLICATION FOR ENVIRONMENTAL AUTHORISATION**

### **Part 1 General**

#### **16. General application requirements**

- (1) An application for an environmental authorisation must -



- (a) be made on an official application form obtainable from the relevant competent authority; and
- (b) when submitted in terms of regulation 19 or 21, be accompanied by -
  - (i) unless regulation 39(2) applies, the written consent referred to in regulation 39(1), if the applicant is not the owner or person in control of the land on which the activity is to be undertaken;
  - (ii) proof of payment of the prescribed application fee, if any;
  - (iii) a declaration of interest by the EAP or specialist, which EAP or specialist meets all the requirements contemplated in regulation 13;
  - (iv) an undertaking under oath or affirmation that all the information submitted or to be submitted for the purposes of the application is true and correct;
  - (v) the report generated by the national web based environmental screening tool, once this tool is operational;
  - (vi) a description of the location of the activity, including
    - (aa) the 21 digit Surveyor General code of each cadastral land parcel,
    - (bb) where available, the physical address or farm name,
    - (cc) where the required information in sub-regulation (aa) and (bb) is not available, the coordinates of the boundary of the property or properties,
  - (vii) a plan which locates the proposed activity or activities applied for at an appropriate scale, or if it is -
    - (aa) a linear activity, a description and coordinates of the corridor in which the proposed activity or activities is proposed; or
    - (bb) on land where the property has not been defined, the coordinates of the area within which the activity is proposed;
  - (viii) any minimum information requirements for the application; and
  - (ix) where applicable, proof of acceptance of an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002.

- (2) An application for an environmental authorisation may -
- (a) where applicable, only be submitted after the acceptance of an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;
  - (b) where section 24L of the Act applies, be submitted in the manner as agreed to by the relevant authorities.
- (3) Any report, plan or document submitted as part of an application must -
- (a) comply with any minimum information requirements for the application;
  - (b) be prepared in a format that may be determined by the competent authority; and
  - (c) take into account any applicable government policies and plans, guidelines, environmental management instruments and other decision making instruments that have been adopted by the competent authority in respect of the application process or the kind of activity which is the subject of the application and indicate how the relevant information has been considered, incorporated and utilised.

#### **17. Checking of application for compliance with formal requirements**

Upon receipt of an application, the competent authority must check whether the application -

- (a) is properly completed and that it contains the information required in the application form;
- (b) is accompanied by any other documents as required in terms of these Regulations; and
- (c) has taken into account any minimum information requirements for the application or instructions or guidance provided by the competent authority to the submission of applications.

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

When considering an application the competent authority must have regard to section 24O and 24(4) of the Act, the need for and desirability of the undertaking of the proposed activity, any guideline published in terms of section 24J of the Act and any minimum information requirements for the application.

### ***Part 2***

#### ***Basic assessment***

**19. Submission of basic assessment report and environmental management programme, and where applicable closure plan, 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 specialist reports, an EMPr, and where applicable a closure plan, 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 basic assessment report, inclusive of specialist reports an EMPr, and where applicable, a closure plan, will be submitted within 140 days of receipt of the application by the competent authority, as significant changes have been made or significant new information has been added to the basic assessment report or EMPr or, where applicable, a closure plan, which changes or information was not contained in the reports or plans consulted on during the initial public participation process contemplated in subregulation (1)(a) and that the revised reports or, EMPr or, where applicable, a closure plan will be subjected to another public participation process of at least 30 days.
- (2) In the event where subregulation (1)(b) applies, the basic assessment report inclusive of specialist reports, an EMPr, and where applicable, the closure plan, 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.
- (3) A basic assessment report must contain the information set out in Appendix 1 to these Regulations and, where the application for an environmental authorisation is for prospecting, exploration, extraction and primary processing of a mineral or petroleum resource 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, mining or production operations, made in terms of the Act.
- (4) An EMPr must contain the information set out in Appendix 4 to these Regulations and, where the application for an environmental authorisation is for prospecting, exploration, extraction and primary processing of a mineral or petroleum resource or activities directly related thereto, the EMPr must address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, mining or production operations, made in terms of the Act.
- (5) A closure plan is required where the application for an environmental authorisation relates to the decommissioning or closure of a facility.

- (6) A closure plan must contain the information set out in Appendix 5 to these Regulations, and, where the application for an environmental authorisation is for prospecting, exploration, extraction and primary processing of a mineral or petroleum resource 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, mining or production operations, made in terms of the Act.
- (7) The content of a closure plan may be combined with the content of an EMPr on condition that the requirements of both Appendices 5 and 4, respectively, are met.
- (8) A specialist report must contain all information set out in Appendix 6 to these Regulations.

## **20. Decision on basic assessment application**

- (1) The competent authority must within 107 days of receipt of the basic assessment report and EMPr, or where relevant the closure plan, in writing -
  - (a) grant environmental authorisation in respect of all or part of the activity applied for; or
  - (b) refuse environmental authorisation.
- (2) To the extent that authorisation is granted for an alternative, such alternative must, for the purposes of subregulation (1), be regarded as having been applied for, consulted on and its impacts investigated.
- (3) On having reached a decision, the competent authority must comply with regulation 4(1), after which the applicant must comply with regulation 4(2).
- (4) The Minister responsible for mineral resources may only issue an environmental authorisation if the provisions of section 24P(1) of the Act have been complied with.

## **Part 3 S&EIR**

## **21. Submission of scoping report to competent authority**

- (1) If S&EIR must be applied to an application, the applicant must, within 44 days of receipt of the application by the competent authority, submit to the competent authority a scoping report which has 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.

- (2) Subject to regulation 46, and if the findings of the scoping report is still valid and the environmental context has not changed, the submission of a scoping report as contemplated in subregulation (1) need not be complied with -
- (a) in cases where a scoping report was accepted as part of a previous application for environmental authorisation and the application was refused because of insufficient information;
  - (b) on condition that regulation 16 is complied with and that such application is accompanied by proof that registered interested and affected parties, who participated in the public participation process conducted as part of the previous application, have been notified of this intended resubmission of the application prior to submission of such application;
  - (c) if the application contemplated in paragraph (b) is submitted by the same applicant for the same development, as applied for and refused as contemplated in paragraph (a); and
  - (d) if an environmental impact assessment report inclusive of specialist reports and an EMP, 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, is submitted within a period of two years from the date of the acceptance of the scoping report contemplated in paragraph (a).
- (3) A scoping report must contain all information set out in Appendix 2 to these Regulations.

## **22. Consideration of scoping report**

The competent authority must, within 43 days of receipt of a scoping report -

- (a) accept the scoping report, with or without conditions, and advise the applicant to proceed or continue with the tasks contemplated in the plan of study for environmental impact assessment;  
or
- (b) refuse environmental authorisation if -
  - (i) the proposed activity is in conflict with a prohibition contained in legislation; or
  - (ii) if the scoping report does not substantially comply with Appendix 2 to these Regulations and the applicant is unwilling or unable to ensure compliance with these requirements within the prescribed timeframe.

## **23. Submission and consideration of environmental impact assessment report and environmental management programme**

- (1) The applicant must within 106 days of the acceptance of the scoping report submit to the competent authority -
  - (a) an environmental impact report inclusive of any specialist reports, and an EMPr, 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 environmental impact report inclusive of any specialist reports, and an EMPr, will be submitted within 156 days of acceptance of the scoping report by the competent authority, as significant changes have been made or significant new information has been added to the environmental impact report or EMPr, which changes or information was not contained in the reports consulted on during the initial public participation process contemplated in subregulation (1)(a), and that the revised environmental impact report or EMPr will be subjected to another public participation process of at least 30 days.
- (2) In the event where subregulation (1)(b) applies, the environmental impact report inclusive of specialist reports and EMPr, 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 receipt of the application by the competent authority.
- (3) An environmental impact: report must contain all information set out in Appendix 3 to these Regulations and, where the application is for an environmental authorisation for prospecting, exploration, extraction and primary processing of a mineral or petroleum resource or activities directly related thereto, the environmental impact report must address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, mining or production operations, made in terms of the Act.
- (4) An EMPr must contain all information set out in Appendix 4 to these Regulations and, where the application is for an environmental authorisation is for prospecting, exploration, extraction and primary processing of a mineral or petroleum resource or activities directly related thereto, the EMPr must address the requirements as determined in the regulations, pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, mining or production operations, made in terms of the Act.
- (5) A specialist report must contain all information set out in Appendix 6 to these Regulations.

