

# **DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**

No. R ....

... 2006

## **REGULATIONS IN TERMS OF CHAPTER 5 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

The Minister of Environmental Affairs and Tourism has in terms of section 24(5) read with section 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), made the regulations set out in the Schedule hereto.

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**CHAPTER 1**

**INTERPRETATION AND PURPOSE OF THESE REGULATIONS**

**Interpretation**

1. (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 –

- (a) in Government Notice No. R. 386 and No. R. 387 of 2006 as a listed activity; or
- (b) in any other notice published by the Minister or MEC in terms of section 24D of the Act as a listed activity or specified activity;

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

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

**“applicant”** means a person who has submitted or intends to submit an application;

**“application”** means an application for –

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

**“basic assessment”** means a process contemplated in regulation 22;

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

**“cumulative impact”**, in relation to an activity, means the impact of an activity that in itself may not be significant but may become significant when

added to the existing and potential impacts eventuating from similar or diverse activities or undertakings in the area;

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

**“environmental impact assessment”**, in relation to an application to which scoping must be applied, means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to the consideration of that application;

**“environmental impact assessment report”** means a report contemplated in regulation 32;

**“environmental management plan”** means an environmental management plan in relation to identified or specified activities envisaged in Chapter 5 of the Act and described in regulation 34;

**“guidelines”** means any national guidelines and provincial guidelines issued in terms of Chapter 8 of these Regulations;

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

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

**“interested and affected party”** means an interested and affected party contemplated in section 24(4)(d) of the Act, and which in terms of that section includes –

- (a) any person, group of persons or organisation interested in or affected by an activity; and
- (b) any organ of state that may have jurisdiction over any aspect of the activity;

**“linear activity”** means an activity that is undertaken across several properties and which affects the environment or any aspect of the environment along the course of the activity in different ways, and includes a road, railway line, power line, pipeline or canal;

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

**“plan of study for environmental impact assessment”** means a document contemplated in regulation 29(1)(i) which forms part of a scoping report and sets out how an environmental impact assessment must be conducted;

**“public participation process”** means a process in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to, specific matters;

**“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 57;

**“scoping”** means a process contemplated in regulation 28(e);

**“scoping report”** means a report contemplated in regulation 29;

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

**“specialised process”** means a process to obtain information which –



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

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

(2) 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.

### **Purpose of these Regulations**

2. The purpose of these Regulations is to regulate procedures and criteria as contemplated in Chapter 5 of the Act for the submission, processing, consideration and decision of applications for environmental authorisation of activities and for matters pertaining thereto.

## **CHAPTER 2 COMPETENT AUTHORITIES**

### **Identification of competent authorities**

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

(2) The competent authority who must consider and decide an application in respect of a specific activity must be determined with

reference to Government Notice No. R. 386 and No. R. 387 of 2006, including any further notices that may be issued in terms of section 24D of the Act.

(3) Any dispute or disagreement in respect of who the competent authority should be in relation to any specific application must be resolved by the Minister and the MEC of the relevant province or by the Minister and delegated organ of state, as the case may be.

#### **Where to submit applications**

4. (1) If the Minister is the competent authority in respect of a specific application, the application must be submitted to the Department of Environmental Affairs and Tourism.

(2) If an MEC is the competent authority in respect of a particular application, the application must be submitted to the provincial department responsible for environmental affairs in that province.

(3) If the Minister or MEC has in terms of section 42 of the Act delegated any powers or duties of a competent authority in relation to an activity to which an application relates to an organ of state, the application must be submitted to that delegated organ of state.

#### **Assistance by competent authorities to applicants**

5. A competent authority may, on request by an applicant or an EAP managing an application, and subject to the payment of any reasonable charges –

(a) give the applicant or EAP access to any guidelines and information on practices that have been developed or to any other information in the possession of the competent authority that is relevant to the application; or

- (b) advise the applicant or EAP, either in writing or by way of discussions, of the nature and extent of any of the processes that must be followed in order to comply with the Act and these Regulations.

### **Consultation between competent authorities and other organs of state having jurisdiction**

6. Where an application in respect of any activity requiring environmental authorisation in terms of these Regulations must also be made in terms of other legislation and that other legislation requires that information must be submitted or processes must be carried out that are substantially similar to information or processes required in terms of these Regulations, the Minister or MEC, in giving effect to Chapter 3 of the Constitution and section 24(4)(g) of the Act, must take steps to enter into a written agreement with the authority responsible for administering the legislation in respect of the co-ordination of the requirements of the legislation and these Regulations to avoid duplication in the submission of such information or the carrying out of such processes.

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

7. (1) A competent authority is entitled to all information that reasonably has or may have the potential of influencing any decision with regard to an application.

(2) Unless that information is protected by law, an applicant or EAP or other person in possession of that information must, on request by the competent authority, disclose that information to the competent authority, whether or not such information is favourable to the applicant.

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

8. When considering an application the competent authority must –
- (a) comply with the Act, these Regulations and all other applicable legislation; and
  - (b) take into account all relevant factors, including –

- (i) any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused;
- (ii) the impact on the environment of the activity which is the subject of the application, whether alone or together with existing operations or activities;
- (iii) measures that could be taken –
  - (aa) to protect the environment from harm as a result of the activity which is the subject of the application; and
  - (bb) to prevent, control, abate or mitigate any pollution, environmental impacts or environmental degradation;
- (iv) the ability of the applicant to implement mitigation measures and to comply with any conditions subject to which the application may be granted;
- (v) any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment;
  - (vi) any information and maps compiled in terms of section 24 (3) of the Act, including any environmental management frameworks compiled in terms of Part 1 of Chapter 8 of these Regulations, to the extent that such information and maps and frameworks are relevant to the application;
- (vii) the information contained in the application form, reports, comments, representations and other documents submitted in terms of these Regulations to the competent authority in connection with the application;
- (viii) any comments received from organs of state that have jurisdiction over any aspect of the activity which is the subject of the application; and
- (ix) any guidelines that are relevant to the application.

### **Timeframes for competent authorities**

- 9. (1)** A competent authority must strive to meet timeframes applicable to competent authorities in terms of these Regulations.

(2) If the competent authority is an organ of state acting under delegated powers and duties in terms of section 42 or 42A of the Act and that organ of state is unable to meet any timeframe set by a provision of these Regulations, the delegated organ of state must notify the Minister or MEC.

### **Decision on applications by competent authorities**

**10.(1)** After a competent authority has reached a decision on an application, the competent authority must, in writing and within 10 days –

- (a) notify the applicant of the decision and of the period within which the applicant must comply with subregulation (2);
- (b) give reasons for the decision to the applicant; and
- (c) draw the attention of the applicant to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.

(2) The applicant must, in writing, within a period determined by the competent authority –

- (a) notify all registered interested and affected parties of –
  - (i) the outcome of the application; and
  - (ii) the reasons for the decision; and
- (b) draw their attention to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.

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

**11.A** competent authority must keep –

- (a) a register of all applications received by the competent authority in terms of these Regulations; and
- (b) records of all decisions in respect of environmental authorisations.

