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## GENERAL NOTICE

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### NOTICE 12 OF 2005

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

PROPOSED REGULATIONS UNDER SECTION 24(5) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT No. 107 OF 1998) AS AMENDED

The Minister of Environmental Affairs and Tourism intends making regulations and identifying activities and geographical areas under sections 24(2), 24(5) and 24A of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as amended, and as set out in the Schedule hereto.

Interested parties are requested to submit comments in connection with the proposed regulations within 30 days from the date of publication of this notice. Comments must be submitted to the Director-General: Environmental Affairs and Tourism, Private Bag X447, Pretoria, 0001.

**C G Olver**

Director-General: Environmental Affairs and Tourism

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**SCHEDULE**

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**CHAPTER 1: DEFINITIONS AND INTERPRETATION****1. Definitions and interpretation**

- (1) In these regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise-
- (a) **“activity”** unless otherwise indicated means a listed activity or specified activity in terms of section 24(2)(a), (b) or (d) of the Act;
  - (b) **“adjacent land”** includes land that is separated from a site by a road, railway line or other infrastructure;
  - (c) **“agri-industrial”** means a commercial concern engaged in the manufacture or distribution of agricultural produce and includes battery farm operations that are under roof;
  - (d) **“aquaculture”** means the farming of animals or plants in an aquatic environment;
  - (e) **“asbestos”** means any fibrous mineral silicate containing actinolite, amosite, anthophyllite, chrysotile or crocokolite;
  - (f) **“associated structures or infrastructure”** means any building or infrastructure that is necessary for the functioning of the facility or that is used for an ancillary service from the facility;
  - (g) **“bulk storage or transport”** means the storage or transport of goods in quantities specified before it is processed, packaged or made available to the retail sector or the end user, or the storage, transport or movement of large quantities of effluent or waste after it has been discarded by the end user;
  - (h) **“clay”** means attapulgitic or sepiolite, ball clay, bentonite, refractory clay, semi-flint and plastic or fireclay, shale or brick clay, vermiculite-chlorite group, fuller’s earth, illite-montmorillonite group, kaolin, nontronite or saponite, or any other kinds of clay;
  - (i) **“coal”** means coal, pseudo-coal, or torbanite or oil shale;

- (j) **"community woodlot"** means a small plantation the purpose of which is to provide firewood or other wood to a community, excluding for commercial purposes;
- (k) **"competent authority"** means the authority described in regulation 7(7);
- (l) **"concentration of animals"** means keeping animals in confined spaces or structures where they are fed in order to prepare them for slaughter or to produce secondary products like milk or eggs;
- (m) **"cumulative impact"** means an impact that in itself may not be significant but is significant when added to the impact of other activities;
- (n) **"dangerous goods"** means goods that are capable of posing a significant risk to the health and safety of people or the environment and that are listed in Annex B.2 or Annex C of South African National Standard: The identification and classification of dangerous goods for transport, SANS 10228 as amended from time to time;
- (o) **"development"** means the process of carrying out the work associated with a change in the use of land, buildings or infrastructure, or with a change in the intensity of the use of land, buildings or infrastructure;
- (p) **"diamond"** means alluvial diamond or kimberlite diamond;
- (q) **"dimension stone"** means general dimension stone, diorite or syenite, gabbro or norite, granite or syenite, marble, pyroxenite, quartzite or sandstone, shale or slate or jaspilite or schist, travertine, verdite or buddstone or any other kind of dimension stone;
- (r) **"environmental control zones"** means identified areas that are subject to specific forms or levels of control based on the environmental sensitivity of each zone;
- (s) **"environmental impact assessment"** means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to a decision contemplated in regulation 17 in respect of the potential impacts of a proposed activity;
- (t) **"environmental management framework"** means a spatial framework within which specific environmental management parameters and conditions are set in respect to development activities;



- (u) ***“environmental management parameters”*** means the parameters within which activities should be evaluated given the broader context of an area for which an environmental management framework exists;
- (v) ***“environmental resource inventory”*** means an inventory of environmental resources that occur in an area;
- (w) ***“environmental opportunities and constraints”*** means the opportunities that the environment provides for development and the constraints that environment poses for development;
- (x) ***“expansion”*** means extending the range of outputs from a facility or extending the area covered by a facility used to undertake an activity;
- (y) ***“ferrous and base metal”*** means aluminium ore, antimony ore, beryllium ore, bismuth ore, chrome ore, cobalt, copper ore, germanium ore, iron ore, lead, lithium ore, manganese ore, mercury, molybdenum ore, nickel ore, niobium (columbium) ore, pyrite, rare earths, silicon ore, tantalum/niobium ore, tin ore, tungsten ore, uranium ore, vanadium ore, zinc ore or zirconium ore;
- (z) ***“filling station”*** means a facility where petrol, diesel and paraffin is sold and includes shops and car-washing facilities that are located on the same property;
- (aa) ***“gemstone”*** excluding diamond, means agate, amazonite, amethyst, apatite, apophyllite, aquamarine, beryl, chalcedony, chrysoberyl, citrine, corundum, dumortierite, emerald, epidote, feldspar, garnet, heliodor, jade, jasper, kyanite, labradorite, malachite, morganite, opal, orthoclase, prehnite, quartz, ruby, sapphire, sodalite, spinel, tiger's-eye, topaz, tourmaline or zircon;
- (bb) ***“geographical area”*** means an area that can be accurately identified on a map or described in words or coordinates;
- (cc) ***“heavy mineral”*** means leucoxene, monazite, rutile or any other type of heavy mineral;
- (dd) ***“identified activity”*** means activities listed or specified in regulations 22, 23 or 24 or in terms of the Act;
- (ee) ***“industrial mineral”*** means aggregate, andalusite, barytes, calcite, corundum, dolomite, dolomitic limestone, feldspar, fluorspar, garnet (abrasive), gibbsite, graphite, gravel, gypsum, kieselguhr, kyanite, lignite, limestone, magnesite, mica, mineral pigment, nepheline, nitrate, perlite, phosphate ore, phosphorous

materials, pyrophyllite, salt, manufactured sand from hardrock, manufactured sand from waste dump, serpentine, sillimanite, soda, stone aggregate from waste dump, gravel stone aggregate, strontium, sulphur, sulphur in pyrite, talc, vermiculite, wollastonite or zeolite;

- (ff) ***“infill development”*** means urban development, including residential commercial, retail, institutional, educational and mixed use development in a built up area which is at least 50 percent abutted by urban development and can be readily connected to municipal bulk infrastructure services;
- (gg) ***“interested and affected party”*** means a person or group of persons interested or affected by a proposed activity;
- (hh) ***“linear activity”*** means an activity that usually occurs across several properties and may affect more than one aspect or type of environment in different ways along the course of the development;
- (ii) ***“mixed use”*** means, with regards to an activity, the presence of two or more types of land use in an area;
- (jj) ***“opportunity cost”*** means the loss of the ability to use a resource for an alternative activity as a result of the chosen activity;
- (kk) ***“plan of study for environmental impact assessment”*** means a document contemplated in regulation 11 that sets out how the environmental impact assessment will be conducted;
- (ll) ***“precious metal”*** means gold ore, silver ore or platinum group minerals and ore;
- (mm) ***“public participation”*** means furnishing interested and affected parties and the public with an opportunity to comment on, or raise issues relevant to, an application for environmental authorisation, the adoption of a policy or guideline contemplated in these regulations or the compilation of an environmental management framework;
- (nn) ***“registered interested and affected party”*** means a person who participated in a public participation process contemplated in these regulations;
- (oo) ***“scoping report”*** means a report contemplated in regulation 11 and which contains information on identified issues of and alternatives to the proposed development;

- (pp) **“screening”** means the assessment contemplated in regulation 9 to determine whether there is a likelihood of significant impacts that require further investigation or whether a decision can be made, based on the information provided as a result of the screening process;
  - (qq) **“significant impact”** means an impact that by its magnitude, duration, intensity or probability of occurring may have an effect on an important aspect of the environment;
  - (rr) **“silica”** means building sand, concrete sand, crusher sand, filling sand, foundry sand, glass sand, metallurgical silica, silcrete or silica sand;
  - (ss) **“South African Manual for Outdoor Advertising Control”** means the publication of the national Department of Environmental Affairs and Tourism that is used as the basis for control of outdoor advertising by local authorities;
  - (tt) **“specialised processes”** means processes that have been developed to fulfil specific functions in environmental management decision making that may be used as appropriate to a specific case and may include risk assessment, cost benefit analysis, and strategic environmental assessment;
  - (uu) **“the Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended; and
  - (vv) **“upgrade”** means extending the capacity or output of infrastructure or of a facility.
- (2) Where a term is not defined in this section, the term shall have its ordinary dictionary meaning, unless the context indicates otherwise.
- (3) Unless otherwise specified in these regulations, a reference to a number of days shall mean calendar days.