#### **24. Decision on S&EIR application**

- (1) The competent authority must within 107 days of receipt of the environmental impact report and EMPr, in writing -
  - (a) grant environmental authorisation in respect of all or part of the activity applied for; or

- (b) refuse environmental authorisation.
- (2) To the extent that authorisation is granted for an alternative, such alternative must for the purposes of subregulation (1) be regarded as having been applied for, consulted on and its impacts investigated.
- (3) On having reached a decision, the competent authority must comply with regulation 4(1), after which an applicant must comply with regulation 4(2).
- (4) The Minister responsible for Mineral Resources may only issue an authorization if the provisions of section 24P(1) of the Act have been complied with.

#### **Part 4**

#### ***Environmental authorisation***

#### **25. Issue of environmental authorisation**

- (1) If the competent authority decides to grant authorisation, the competent authority must issue an environmental authorisation or environmental authorisations complying with regulation 26 to, and in the name of, the applicant or applicants.
- (2) If the competent authority decides to grant authorisation in respect of an application, the competent authority may issue a single environmental authorisation or multiple environmental authorisations in the name of the same or different applicants covering all aspects for which authorisation is granted.
- (3) A competent authority may issue an integrated environmental authorisation as contemplated in section 24L of the Act.
- (4) The competent authority may replace an existing valid environmental authorisation with an environmental authorisation contemplated in this regulation, indicating the extent of replacement in the environmental authorisation, if the existing valid environmental authorisation is directly related to the application for environmental authorisation.

#### **26. Content of environmental authorisation**

An environmental authorisation must specify -

- (a) the name, address and contact details of the person to whom the environmental authorisation is issued;
- (b) a description of the activity that is authorised;

- (c) a description of the location of the activity, including
  - (i) the 21 digit Surveyor General code of each cadastral land parcel,
  - (ii) where available, the physical address or farm name,
  - (iii) where the required information in sub-regulation (i) and (ii) is not available, the coordinates of the boundary of the property or properties,
  - (iv) a plan which locates the proposed activity or activities authorised at an appropriate scale, or, if it is -
    - (aa) a linear activity, a description and coordinates of the approved corridor of the activity or activities; or
    - (bb) on land where the property has not been defined, the coordinates of the area within which the activity is to be undertaken;
- (d) the conditions subject to which the activity may be undertaken, including conditions determining-
  - (i) the period within which commencement must occur, which period may not exceed 10 years and may not be extended beyond such 10 year period, unless the process to amend the environmental authorisation contemplated in regulation 32 is followed;
  - (ii) the period for which the environmental authorisation is granted and the date on which the activity is deemed to have been concluded, where the environmental authorisation does not include operational aspects;
  - (iii) a distinction between the portions of the environmental authorisation that deal with operational and non-operational aspects respectively and the respective periods for which the distinct portions of the environmental authorisation is granted, where the environmental authorisation contains operational and non-operational aspects;
  - (iv) 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 where applicable the closure plan; and
- (e) the frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr, and where applicable 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 five years;

- (f) the frequency of submission of an environmental audit report to the competent authority, including the timeframe within which a final environmental audit report must be submitted to the competent authority;
- (g) the frequency of updating the EMPr, and where applicable the closure plan, and the manner in which the updated EMPr and closure plan will be approved, taking into account processes for such amendments prescribed in terms of these Regulations;
- (h) a requirement that the environmental authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, where applicable, 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
- (i) any relevant conditions which the competent authority deems appropriate.

## CHAPTER 5

### AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING OF COMPLIANCE WITH ENVIRONMENTAL AUTHORISATION AND ENVIRONMENTAL MANAGEMENT PROGRAMME

#### 27. General

- (1) The competent authority that issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment of that environmental authorisation as long as the environmental authorisation is still valid, provided that the competent authority that issued such environmental authorisation still has jurisdiction in terms of the Act.
- (2) Where the competent authority decides to amend an environmental authorisation, the competent authority must -

- (a) issue an amendment to the environmental authorisation either by way of a new environmental authorisation or new environmental authorisations or an addendum to the relevant environmental authorisation; or
  - (b) replace an existing valid environmental authorisation with an environmental authorisation contemplated in this regulation, indicating the extent of replacement in the environmental authorisation, if the existing environmental authorisation is directly related to the amendment required.
- (3) Where an environmental authorisation granted in terms of these Regulations does not include operational aspects and the activity has been commenced with, the period for which such environmental authorisation is granted may only be extended for a maximum further period of five years.
- (4) An environmental authorisation may be amended or replaced without following a procedural requirement contained in these Regulations if the purpose is to correct an error and the correction does not change the rights and duties of any person materially.

## **28. Application for amendment**

- (1) The holder of an environmental authorisation may, at least three months prior to the expiry of the validity period of an environmental authorisation, apply to the relevant competent authority for the amendment of the environmental authorisation in terms of Part 1 of this Chapter.
- (2) Failure to lodge an application for amendment of an environmental authorisation at least three months prior to expiry may result in the competent authority not being able to process the application for amendment in time and in the lapsing of the environmental authorisation.
- (3) An application in terms of subregulation (1) must be in writing and accompanied by a motivation for such amendment.

### ***Part 1***

#### ***Amendments where no change in scope or a change of ownership occur***

## **29. Amendments to be applied for in terms of Part 1**

An environmental authorisation may be amended by following the process prescribed in this Part if the amendment -

- (a) will not change the scope of a valid environmental authorisation nor increase the level or nature of the impact, which impact was initially assessed and considered when application was made for an environmental authorisation; or

- (b) relates to the change of ownership or transfer of rights and obligations.

**30. Process and consideration of application for amendment and decision**

- (1) Upon receipt of an application made in terms of regulation 29 the competent authority -
  - (a) may request the holder to furnish additional information and such request must accompany the acknowledgement of receipt of the application; and
  - (b) must refuse the application for amendment if the amendment being applied does not fall within the ambit of regulation 29.
- (2) The competent authority must within 30 days of acknowledging receipt of the application or of receipt of the additional information contemplated in subregulation (1)(a) decide the application.

**Part 2**

***Amendments where a change in scope occurs***

**31. Amendments to be applied for in terms of Part 2**

An environmental authorisation may be amended by following the process prescribed in this Part if the amendment will result in a change to the scope of a valid environmental authorisation where such change will result in an increased level or nature of impact where such level or nature of impact was not -

- (a) assessed and included in the initial application for environmental authorisation; or
- (b) taken into consideration in the initial environmental authorisation;

and the change does not, on its own, constitute a listed or specified activity.

**32. Process and consideration of application for amendment**

- (1) The holder must -
  - (a) within 90 days of receipt by the competent authority of the application made in terms of regulation 31, submit to the competent authority a report, reflecting -
    - (i) an assessment of all impacts related to the proposed change;
    - (ii) advantages and disadvantages associated with the proposed change; and

- (iii) measures to ensure avoidance, management and mitigation of impacts associated with such proposed change; and
- (iv) any changes to the EMPR;

which report -

- (i) had been subjected to a public participation process, which had been agreed to by the competent authority, and which was appropriate to bring the proposed change to the attention of potential and registered interested and affected parties, including organs of state, which have jurisdiction in respect of any aspect of the relevant activity, and the competent authority, and
  - (ii) reflects the incorporation of comments received, including any comments of the competent authority; or
- (b) submit to the competent authority a notification in writing that the report will be submitted within 140 days of receipt of the application by the competent authority, as significant changes have been made or significant new information has been added to the report, which changes or information was not contained in the report consulted on during the initial public participation process contemplated in subregulation (1)(a) and that the revised report will be subjected to another public participation process of at least 30 days.
- (2) In the event where subregulation (1)(b) applies, the report, 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.