### **Liability of competent authorities as to costs of applications**

**12.**A competent authority is not liable for any costs incurred by an applicant in complying with these Regulations.

### **CHAPTER 3**

#### **APPLICATIONS FOR ENVIRONMENTAL AUTHORISATIONS**

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

##### **Applications**

**13.**(1) An application for environmental authorisation of an activity must be made to the competent authority referred to in regulation **3**.

- (2) An application must –
- (a) be made on an official application form published by or obtainable from the relevant competent authority; and
  - (b) when submitted in terms of regulation **24**(b) or **27**(b) be accompanied by –
    - (i) the written consent referred to in regulation **16**(1) or proof that regulation **16**(3) has been complied with, if the applicant is not the owner of the land on which the activity is to be undertaken; and
    - (ii) the prescribed application fee, if any.

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

**14.**(1) On receipt of an application, the competent authority to which the application is submitted must check whether the application –

- (a) is properly completed and that it contains the information required in the application form;
  - (b) is accompanied by any reports, other documents and fees required in terms of these Regulations; and
  - (c) has taken into account any guideline applicable to the submission of applications.
- (2) The competent authority must, within 14 days of receipt of the application, and in writing –
- (a) acknowledge receipt of the application, if the application is in order; or
  - (b) reject the application, if it is not in order.

(3) The EAP managing an application that has been rejected in terms of subregulation (2) may correct that application and resubmit it to the competent authority.

(4) Subregulations (1) and (2) apply afresh to a corrected application submitted to the competent authority in terms of subregulation (3).

### **Combination of applications**

**15.(1)** If an applicant intends undertaking two or more activities as part of the same development, a single application on one application form must be submitted in respect of all those activities.

(2) If an applicant intends undertaking more than one activity of the same type at different locations in the same province, different applications in respect of the different locations must be submitted, but the competent authority may, at the written request of the applicant, grant permission for the submission of a single application in respect of all those activities, whether or not the application is submitted on one or more application forms.

(3) If the competent authority grants permission in terms of subregulation (2), the application must be dealt with as a consolidated process in respect of all the activities covered by the application, but the potential environmental impacts of each activity must be considered in terms of the location where the activity is to be undertaken.

### **Activities on land owned by person other than applicant**

**16.(1)** If the applicant is not the owner of the land on which the activity is to be undertaken, the applicant must, before applying for an environmental authorisation in respect of that activity, obtain the written consent of the landowner to undertake the proposed activity on that land.

(2) A written consent contemplated in subregulation (1) must be in a form agreed to or determined by the competent authority.

(3) Subregulation (1) does not apply in respect of a linear activity, provided the applicant has given notice of the proposed activity to the owners of the land on which the activity is to be undertaken as soon as the proposed route or alternative routes have been identified.

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

**17.(1)** Before applying for environmental authorisation of an activity, an applicant must appoint an EAP at own cost to manage the application.

(2) The applicant must –

(a) take all reasonable steps to verify whether the EAP to be appointed complies with regulation **18(a)** and (b); and

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

### **General requirements for EAPs**

**18.** An EAP appointed in terms of regulation **17(1)** must –

(a) be independent;

(b) have expertise in conducting environmental impact assessments, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;

(c) perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;

(d) comply with the Act, these Regulations and all other applicable legislation;

(e) take into account, to the extent possible, the matters listed in regulation **8(b)** when preparing the application and any report relating to the application; and



(f) disclose to the applicant and the competent authority all material information in the possession of the EAP 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 in terms of these Regulations for submission to the competent authority.

### **Disqualification of EAPs**

**19.(1)** If the competent authority at any stage of considering an application has reason to believe that the EAP managing an application may not be independent in respect of the application, the competent authority must –

- (a) notify the EAP of the reasons for the belief; and
- (b) afford the EAP an opportunity to make representations to the competent authority regarding his or her independence, in writing.

(2) If, after considering the matter, the competent authority is unconvinced of the independence of the EAP, the competent authority must in writing, inform the EAP and the applicant accordingly and may –

- (a) refuse to accept any further reports or input from the EAP in respect of the application in question;
- (b) request the applicant to commission, at own cost, an external review by an independent person of any reports prepared or processes conducted by the EAP in connection with the application;
- (c) request the applicant to appoint, at own cost, another EAP –
  - (i) to redo any specific aspects of the work done by the previous EAP in connection with the application; and
  - (ii) to complete any unfinished work in connection with the application; or
- (d) request the applicant to take such action as the competent authority requires to remedy the effects of the lack of independence of the EAP on the application.

(3) If the application has reached a stage where a register of interested and affected parties has been opened in terms of regulation 57, the applicant must inform all registered interested and affected parties of any decisions taken by the competent authority in terms of subregulation (2).

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

**20.(1)** When appointed in terms of regulation 17(1), an EAP must in accordance with regulation 21 determine whether basic assessment or scoping must be applied to the application, taking into account –

- (a) any guidelines applicable to the activity which is the subject of the application; and
  - (b) any advice given by the competent authority in terms of regulation 5
- (b).

(2) An application must be managed in accordance with –

- (a) Part 2 of this Chapter if basic assessment must be applied to the application; or
- (b) Part 3 of this Chapter if scoping must be applied to the application.

### **Criteria for determining whether basic assessment or scoping is to be applied to applications**

**21.(1)** Basic assessment must be applied to an application if the authorisation applied for is in respect of an activity listed in –

- (a) Government Notice No. R. 386 of 2006; or
- (b) a notice issued by the Minister or an MEC in terms of section 24D of the Act identifying further activities for which environmental authorisation is required and stipulating that the procedure described in Part 2 of this Chapter must be applied to applications for environmental authorisation in respect of those activities.

(2) Scoping must be applied to an application if –

- (a) the authorisation applied for is in respect of an activity listed in –
  - (i) Government Notice No. R. 387 of 2006;

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

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

#### **Steps to be taken before submission of application**

**22.** If basic assessment must be applied to an application, the EAP managing the application must before submitting the application to the competent authority –

- (a) conduct at least a public participation process as set out in regulation 56;
- (b) give notice, in writing, of the proposed application to –
  - (i) the competent authority; and
  - (ii) any organ of state which has jurisdiction in respect of any aspect of the activity;
- (c) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 57;

- (d) consider all objections and representations received from interested and affected parties following the public participation process conducted in terms of paragraph (a), and subject the proposed application to basic assessment by assessing –
- (i) the potential impacts of the activity on the environment;
  - (ii) whether and to what extent those impacts can be mitigated; and
  - (iii) whether there are any significant issues and impacts that require further investigation;
- (e) prepare a basic assessment report in accordance with regulation **23**; and
- (f) give all registered interested and affected parties an opportunity to comment on the basic assessment report in accordance with regulation **58**.

### **Content of basic assessment reports**

**23.(1)** The EAP managing an application to which this Part applies must prepare a basic assessment report in a format published by, or obtainable from, the competent authority.