## 2. Application of regulations

- (1) These regulations are applicable to the undertaking of –
- (a) the activities listed in regulations 22 and 23;
  - (b) any listed activity identified in terms of section 24(2)(a) and (d) of the Act; and
  - (c) any specified activity identified within a listed area in terms of section 24(2)(b) or (c) of the Act.

## CHAPTER 2: GENERAL POWERS, RESPONSIBILITIES AND OBLIGATIONS

### 3. General responsibilities and obligations of applicants

(1) An applicant –

- (a) must, where the applicant is not the owner of the land on which it is proposed to undertake the activity, obtain the consent of the landowner to undertake the proposed activity in a form agreed to, or indicated by, the competent authority provided that if the application is in respect of a linear activity, it shall be sufficient for the applicant to prove that notice of the proposed activity has been given to the owners of land on which the activity may take place;
- (b) must appoint an independent environmental assessment practitioner where required in terms of these regulations;
- (c) must provide the environmental assessment practitioner and the competent authority with access to all information at its disposal regarding the application, whether such information is favourable to the applicant or not;
- (d) is responsible for all costs incurred in complying with these regulations, including but not limited to –
  - (i) costs incurred in connection with the appointment of the environmental assessment practitioner or any person contracted by the environmental assessment practitioner;
  - (ii) costs incurred in respect of the undertaking of any process required in terms of these regulations;
  - (iii) costs in respect of any fee prescribed by the competent authority,
  - (iv) costs in respect of specialist reviews, if the competent authority decides to recover costs; and
  - (v) the provision of security to ensure compliance with conditions attached to an environmental authorisation, should it be required by the competent authority;
- (e) must ensure that the environmental assessment practitioner has-
  - (i) expertise in conducting environmental impact assessments;
  - (ii) the ability to perform all the relevant tasks contemplated in these regulations;
  - (iii) the ability to manage the public participation process contemplated in paragraph (f);

- (iv) the ability to timeously produce thorough, readable and informative documents relevant to the application;
  - (v) adequate recording and reporting systems to ensure the preservation of all data gathered; and
  - (vi) a good working knowledge of all relevant policies, legislation, guidelines, norms and standards;
- (f) is responsible for ensuring that the environmental assessment practitioner undertakes public notification, information dissemination and participation that provides all interested and affected parties, including all organs of state at all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in such information and participation procedures;
- (g) is responsible for complying with the conditions of any environmental authorisation issued by the competent authority; and
- (h) must indemnify the government of the Republic, the competent authority and all its officers, agents and employees, from any liability arising out of the content of any report, any procedure or any action for which the applicant or environmental assessment practitioner is responsible in terms of these regulations in a form indicated by the competent authority, provided that this requirement shall not apply to an applicant that is an organ of state.
- (2) An applicant may request a meeting with the competent authority to discuss appropriate steps that should be taken to give effect to the requirements of these regulations.
- (3) If any provision of subregulation (1) is not complied with by the applicant within six months, after having been made aware of it by the relevant competent authority, the application shall be regarded as having lapsed.

#### **4. General responsibilities and obligations of environmental assessment practitioners**

- (1) An environmental assessment practitioner must when performing any work in terms of these regulations –

- (a) have expertise in conducting environmental impact assessments, including a knowledge and understanding of any guidelines or policies that have relevance to the proposed activity;
  - (b) undertake such work in an objective manner, even if this results in findings and views which are not favourable to the applicant;
  - (c) have no financial interest in the undertaking of the activity, other than remuneration for work performed in terms of these regulations;
  - (d) have no vested interest in the proposed activity proceeding, nor any other conflicting interest in the undertaking of the activity, other than in complying with the regulations;
  - (e) disclose to the competent authority any material factors that have or may have the potential to influence the decision of the competent authority or the objectivity of any report, plan or document required in terms of these regulations;
  - (f) ensure that public information is distributed and participation facilitated that provide all interested and affected parties, including all organs of state at all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in such information and participation procedures;
  - (g) keep a register of any interested and affected party that participated in a public participation process;
  - (h) provide the competent authority with reasonable access to all information at its disposal regarding the application, whether such information is favourable to the applicant or not; and
  - (i) submit a declaration of interest to the competent authority in a form that may be indicated by the competent authority.
- (2) Where it comes to the attention of the competent authority that the environmental assessment practitioner has an interest in the application, the competent authority may indicate to the applicant and environmental assessment practitioner that it will not accept any reports from the environmental assessment practitioner.

**5. General responsibilities and obligations of interested and affected parties**

Interested and affected parties who register as interested and affected parties in respect of an application must –

- (a) furnish comments within the timeframes that have been approved or provided for by the competent authority;
- (b) disclose any issue which the interested and affected party believes may be of significance to the decision of the competent authority during the comment periods provided for; and
- (c) disclose any competitive or direct financial interest that the interested and affected party may have in the approval or refusal of an application.

**6. General powers, responsibilities and obligations of the competent authority**

(1) The competent authority must -

- (a) ensure that officers or agents employed by the competent authority to evaluate any reports submitted in terms of these regulations -
  - (i) have knowledge in the area of environmental matters and integrated environmental management;
  - (ii) are familiar with the evaluation tasks required; and
  - (iii) have knowledge of all relevant policies, legislation, guidelines, norms and standards;
- (b) ensure that the evaluation and decisions required in terms of these regulations are done or reached efficiently and within the specified timeframes, or where timeframes are not indicated, within a reasonable time, and that the applicant is informed immediately of any delay;
- (c) provide the applicant, on request, with access to any guidelines or information that are relevant to the application, are in the possession of the competent authority and that may assist the applicant in fulfilling its obligations;
- (d) keep the inputs required from the applicant to the minimum that are necessary to make an informed decision on the application, without putting any limitation on the rights that interested and affected parties may have in terms of these regulations;

- (e) where applicable, inform the applicant of the nature and extent of the public participation process to be followed in complying with these regulations; and
  - (f) maintain a register of all applications received and in terms of which an environmental authorisation has been issued.
- (2) The Minister or MEC may develop and publish guidelines or policies in the relevant *Gazette* in respect of an activity, group of activities or the process contemplated in these regulations with the aim of ensuring efficiency and the protection of the environment.
- (3) Before adopting a policy contemplated in subregulation (2), the Minister or MEC must -
- (a) publish the proposed policy in the relevant *Gazette* and invite members of the public to submit comments on the policy;
  - (b) consult with all Cabinet members or members of the Executive Council whose area of responsibility will be affected by the policy; and
  - (c) give notice to the public of the Minister or MEC's intention to adopt a policy and provide an opportunity for the public to comment on the policy in question.
- (4) Any policies contemplated in subregulation (2) above must be taken into account when completing any form or preparing any report required by these regulations and any proposed deviation from a guideline or policy must be motivated.
- (5) In considering any application where existing operations or activities are undertaken on the property that is the subject of the application, the competent authority may require that the impacts of any existing operations or activities be taken into consideration or assessed in the submission of the application or any report contemplated in these regulations.
- (6) Where these regulations contemplate an assessment of alternatives to the proposed activity, the competent authority may, where relevant, direct the applicant to consider alternatives in respect of -
- (a) the property on which or location where it is proposed to undertake the activity;
  - (b) the type of activity to be undertaken on a property;
  - (c) the design of the activity;
  - (d) the way in which the activity is undertaken; or
  - (e) not proceeding with the proposed activity.