### **33. Decision on amendment application**

- (1) The competent authority must within 107 days of receipt of the report contemplated in regulation 32, in writing, decide the application.
- (2) On having reached a decision, the competent authority must comply with regulation 4(1), after which the holder applicant must comply with regulation 4(2).

## ***Part 3***

### ***Auditing and amendment of environmental authorisation, environmental management programme and closure plan***

### **34. Auditing of compliance with environmental authorisation, environmental management programme and closure plan**

Prepared by:

In partnership with:

- (1) The holder of an environmental authorisation must, for the period during which the environmental authorisation and EMPr, and where applicable the closure plan, remain valid -
  - (a) ensure that the compliance with the conditions of the environmental authorisation and the EMPr, and where applicable the closure plan, is audited; and
  - (b) submit an environmental audit report to the relevant competent authority.
- (2) The environmental audit report contemplated in subregulation (1) must -
  - (a) be prepared by an independent person with the relevant environmental auditing expertise;
  - (b) provide verifiable findings, in a structured and systematic manner, on -
    - (i) the level of performance against and compliance of an organization or project with the provisions of the requisite environmental authorisation or EMPr and, where applicable, the closure plan; and
    - (ii) the ability of the measures contained in the EMPr, and where applicable the closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity;
  - (c) contain the information set out in Appendix 7; and
  - (d) be conducted and submitted to the competent authority at intervals as indicated in the environmental authorisation.
- (3) The environmental audit report contemplated in subregulation (1) must determine -
  - (a) the ability of the EMPr, and where applicable the closure plan, to sufficiently provide for the avoidance, 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; and
  - (b) the level of compliance with the provisions of environmental authorisation, EMPr and where applicable the closure plan.
- (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 the environmental authorisation or EMPr and, where applicable the closure plan;

the holder must, when submitting the environmental audit report to the competent authority in terms of subregulation (1), submit recommendations to amend the EMPr or closure plan in order to rectify the shortcomings identified in the environmental audit report.

- (5) When submitting recommendation in terms of subregulation (4), such recommendations must have been subjected to a public participation process, which process has been agreed to by the competent authority and was appropriate to bring the proposed amendment of the EMPr and, where applicable the closure plan, to the attention of potential and registered interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity and the competent authority, for approval by the competent authority.
- (6) Within 7 days of the date of submission of an environmental audit report to the competent authority, the holder of an environmental authorisation must notify all potential and registered interested and affected parties of the submission of that report, and make such report immediately available -
  - (a) to anyone on request; and
  - (b) on a publicly accessible website, where the holder has such a website.
- (7) An environmental audit report must contain all information set out in Appendix 7 to these Regulations.

**35. Amendment of environmental management programme or closure plan as a result of an audit**

- (1) The competent authority must consider the environmental audit report and amended EMPr and, where applicable the amended closure plan, contemplated in regulation 34 and approve such amended EMPr, and where applicable the amended closure plan, if it is satisfied that it sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity, or where applicable the closure of the facility, and that it has been subjected to an appropriate public participation process.
- (2) Prior to approving an amended EMPr or closure plan contemplated in subregulation (1), the competent authority may request such amendments to the EMPr or closure plan as it deems appropriate to ensure that the EMPr sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity or to ensure that the closure plan sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the closure of the facility.

**Part 4**

***Other amendments of environmental management programme or closure plan***

**36. Other amendments of environmental management programme or closure plan**

- (1) Where an amendment is required to the impact management actions of an EMPr, such amendments may immediately be effected by the holder and reflected in the next environmental audit report submitted as contemplated in the environmental authorisation and regulation 34.
- (2) Where an amendment to the impact management outcomes or objectives of an EMPr or an amendment of the closure objectives of a closure plan is required before an audit is required in terms of the environmental authorisation, an EMPr or closure plan may be amended on application by the holder of the environmental authorisation.

**37. Amendment of environmental management programme or closure plan on application by holder of environmental authorisation**

- (1) Where the holder of an environmental authorisation identifies amendments to the impact management outcomes or objectives of the EMPr or amendments to the closure objectives of the closure plan before an audit is required in terms of the environmental authorisation, such holder must notify the competent authority of its intention to amend the EMPr or closure plan at least 60 days prior to submitting such amendments to the EMPr or closure plan to the competent authority for approval.
- (2) The holder of the environmental authorisation must invite comments on the proposed amendments to the impact management outcomes or objectives of the EMPr or amendments to the closure objectives of the closure plan from potentially interested and affected parties, including the competent authority, by using any of the methods provided for in the Act for a period of at least 30 days.
- (3) Reasonable alternative methods, as agreed to by the competent authority, to invite comments as contemplated in subregulation (2), may be used in those instances where a person desires but is unable to participate in the process due to -
  - (a) illiteracy;
  - (b) disability; or
  - (c) any other disadvantage.
- (4) The invitation to comment as contemplated in subregulation (2) must include an indication that any comments to the proposed amendments must be submitted to the holder of the environmental authorisation within 30 days of such invitation to comment.

- (5) If no comments are received, the holder of the environmental authorisation may amend the EMPr or closure plan in accordance with its intention contemplated in subregulation (1) and submit the amended EMPr or closure plan to the competent authority for approval within 60 days of inviting comments.
- (6) Prior to approving an amended EMPr or closure plan contemplated in subregulation (5), the competent authority may request such amendments to the EMPr or closure plan as it deems appropriate to ensure that the EMPr sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity or to ensure that the closure plan sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the closure of the facility.
- (7) If comments are submitted to the holder of the environmental authorisation, such holder must submit such comments to the competent authority, including responses to such comments, together with the proposed amended EMPr or closure plan.
- (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 closure plan or not.
- (9) After the competent authority has reached a decision in terms of subregulation (5) or (8), the competent authority must, within five days -
  - (a) provide the holder of the environmental authorisation with its decision, including the amended EMPr or closure plan if the decision was to approve the amended EMPr or closure plan, as well as reasons for the decision;
  - (b) draw the attention of the holder of the environmental authorisation to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision; and
  - (c) instruct the holder of the environmental authorisation to, within 14 days of the date of the decision, inform the parties who submitted comments of the decision, to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.

## ***Part 5***

### ***Suspension and withdrawal of environmental authorisation***

#### **38. Suspension and withdrawal of environmental authorisation**



- (1) If the competent authority has reason to believe that the authorisation was obtained through fraud, non-disclosure of material information or misrepresentation of a material fact, the competent authority may, in writing, suspend or partially suspend, with immediate effect, the environmental authorisation and direct the holder of such environmental authorisation forthwith to cease any activities that have been commenced or to refrain from commencing any activities, pending a decision to withdraw the environmental authorisation.
- (2) The holder of the environmental authorisation may, within ten days of the suspension issued in terms of subregulation (1), provide the competent authority with representations as to why the environmental authorisation should not be withdrawn.
- (3) Subject to subregulation (4), within 14 days of receipt of representations, alternatively within 14 days of the expiry of the time period in which to submit representations, the competent authority must consider the representations, if any, and must inform the applicant in writing of its decision to -
  - (a) lift the suspension;
  - (b) withdraw, or partially withdraw, the environmental authorisation.
- (4) In the event that the competent authority requires further information in order to take a decision referred to in subregulation (3) it shall -
  - (a) within the 14 day time period set out in regulation (3), and in writing, request the holder to provide such further information; and
  - (b) consider this additional information prior to taking a decision in terms of (3)(a) or (b).
- (5) Where further information is requested, the competent authority shall have a further 14 day period from the date of receipt of this information, in which to make its decision in terms of subregulation (3)(a) or (b).
- (6) In the event that the competent authority decides to withdraw, or partially withdraw, the environmental authorisation in terms of (3)(b), and the activity or activities have commenced, the competent authority may direct the holder to rehabilitate the effects of the activity on the environment.
- (7) The provisions of this Part apply equally to any exemptions issued in terms of the ECA regulations or the previous NEMA Regulations as defined in Chapter 8 of these Regulations.