(2) A basic assessment report must contain all the information that is necessary for the competent authority to consider the application and to reach a decision contemplated in regulation **26**, and must include –

(a) details of –

- (i) the EAP who prepared the report; and
- (ii) the expertise of the EAP to carry out basic assessment procedures;

(b) a description of the proposed activity;

(c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –

- (i) a linear activity, a description of the route of the activity; or
- (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken;

(d) a description of the environment that may be affected by the proposed activity and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be

affected by the proposed activity;

(e) an identification of all legislation and guidelines that have been considered in the preparation of the basic assessment report;

(f) details of the public participation process conducted in terms of regulation **22(a)** in connection with the application, including –

- (i) the steps that were taken to notify potentially interested and affected parties of the proposed application;
  - (ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the proposed application have been displayed, placed or given;
- (iii) a list of all persons, organisations and organs of state that were registered in terms of regulation **57** as interested and affected parties in relation to the application;
  - (iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;
- (g) a description of the need and desirability of the proposed activity and any identified alternatives to the proposed activity that are feasible and reasonable, including the advantages and disadvantages that the proposed activity or alternatives will have on the environment and on the community that may be affected by the activity;
- (h) a description and assessment of the significance of any environmental impacts, including cumulative impacts, that may occur as a result of the undertaking of the activity or identified alternatives or as a result of any construction, erection or decommissioning associated with the undertaking of the activity;
- (i) any environmental management and mitigation measures proposed by the EAP;
  - (j) any inputs made by specialists to the extent that may be necessary; and
- (k) any specific information required by the competent authority.

(3) In addition, a basic assessment report must take into account –

(a) any relevant guidelines; and

- (b) any practices that have been developed by the competent authority in respect of the kind of activity which is the subject of the application.

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

**24.** After having complied with regulation **22**, the EAP managing the application may –

- (a) complete the application form for environmental authorisation of the relevant activity; and
- (b) submit the completed application form to the competent authority, together with –
- (i) the basic assessment report;
  - (ii) copies of any representations, objections and comments received in connection with the application or the basic assessment report;
  - (iii) copies of the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants;
  - (iv) any responses by the EAP to those representations, objections, comments and views;
  - (v) a declaration of interest by the EAP on a form provided by the competent authority; and
  - (vi) the prescribed application fee, if any, and any documents referred to in regulation **13(2)(b)**.

### **Consideration of applications**

**25.(1)** A competent authority must within 30 days of acknowledging receipt of an application in terms of regulation **14(2)(a)**, consider the application and the basic assessment report.

(2) If the competent authority is unable to decide the application on the basic assessment report alone, the competent authority must request the EAP managing the application –

- (a) to submit such additional information as the competent authority may require;

- (b) to submit a report on any specialist study or specialised process as the competent authority may require in relation to any aspect of the proposed activity;
  - (c) to suggest, consider or comment on feasible and reasonable alternatives; or
  - (d) to subject the application to scoping and environmental impact assessment.

(3) The competent authority may reject the basic assessment report if –

- (a) it does not comply with regulation **23** in a material respect; or
- (b) it is based on an insufficient public participation process.

(4) (a) A basic assessment report that has been rejected in terms of subregulation (3), may be amended and resubmitted by the EAP to the competent authority.

(b) Comments that are made by interested and affected parties in respect of an amended basic assessment report must be attached to the report, but the EAP need not make further changes to the report in response to such comments.

(5) On receipt of any information, reports, suggestions or comments requested in terms of subregulation (2)(a), (b) or (c) or any amended basic assessment report submitted in terms of subregulation (4), as the case may be, the competent authority must reconsider the application.

(6) If the competent authority requests in terms of subregulation (2) (d) that the application be subjected to scoping, the application must be proceeded with in accordance with regulations **30, 31, 32, 33, 34, 35** and **36**.

### **Decision on applications**

**26.(1)** A competent authority must within 30 days of acknowledging receipt of an application in terms of regulation **14** or, if regulation **25(2)(a)**,

(b) or (c) has been applied or if the basic assessment report has been rejected in terms of regulation **25(3)**, within 30 days of receipt of the required information, reports, suggestions or comments or the amended basic assessment report, in writing –

- (a) grant authorisation in respect of all or part of the activity applied for; or
- (b) refuse authorisation in respect of all or part of the activity.

(2) To the extent that authorisation is granted for an alternative, such alternative must for the purposes of subregulation (1) be regarded as having been applied for.

(3) On having reached a decision, the competent authority must comply with regulation **10(1)**.

### ***Part 3: Applications subject to scoping and environmental impact assessment***

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

**27.** If scoping must be applied to an application, the EAP managing the application must –

- (a) complete the application form for environmental authorisation of the relevant activity; and
  - (b) submit the completed application form to the competent authority, together with –
    - (i) a declaration of interest by the EAP on a form provided by the competent authority; and
    - (ii) the prescribed application fee, if any, and any documents referred to in regulation **13(2)(b)**.

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

**28.** After having submitted an application, the EAP managing the application must –

- (a) conduct at least the public participation process set out in regulation **56**;
- (b) give notice, in writing, of the proposed application to any organ of state which has jurisdiction in respect of any aspect of the activity;



- (c) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation **57**;
- (d) consider all objections and representations received from interested and affected parties following the public participation process;
- (e) subject the application to scoping by identifying –
  - (i) issues that will be relevant for consideration of the application;
  - (ii) the potential environmental impacts of the proposed activity; and
  - (iii) alternatives to the proposed activity that are feasible and reasonable;
- (f) prepare a scoping report in accordance with regulation **29**; and
- (g) give all registered interested and affected parties an opportunity to comment on the scoping report in accordance with regulation **58**.

### **Content of scoping reports**

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

- (a) details of –
  - (i) the EAP who prepared the report; and
  - (ii) the expertise of the EAP to carry out scoping procedures;
- (b) a description of the proposed activity and of any feasible and reasonable alternatives that have been identified;
- (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –
  - (i) a linear activity, a description of the route of the activity; or
  - (ii) an ocean-based activity, the coordinates where the activity is to be undertaken;
- (d) a description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
- (e) an identification of all legislation and guidelines that have been considered in the preparation of the scoping report;

- (f) a description of environmental issues and potential impacts, including cumulative impacts, that have been identified;
- (g) information on the methodology that will be adopted in assessing the potential impacts that have been identified, including any specialist studies or specialised processes that will be undertaken;
- (h) details of the public participation process conducted in terms of regulation **28(a)**, including –
  - (i) the steps that were taken to notify potentially interested and affected parties of the application;
  - (ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the application have been displayed, placed or given;
  - (iii) a list of all persons or organisations that were identified and registered in terms of regulation **57** as interested and affected parties in relation to the application; and
  - (iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;
- (i) a plan of study for environmental impact assessment which sets out the proposed approach to the environmental impact assessment of the application, which must include –
  - (i) a description of the tasks that will be undertaken as part of the environmental impact assessment process, including any specialist reports or specialised processes, and the manner in which such tasks will be undertaken;
  - (ii) an indication of the stages at which the competent authority will be consulted;
  - (iii) a description of the proposed method of assessing the environmental issues and alternatives, including the option of not proceeding with the activity; and
  - (iv) particulars of the public participation process that will be conducted during the environmental impact assessment process; and
- (j) any specific information required by the competent authority.

(2) In addition, a scoping report must take into account any guidelines applicable to the kind of activity which is the subject of the application.