- (7) The competent authority may convene meetings with organs of state that have jurisdiction over an activity that is the subject of an application to –
  - (a) ensure that the comments of other organs of state are considered by the competent authority; and
  - (b) facilitate an integrated approach to decision-making in respect of the activity.

### **CHAPTER 3: AUTHORISATION OF ACTIVITIES**

#### **7. Applications**

- (1) Any person who intends undertaking a Category I activity listed in regulation 22 must submit an application form together with the prescribed fee and conduct a screening process.
- (2) Any person who intends undertaking a Category II activity listed in regulation 23 must submit an application form together with the prescribed fee and conduct a scoping process and environmental impact assessment.
- (3) If any person intends undertaking a Category I activity and that person is of the opinion that it is unlikely that the competent authority will be able to reach a decision on the basis of information provided in a screening report, the applicant may request the competent authority, in writing, to grant permission to undertake an environmental impact assessment instead of a screening process.
- (4) Applications must be made on the relevant application form obtainable from the competent authority.
- (5) Any person who intends undertaking two or more activities on the same property or as part of one development proposal must submit one application form in respect of such activities for the purposes of complying with these regulations.
- (6) Any person who intends undertaking more than one of the same type of activity may request the competent authority, in writing, for permission to submit one application form in respect of those activities and to undertake a consolidated process in respect of those activities.
- (7) The competent authority shall be the environmental authority in the province in which the activity is to be undertaken unless it is an application for an activity contemplated

in section 24C(2) of the Act, in which case the competent authority shall be the Minister.

- (8) Any dispute or disagreement concerning the competent authority to which an application should be submitted shall be referred to the Minister.

## **8. Assessment of applications**

- (1) On receipt of an application, the competent authority must within 14 days and in writing –
- (a) acknowledge receipt of the application; or
  - (b) notify the applicant if the application does not comply with the requirements of these regulations or does not contain material information required in the application form or any guideline that has been developed by the competent authority in respect of the submission of applications.
- (2) An application that does not comply with the requirements of these regulations or does not contain material information required in the application form or any guideline that has been developed by the competent authority in respect of the submission of applications may be referred back to the applicant by the competent authority.

## **9. Screening**

- (1) An applicant who wishes to undertake a Category I activity listed in regulation 22 must appoint an environmental assessment practitioner to conduct a screening process and to complete a form in accordance with the requirements of the competent authority or provided by the competent authority.
- (2) A completed form referred to in subregulation (1), including any additional information that is required to support the application, shall be known as a screening report.
- (3) The competent authority may require that a screening report be submitted together with, or as part of an application form, in which instance, the competent authority shall take the decisions contemplated in regulations 8 and 10 concurrently.
- (4) Unless agreed otherwise by the competent authority, the environmental assessment practitioner must follow any relevant guidelines developed by the competent authority in respect of public participation and must at least –

- (a) inform the following people that an application will be submitted to the competent authority in terms of these regulations and the manner in which such persons may make representations -
    - (i) landowners and occupiers of adjacent land;
    - (ii) landowners and occupiers of land near the property where it is proposed to undertake the activity and whom may be directly affected by the proposed activity; and
    - (iii) the ward counsellor and any organisation that represents the community in the area;
  - (b) place a notice in at least one local newspaper and any *Government Gazette* that is published specifically for the purpose of providing notice to the public of applications in terms of these regulations indicating that an application is being submitted to the competent authority in terms of these regulations; and
  - (c) place a notice in at least one provincial newspaper, national newspaper or any *Government Gazette* that is published specifically for the purpose of providing notice to the public of applications in terms of these regulations, indicating that an application is being submitted to the competent authority in terms of these regulations where the proposed activity may have impacts that are outside of the geographical area.
- (5) A screening report must contain all information that is necessary for the competent authority to assess the application and make a decision contemplated in regulation 10, including –
- (a) details of the person who compiled the report and that person's competence to undertake a screening process;
  - (b) a description of the proposed activity;
  - (c) a description of the need and desirability of the activity, including the benefits that the proposed activity will have to society in general and the community where it will be located;
  - (d) a description of the property or properties and environment in the vicinity of the property where the applicant intends undertaking the activity, including any geographical, physical, social and cultural features of the property or environment;

- (e) an identification of any legislation, policies and guidelines that are relevant to the application;
- (f) a description of the public participation process undertaken during the screening process, including information in respect of –
  - (i) steps taken to notify potential interested and affected parties of the application;
  - (ii) proof of any advertisements that were placed notifying potential interested and affected parties;
  - (iii) a list of all people or organisations that were identified as an interested and affected party; and
  - (iv) a summary of comments received from interested and affected parties and the date and method of response to any comment received;
- (g) a description of the need and desirability of the proposed activity, potential alternatives to the proposed activity, including the consideration of alternative locations, alternative designs and processes at an appropriate level of detail, as well as the alternative of not proceeding with 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, including during the construction phase;
- (i) any environmental management and mitigation measures proposed by the applicant;
- (j) a draft environmental management plan; and
- (k) any other information required by a competent authority in a guideline.

#### **10. Consideration of screening reports**

- (1) After a screening report has been received by the competent authority, the competent authority must within 30 days -
  - (a) decide that the information contained in the screening report is sufficient for the competent authority to reach a decision in respect of the application without further investigation and grant authorisation in respect of all or part of the application with any conditions or refuse authorisation;

- (b) advise the applicant that further or additional information or investigation is required before a decision can be reached on the application because –
  - (i) the issues or potential impacts of the proposed activity are unclear;
  - (ii) further information is required in respect of the proposed activity;
  - (iii) further information in respect of any environmental aspect, including a social or cultural impact, is required;
  - (iv) further information is required on alternatives to the activity; or
  - (v) more comprehensive public participation is required;and instruct the applicant to comply with the provisions of regulation 11 or instruct the applicant to furnish only the information specified by the competent authority; or
- (c) notify the applicant that the application cannot be assessed properly because the screening report does not contain material information required in terms of these regulations or any guidelines that have been developed in respect of the activity which is the subject of the application and refer the screening report back to the applicant.

- (2) A screening report that is referred back to the applicant in terms of subregulation (1)(b), may be amended and resubmitted by the environmental assessment practitioner.

## **11. Scoping and plan of study for environmental impact assessment**

- (1) An applicant who wishes to undertake a Category II activity listed in regulation 23 must appoint an environmental assessment practitioner to complete an application form, conduct a scoping process and to compile a scoping report and plan of study for environmental impact assessment.
- (2) The environmental assessment practitioner must follow any guidelines developed by the competent authority in respect of public participation.
- (3) A scoping report must contain all the information that is necessary for the competent authority to understand the nature of issues that have been identified during scoping and –
  - (a) details of the person who compiled the report and that person's competence to undertake a scoping process;

- (b) a description of the proposed project;
  - (c) a description of how the physical, social and cultural environment may be affected by the proposed activity;
  - (d) a description of environmental issues that have been identified;
  - (e) a description of all alternatives identified; and
  - (f) a description of the public participation process undertaken during scoping, including information in respect of –
    - (i) steps taken to notify potentially interested and affected parties of the application;
    - (ii) proof of any advertisements that were placed soliciting comments from potentially interested and affected parties;
    - (iii) an indication of all people or organisations that were registered as an interested and affected party; and
    - (iv) a summary of comments received from such parties and the date and method of response to any comment received; and
  - (g) a plan of study for environmental impact assessment.
- (4) A plan of study for environmental impact assessment contemplated in subregulation (3) must set out the approach that the applicant intends to follow in undertaking an environmental impact assessment and must include –
- (a) a description of all tasks to be undertaken as part of the assessment process, including any specialist reports or specialised processes;
  - (b) an indication of the stages at which the competent authority will be consulted;
  - (c) a description of the proposed method of assessing the environmental issues and alternatives, including the no-go option; and
  - (d) the nature and extent of the public participation processes to be conducted during the environmental impact assessment process.