## CHAPTER 6 PUBLIC PARTICIPATION

### 39. Activity on land owned by person other than proponent

Prepared by:

In partnership with:

- (1) If the proponent is not the owner or person in control of the land on which the activity is to be undertaken, the proponent must, before applying for an environmental authorisation in respect of such activity, obtain the written consent of the landowner or person in control of the land to undertake such activity on that land.
- (2) Subregulation (1) does not apply in respect of-
  - (a) linear activities;
  - (b) activities directly related to prospecting or exploration of a mineral and petroleum resource or extraction and primary processing of a mineral resource; and
  - (c) strategic integrated projects as contemplated in the Infrastructure Development Act, 2014.

#### **40. Purpose of public participation**

- (1) The public participation process to which the -
  - (a) basic assessment report and EMPr, and where applicable 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 where applicable the closure plan, as well as the report contemplated in regulation 32, if such reports or plans are submitted at different times.

- (2) The public participation process contemplated in this regulation must provide access to all information that reasonably has or may have the potential to influence any decision with regard to an application unless access to that information is protected by law and must include consultation with -
  - (a) the competent authority;
  - (b) every State department that administers a law relating to a matter affecting the environment relevant to an application for an environmental authorisation;
  - (c) all organs of state which have jurisdiction in respect of the activity to which the application relates; and

- (d) all potential, or, where relevant, registered interested and affected parties.
- (3) Potential or registered interested and affected parties, including the competent authority, may be provided with an opportunity to comment on reports and plans contemplated in subregulation (1) prior to submission of an application but must be provided an opportunity to comment on such reports once an application has been submitted to the competent authority.

#### **41. Public participation process**

- (1) This regulation only applies in instances where adherence to the provisions of this regulation is specifically required.
- (2) The person conducting a public participation process must take into account any relevant guidelines applicable to public participation as contemplated in section 24J of the Act and must give notice to all potential interested and affected parties of an application or proposed application which is subjected to public participation by -
  - (a) fixing a notice board at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of -
    - (i) the site where the activity to which the application or proposed application relates is or is to be undertaken; and
    - (ii) any alternative site;
  - (b) giving written notice, in any of the manners provided for in section 47D of the Act, to -
    - (i) the occupiers of the site and, if the proponent or applicant is not the owner or person in control of the site on which the activity is to be undertaken, the owner or person in control of the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;
    - (ii) owners, persons in control of, and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;
    - (iii) the municipal councillor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represent the community in the area;
    - (iv) the municipality which has jurisdiction in the area;
    - (v) any organ of state having jurisdiction in respect of any aspect of the activity; and

- (vi) any other party as required by the competent authority;
  - (c) placing an advertisement in -
    - (i) one local newspaper; or
    - (ii) any official *Gazette* that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these Regulations;
  - (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or district municipality in which it is or will be undertaken: Provided that this paragraph need not be complied with if an advertisement has been placed in an official *Gazette* referred to in paragraph (c)(ii);and
  - (e) using reasonable alternative methods, as agreed to by the competent authority, in those instances where a person is desirous of but unable to participate in the process due to -
    - (i) illiteracy;
    - (ii) disability; or
    - (iii) any other disadvantage.
- (3) A notice, notice board or advertisement referred to in subregulation (2) must -
- (a) give details of the application or proposed application which is subjected to public participation; and
  - (b) state -
    - (i) whether basic assessment or S&EIR procedures are being applied to the application;
    - (ii) the nature and location of the activity to which the application relates;
    - (iii) where further information on the application or proposed application can be obtained; and
    - (iv) the manner in which and the person to whom representations in respect of the application or proposed application may be made.
- (4) A notice board referred to in subregulation (2) must -

- (a) be of a size at least 60cm by 42cm; and
  - (b) display the required information in lettering and in a format as may be determined by the competent authority.
- (5) Where public participation is conducted in terms of this regulation for an application or proposed application, subregulation (2)(a), (b), (c) and (d) need not be complied with again during the additional public participation process contemplated in regulations 19(1)(b) or 23(1)(b) or the public participation process contemplated in regulation 21(2)(d), on condition that -
- (a) such process has been preceded by a public participation process which included compliance with subregulation (2)(a), (b), (c) and (d); and
  - (b) written notice is given to registered interested and affected parties regarding where the -
    - (i) revised basic assessment report or, EMPr or closure plan, as contemplated in regulation 19(1)(b);
    - (ii) revised environmental impact report or EMPr as contemplated in regulation 23(1)(b); or
    - (iii) environmental impact report and EMPr as contemplated in regulation 21(2)(d);may be obtained, the manner in which and the person to whom representations on these reports or plans may be made and the date on which such representations are due.
- (6) When complying with this regulation, the person conducting the public participation process must ensure that -
- (a) information containing all relevant facts in respect of the application or proposed application is made available to potential interested and affected parties; and
  - (b) participation by potential or registered interested and affected parties is facilitated in such a manner that all potential or registered interested and affected parties are provided with a reasonable opportunity to comment on the application or proposed application.
- (7) Where an environmental authorisation is required in terms of these Regulations and an authorisation, permit or licence is required in terms of a specific environmental management Act, the public participation process contemplated in this Chapter may be combined with any public participation processes prescribed in terms of a specific environmental management Act, on condition that all relevant authorities agree to such combination of processes.

#### **42. Register of interested and affected parties**

A proponent or applicant must ensure the opening and maintenance of a register of interested and affected parties and submit such a register to the competent authority, which register must contain the names, contact details and addresses of -

- (a) all persons who, as a consequence of the public participation process conducted in respect of that application, have submitted written comments or attended meetings with the proponent, applicant or EAP;
- (b) all persons who have requested the proponent or applicant, in writing, for their names to be placed on the register; and
- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

#### **43. Registered interested and affected parties entitled to comment on reports and plans**

- (1) A registered interested and affected party is entitled to comment, in writing, on all reports or plans submitted to such party during the public participation process contemplated in these Regulations and to bring to the attention of the proponent or applicant any issues which that party believes may be of significance to the consideration of the application, provided that the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.
- (2) In order to give effect to section 24O of the Act, any State department that administers a law relating to a matter affecting the environment must be requested, subject to regulation 7(2), to comment within 30 days.

#### **44. Comments of interested and affected parties to be recorded in reports and plans**

- (1) The applicant must ensure that the comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations.
- (2) Where a person desires but is unable to access written comments as contemplated in subregulation (1) due to -
  - (i) a lack of skills to read or write;
  - (ii) disability; or

- (iii) any other disadvantage;

reasonable alternative methods of recording comments must be provided for.

## **CHAPTER 7 GENERAL MATTERS**

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

An application in terms of these Regulations lapses, and a competent authority will deem the application as having lapsed, if the applicant fails to meet any of the time-frames prescribed in terms of these Regulations, unless extension has been granted in terms of regulation 3(7).

### **46. Resubmission of similar applications**

No applicant may submit an application which is substantially similar to a previous application which has been refused unless the appeal on such refusal has been finalised or the time period for the submission of such appeal has lapsed.

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

The competent authority processing an application in terms of these Regulations must give reasonable assistance to people with

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

who cannot, but desire to, comply with these Regulations.

### **48. Offences**

- (1) A person is guilty of an offence if that person -
  - (a) provides incorrect or misleading information in any form, including any document submitted in terms of these Regulations to a competent authority or omits information that may have an influence on the outcome of a decision of a competent authority;
  - (b) fails to comply with regulation 10(c);

- (c) fails to comply with regulation 13(1)(f);
  - (d) fails to comply with regulation 34;
  - (e) fails to comply with regulation 37; or
  - (f) commences with an activity where the environmental authorisation was suspended or withdrawn in terms of regulation 38.
- (2) A person convicted of an offence in terms of subregulation (1)(a), (b), (c), (d) or (e) is liable to the penalties as contemplated in section 49B(2) of the Act.
- (3) A person convicted of an offence in terms of subregulation (1)(f) is liable to the penalties as contemplated in section 49B(1) of the Act.