### **Submission of scoping reports to competent authority**

**30.** The EAP managing an application must submit the scoping report compiled in terms of regulation **28(f)** to the competent authority, together with –

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

### **Consideration of scoping reports**

**31.(1)** The competent authority must, within 30 days of receipt of a scoping report, consider the report, and in writing –

- (a) accept the report and the plan of study for environmental impact assessment contained in the report and advise the EAP to proceed with the tasks contemplated in the plan of study for environmental impact assessment;
- (b) request the EAP to make such amendments to the report or the plan of study for environmental impact assessment as the competent authority may require;
- (c) reject the scoping report or the plan of study for environmental impact assessment if it –
  - (i) does not contain material information required in terms of these Regulations; or
  - (ii) has not taken into account guidelines applicable in respect of scoping reports and plans of study for environmental impact assessment.

(2) In addition to complying with subregulation (1), the competent authority may advise the EAP of any matter that may prejudice the success of the application.

(3) A scoping report or plan of study for environmental impact assessment that has been rejected by the competent authority in terms of subregulation (1)(d) may be amended and resubmitted by the EAP.

(4) On receipt of the amended scoping report or plan of study for environmental impact assessment, the competent authority must reconsider the scoping report or plan of study for environmental impact assessment in accordance with subregulation (1).

### **Environmental impact assessment reports**

**32.(1)** If a competent authority accepts a scoping report and advises the EAP in terms of regulation **31(1)(a)** to proceed with the tasks contemplated in the plan of study for environmental impact assessment, the EAP must proceed with those tasks, including the public participation process for environmental impact assessment referred to in regulation **29(1)(i)(iv)** and prepare an environmental impact assessment report in respect of the proposed activity.

(2) An environmental impact assessment report must contain all information that is necessary for the competent authority to consider the application and to reach a decision contemplated in regulation **36**, and must include –

(a) details of –

- (i) the EAP who compiled the report; and
- (ii) the expertise of the EAP to carry out an environmental impact assessment;

(b) a detailed description of the proposed activity;

(c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –

- (i) a linear activity, a description of the route of the activity; or

- (ii) an ocean-based activity, the coordinates where the activity is to be undertaken;
- (d) a description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
- (e) details of the public participation process conducted in terms of subregulation (1), including –
  - (i) steps undertaken in accordance with the plan of study;
  - (ii) a list of persons, organisations and organs of state that were registered as interested and affected parties;
    - (iii) a summary of comments received from, and a summary of issues raised by registered interested and affected parties, the date of receipt of these comments and the response of the EAP to those comments; and
  - (iv) copies of any representations, objections and comments received from registered interested and affected parties;
- (f) a description of the need and desirability of the proposed activity and identified potential alternatives to the proposed activity, including advantages and disadvantages that the proposed activity or alternatives may have on the environment and the community that may be affected by the activity;
- (g) an indication of the methodology used in determining the significance of potential environmental impacts;
- (h) a description and comparative assessment of all alternatives identified during the environmental impact assessment process;
- (i) a summary of the findings and recommendations of any specialist report or report on a specialised process;
- (j) a description of all environmental issues that were identified during the environmental impact assessment process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures;
- (k) an assessment of each identified potentially significant impact, including –

- (i) cumulative impacts;
- (ii) the nature of the impact;
- (iii) the extent and duration of the impact;
- (iv) the probability of the impact occurring;
- (v) the degree to which the impact can be reversed;
- (vi) the degree to which the impact may cause irreplaceable loss of resources; and
- (vii) the degree to which the impact can be mitigated;
- (l) a description of any assumptions, uncertainties and gaps in knowledge;
- (m) an opinion as to whether the activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;
- (n) an environmental impact statement which contains –
  - (i) a summary of the key findings of the environmental impact assessment; and
  - (ii) a comparative assessment of the positive and negative implications of the proposed activity and identified alternatives;
- (o) a draft environmental management plan that complies with regulation **34**;
- (p) copies of any specialist reports and reports on specialised processes complying with regulation **33**; and
- (q) any specific information that may be required by the competent authority.

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

**33.(1)** An applicant or the EAP managing an application may appoint a person who is independent to carry out a specialist study or specialised process.

(2) A specialist report or a report on a specialised process prepared in terms of these Regulations must contain –

- (a) details of –
  - (i) the person who prepared the report; and
  - (ii) the expertise of that person to carry out the specialist study

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

### **Content of draft environmental management plans**

**34.** A draft environmental management plan must include –

- (a) details of –
  - (i) the person who prepared the environmental management plan; and
  - (ii) the expertise of that person to prepare an environmental management plan;
- (b) information on any proposed management or mitigation measures that will be taken to address the environmental impacts that have been identified in a report contemplated by these Regulations, including environmental impacts or objectives in respect of –
  - (i) planning and design;
  - (ii) pre-construction and construction activities;
  - (iii) operation or undertaking of the activity;

- (iv) rehabilitation of the environment; and
  - (v) closure, where relevant.
- (c) a detailed description of the aspects of the activity that are covered by the draft environmental management plan;
- (d) an identification of the persons who will be responsible for the implementation of the measures contemplated in paragraph (b);
- (e) where appropriate, time periods within which the measures contemplated in the draft environmental management plan must be implemented; and
- (f) proposed mechanisms for monitoring compliance with the environmental management plan and reporting thereon.

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

**35.(1)** The competent authority must, within 60 days of receipt of an environmental impact assessment report, in writing –

- (a) accept the report;
- (b) notify the applicant that the report has been referred for specialist review in terms of section 24I of the Act ;
- (c) request the applicant to make such amendments to the report as the competent authority may require for acceptance of the environmental impact assessment report; or
- (d) reject the report if it does not comply with regulation **32(2)** in a material respect.

(2) (a) An environmental impact assessment report that is rejected in terms of subregulation (1)(d) may be amended and resubmitted by the EAP.

(b) On receipt of the amended report, the competent authority must reconsider the report in accordance with subregulation (1).



### **Decision on applications**

**36.(1)** A competent authority must within 45 days of acceptance of an environmental impact assessment report in terms of regulation **35** or, if the report was referred for specialist review in terms of section 24I of the Act, within 45 days of receipt of the findings of the specialist reviewer, in writing –

- (a) grant authorisation in respect of all or part of the activity applied for; or
- (b) refuse authorisation in respect of all or part of the activity.

(2) To the extent that authorisation is granted for an alternative, such alternative must for the purposes of subregulation (1) be regarded as having been applied for.

(3) On having reached a decision, the competent authority must comply with regulation **10(1)**.

### ***Part 4: Environmental authorisations***

#### **Issue of environmental authorisations**

**37.(1)** If the competent authority decides to grant authorisation, the competent authority must issue an environmental authorisation complying with regulation **38** to and in the name of the applicant.

(2) If in the case of an application referred to in regulation **15**, the competent authority decides to grant authorisation in respect of more than one activity, the competent authority may issue a single environmental authorisation covering all the activities for which authorisation was granted.