## **12. Consideration of scoping reports and plans of study for environmental impact assessment**

- (1) After receiving a scoping report the competent authority must within 30 days and in writing –

- (a) accept the report and advise the applicant to proceed with the activities contemplated in the plan of study for environmental impact assessment;
  - (b) request the applicant to make any amendments that the competent authority requires to accept the scoping report and plan of study for environmental impact assessment; or
  - (c) reject the scoping report and plan of study for environmental impact assessment because it does not contain material information required in terms of these regulations or any guidelines that have been developed by the competent authority in respect of scoping reports and plans of study for environmental impact assessment.
- (2) A scoping report or plan of study for environmental impact assessment that has been rejected by the competent authority in terms of subregulation (1)(c) may be amended and resubmitted by the environmental assessment practitioner.

### **13. Environmental impact assessment**

- (1) The environmental impact assessment report must contain all information that is necessary for the competent authority to assess the application and make a decision contemplated in regulation 17 including –
- (a) details of the person who compiled the report and that person's competence to undertake an environmental impact assessment;
  - (b) a detailed description of the proposed activity;
  - (c) a description of the need and desirability of the activity, including the benefits that the proposed activity will have to society in general and the community where it will be located, in particular;
  - (d) a description of the property or properties and environment in the vicinity of the property where the applicant intends undertaking the activity, including any geographical, physical, social and cultural features of the property or environment;
  - (e) a description of the public participation process undertaken during the scoping process, including information in respect of –
    - (i) steps taken to notify potentially interested and affected parties of the application;

- (ii) proof of any advertisements that were placed soliciting comments from potentially interested and affected parties;
- (iii) an indication of all people or organisations that were registered as an interested and affected party; and
- (iv) a summary of comments received from such interested and affected parties and the date and method of response to any comment received;
- (f) an indication of the methodology used in determining the significance of potential environmental impacts;
- (g) a description and comparative assessment of all alternatives identified during the environmental impact assessment process;
- (h) a summary of the findings of any specialist studies;
- (i) a summary of the findings of any specialised processes;
- (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 mitigation measures;
- (k) an assessment of each identified potentially significant impact, including cumulative impacts, in terms of the nature of the impact, the extent and duration of the impact in terms of the spatial size or area of influence, the probability of the impact occurring and the degree to which the impact can be mitigated;
- (l) a description of the assumptions, uncertainties and gaps in knowledge;
- (m) an environmental impact statement that 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;
- (n) a draft environmental management plan;
- (o) copies of specialist reports, reports on specialised processes and comments received from interested and affected parties; and
- (p) any other information specified by the competent authority.



**14. Content of specialist reports**

Specialist reports that are compiled as part of an environmental impact assessment must contain -

- (a) the name or names, qualifications and relevant experience of the specialist or specialists;
- (b) an indication of the scope of report and purpose for which the report was compiled;
- (c) a description of the methodology adopted in compiling the report;
- (d) a description of the assumptions, uncertainties and gaps in knowledge;
- (e) a description of the findings and potential implications of such findings for the impact of the proposed activity on the environment;
- (f) information on any mitigation measures that are recommended;
- (g) a description of any public consultation process undertaken; and
- (h) any other information requested by the competent authority.

**15. Content of reports on specialised processes**

A report compiled on a specialised process that is undertaken as part of an environmental impact assessment must contain -

- (a) the name or names, qualifications and relevant experience of the author or authors;
- (b) an indication of the scope of the report and purpose for which the specialist process was undertaken;
- (c) a description of the methodology adopted in undertaking the process;
- (d) a description of the assumptions, uncertainties and gaps in knowledge;
- (e) a description of the findings and implication of such findings of the impact of the proposed activity on the environment;
- (f) a description of any proposed mitigation measures;

- (g) a description of any public consultation process that was conducted as part of the specialised process; and
- (h) any other information requested by the competent authority.

#### **16. Contents of draft environmental management plans**

A draft environmental management plan must include information on any proposed management or mitigation measures that will be taken to address the environmental impacts identified in the environmental impact assessment report.

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

- (1) The competent authority must, within 45 days after receiving an environmental impact assessment report –
  - (a) accept the report;
  - (b) notify the applicant that specialist reviewers have been appointed to review the report;
  - (c) request the applicant to make the amendments that the competent authority requires to accept the environmental impact assessment report; or
  - (d) reject the report because it does not contain material information required in terms of these regulations or that has been specified by the competent authority.
- (2) An environmental impact assessment report that is rejected in terms of subregulation (1)(d) may be amended and resubmitted by the environmental assessment practitioner.
- (3) The competent authority may, before making a decision to grant authorisation or refuse authorisation, appoint a specialist reviewer or reviewers to review any environmental impact assessment report, or parts thereof, and to submit a report on their findings to the competent authority.
- (4) The Minister or MEC may recover the costs of appointing a specialist reviewer from the applicant where –
  - (a) the technical knowledge required to review any aspect of a report is not readily available within the competent authority; or

- (b) a high level of objectivity is required which is not apparent in the documents submitted, in order to ascertain whether the information contained in such documents is adequate for decision-making or where it requires amendment.
- (5) On acceptance of an environmental impact assessment report or, where the environmental impact assessment report has been referred for specialist review in terms of subregulation (3), on receipt of the findings of the specialist reviewer, the competent authority must within 60 days and in writing –
  - (a) grant authorisation in respect of all or part of the application with any conditions;  
or
  - (b) refuse authorisation.

#### **18. Considerations for issuing of environmental authorisations**

The competent authority must take all relevant factors into account when considering an application for environmental authorisation, including -

- (a) the requirements of section 24 of the Constitution;
- (b) the principles of the Act;
- (c) the objectives of any environmental policies, strategies or plans that are relevant to the application;
- (d) the provisions of applicable international legal instruments which have been ratified by the Republic;
- (e) any economic or social policies of government that adopt specific approaches to achieving sustainable development;
- (f) the pollution or environmental degradation being or likely to be caused by the undertaking of the activity and the likely impact of that pollution or environmental degradation on the environment;
- (g) the cumulative impacts to which the activity may contribute;
- (h) the environmental opportunity costs that may arise as a result of the activity;
- (i) measures that could be taken-
  - (i) to prevent, control, abate or mitigate any pollution or environmental degradation; and
  - (ii) to protect the environment from harm as a result of the undertaking of the activity;

- (j) the contents of any documents accompanying the application, including documents that contain information on –
  - (i) the significance and nature of potential impacts;
  - (ii) alternatives to the activity, including the alternative of not proceeding with the activity;
  - (iii) mitigation measures to manage any environmental impacts;
  - (iv) any submission from an interested and affected party; and
  - (v) the ability of the applicant to implement mitigation measures and to comply with any conditions of authorisation;
- (k) comments received from organs of state that have jurisdiction over any aspect of the activity; and
- (l) any legislation, regulations or guidelines issued by the Minister or competent authority that are relevant to the application.