## CHAPTER 8 TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT

### 49. Definitions

In this Chapter -

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

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

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

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

“**previous MPRDA regulations**” as contemplated in these transitional arrangements, means the regulations published in terms of section 107 of the Mineral and Petroleum Resources Development Act, 2002, by Government Notice R527 in *Government Gazette* 26275 of 23 April 2004 and as amended from time to time;

“**previous NEMA notices**” as contemplated in these transitional arrangements means the previous notices published in terms of section 24(2) of NEMA (Government Notices R. 386 and R. 387 in the



*Government Gazette* of 21 April 2006, and as amended from time to time, or Government Notice No. R. 544, 545 and 546 in the *Government Gazette* of 18 June 2010, as amended from time to time);

“**previous NEMA regulations**” as contemplated in these transitional arrangements means either the previous Environmental Impact Assessment Regulations published in terms of NEMA (Government Notice No. R. 385 in the *Government Gazette* of 21 April 2006 or Government Notice No. R. 543 in the *Government Gazette* of 18 June 2010);

**50. Continuation of actions undertaken and authorisations issued under previous ECA regulations**

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

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

- (1) An application submitted in terms of the ECA regulations and which is pending when these Regulations take effect, including pending applications for activities directly related to -
  - (a) prospecting or exploration of a mineral or petroleum resource; or
  - (b) extraction and primary processing of a mineral or petroleum resource;

must despite the repeal of those Regulations be dispensed with in terms of those Regulations as if those Regulations were not repealed.

- (2) If a situation arises where an activity or activities listed under the ECA Notices no longer requires environmental authorisation in terms of the current activities and competent authorities identified in terms of sections 24(2) and 24D of the Act or in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), and where a decision on an application submitted under the ECA regulations is still pending, the competent authority will consider such application to be withdrawn.
- (3) Where an application submitted in terms of the ECA regulations is pending in relation to an activity of which a component of the same activity was not listed under the ECA Notices, but is now identified in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of those ECA regulations and may authorise the activity identified in terms of section 24(2) as if it was

applied for, on condition that all impacts of the newly listed activity and requirements of these Regulations have also been considered and adequately assessed.

**52. Continuation of actions undertaken and authorisations issued under previous NEMA regulations**

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

**53. Pending applications and appeals (NEMA)**

- (1) An application submitted in terms of the previous NEMA regulations and which is pending when these Regulations take effect, including pending applications for auxiliary activities directly related to -

- (a) prospecting or exploration of a mineral or petroleum resource; or
- (b) extraction and primary processing of a mineral or petroleum resource,

must despite the repeal of those Regulations be dispensed with in terms of those previous NEMA regulations as if those previous NEMA regulations were not repealed.

- (2) If a situation arises where an activity or activities, identified under the previous NEMA Notices, no longer requires environmental authorisation in terms of the current activities and competent authorities identified in terms of section 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), and where a decision on an application submitted under the previous NEMA regulations is still pending, the competent authority will consider such application to be withdrawn.
- (3) Where an application submitted in terms of the previous NEMA regulations, is pending in relation to an activity of which a component of the same activity was not identified under the previous NEMA notices, but is now identified in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of the previous NEMA regulations and may authorise the activity identified in terms of section 24(2) as if it was applied for, on condition that all impacts of the newly identified activity and requirements of these Regulations have also been considered and adequately assessed.

- (4) An appeal lodged in terms of the previous NEMA regulations, and which is pending when these Regulations take effect must despite the repeal of those previous NEMA regulations be dispensed with in terms thereof as if those previous NEMA regulations were not repealed.

#### **54. Pending applications (MPRDA)**

- (1) An application submitted in terms of the previous MPRDA regulations and which is pending when these Regulations take effect must despite the repeal of those regulations be dispensed with in terms of those previous MPRDA regulations as if those previous MPRDA regulations were not repealed.
- (2) An application submitted after the commencement of these Regulations for an amendment of an Environmental Management Programme, issued in terms of the Mineral and Petroleum Resources Development Act, 2002, must be dealt with in terms of Part 1 or Part 2 of Chapter 5 of these Regulations.
- (3) "Application" for the purpose of subregulation (1) means an application for a permit, right, approval of an Environmental Management Programme or amendment to such permit, right or Environmental Management Programmes.

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

These Regulations do not affect the continued application of the regulations published in terms of sections 26 and 28 of the ECA, by Government Notice R. 1528 of 27 November 1998.

#### **56. Repeal of Environmental Impact Regulations, 2010**

With the exception of Chapter 5 and Chapter 7 of the Environmental Impact Assessment Regulations, 2010, those Regulations as published in Government Notice No. R. 543, in the *Gazette* No. 33306 of 18 June 2010, is hereby repealed.

#### **57. Short title and commencement**

These Regulations are called the Environmental Impact Assessment Regulations, 2014 and take effect on 8 December 2014.

## **APPENDIX 1**

### **BASIC ASSESSMENT REPORT**

#### **1. Basic assessment process**

The environmental outcomes, impacts and residual risks of the proposed activity must be set out in the basic assessment report.

#### **2. Objective of the basic assessment process**

The objective of the basic assessment process is to, through a consultative process -

- (a) determine the policy and legislative context within which the proposed activity is located and how the activity complies with and responds to the policy and legislative context;
- (b) identify the alternatives considered, including the activity, location, and technology alternatives;
- (c) describe the need and desirability of the proposed alternatives,
- (d) through the undertaking of an impact and risk assessment process inclusive of cumulative impacts which focused on determining the geographical, physical, biological, social, economic, heritage, and cultural sensitivity of the sites and locations within sites and the risk of impact of the proposed activity and technology alternatives on the these aspects to determine -
  - (i) the nature, significance, consequence, extent, duration, and probability of the impacts occurring to; and
  - (ii) the degree to which these impacts -
    - (aa) can be reversed;
    - (bb) may cause irreplaceable loss of resources; and
    - (cc) can be avoided, managed or mitigated;
- (e) through a ranking of the site sensitivities and possible impacts the activity and technology alternatives will impose on the sites and location identified through the life of the activity to -
  - (i) identify and motivate a preferred site, activity and technology alternative;
  - (ii) identify suitable measures to avoid, manage or mitigate identified impacts; and

- (iii) identify residual risks that need to be managed and monitored.

### 3. Scope of assessment and content of basic assessment reports

- (1) A basic assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include -

- (a) details of -

- (i) the EAP who prepared the report; and
- (ii) the expertise of the EAP, including a curriculum vitae;

- (b) the location of the activity, including;

- (i) the 21 digit Surveyor General code of each cadastral land parcel;
- (ii) where available, the physical address and farm name;
- (iii) where the required information in items (i) and (ii) is not available, the coordinates of the boundary of the property or properties;

- (c) a plan which locates the proposed activity or activities applied for as well as associated structures and infrastructure at an appropriate scale;

or, if it is -

- (i) a linear activity, a description and coordinates of the corridor in which the proposed activity or activities is to be undertaken; or
- (ii) on land where the property has not been defined, the coordinates within which the activity is to be undertaken;

- (d) a description of the scope of the proposed activity, including -

- (i) all listed and specified activities triggered and being applied for; and
- (ii) a description of the activities to be undertaken including associated structures and infrastructure;

- (e) a description of the policy and legislative context within which the development is proposed including -