#### **Contents of environmental authorisations**

**38.(1)** An environmental authorisation must specify –

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

(c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is

–

- (i) a linear activity, a description of the route of the activity; or
  - (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken; and
- (d) the conditions subject to which the activity may be undertaken, including conditions determining –
- (i) the period for which the environmental authorisation is valid, if granted for a specific period;
  - (ii) requirements for the management, monitoring and reporting of the impacts of the activity on the environment throughout the life cycle of the activity; and
  - (iii) the transfer of rights and obligations when there is a change of ownership in the property on which the activity is to take place.

(2) An environmental authorisation may –

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

(d) include any other condition that the competent authority considers necessary for the protection of the environment.

## **CHAPTER 4 AMENDMENT AND WITHDRAWAL OF ENVIRONMENTAL AUTHORISATIONS**

### **General**

**39.(1)** The competent authority referred to in regulation **3** who issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment or withdrawal of that authorisation.

(2) An environmental authorisation may be amended –

- (a) on application by the holder of the authorisation in accordance with Part 1 of this Chapter; or
- (b) on the initiative of the competent authority in accordance with Part 2 of this Chapter.

(3) An environmental authorisation may be amended by –

- (a) attaching an additional condition or requirement;
- (b) substituting a condition or requirement;
- (c) removing a condition or requirement;
- (d) changing a condition or requirement;
- (e) updating or changing any detail on the authorisation; or
- (f) correcting a technical or editorial error.

(4) An environmental authorisation may be withdrawn by the competent authority in accordance with Part 3 of this Chapter.

### ***Part 1: Amendments on application by holders of environmental authorisations***

#### **Applications for amendment**

**40.** The holder of an environmental authorisation may at any time apply to the relevant competent authority for the amendment of the authorisation.

**Submission of applications for amendment**

**41.**(1) An application in terms of regulation **40** must be –

- (a) on an official application form published by or obtainable from the competent authority; and
- (b) accompanied by the prescribed application fee, if any.

(2) The competent authority must, within 14 days of receipt of an application, acknowledge receipt of the application, in writing.

**Consideration of applications**

**42.**(1) On receipt of an application made in terms of regulation **40**, the competent authority –

- (a) must consider whether granting the application is likely to adversely affect the environment or the rights or interests of other parties; and
- (b) may for that purpose request the applicant to furnish additional information.

(2) The competent authority must promptly decide the application if –

- (a) the application is for a non-substantive amendment to the environmental authorisation; or
- (b) the environment or the rights or interests of other parties are not likely to be adversely affected.

(3) If the application is for a substantive amendment, or if the environment or the rights or interests of other parties are likely to be adversely affected, the competent authority must, before deciding the application, request the applicant to the extent appropriate –

- (a) if necessary, to conduct a public participation process as referred to in regulation 56 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity;

- (b) to open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation **57**;
- (c) to conduct such investigations and assessments as the competent authority may direct, to prepare reports on those investigations and assessments, and, if the competent authority so directs, to make use of an EAP for this purpose;
- (d) to give registered interested and affected parties an opportunity to submit comments on those reports; and
- (e) to submit to the competent authority those reports, together with any comments on those reports from registered interested and affected parties.

(4) If the environment is likely to be adversely affected in a way that would significantly impact on the environment, the competent authority must –

- (a) return the application to the applicant; and
- (b) request the applicant to submit an application in terms of Chapter **3** of these Regulations as if it is a new application for environmental authorisation.

### **Decision on applications**

**43.**(1) On having reached a decision on whether or not to grant the application, the competent authority must comply with regulation **10**(1).

(2) If an application is approved, the competent authority must issue an amended environmental authorisation to the applicant

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

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

**44.**The relevant competent authority may on own initiative amend an environmental authorisation if it is necessary or desirable –

- (a) to prevent deterioration or further deterioration of the environment;
- (b) to achieve prescribed environmental standards; or

- (c) to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands.

### **Process**

**45.(1)** If a competent authority intends amending an environmental authorisation in terms of regulation **44**, the competent authority must first –

- (a) notify the holder of the environmental authorisation, in writing, of the proposed amendment;
- (b) give the holder of the environmental authorisation an opportunity to submit representations on the proposed amendment, in writing; and
- (c) if necessary, conduct a public participation process as referred to in regulation **56** or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.

(2) The process referred to in subregulation (1) must afford an opportunity to –

- (a) potential interested and affected parties to submit to the competent authority written representations on the proposed amendment; and
- (b) the holder of the environmental authorisation to comment on any representations received in terms of paragraph (a) in writing.

(3) Subregulations (1)(c) and (2) need not be complied with if the proposal is to amend the environmental authorisation in a non-substantive way.

### **Decision**

**46.(1)** On having reached a decision on whether or not to amend the environmental authorisation, the competent authority must notify the holder of the authorisation of that decision.

- (2) If the decision is to amend the environmental authorisation, the competent authority must –
- (a) give to the holder of the authorisation the reasons for the decision;
  - (b) draw the attention of the holder to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision; and
  - (c) issue an amended environmental authorisation to the holder of the authorisation.

### ***Part 3: Withdrawal of environmental authorisations***

#### **Circumstances in which withdrawals are permissible**

**47.** The relevant competent authority may in accordance with this Part withdraw an environmental authorisation if –

- (a) a condition of the authorisation has been contravened or is not being complied with;
- (b) the authorisation was obtained through –
  - (i) fraudulent means; or
  - (ii) the misrepresentation or non-disclosure of material information;or
- (c) the activity is permanently or indefinitely discontinued.

#### **Withdrawal proceedings**

**48.(1)** If the competent authority intends to consider the withdrawal of an environmental authorisation, the competent authority must –

- (a) notify the holder of the authorisation, in writing, of the proposed withdrawal and the reasons why withdrawal of the authorisation is considered;
- (b) give the holder of the authorisation an opportunity –
  - (i) to comment on any environmental audit report submitted to or obtained by the competent authority in terms of regulation 79(2); and
  - (ii) to submit any representations on the proposed withdrawal which the holder of the authorisation wishes to make; and

(c) conduct any appropriate public participation process to bring the proposed withdrawal to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity, if the environment or rights or interests of other parties are likely to be adversely affected by the withdrawal.

(2) The process referred to in subregulation (1)(c) must afford an opportunity to –

- (a) potential interested and affected parties to submit to the competent authority written representations on the proposed withdrawal; and
- (b) the holder of the environmental authorisation to comment on any representations received in terms of paragraph (a).

### **Suspension of environmental authorisations**

**49.(1)** The competent authority may by written notice to the holder of an environmental authorisation suspend with immediate effect an environmental authorisation which is the subject of withdrawal proceedings in terms of this Part if –

- (a) there are reasonable grounds for believing that the contravention or non-compliance with a condition of the authorisation causes harm to the environment; and
- (b) suspension of the authorisation is necessary to prevent harm or further harm to the environment.

(2) Regulation **48(1)(b)**, (c) and (2) may be complied with either before or after a suspension.

### **Decision**



**50.(1)** On having reached a decision on whether or not to withdraw the environmental authorisation, the competent authority must notify the holder of the authorisation of the decision in writing.

(2) If the decision is to withdraw the environmental authorisation, the competent authority must –

- (a) give to the holder of the authorisation the reasons for the decision; and
- (b) draw the attention of the holder of the environmental authorisation to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.