#### **19. Decisions of competent authority**

- (1) After the competent authority has reached a decision to grant or refuse authorisation in respect of an application, it must –
  - (a) notify the applicant of the decision;
  - (b) give written reasons for the decision;
  - (c) draw the applicant's attention to the provisions contained in these regulations regulating appeal procedures;
  - (d) instruct the applicant to notify all registered interested and affected parties of the competent authority's decision and the provisions regulating appeal procedures contained in these regulations within a determined time period; and
  - (e) issue an environmental authorisation where the decision of the competent authority is to grant authorisation, provided that where the competent authority grants authorisation, the information specified in subregulation (a), (b), (c) and (d) may be included in the authorisation.
- (2) If an applicant has submitted an application form in respect of more than one activity in terms of regulation 7(5) or (6), the competent authority may grant authorisation in respect of one or more of the activities forming the subject of the application in a

single environmental authorisation or refuse to grant authorisation in respect of one or more of the activities forming the subject of the application.

**(3) An environmental authorisation must specify-**

- (a) the name, address and telephone number of the applicant to whom the authorisation is issued;
- (b) a description of the activity that is authorised;
- (c) a description of the property or properties, location and area where the activity will be undertaken;
- (d) the conditions in terms of which the activity may be undertaken including in respect of –
  - (i) the period for which the environmental authorisation is valid;
  - (ii) requirements for the management, monitoring and reporting of the impacts of the activity throughout the life cycle of the activity; and
  - (iii) the transfer of rights and obligations when there is a change of ownership of the property or of the activity.

**(4) An environmental authorisation may -**

- (a) provide that the activity may not commence prior to specified conditions being complied with;
- (b) require the applicant to furnish the competent authority with reports prepared by the applicant or an independent person, at specified times or intervals, that -
  - (i) indicate the extent to which the conditions of the authorisation have or have not been complied with;
  - (ii) provide details of the nature of, and reasons for, any non-compliance with a condition of the authorisation; and
  - (iii) describe any action taken, or to be taken, to mitigate the effects of the non-compliance or to prevent any recurrence of the non-compliance;
- (c) require the applicant to furnish security for any mitigation or rehabilitation measures required in the environmental authorisation; and
- (d) include any other condition that the competent authority considers necessary for the protection of the environment.

**20. Transfer of environmental authorisations**

- (1) If a holder of an environmental authorisation transfers ownership of a property on which an activity that is authorised in terms of these regulations is undertaken, or transfers the ownership of an activity that is authorised in terms of these regulations, the environmental authorisation may, with the permission of the competent authority, be transferred to the new owner of the property or activity.
- (2) The permission of the competent authority referred to in subregulation (1) may not be unreasonably withheld.
- (3) A person applying for permission for the transfer of an environmental authorisation must submit a written application to the competent authority that includes -
  - (a) the name, address and telephone number of the new owner of the property or activity;
  - (b) a written declaration from the new owner that he is aware of the conditions of the environmental authorisation and that he is able to comply with such conditions;
  - (c) any relevant information that supports the declaration; and
  - (d) any other information stipulated in the conditions of the environmental authorisation relating to the transfer of rights and obligations.
- (4) A person applying for permission for the transfer of an environmental authorisation must take appropriate steps to bring the application for transfer of the environmental authorisation to the attention of registered interested and affected parties.
- (5) If the competent authority grants permission for the transfer of an environmental authorisation, it must amend the authorisation to reflect the name, address and telephone number of the new owner and furnish a copy thereof to the new owner.

**21. Variation of environmental authorisations**

- (1) The competent authority may, by written notice to the holder of an environmental authorisation, vary an environmental authorisation –
  - (a) if it is necessary or desirable to prevent deterioration of the environment;
  - (b) if it is necessary or desirable for the purposes of achieving prescribed environmental standards;

- (c) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
  - (d) at the written request of the holder of the environmental authorisation; or
  - (e) if it is transferred to another person in terms of regulation 20.
- (2) The variation of an environmental authorisation includes –
- (a) the attaching of an additional condition or requirement to the environmental authorisation;
  - (b) the substitution of a condition or requirement;
  - (c) the removal of a condition or requirement; or
  - (d) the amendment of a condition or requirement.
- (3) An environmental authorisation may be varied at any time during its currency.
- (4) If the competent authority intends varying an environmental authorisation in terms of subregulation (1)(a), (b), (c), or (e), the competent authority must notify the holder of the environmental authorisation, interested and affected parties and the public of the –
- (a) competent authority's intention to vary the environmental authorisation;
  - (b) proposed details of the variation;
  - (c) reasons for the variation; and
  - (d) time period within which objections to the variation may be submitted to the competent authority.
- (5) If the competent authority receives a request from the holder of an environmental authorisation in terms of subregulation (1)(d), the competent authority may require the holder of the environmental authorisation to furnish such additional information or to undertake such studies as it deems necessary to reach a decision on the request for variation.
- (6) If the competent authority receives a request from the holder of an environmental authorisation in terms of subregulation (1)(d), the competent authority must require the holder of the environmental authorisation to take appropriate steps to bring the request to the attention of relevant organs of state, interested and affected persons and the public and to provide such persons with an opportunity to submit comments on the request for variation.

- (7) Regulation 20, read with the necessary changes as the context may require, applies to the variation of an environmental authorisation.

#### **CHAPTER 4: IDENTIFICATION OF ACTIVITIES AND GEOGRAPHICAL AREAS**

##### **22. Category I identified activities that require screening**

- (1) The construction of new facilities or infrastructure, including associated structures or infrastructure, for –
- (a) the manufacturing, storage, testing or disposal of explosives including ammunition, but excluding licensed retail outlets and the legal end use of such explosives;
  - (b) the storage of more than 1 000 tons of ore;
  - (c) the storage of more than 250 tons of coal;
  - (d) hospitality and recreational purposes, including resorts, lodges, hotels and other tourism or hospitality facilities where -
    - (i) more than 20 guests can be accommodated overnight;
    - (ii) there are more than 10 guest units;
    - (iii) the facility will cover an area in excess of 1 hectare; or
    - (iv) there is no connection to a municipal sewerage system;
  - (e) golfing activities including –
    - (i) driving ranges; or
    - (ii) golf courses covering less than 10 hectares;
  - (f) sport and associated recreation activities where -
    - (i) the facility will have a capacity to hold more than 8 000 people; or
    - (ii) the facility will cover an area in excess of 3 hectares;
  - (g) the slaughter of animals and the processing of animal products and by-products with a product throughput in excess of 10 000 kilogram per year;
  - (h) the concentration of animals for the purpose of commercial production in densities that exceed -
    - (i) 20 square metres per unit of cattle and more than 500 units per year,
    - (ii) 8 square meters per unit of sheep and more than 1 000 units per year;



- (iii) 8 square metres per unit of pigs and more than 250 units per year excluding piglets that are not yet weaned;
- (iv) 30 square metres per unit of crocodiles at any level of production, excluding crocodiles younger than 6 months;
- (v) 3 square metres per unit of poultry and more than 250 units at any time, excluding chicks younger than 20 days;
- (vi) 3 square metre per unit of rabbit at and more than 250 units at any time; or
- (vii) 100 square metres per unit of ostriches and more than 50 units per year;
- (i) commercial aquaculture production including mariculture and algae farms with a product throughput of more than 10 000 kilograms per year;
- (j) agri-industrial purposes outside areas zoned for industrial purposes and that cover an area of more than 1 000 square metres;
- (k) the bulk transportation of sewage and water in pipelines or channels with -
  - (i) an internal diameter of 0,36 metres or more; or
  - (ii) a maximum peak throughput of 120 litres or more per second;
- (l) the production of clay bricks and clay or ceramic tiles;
- (m) the transmission and distribution of above ground electricity with a capacity of less than 120 kilovolt, but more than 20 kilovolt;
- (n) any purpose in the one in a hundred year flood line of a river or stream, or within 30 metres from the bank of a river or stream where the flood line is unknown, including -
  - (i) canals;
  - (ii) channels;
  - (iii) bridges;
  - (iv) dams; and
  - (v) weirs;
- (o) the off-stream storage of water, including dams and reservoirs, with a capacity of 80 000 cubic metres or more;
- (p) the recycling, handling, temporary storage or treatment of waste with a daily throughput capacity in excess of 10 cubic metres;
- (q) the cremation of human or animal tissue;
- (r) horseracing;