- (i) an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks, and instruments that are applicable to this activity and have been considered in the preparation of the report; and
  - (ii) how the proposed activity complies with and responds to the legislation and policy context, plans, guidelines, tools frameworks, and instruments;
- (f) a motivation for the need and desirability for the proposed development including the need and desirability of the activity in the context of the preferred location;
- (g) a motivation for the preferred site, activity and technology alternative;
- (h) a full description of the process followed to reach the proposed preferred alternative within the site, including:
- (i) details of all the alternatives considered;
  - (ii) details of the public participation process undertaken in terms of regulation 41 of the Regulations, including copies of the supporting documents and inputs;
  - (iii) a summary of the issues raised by interested and affected parties, and an indication of the manner in which the issues were incorporated, or the reasons for not including them;
  - (iv) the environmental attributes associated with the alternatives focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;
  - (v) the impacts and risks identified for each alternative, including the nature, significance, consequence, extent, duration and probability of the impacts, including the degree to which these impacts -
    - (aa) can be reversed;
    - (bb) may cause irreplaceable loss of resources; and
    - (cc) can be avoided, managed or mitigated;
  - (vi) the methodology used in determining and ranking the nature, significance, consequences, extent, duration and probability of potential environmental impacts and risks associated with the alternatives;

- (vii) positive and negative impacts that the proposed activity and alternatives will have on the environment and on the community that may be affected focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;
  - (viii) the possible mitigation measures that could be applied and level of residual risk;
  - (ix) the outcome of the site selection matrix;
  - (x) if no alternatives, including alternative locations for the activity were investigated, the motivation for not considering such; and
  - (xi) a concluding statement indicating the preferred alternatives, including preferred location of the activity;
- (i) a full description of the process undertaken to identify, assess and rank the impacts the activity will impose on the preferred location through the life of the activity, including -
- (i) a description of all environmental issues and risks that were identified during the environmental impact assessment process; and
  - (ii) an assessment of the significance of each issue and risk and an indication of the extent to which the issue and risk could be avoided or addressed by the adoption of mitigation measures;
- (j) an assessment of each identified potentially significant impact and risk, including -
- (i) cumulative impacts;
  - (ii) the nature, significance and consequences of the impact and risk;
  - (iii) the extent and duration of the impact and risk;
  - (iv) the probability of the impact and risk occurring;
  - (v) the degree to which the impact and risk can be reversed;
  - (vi) the degree to which the impact and risk may cause irreplaceable loss of resources; and
  - (vii) the degree to which the impact and risk can be avoided, managed or mitigated;

- (k) where applicable, a summary of the findings and impact management measures identified in any specialist report complying with Appendix 6 to these Regulations and an indication as to how these findings and recommendations have been included in the final report;
- (l) an environmental impact statement which contains -
  - (i) a summary of the key findings of the environmental impact assessment;
  - (ii) a map at an appropriate scale which superimposes the proposed activity and its associated structures and infrastructure on the environmental sensitivities of the preferred site indicating any areas that should be avoided, including buffers; and
  - (iii) a summary of the positive and negative impacts and risks of the proposed activity and identified alternatives;
- (m) based on the assessment, and where applicable, impact management measures from specialist reports, the recording of the proposed impact management objectives, and the impact management outcomes for the development for inclusion in the EMPr;
- (n) any aspects which were conditional to the findings of the assessment either by the EAP or specialist which are to be included as conditions of authorisation;
- (o) a description of any assumptions, uncertainties, and gaps in knowledge which relate to the assessment and mitigation measures proposed;
- (p) a reasoned opinion as to whether the proposed activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;
- (q) where the proposed activity does not include operational aspects, the period for which the environmental authorisation is required, the date on which the activity will be concluded, and the post construction monitoring requirements finalised;
- (r) an undertaking under oath or affirmation by the EAP in relation to:
  - (i) the correctness of the information provided in the reports;
  - (ii) the inclusion of comments and inputs from stakeholders and I&APs;
  - (iii) the inclusion of inputs and recommendations from the specialist reports where relevant; and



- (iv) any information provided by the EAP to interested and affected parties and any responses by the EAP to comments or inputs made by interested and affected parties; and
- (s) where applicable, details of any financial provisions for the rehabilitation, closure, and ongoing post decommissioning management of negative environmental impacts;
- (t) any specific information that may be required by the competent authority; and
- (u) any other matters required in terms of section 24(4)(a) and (b) of the Act.

## **APPENDIX 2**

### **SCOPING REPORT**

#### **1. Objective of the Scoping Process**

The objective of the scoping process is to, through a consultative process -

- (a) identify the relevant policies and legislation relevant to the activity;
- (b) motivate the need and desirability of the proposed activity, including the need and desirability of the activity in the context of the preferred location;
- (c) identify and confirm the preferred activity and technology alternative through an impact and risk assessment and ranking process;
- (d) identify and confirm the preferred site, through a detailed site selection process, which includes an impact and risk assessment process inclusive of cumulative impacts and a ranking process of all the identified alternatives focusing on the geographical, physical, biological, social, economic, and cultural aspects of the environment;
- (e) identify the key issues to be addressed in the assessment phase;
- (f) agree on the level of assessment to be undertaken, including the methodology to be applied, the expertise required as well as the extent of further consultation to be undertaken to determine the impacts and risks the activity will impose on the preferred site through the life of the activity, including the nature, significance, consequence, extent, duration and probability of the impacts to inform the location of the development footprint within the preferred site; and
- (g) identify suitable measures to avoid, manage or mitigate identified impacts and to determine the extent of the residual risks that need to be managed and monitored.

#### **2. Content of the scoping report**

A scoping report must contain the information that is necessary for a proper understanding of the process, informing all preferred alternatives, including location alternatives, the scope of the assessment, and the consultation process to be undertaken through the environmental impact assessment process, and must include -

- (a) details of -
  - (i) the EAP who prepared the report; and

- (ii) the expertise of the EAP, including a curriculum vitae;
  - (b) the location of the activity, including -
    - (i) the 21 digit Surveyor General code of each cadastral land parcel;
    - (ii) where available, the physical address and farm name;
    - (iii) where the required information in items (i) and (ii) is not available, the coordinates of the boundary of the property or properties;
  - (c) a plan which locates the proposed activity or activities applied for at an appropriate scale, or, if it is -
    - (i) a linear activity, a description and coordinates of the corridor in which the proposed activity or activities is to be undertaken; or
    - (ii) on land where the property has not been defined, the coordinates within which the activity is to be undertaken;
  - (d) a description of the scope of the proposed activity, including -
    - (i) all listed and specified activities triggered;
    - (ii) a description of the activities to be undertaken, including associated structures and infrastructure;
  - (e) a description of the policy and legislative context within which the development is proposed including an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks and instruments that are applicable to this activity and are to be considered in the assessment process;
  - (f) a motivation for the need and desirability for the proposed development including the need and desirability of the activity in the context of the preferred location;
- (Publisher's Note – Paragraph (g) missing as published in the original Gazette No. 38282)*
- (h) a full description of the process followed to reach the proposed preferred activity, site and location within the site, including -
    - (i) details of all the alternatives considered;

- (ii) details of the public participation process undertaken in terms of regulation 41 of the Regulations, including copies of the supporting documents and inputs;
  - (iii) a summary of the issues raised by interested and affected parties, and an indication of the manner in which the issues were incorporated, or the reasons for not including them;
  - (iv) the environmental attributes associated with the alternatives focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;
  - (v) the impacts and risks identified for each alternative, including the nature, significance, consequence, extent, duration and probability of the impacts, including the degree to which these impacts -
    - (aa) can be reversed;
    - (bb) may cause irreplaceable loss of resources; and
    - (cc) can be avoided, managed or mitigated;
  - (vi) the methodology used in determining and ranking the nature, significance, consequences, extent, duration and probability of potential environmental impacts and risks associated with the alternatives;
  - (vii) positive and negative impacts that the proposed activity and alternatives will have on the environment and on the community that may be affected focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;
  - (viii) the possible mitigation measures that could be applied and level of residual risk;
  - (ix) the outcome of the site selection matrix;
  - (x) if no alternatives, including alternative locations for the activity were investigated, the motivation for not considering such and
  - (xi) a concluding statement indicating the preferred alternatives, including preferred location of the activity;
- (i) a plan of study for undertaking the environmental impact assessment process to be undertaken, including -
- (i) a description of the alternatives to be considered and assessed within the preferred site, including the option of not proceeding with the activity;