(3) The provisions of this Part do not affect the institution of criminal proceedings against the holder of an environmental authorisation in terms of section 24F(2) of the Act.

## **CHAPTER 5**

### **EXEMPTIONS FROM PROVISIONS OF THESE REGULATIONS**

#### **Applications for exemptions**

**51.(1)** Any person to whom a provision of these Regulations applies may apply for an exemption from such provision in respect of a specific activity to the competent authority referred to in regulation 3 who is the competent authority for the activity in respect of which the exemption is sought.

(2) A person may be exempted from a provision of these Regulations requiring or regulating a public participation process, only if the rights or interests of other parties are not likely to be adversely affected by exemption from conducting a public participation process.

### **Submission of applications**

**52.(1)** An application in terms of regulation **51** must be in writing, and must be accompanied by –

- (a) an explanation of the reasons for the application;
- (b) any applicable supporting documents; and
- (c) the prescribed application fee, if any.

(2) The competent authority must, within 14 days of receipt of an application, acknowledge receipt of the application in writing.

### **Consideration of applications**

**53.(1)** On receipt of an application in terms of regulation **51**, the competent authority –

- (a) must consider whether the granting or refusal of the application is likely to adversely affect the rights or interests of other parties; and
- (b) may for that purpose request the applicant to furnish additional information.

(2) In addition to complying with subregulation (1), the competent authority may advise the applicant of any matter that may prejudice the success of the application.

(3) The competent authority must promptly decide the application if the rights or interests of other parties are not likely to be adversely affected by the proposed exemption.

(4) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the competent authority must, before deciding the application, request the applicant –

- (a) to conduct at least a public participation process as set out in regulation **56**, or any aspect of such process;
- (b) to open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation **57**; and

(c) to submit any comments received from interested and affected parties following such public participation process, to the competent authority.

### **Decision on applications**

**54. (1)** On having reached a decision on whether or not to grant the application, the competent authority must, in writing and within 10 days -

- (a) notify the applicant of the decision;
- (b) give reasons for the decision to the applicant;
- (c) draw the attention of the applicant to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision
- (d) request the applicant to notify potential or registered interested and affected parties, as the case may be of -
  - (i) the outcome of the application; and
  - (ii) the reasons for the decision; and
- (e) request the applicant to draw the attention of potential or registered interested and affected parties, as the case may be, to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision. .

(2) If an application is approved, the competent authority must issue a written exemption notice to the applicant, stating –

- (a) the name, address and telephone number of the person to whom the exemption is granted;
- (b) the provision of these Regulations from which exemption is granted;
- (c) the activity in respect of which exemption is granted;
- (d) the conditions subject to which exemption is granted,, including conditions relating to the transfer of the written exemption notice; and
- (e) the period for which exemption is granted, if the exemption is granted for a period.

### **Review of exemptions**

- 55.** (1) A competent authority may –
- (a) from time to time review any exemption notice issued by it in terms of regulation **54** ; and
  - (b) on good grounds, by written notice to the person to whom exemption was granted, withdraw or amend the exemption notice.

(2) The competent authority must before withdrawing or amending an exemption notice give the person to whom exemption was granted an opportunity to comment on the reasons for the withdrawal or amendment in writing.

## **CHAPTER 6 PUBLIC PARTICIPATION PROCESSES**

### **Public participation process**

**56.**(1) This regulation only applies where specifically required by a provision of these Regulations.

(2) The person conducting a public participation process must take into account any guidelines applicable to public participation and must give notice to all potential interested and affected parties of the application which is subjected to public participation by –

- (a) fixing a notice board at a place conspicuous to the public at the boundary or on the fence of -
  - (i) the site where the activity to which the application relates is or is to be undertaken; and
  - (ii) any alternative site mentioned in the application;
- (b) giving written notice to –
  - (i) the owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site;
  - (ii) the owners and occupiers of land within 100 metres of the boundary of the site or alternative site who are or may be directly affected by the activity;

- (iii) the municipal councillor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represents the community in the area;
  - (iv) the municipality which has jurisdiction in the area; and
  - (v) any organ of state having jurisdiction in respect of any aspect of the activity;
- (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; and
- (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is or will be undertaken: Provided that this paragraph need not be complied with if an advertisement has been placed in an official *Gazette* referred to in subregulation (c)(ii).

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

- (a) give details of the application which is subjected to public participation; and
- (b) state –
  - (i) that the application has been or is to be submitted to the competent authority in terms of these Regulations, as the case may be;
  - (ii) whether basic assessment or scoping procedures are being applied to the application, in the case of an application for environmental authorisation;
  - (iii) the nature and location of the activity to which the application relates;
  - (iv) where further information on the application or activity can be obtained; and
  - (v) the manner in which and the person to whom representations in respect of the application may be made.

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

- (a) be of a size at least 60cm by 42cm; and
- (b) display the required information in lettering and in a format as may be determined by the competent authority .

(5) If an application is for a linear or ocean-based activity and strict compliance with subregulation (2) is inappropriate, the person conducting the public participation process may deviate from the requirements of that subregulation to the extent and in the manner as may be agreed to by the competent authority.

(6) When complying with this regulation, the person conducting the public participation process must ensure that –

- (a) information containing all relevant facts in respect of the application is made available to potential interested and affected parties; and
- (b) participation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application.

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

**57.(1)** An applicant or EAP managing an application must open and maintain a register which contains the names and addresses of –

- (a) all persons who, as a consequence of the public participation process conducted in respect of that application in terms of regulation **56**, have submitted written comments or attended meetings with the applicant or EAP;
  - (b) all persons who, after completion of the public participation process referred to in paragraph (a), have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and
- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

(2) An applicant or EAP managing an application must give access to the register to any person who submits a request for access to the register in writing.

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

**58.(1)** A registered interested and affected party is entitled to comment, in writing, on all written submissions made to the competent authority by the applicant or the EAP managing an application, and to bring to the attention of the competent authority any issues which that party believes may be of significance to the consideration of the application, provided that –

(a) comments are submitted within –

(i) the timeframes that have been approved or set by the competent authority; or

(ii) any extension of a timeframe agreed to by the applicant or EAP;

(b) a copy of comments submitted directly to the competent authority is served on the applicant or EAP; and

(c) the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

(2) Before the EAP managing an application for environmental authorisation submits a report compiled in terms of these Regulations to the competent authority, the EAP must give registered interested and affected parties access to, and an opportunity to comment on the report in writing.

(3) Reports referred to in subregulation (2) include –

(a) basic assessment reports;

(b) basic assessment reports amended and resubmitted in terms of regulation **25** (4);

(c) scoping reports;

(d) scoping reports amended and resubmitted in terms of regulation **31**(3);

(e) specialist reports and reports on specialised processes compiled in terms of regulation **33**;

- (f) environmental impact assessment reports submitted in terms of regulation **32**; and
- (g) draft environmental management plans compiled in terms of regulation **34**.

(4) Any written comments received by the EAP from a registered interested and affected party must accompany the report when the report is submitted to the competent authority.

(5) A registered interested and affected party may comment on any final report that is submitted by a specialist reviewer for the purposes of these Regulations where the report contains substantive information which has not previously been made available to a registered interested and affected party.