- (s) polo and polo-cross;
  - (t) the landing, parking and maintenance of aircraft including -
    - (i) helicopter landing pads;
    - (ii) structures for equipment and aircraft storage;
    - (iii) structures for maintenance and repair;
    - (iv) structures for fuelling and fuel storage; and
    - (v) structures for air cargo handling; or
  - (u) the outdoor racing of motor powered vehicles including -
    - (i) motorcars;
    - (ii) trucks;
    - (iii) motorcycles;
    - (iv) boats; and
    - (v) jet skis.
- (2) Construction or earth moving activities in the sea and extending for a distance of 100 metres inland of the high-water mark of the sea, including the construction of –
- (a) small harbour facilities for commercial and recreational vessels or craft;
  - (b) facilities associated with the arrival and departure of vessels and the handling of cargo;
  - (c) facilities for the storage of material and the maintenance of vessels;
  - (d) fixed or floating jetties and slipways;
  - (e) piers;
  - (f) breakwater structures;
  - (g) tidal pools; or
  - (h) buildings.
- (3) The prevention of the free movement of sand, including erosion and accretion, by means of planting vegetation, placing synthetic material on dunes and exposed sand surfaces for a distance of 100 metres inland of the high-water mark of the sea.
- (4) The dredging, excavation, removal or moving of soil, sand or rock exceeding 5 cubic metres from a river, tidal lagoon, tidal river, floodplain or wetland.
- (5) The removal or damaging of natural vegetation for a distance of 100 metres inland of the high-water mark of the sea.

- (6) The excavation, moving, removal, depositing or compacting of soil, sand, rock or rubble covering an area exceeding 10 square metres for a distance of 100 metres inland of the high-water mark of the sea.
- (7) Filling stations or any other facility for the underground storage of petrol, diesel or paraffin.
- (8) The above ground storage, including temporary storage, of petrol, diesel or paraffin in containers with a combined capacity of more than 30 cubic metres at any one location or site.
- (9) Borrow pits, other than borrow pits identified in regulation 23.
- (10) The manufacture of charcoal and coke.
- (11) The establishment of cemeteries.
- (12) The decommissioning of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of more than 10 hectares.
- (13) The abstraction of groundwater at a volume where any general authorisation granted in terms of the National Water Act, 198 (Act No. 36 of 1998) for groundwater is to be exceeded or the borehole is within 100 metres of another user, spring, wetland, surface water body or river.
- (14) The transformation or removal of indigenous vegetation in excess of 3 hectares.
- (15) The planting of tree plantations or the expansion of existing plantations, but excluding community woodlots smaller than 3 hectares.
- (16) The construction of masts and towers, including those used for telecommunication, broadcasting or radio transmission, where the height of the mast or tower structure as measured from its base is higher than 15 metres;
- (17) The transformation of undeveloped land to –
  - (a) establish infill development covering an area of 5 hectares or more; or
  - (b) establish residential, mixed use, retail, commercial, industrial or institutional use with a structure footprint of 1 hectare or more where such development does not constitute infill.
- (18) Phased development activities where any one phase of a development activity may be below a threshold in these regulations but a combination of the phases will exceed the threshold.

- (19) The subdivision of land into portions smaller than 5 hectares.
- (20) The development of a new facility or the transformation of an existing facility for the conducting of manufacturing processes, warehousing, bottling, packaging, or storage, which occupies an area in excess of 1000 square metres outside an existing area zoned for industrial purposes.
- (21) The transformation of public open space or a protected area to another use.
- (22) The release of genetically modified organisms into the environment in instances where it is required by the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997) or the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).
- (23) The use of any organism for biological control.
- (24) The decommissioning of mining, quarrying, prospecting or other mineral extraction operations that commenced before 1991.
- (25) The decommissioning of existing facilities or infrastructure, other than facilities or infrastructure that commenced under an environmental authorisation issued in terms of these regulations, for -
- (a) electricity generation;
  - (b) nuclear reactors and storage of nuclear fuel;
  - (c) industrial activities where the facility or the land on which it is located is contaminated or has the potential to be contaminated by any material which may place a restriction on the potential to re-use the site for a different purpose;
  - (d) the disposal of waste;
  - (e) the treatment of effluent, wastewater and sewage with an annual throughput capacity of more than 15 000 cubic metres;
  - (f) the recycling, handling, temporary storage or treatment of waste with a daily throughput capacity of more than 10 cubic metres; or
  - (g) the cremation of human or animal tissue;
- (26) The recommissioning or use of facilities or infrastructure, after a period of two years from closure, or temporary closure, excluding facilities or infrastructure that commenced under an environmental authorisation issued in terms of these regulations, for -
- (a) electricity generation;

- (b) nuclear reactors and nuclear fuel storage; or
- (c) facilities for any industrial process or activity, which requires a new permit or license in terms of legislation governing the release of emissions, pollution, effluent or waste to air, water or soil;

(27) The expansion or upgrading of existing facilities for any industrial process or activity, which requires an amendment of an existing permit or license or a new permit or license in terms of legislation governing the release of emissions, pollution, effluent or waste to air, water or soil;

(28) In accordance with the provisions of section 24(2)(c) of the Act, an MEC may exclude activities (1)(c), (1)(d), (1)(e), (1)(f), (1)(j), (1)(k), (1)(l), (1)(m), (1)(o), (1)(r), (1)(s), (1)(t), (1)(u), (2), (3), (4), (5), (6), (7), (8), (13), (14), (15), (16), (17), (18), (19), (20), (21), (24), (25), (26) and (27) where -

- (a) an area that is managed by any authority for which an environmental management framework that makes provision for the proper management of the activities to be managed in terms of the environmental management framework has been approved by the competent authority; or
- (b) an area is not sensitive to certain activities due to its nature or zoning as identified by the competent authority.

### **23. Category II identified activities that require environmental impact assessment**

- (1) The construction of new facilities or infrastructure, including associated structures or infrastructure, for -
  - (a) the generation of electricity where -
    - (i) the electricity output is 10 megawatt or more; or
    - (ii) the facility covers an area in excess of 1 hectare;
  - (b) nuclear reaction including the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and waste;
  - (c) any industrial process or activity, which requires a permit or license in terms of legislation governing the release of emissions, pollution, effluent or waste to air, water or soil;

- (d) the use, recycling, handling, treatment, storage or final disposal of hazardous wastes;
- (e) the extraction or processing of natural gas including gas from landfill sites;
- (f) the bulk transportation of dangerous goods using pipelines, funiculars and conveyors with a daily throughput capacity in excess of 50 tons or 50 cubic metres;
- (g) the landing, parking and maintenance of aircraft excluding unpaved landing strips shorter than 1,4 kilometres in length and helicopter landing facilities and stops used exclusively by emergency services, but including -
  - (i) airports;
  - (ii) runways;
  - (iii) waterways; or
  - (iv) structures for engine testing;
- (h) coastal marinas and harbours;
- (i) the transmission and distribution of above ground electricity with a capacity of 120 kilovolt or more;
- (j) marine telecommunication infrastructure;
- (k) the transfer of more than 20 000 cubic metres of water between water catchments or impoundments per day;
- (l) the final disposal of general waste covering an area in excess of 100 square metres or 200 cubic metres of airspace;
- (m) the treatment of effluent, wastewater and sewage with an annual throughput capacity of more than 15 000 cubic metres;
- (n) the incineration, burning, evaporation, thermal treatment, roasting or heat sterilisation of waste or effluent;
- (o) the microbial deactivation, chemical sterilisation or non-thermal treatment of waste or effluent;
- (p) rail transportation, excluding railway lines and sidings in industrial areas and underground railway lines in mines, but including -
  - (i) railway lines;
  - (ii) stations; and
  - (iii) shunting yards; or