- (ii) a description of the aspects to be assessed as part of the environmental impact assessment process;
  - (iii) aspects to be assessed by specialists;
  - (iv) a description of the proposed method of assessing the environmental aspects, including a description of the proposed method of assessing the environmental aspects including aspects to be assessed by specialists;
  - (v) a description of the proposed method of assessing duration and significance;
  - (vi) an indication of the stages at which the competent authority will be consulted;
  - (vii) particulars of the public participation process that will be conducted during the environmental impact assessment process; and
  - (viii) a description of the tasks that will be undertaken as part of the environmental impact assessment process;
  - (ix) identify suitable measures to avoid, reverse, mitigate or manage identified impacts and to determine the extent of the residual risks that need to be managed and monitored.
- (j) an undertaking under oath or affirmation by the EAP in relation to -
- (i) the correctness of the information provided in the report;
  - (ii) the inclusion of comments and inputs from stakeholders and interested and affected parties; and
  - (iii) any information provided by the EAP to interested and affected parties and any responses by the EAP to comments or inputs made by interested or affected parties;
- (k) an undertaking under oath or affirmation by the EAP in relation to the level of agreement between the EAP and interested and affected parties on the plan of study for undertaking the environmental impact assessment;
- (l) where applicable, any specific information required by the competent authority; and
- (m) any other matter required in terms of section 24(4)(a) and (b) of the Act.

## **APPENDIX 3**

### **ENVIRONMENTAL IMPACT ASSESSMENT REPORT**

#### **1. Environmental impact assessment process**

- (1) The environmental impact assessment process must be undertaken in line with the approved plan of study for environmental impact assessment.
- (2) The environmental impacts, mitigation and closure outcomes as well as the residual risks of the proposed activity must be set out in the environmental impact assessment report.

#### **2. Objective of the environmental impact assessment process**

The objective of the environmental impact assessment process is to, through a consultative process -

- (a) determine the policy and legislative context within which the activity is located and document how the proposed activity complies with and responds to the policy and legislative context;
- (b) describe the need and desirability of the proposed activity, including the need and desirability of the activity in the context of the preferred location;
- (c) identify the location of the development footprint within the preferred site based on an impact and risk assessment process inclusive of cumulative impacts and a ranking process of all the identified development footprint alternatives focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects of the environment;
- (d) determine the -
  - (i) nature, significance, consequence, extent, duration and probability of the impacts occurring to inform identified preferred alternatives; and
  - (ii) degree to which these impacts -
    - (aa) can be reversed;
    - (bb) may cause irreplaceable loss of resources, and
    - (cc) can be avoided, managed or mitigated;
- (e) identify the most ideal location for the activity within the preferred site based on the lowest level of environmental sensitivity identified during the assessment;

- (f) identify, assess, and rank the impacts the activity will impose on the preferred location through the life of the activity;
- (g) identify suitable measures to avoid, manage or mitigate identified impacts; and
- (h) identify residual risks that need to be managed and monitored.

### 3. Scope of assessment and content of environmental impact assessment reports

An environmental impact assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include -

- (a) details of -
  - (i) the EAP who prepared the report; and
  - (ii) the expertise of the EAP, including a curriculum vitae;
- (b) the location of the activity, including:
  - (i) the 21 digit Surveyor General code of each cadastral land parcel;
  - (ii) where available, the physical address and farm name; and
  - (iii) where the required information in items (i) and (ii) is not available, the coordinates of the boundary of the property or properties;
- (c) a plan which locates the proposed activity or activities applied for as well as the associated structures and infrastructure at an appropriate scale, or, if it is -
  - (i) a linear activity, a description and coordinates of the corridor in which the proposed activity or activities is to be undertaken;
  - (ii) on land where the property has not been defined, the coordinates within which the activity is to be undertaken;
- (d) a description of the scope of the proposed activity, including -
  - (i) all listed and specified activities triggered and being applied for; and
  - (ii) a description of the associated structures and infrastructure related to the development;

- (e) a description of the policy and legislative context within which the development is located and an explanation of how the proposed development complies with and responds to the legislation and policy context;
- (f) a motivation for the need and desirability for the proposed development, including the need and desirability of the activity in the context of the preferred location;
- (g) a motivation for the preferred development footprint within the approved site;
- (h) a full description of the process followed to reach the proposed development footprint within the approved site, including:
  - (i) details of the development footprint alternatives considered;
  - (ii) details of the public participation process undertaken in terms of regulation 41 of the Regulations, including copies of the supporting documents and inputs;
  - (iii) a summary of the issues raised by interested and affected parties, and an indication of the manner in which the issues were incorporated, or the reasons for not including them;
  - (iv) the environmental attributes associated with the development footprint alternatives focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;
  - (v) the impacts and risks identified including the nature, significance, consequence, extent, duration and probability of the impacts, including the degree to which these impacts -
    - (aa) can be reversed;
    - (bb) may cause irreplaceable loss of resources; and
    - (cc) can be avoided, managed or mitigated;
  - (vi) the methodology used in determining and ranking the nature, significance, consequences, extent, duration and probability of potential environmental impacts and risks;
  - (vii) positive and negative impacts that the proposed activity and alternatives will have on the environment and on the community that may be affected focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;
  - (viii) the possible mitigation measures that could be applied and level of residual risk;



- (ix) if no alternative development locations for the activity were investigated, the motivation for not considering such; and
- (x) a concluding statement indicating the preferred alternative development location within the approved site;
- (i) a full description of the process undertaken to identify, assess and rank the impacts the activity and associated structures and infrastructure will impose on the preferred location through the life of the activity, including -
  - (i) a description of all environmental issues and risks that were identified during the environmental impact assessment process; and
  - (ii) an assessment of the significance of each issue and risk and an indication of the extent to which the issue and risk could be avoided or addressed by the adoption of mitigation measures;
- (j) an assessment of each identified potentially significant impact and risk, including -
  - (i) cumulative impacts;
  - (ii) the nature, significance and consequences of the impact and risk;
  - (iii) the extent and duration of the impact and risk;
  - (iv) the probability of the impact and risk occurring;
  - (v) the degree to which the impact and risk can be reversed;
  - (vi) the degree to which the impact and risk may cause irreplaceable loss of resources; and
  - (vii) the degree to which the impact and risk can be mitigated;
- (k) where applicable, a summary of the findings and recommendations of any specialist report complying with Appendix 6 to these Regulations and an indication as to how these findings and recommendations have been included in the final assessment report;
- (l) an environmental impact statement which contains -
  - (i) a summary of the key findings of the environmental impact assessment;

- (ii) a map at an appropriate scale which superimposes the proposed activity and its associated structures and infrastructure on the environmental sensitivities of the preferred site indicating any areas that should be avoided, including buffers; and
- (iii) a summary of the positive and negative impacts and risks of the proposed activity and identified alternatives;
- (m) based on the assessment, and where applicable, recommendations from specialist reports, the recording of proposed impact management objectives, and the impact management outcomes for the development for inclusion in the EMPr as well as for inclusion as conditions of authorisation;
- (n) the final proposed alternatives which respond to the impact management measures, avoidance, and mitigation measures identified through the assessment;
- (o) any aspects which were conditional to the findings of the assessment either by the EAP or specialist which are to be included as conditions of authorisation
- (p) a description of any assumptions, uncertainties and gaps in knowledge which relate to the assessment and mitigation measures proposed;
- (q) a reasoned opinion as to whether the proposed activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;
- (r) where the proposed activity does not include operational aspects, the period for which the environmental authorisation is required and the date on which the activity will be concluded and the post construction monitoring requirements finalised;
- (s) an undertaking under oath or affirmation by the EAP in relation to:
  - (i) the correctness of the information provided in the reports;
  - (ii) the inclusion of comments and inputs from stakeholders and I&APs;
  - (iii) the inclusion of inputs and recommendations from the specialist reports where relevant; and
  - (iv) any information provided by the EAP to interested and affected parties and any responses by the EAP to comments or inputs made by interested or affected parties;

- (t) where applicable, details of any financial provisions for the rehabilitation, closure, and ongoing post decommissioning management of negative environmental impacts;
- (u) an indication of any deviation from the approved scoping report, including the plan of study, including -
  - (i) any deviation from the methodology used in determining the significance of potential environmental impacts and risks; and
  - (ii) a motivation for the deviation;
- (v) any specific information that may be required by the competent authority; and
- (w) any other matters required in terms of section 24(4)(a) and (b) of the Act.