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

**59.** The EAP managing an application for environmental authorisation must ensure that the comments of interested and affected parties are recorded in reports submitted to the competent authority in terms of these Regulations: Provided that any comments by interested and affected parties on a report which is to be submitted to the competent authority may be attached to the report without recording those comments in the report itself.

## **CHAPTER 7 APPEALS**

### **Application of this Chapter**

- 60.**(1) This Chapter applies to decisions that –
- (a) are subject to an appeal to the Minister or MEC in terms of section 43 (1), (2) or (3) of the Act; and



(b) were taken by an organ of state acting under delegation in terms of section 42 or 42A of the Act in the exercise of a power or duty vested by the Act or these Regulations in a competent authority.

(2) No appeal in terms of this Chapter lies against decisions taken by the Minister or MEC themselves in their capacity as the competent authority for the activity to which the decision relates.

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

**61.** An appeal against a decision must be lodged with –

- (a) the Minister, if the Minister is the competent authority for the activity in relation to which the decision was taken;
- (b) the MEC, if the MEC is the competent authority for the activity in relation to which the decision was taken or
- (c) the delegated organ of state, where relevant.

### **Notices of intention to appeal**

**62.(1)** A person affected by a decision referred to in regulation **60(1)** who wishes to appeal against the decision, must lodge a notice of intention to appeal with the Minister, MEC, or delegated organ of state, as the case may be, within 10 days after that person has been notified in terms of these Regulations of the decision.

(2) If the appellant is an applicant, the appellant must serve on each person and organ of state which was a registered interested and affected party in relation to the applicant's application –

- (a) a copy of the notice referred to subregulation (1); and
- (b) a notice indicating where and for what period the appeal submission will be available for inspection by such person or organ of state.

(3) If the appellant is a person other than an applicant, the appellant must serve on the applicant –

- (a) a copy of the notice referred to subregulation (1); and
- (b) a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.

(4) The Minister, MEC or delegated organ of state, may, as the case may be, in writing, on good cause extend the period within which a notice of intention to appeal must be submitted.

### **Submission of appeals**

- 63.(1)** An appeal lodged with –
- (a) the Minister must be submitted to the Department of Environmental Affairs and Tourism;
  - (b) the MEC must be submitted to the provincial department responsible for environmental affairs in the relevant province or
  - (c) the delegated organ of state, where relevant, must be submitted to that delegated organ of state.

- (2) An appeal must be –
- (a) on an official form published by or obtainable from the relevant department; and
  - (b) accompanied by –
    - (i) a statement setting out the grounds of appeal;
    - (ii) supporting documentation which is referred to in the appeal and which is not in the possession of the Minister, MEC or delegated organ of state;
    - (iii) a statement by the appellant that regulation **62(2)** or (3) has been complied with together with copies of the notices referred to in that regulation; and
    - (iv) the prescribed appeal fee, if any.

(3) When submitting an appeal, the appellant must take into account any guidelines applicable to appeals.

### **Time within which appeals must be lodged**

**64.(1)** An appeal must be submitted to the relevant department within 30 days of the lodging of the notice of intention to appeal referred to in regulation **62(1)**.

(2) The Minister, MEC or delegated organ of state, as the case may be, may, in writing, on good cause extend the period within which an appeal must be submitted.

### **Responding statements**

**65.(1)** A person or organ of state which receives a notice in terms of regulation **62(2)**, or an applicant who receives a notice in terms of regulation **62(3)**, may submit to the Minister, MEC or delegated organ of state, as the case may be, a responding statement within 30 days from the date the appeal submission was made available for inspection in terms of that section.

(2) (a) A person, organ of state or applicant who submits a responding statement in terms of subregulation (1), (hereinafter referred to as a respondent), must serve a copy of the statement on the appellant.

(b) If a respondent introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister, MEC or delegated organ of state, as the case may be, within 30 days of receipt of the responding statement.

(c) The appellant must serve a copy of the answering statement on the respondent who submitted the new information.

(3) The Minister, MEC or delegated organ of state, as the case may be, may, in writing, on good cause extend the period within which responding statements in terms of subregulation (1) or an appellant's answering statement in terms of subregulation (2)(b) must be submitted.

### **Processing of appeals**

**66.**(1) Receipt by the Minister, MEC or delegated organ of state, as the case may be, of an appeal, responding statement or answering statement must be acknowledged within 10 days of receipt of the appeal, responding statement or answering statement.

(2) An appellant and each respondent is entitled to be notified of –  
(a) a direction in terms of section 43(7) of the Act, if the Minister, MEC or delegated organ of state, as the case may be, issues such a direction; and

(b) the appointment of an appeal panel in terms of section 43(5) of the Act, if the Minister, MEC or delegated organ of state, as the case may be, appoints an appeal panel for purposes of the appeal.

(3) The Minister, MEC or delegated organ of state, as the case may be, may request the appellant or a respondent to submit such additional information in connection with the appeal as the Minister or MEC may require.

### **Appeal panels**

**67.**(1) If the Minister, MEC or delegated organ of state, as the case may be, appoints an appeal panel, the Minister, MEC or delegated organ of state must furnish the panel with a written instruction concerning –

(a) the issues in respect of which the panel must make recommendations;  
and

(b) the period within which recommendations must be submitted to the Minister, MEC or delegated organ of state.

(2) A member of an appeal panel must be independent.

(3) If an appeal panel introduces any new information not dealt with in the appeal submission of the appellant or in the statements of the respondents, both the appellant and each respondent are entitled to submit to the panel, within a period determined by the panel, any additional statements rebutting or supporting such new information.

(4) An appeal panel must submit its recommendations to the Minister, MEC or delegated organ of state, as the case may be, in writing.

### **Decision on appeals**

**68.** (1) When the Minister, MEC or delegated organ of state, as the case may be, has reached a final decision on an appeal, the appellant and each respondent must be notified of the decision and the extent to which the decision appealed against is upheld or overturned in writing.

(2) Reasons for the decision must on written request be given to the appellant or a respondent in writing.

## **CHAPTER 8**

### **GENERAL MATTERS AFFECTING APPLICATIONS AND APPEALS**

#### ***Part 1: Environmental management frameworks***

#### **Purpose of this Part**

**69.**(1) The purpose of this Part is to provide –

- (a) for the Minister or MEC with concurrence of the Minister to initiate the compilation of information and maps referred to in section 24(3) of the Act specifying the attributes of the environment in particular geographical areas; and
- (b) for such information and maps to be used as environmental management frameworks in the consideration in terms of section 24(4)(i) of the Act of applications for environmental authorisations in or affecting the geographical areas to which those frameworks apply.

(2) The provisions of this Part may not be read as purporting to affect the powers of the Minister or MEC in terms of section 24(3) of the

Act to compile information and maps specifying the attributes of the environment in specific geographical areas.

### **Draft environmental management frameworks**

**70.(1)** The Minister or MEC with the concurrence of the Minister may initiate an environmental management framework for an area.