- (q) **golfing activities including -**
  - (i) **golf courses covering 10 hectares or more; and**
  - (ii) **golf estates that comprise of golf courses of any size and residential housing.**
- (2) **Any new development activity where the total area of the site is in excess of 20 hectares.**
- (3) **The extraction of peat.**
- (4) **The route determination and construction of roads and associated infrastructure where –**
  - (a) **it is a national road as defined in section 40 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);**
  - (b) **it is a road administered by a provincial authority;**
  - (c) **the road reserve is wider than 30 metres; or**
  - (d) **the road is designed to carry a high volume of traffic of more than 700 vehicles per lane per day with an equivalent standard axle (80 kilo Newton) pavement class of 3 or more.**
- (5) **The construction of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of more than 10 hectares.**
- (6) **The mining, quarrying, prospecting, extraction or production, including associated structures and the extension of existing operations, of -**
  - (a) **ferrous and base metals;**
  - (b) **precious metals;**
  - (c) **coal;**
  - (d) **diamonds;**
  - (e) **heavy minerals;**
  - (f) **asbestos;**
  - (g) **industrial minerals;**
  - (h) **gemstones;**
  - (i) **clay;**
  - (j) **silica; or**
  - (k) **dimension stone.**

- (7) In accordance with the provisions of section 24(2)(c) of the Act, an MEC may exclude activities listed under (1)(p), (1)(q), (2) and (4), as appropriate, where –
- (a) an area which is managed by any authority for which an environmental management framework that makes provision for the proper management of the activities to be managed in terms of the environmental management framework has been approved by the competent authority; or
  - (b) an area is not sensitive to certain activities due to its nature or zoning as identified by the competent authority.

**24. The identification of geographical areas in which specified activities require environmental authorisation**

- (1) Geographical areas that may be identified by an MEC in terms of section 24(2) of the Act in which specified activities may not commence without any environmental authorisation include –
- (a) areas or sites identified by any legislation or in any government policy or plan that has been adopted for the purpose of protecting or conserving biological, water, landscape, geological, archaeological, palaeontological, architectural or cultural resources;
  - (b) the core areas of biosphere reserves; and
  - (c) areas designated for conservation or protection by the Republic in terms of any international agreement, treaty or convention to which the Republic is a party.
- (2) Activities listed that may be specified by an MEC as requiring environmental authorisation in a geographic area include –
- (a) the construction of new facilities or infrastructure or the upgrade or expansion of existing facilities or infrastructure, including associated structures, for –
    - (i) the manufacture of cement bricks and products;



- (ii) vehicular transport, including tracks, where natural vegetation in excess of 250 square metres must be removed, or material to construct a road must be imported from a borrow pit;
  - (iii) marinas and the launching of watercraft on inland waters;
  - (iv) above ground cableways and funiculars;
  - (v) landing and take-off of aircraft;
  - (vi) driving of 4x4 vehicles;
  - (vii) the generation of water pressure by means of elevated water pressure tanks with a combined capacity of 10 000 litres or more;
  - (viii) the treatment or disposal of effluent, wastewater and sewage with a yearly throughput capacity of more than 100 cubic metres;
  - (ix) advertisements as defined in classes 1(a), 1(b), 1(c), 1(d), 2(g), 3(a), 3(b), 3(k), 4(b) and 5(a) of the South African Manual for Outdoor Advertising Control;
  - (x) resorts, lodges, hotels and other tourism or hospitality facilities;
  - (xi) camping and picnicking where the site covers an area in excess of 500 square metres;
  - (xii) sporting activities with a capacity to hold more than 1 000 spectators, or covering an area in excess of 1 hectare; or
  - (xiii) the abstraction of water directly from natural sources, including streams and aquifers, where the daily extraction will exceed 10 000 litres per day or more than 50% of the flow volume of a stream;
- (b) the construction of masts, towers and poles, including those used for telecommunication, broadcasting or radio transmission where the height of the mast, tower or pole structure as measured from its base is higher than 7 metres;

- (c) the new or initial fitment of telecommunication or radio reflector or antenna dishes with a diameter in excess of 3 metres and other types of antennas with dimensions of which any part falls outside a box of 3 metres long, 0,4 metres wide and 0,4 metres deep, whether fitted to a pole, mast, tower, building or any other existing structure;
- (d) the establishment of new or the extension of existing cultivated agricultural fields in excess of 500 square metres;
- (e) the transformation or removal of indigenous vegetation in excess of 500 square metres;
- (f) the development or redevelopment of areas for the purposes of residential, mixed, commercial, retail, industrial, agri-industrial, institutional and educational use.

## **CHAPTER 5: ENVIRONMENTAL MANAGEMENT FRAMEWORKS**

### **25. Purpose of environmental management frameworks**

- (1) The Minister or MEC may use an approved or adopted environmental management framework to inform any decision regarding the identification of a geographical area in which specified activities may not commence without an environmental authorisation or in which a specified activity may be excluded from requiring an environmental authorisation.
- (2) The purpose of any environmental management framework that is submitted to the Minister or MEC for approval or to Cabinet or an Executive Council for adoption must be to –
  - (a) assess and document the environmental attributes of a defined geographical area in sufficient detail to enable the Minister or MEC to make an informed decision regarding the need for environmental authorisation in respect of specific activities;

- (b) identify conservation and environmental management priorities within a defined geographical area to facilitate the implementation of measures that support the management of such priorities;
- (c) identify specific areas or aspects within a defined geographical area that should be managed or protected;
- (d) identify environmental considerations that should be taken into account in the formulation of strategic development frameworks and integrated development plans;
- (e) provide information in respect of land uses that are, or are not, appropriate for the area, having regard to the environmental attributes of the area; and
- (f) facilitate co-operative governance with respect to decision-making and the management and protection of the environment.

## **26. Compilation of environmental management frameworks**

- (1) The process for developing an environmental management framework must include as a minimum -
  - (a) a terms of reference that is developed on the basis of the requirements of the competent authority, the relevant local authority or authorities, other organs of state that have an interest in the contents of the environmental management framework and the public;
  - (b) an assessment of the status quo in respect of environmental resources and development in the geographical area in question;
  - (c) the determination of environmental management framework parameters that are based on -
    - (i) an identification and assessment of alternatives or potential development scenarios in the area;
    - (ii) an identification of relevant strategic issues and objectives; and

- (iii) an identification of potentially competing interests in respect of the access to or utilisation of environmental resources and an assessment of how such interests can be balanced, if at all.
- (d) a public participation process that provides for -
  - (i) notification to the public of the intention to develop an environmental management framework and information regarding the manner in which the public may participate;
  - (ii) the dissemination of information in respect of the proposed contents of the environmental management framework to the public;
  - (iii) the opportunity for interested and affected parties to provide input to, comment on, or raise issues in respect of, the process and contents of the proposed environmental management framework;
  - (iv) response mechanisms for communicating how comments made by the public have been considered and addressed; and
  - (v) the communication of the results of the environmental management framework to the public and stakeholders.

## **27. Contents of environmental management frameworks**

- (1) An environmental management framework that is submitted to the Minister or MEC for approval or adoption must contain –
  - (a) a description and map of the area that is the subject of the environmental management framework;
  - (b) a comprehensive description of the process followed in compiling the environmental management framework report including a description of the public participation process followed;
  - (c) an assessment of the status quo of environmental resources and development pressures in the area;
  - (d) proposed environmental management parameters and guidelines for the assessment of proposed activities in the area;

- (e) a determination of environmental control zones in the area and control mechanisms for each zone based on the sensitivity of the environment;
- (f) an indication of activities that will be managed in terms of the environmental management framework and measures that will be used to make the provisions of the environmental management framework binding, if at all; and
- (g) a zoning of the area in respect of specific activities in a manner that will identify –
  - (i) areas in which an activity should be allowed to take place without further investigation;
  - (ii) areas in which the undertaking of a specific activity may be allowed subject to an environmental authorisation being granted in terms of these regulations; and
  - (iii) areas in which the undertaking of a specific activity should not be considered;
- (h) a strategy for the implementation of the environmental management framework including an indication of how the environmental management framework will facilitate administrative efficiency and co-operative governance;
- (i) an indication of the intervals when the environmental management framework will be reviewed; and
- (j) any other requirements specified by the competent authority.