## **APPENDIX 4**

### **ENVIRONMENTAL MANAGEMENT PROGRAMME**

#### **1. Content of environmental management programme (EMPr)**

- (1) An EMPr must comply with section 24N of the Act and include -
- (a) details of -
    - (i) the EAP who prepared the EMPr; and
    - (ii) the expertise of that EAP to prepare an EMPr, including a curriculum vitae;
  - (b) a detailed description of the aspects of the activity that are covered by the EMPr as identified by the project description;
  - (c) a map at an appropriate scale which superimposes the proposed activity, its associated structures, and infrastructure on the environmental sensitivities of the preferred site, indicating any areas that any areas that should be avoided, including buffers;
  - (d) a description of the impact management objectives, including management statements, identifying the impacts and risks that need to be avoided, managed and mitigated as identified through the environmental impact assessment process for all phases of the development including -
    - (i) planning and design;
    - (ii) pre-construction activities;
    - (iii) construction activities;
    - (iv) rehabilitation of the environment after construction and where applicable post closure; and
    - (v) where relevant, operation activities;
  - (e) a description and identification of impact management outcomes required for the aspects contemplated in paragraph (d);
  - (f) a description of proposed impact management actions, identifying the manner in which the impact management objectives and outcomes contemplated in paragraphs (d) and (e) will be achieved, and must, where applicable, include actions to -

- (i) avoid, modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
  - (ii) comply with any prescribed environmental management standards or practices;
  - (iii) comply with any applicable provisions of the Act regarding closure, where applicable; and
  - (iv) comply with any provisions of the Act regarding financial provisions for rehabilitation, where applicable;
- (g) the method of monitoring the implementation of the impact management actions contemplated in paragraph (f);
- (h) the frequency of monitoring the implementation of the impact management actions contemplated in paragraph (f);
- (i) an indication of the persons who will be responsible for the implementation of the impact management actions;
- (j) the time periods within which the impact management actions contemplated in paragraph (f) must be implemented;
- (k) the mechanism for monitoring compliance with the impact management actions contemplated in paragraph (f);
- (l) a program for reporting on compliance, taking into account the requirements as prescribed by the Regulations;
- (m) an environmental awareness plan describing the manner in which -
- (i) the applicant intends to inform his or her employees of any environmental risk which may result from their work; and
  - (ii) risks must be dealt with in order to avoid pollution or the degradation of the environment; and
- (n) any specific information that may be required by the competent authority.

## APPENDIX 5 CLOSURE PLAN

### 1. Content of closure plan

- (1) A closure plan must include -
  - (a) details of -
    - (i) the EAP who prepared the closure plan; and
    - (ii) the expertise of that EAP;
  - (b) closure objectives;
  - (c) proposed mechanisms for monitoring compliance with and performance assessment against the closure plan and reporting thereon;
  - (d) measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity and associated closure to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development, including a handover report, where applicable;
  - (e) information on any proposed avoidance, management and mitigation measures that will be taken to address the environmental impacts resulting from the undertaking of the closure activity;
  - (f) a description of the manner in which it intends to -
    - (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation during closure;
    - (ii) remedy the cause of pollution or degradation and migration of pollutants during closure;
    - (iii) comply with any prescribed environmental management standards or practices; and
    - (iv) comply with any applicable provisions of the Act regarding closure;
  - (g) time periods within which the measures contemplated in the closure plan must be implemented;
  - (h) the process for managing any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of closure; and

- (i) details of all public participation processes conducted in terms of regulation 41 of the Regulations, including -
  - (i) copies of any representations and comments received from registered interested and affected parties;
  - (ii) a summary of comments received from, and a summary of issues raised by registered interested and affected parties, the date of receipt of these comments and the response of the EAP to those comments;
  - (iii) the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants;
  - (iv) where applicable, an indication of the amendments made to the plan as a result of public participation processes conducted in terms of regulation 41 of these Regulations: and
- (j) where applicable, details of any financial provisions for the rehabilitation, closure and on-going post decommissioning management of negative environmental impacts

## **APPENDIX 6**

### **SPECIALIST REPORTS**

#### **1. Specialist reports**

- (1) A specialist report prepared in terms of these Regulations must contain -
- (a) details of -
    - (i) the specialist who prepared the report; and
    - (ii) the expertise of that specialist to compile a specialist report including a curriculum vitae;
  - (b) a declaration that the specialist is independent in a form as may be specified by the competent authority;
  - (c) an indication of the scope of, and the purpose for which, the report was prepared;
  - (d) the date and season of the site investigation and the relevance of the season to the outcome of the assessment;
  - (e) a description of the methodology adopted in preparing the report or carrying out the specialised process;
  - (f) the specific identified sensitivity of the site related to the activity and its associated structures and infrastructure;
  - (g) an identification of any areas to be avoided, including buffers;
  - (h) a map superimposing the activity including the associated structures and infrastructure on the environmental sensitivities of the site including areas to be avoided, including buffers;
  - (i) a description of any assumptions made and any uncertainties or gaps in knowledge;
  - (j) a description of the findings and potential implications of such findings on the impact of the proposed activity, including identified alternatives on the environment;
  - (k) any mitigation measures for inclusion in the EMPr;
  - (l) any conditions for inclusion in the environmental authorisation;
  - (m) any monitoring requirements for inclusion in the EMPr or environmental authorisation;



- (n) a reasoned opinion -
  - (i) as to whether the proposed activity or portions thereof should be authorised; and
  - (ii) if the opinion is that the proposed activity or portions thereof should be authorised, any avoidance, management and mitigation measures that should be included in the EMPr, and where applicable, the closure plan;
- (o) a description of any consultation process that was undertaken during the course of preparing the specialist report;
- (p) a summary and copies of any comments received during any consultation process and where applicable all responses thereto; and
- (q) any other information requested by the competent authority.

## **APPENDIX 7**

### **ENVIRONMENTAL AUDIT REPORT**

#### **1. Environmental audit report**

The environmental audit report must provide for recommendations regarding the need to amend the EMPr, and where applicable, the closure plan.

#### **2. Objective of the environmental audit report**

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 where applicable, the closure plan; and
  - (ii) the extent to which the avoidance, management and mitigation measures provided for in the EMPr, and where applicable, the closure plan achieve 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 where applicable, the closure plan;
- (d) identify shortcomings in the EMPr, and where applicable, the closure plan; and
- (e) identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr, and where applicable, the closure plan.

#### **3. Content of environmental audit reports**

- (1) An environmental audit report prepared in terms of these Regulations must contain -
  - (a) details of -
    - (i) the independent person who prepared the environmental audit report; and
    - (ii) the expertise of independent person that compiled the environmental audit report;
  - (b) a declaration that the independent auditor is independent in a form as may be specified by the competent authority;

- (c) an indication of the scope of, and the purpose for which, the environmental audit report was prepared;
- (d) a description of the methodology adopted in preparing the environmental audit report;
- (e) an indication of the ability of the EMPr, and where applicable, 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; and
  - (iii) ensure compliance with the provisions of environmental authorisation, EMPr, and where applicable, the closure plan;
- (f) a description of any assumptions made, and any uncertainties or gaps in knowledge;
- (g) a description of any consultation process that was undertaken during the course of carrying out the environmental audit report;

*(Publisher's Note – Paragraph (h) and (i) missing as published in the original Gazette No. 38282)*

- (j) a summary and copies of any comments that were received during any consultation process; and
- (k) any other information requested by the competent authority.