(2) In order to initiate an environmental management framework for an area, the Minister or MEC must –

- (a) compile a draft environmental management framework;
- (b) subject the draft to a public participation process by –
  - (i) making the draft available for public inspection at a convenient place; and
  - (ii) inviting potential interested and affected parties by way of advertisements in newspapers circulating in the area and in any other appropriate way to inspect the draft and submit representations, objections and comments in connection with the draft to that person or organ of state; and
- (c) review the draft in the light of any representations, objections and comments received.

### **Contents**

**71.** A draft environmental management framework must –

- (a) identify by way of a map or otherwise the geographical area to which it applies;
- (b) specify the attributes of the environment in the area, including the sensitivity, extent, interrelationship and significance of those attributes;
- (c) identify any parts in the area to which those attributes relate;
- (d) state the conservation status of the area and in those parts;
- (e) state the environmental management priorities of the area;
- (f) indicate the kind of activities that would have a significant impact on those attributes and those that would not;
- (g) indicate the kind of activities that would be undesirable in the area or in specific parts of the area; and

(h) include any other matters that may be specified.

### **Adoption**

**72.(1)** If the Minister or MEC adopts with or without amendments an environmental management framework initiated in terms of regulation **70**, the environmental management framework must be taken into account in the consideration of applications for environmental authorisation in or affecting the geographical area to which the framework applies.

(2) When an environmental management framework has been adopted, notice must be given in the Government Gazette or the official Gazette of the relevant province of –

- (a) the adoption of the environmental management framework; and
- (b) the place where the environmental management framework is available for public scrutiny.

### ***Part 2: National and provincial guidelines***

#### **National guidelines**

**73.(1)** The Minister may by notice in the Government Gazette issue national guidelines on the implementation of these Regulations with regard to –

- (a) any particular environmentally sensitive area or kind of environmentally sensitive areas, or environmentally sensitive areas in general;
- (b) any particular environmental impact or kind of environmental impact, or environmental impacts in general;
- (c) any particular activity or kind of activities, or activities in general ; and
- (d) any particular process contemplated in these Regulations.

(2) A delegated organ of state may, in consultation with the Minister, by notice in the Government Gazette issue guidelines, which must be consistent with any national guidelines issued in terms of regulation 73, on the implementation of these Regulations, including guidelines with regard to the matters set out in 73(1)(b), (c), (d) or any matter incidental thereto,

in relation to activities in respect of which the organ of state is the competent authority.

### **Provincial guidelines**

**74.(1)** An MEC may by notice in the official Gazette of the province issue provincial guidelines on the implementation of these Regulations, including guidelines with regard to the matters set out in regulation **73(a)**, (b), (c) or (d), in relation to applications in respect of which the MEC is the competent authority.

(2) Provincial guidelines issued in terms of subregulation (1) must be consistent with any national guidelines issued in terms of regulation **73**.

### **Legal status of guidelines**

**75.** Guidelines issued in terms of regulation **73** or **74** are not binding but must be taken into account when preparing, submitting, processing or considering any application in terms of these Regulations.

### **Draft guidelines to be published for public comment**

**76.** Before issuing any guidelines in terms of regulation **73** or **74**, the Minister or MEC must publish the draft guidelines in the relevant *Gazette* for public comment.

## ***Part 3: Other matters***

### **Failure to comply with requirements for consideration of applications and appeals**

**77.** An application or appeal in terms of these Regulations lapses if the applicant or appellant after having submitted the application or appeal fails for a period of six months to comply with a requirement in terms of these Regulations relating to the consideration of the application or appeal.

### **Resubmission of similar applications**

**78.** No applicant may submit an application which is substantially similar to a previous application by the applicant which has been refused, unless –



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

### **Compliance monitoring**

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

(2) If the competent authority reasonably suspects that the alleged contravention or failure has caused, or may cause, harm to the environment, the competent authority may request the person concerned, in writing, to submit an environmental audit report on the harm or suspected harm to the environment or on any specific matter determined by the competent authority.

(3) An explanation and environmental audit report requested in terms of subregulation (1) must be submitted in a form and within a period determined by the competent authority.

(4) The competent authority may require a person contemplated in subregulation (1) to appoint an independent person approved by the competent authority to perform the environmental audit.

(5) A person contemplated in subregulation (1) is liable for all costs in connection with the environmental audit, including the preparation and submission of the audit report.

(6) If a person contemplated in subregulation (2) is requested to submit an environmental audit report and fails to submit the report within the period determined in terms of subregulation (3), the competent authority may –

- (a) appoint an independent person to perform the audit; and
- (b) recover the cost of the audit from that person.

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

**80.** The competent authority processing an application or the Minister or MEC processing an appeal in terms of these Regulations must give reasonable assistance to a person desiring to object against the application or to lodge an appeal against a decision in respect of the application if that person is unable to comply with a requirement of these Regulations due to –

- (a) a lack of skills to read or write;
- (b) disability; or
- (c) any other disadvantage.

### **Offences**

**81.**(1) A person is guilty of an offence if that person –

- (a) provides incorrect or misleading information in any document submitted in terms of these Regulations to a competent authority;
- (b) fails to comply with regulation 7(2);
- (c) fails to comply with a request in terms of regulation 79(2);
- (d) contravenes or fails to comply with a condition subject to which an exemption in terms of Chapter 5 of these Regulations has been granted or
- (e) continues with an activity where the environmental authorisation was withdrawn in terms of regulation 50 or suspended in terms of regulation 49.

(2) A person is liable on conviction of an offence in terms of subregulation (1) to imprisonment for a period not exceeding two years or to a fine not exceeding an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

## **CHAPTER 9 TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT**

**Definition**

**82.** In this Chapter –

**“previous regulations”** means the regulations published in terms of sections 26 and 28 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), by Government Notice R. 1183 of 5 September 1997, 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.

**Continuation of things done and authorisations issued under previous regulations**

**83.(1)** Anything done in terms of the previous regulations and which can be done in terms of a provision of these Regulations must be regarded as having been done in terms of the provision of these Regulations.

(2) Any authorisation issued in terms of the previous regulations and which is in force when these Regulations take effect, must be regarded to be an environmental authorisation issued in terms of these Regulations.

**Pending applications and appeals**

**84.(1)** An application for authorisation of an activity submitted in terms of the previous regulations and which is pending when these Regulations take effect, must despite the repeal of the previous regulations be dispensed with in terms of the previous regulations as if the previous regulations were not repealed.

(2) An appeal lodged in terms of the previous regulations which is pending when these Regulations take effect or an appeal lodged against a decision taken by virtue of the application of subregulation (1), must despite the repeal of the previous regulations be dispensed with in terms of the previous regulations as if the previous regulations were not repealed.

(3) Any authorisation issued following an application in terms of subregulation (1) or an appeal in terms of subregulation (2) must be regarded to be an environmental authorisation issued in terms of these Regulations.

#### **Existing policies and guidelines**

**85.** Guidelines adopted by the Minister or MEC before these Regulations took effect for the purpose of facilitating the implementation of the previous regulations, must to the extent compatible with the Act and these Regulations be regarded to be national or provincial guidelines issued in terms of Part 2 of Chapter 8 of these Regulations.

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

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

#### **Short title and commencement**

**87.** These Regulations may be cited as the Environmental Impact Assessment Regulations, 2006, and take effect on a date determined by the Minister by notice in the Government Gazette.