## **28. Approval and adoption of environmental management frameworks**

- (1) An environmental management framework that is compiled by a competent authority must be adopted by Cabinet or an Executive Council as the case may be.
- (2) An environmental management framework that is developed by an organ of state, other than the competent authority, must be approved by –
  - (a) the MEC of the province in which the geographical area, that is the subject of the environmental management framework, is located;
  - (b) the Minister, in consultation with the MEC, where the environmental management framework includes activities contemplated in section 24C(2) of the Act.

- (3) An environmental management framework that is approved by the Minister or MEC must be reviewed, and if necessary revised, at intervals not exceeding five years and the revised environmental management framework submitted to the Minister or MEC for approval.
- (4) Any environmental management framework that is approved by the Minister or MEC or adopted by Cabinet or an Executive Council must be published in the relevant *Gazette* and be available in a user-friendly format to the public.

## **CHAPTER 6: COMPLIANCE AND ENFORCEMENT**

### **29. Compliance and enforcement**

- (1) The provisions of Chapter 7 of the Act shall apply to these regulations, as read with the necessary changes.
- (2) The competent authority may require the holder of an environmental authorisation or exemption to submit an environmental audit report if the competent authority reasonably suspects that the holder of an environmental authorisation or exemption has on one or more occasions contravened the conditions of the environmental authorisation or exemption and that the contravention or contraventions have caused, or are likely to cause, harm to the environment.
- (3) An environmental audit report required in subregulation (2) must be submitted in a form and within a time period indicated by the competent authority.
- (4) The competent authority may require the holder of an environmental authorisation to appoint an independent person approved by the competent authority to undertake the environmental audit.

### **30. Use of information or statements**

Any information or statements supplied to the competent authority as required by these regulations or the Act, may be taken into consideration by the competent authority and used for the purposes of these regulations or the Act.

### **31. Offences**

- (1) In addition to any offences contained in the Act, a person shall be guilty of an offence if that person –
  - (a) commences or undertakes an activity listed in regulation 22 or 23 without obtaining environmental authorisation or exemption from requiring such authorisation from the competent authority;
  - (b) contravenes or fails to comply with a condition of an environmental authorisation or exemption;
  - (c) is a holder of an environmental authorisation and that person transfers ownership of the property on which an activity that is authorised in terms of these regulations is undertaken or transfers the ownership of the activity without drawing the requirements of the environmental authorisation to the attention of the new owner;
  - (d) fails to submit an environmental audit report required in terms of regulation 29(2); or
  - (e) supplies false or misleading information in respect of an application for environmental authorisation, exemption or transfer of an environmental authorisation.
- (2) Any person who fails to submit information or submits false or misleading information during the compilation of the audit shall be guilty of an offence, whether or not the information, or failure to furnish the information, might incriminate that person.

### **32. Penalties**

The penalties as prescribed in the Act, as amended, will be applicable to these regulations.

## **CHAPTER 7: APPEALS**

### **33. Appeal**

- (1) Any affected person may appeal against a decision as provided for in the Act.
- (2) An appeal must be made within 30 days after –

- (a) the decision of the competent authority forming the subject of the appeal is received by the applicant; or
  - (b) notice of the decision forming the subject of the appeal has come to the attention of the appellant or has been sent to the appellant by the applicant.
- (3) Any applicant who appeals a decision must give a copy of his appeal to all registered interested and affected parties.
- (4) The competent authority must furnish a copy of any appeal received from a person other than the applicant to the applicant.
- (5) Any person receiving notification of an appeal in terms of subregulation (3) or (4) shall be entitled to submit a response to the appeal to the Minister or MEC within 30 days after the notification has been received.
- (6) An appeal shall be made in writing and shall at least contain –
- (a) the name of the appellant;
  - (b) the grounds of the appeal;
  - (c) any supporting documentation which is referred to in the appeal and which is not in the Minister or MEC's possession;
  - (d) proof that a copy of the appeal has been given to all registered interested and affected parties, where the appellant is the applicant for an environmental authorisation or exemption; and
  - (e) any other information specified in a guideline published by the competent authority.
- (7) After receipt of an appeal, the Minister or MEC must –
- (a) acknowledge receipt of the appeal within 10 days;
  - (b) advise the appellant if the environmental authorisation or exemption, or any provisions or conditions attached thereto, which are the subject of the appeal are suspended during the consideration of the appeal;
  - (c) advise the appellant, or other persons who have responded to the appeal –
    - (i) of the process that will be followed;
    - (ii) whether further information is required; and
    - (iii) if the appeal will be referred to an appeal panel.



- (8) An appeal panel appointed by the Minister must comprise of people who are appropriately qualified to consider the appeal and to make recommendations to the Minister or MEC.
- (9) The Minister or MEC must furnish an appeal panel with a written description of the issues in respect of which recommendations must be made and the powers of the appeal panel.
- (10) The Minister or MEC must reach a decision within 60 days of being in possession of all the relevant information, including any recommendations of an appeal panel, which he requires to reach a decision, unless the Minister or MEC has, in writing and with the furnishing of reasons, notified the appellant and other persons who have responded to the appeal that a different time period will be applied.
- (11) A decision of the Minister or MEC must be in writing and must indicate –
  - (a) the reasons for the decision; and
  - (b) the extent to which the decision being appealed against is upheld or overturned.

## **CHAPTER 8: GENERAL MATTERS**

### **34. Exemptions**

- (1) Any person may apply, in writing, to the competent authority for exemption from the application of any provision of these regulations other than a public participation process, in respect of a specific activity.
- (2) An application for exemption shall comply with any written guideline that the competent authority has produced to facilitate administrative efficiency, consistency in applications and informed decision-making.
- (3) An application in terms of subregulation (1) must be accompanied by reasons.
- (4) The competent authority must acknowledge receipt of the application for exemption within 14 days.
- (5) The competent authority may require the applicant to furnish further information or to take such steps as may be specified by the competent authority if it is necessary to inform the consideration of the application.
- (6) The competent authority must require an applicant applying for exemption to take steps specified by the competent authority to bring the application to the attention of

relevant organs of state, interested and affected persons and the public and to provide such persons with an opportunity to submit comments on the application where a decision to grant exemption may adversely affect the rights of any person.

### **35. Consideration of exemption applications**

- (1) When considering an application for exemption, the competent authority must consider the requirements of sections 23 and 24(1) of the Act and the provisions of regulation 18, read with the necessary changes that it considers to be relevant.
- (2) The competent authority must, after considering an application for exemption, within 60 days of receiving comments on the application and in writing –
  - (a) refuse to grant exemption or grant exemption from compliance with any or all of the provisions of these regulations, subject to such conditions as it may deem fit;
  - (b) notify the applicant of the decision;
  - (c) give written reasons for the decision;
  - (d) draw the applicant's attention to the provisions contained in these regulations regulating appeal procedures;
  - (e) instruct the applicant to notify all registered interested and affected parties of the competent authority's decision and the provisions regulating appeal procedures contained in these regulations within a determined time period; and
  - (f) issue a letter of exemption where the decision of the competent authority is to grant exemption, provided that where the competent authority grants exemption, the information specified in subregulation (b), (c), (d) and (e) may be included in the letter of exemption.
- (3) An exemption must specify-
  - (a) the name, address and telephone number of the applicant to whom the exemption is granted;
  - (b) a description of the activity in respect of which exemption was applied for;
  - (c) the regulation or regulations that the applicant is exempted from complying; and
  - (d) conditions of the exemption, if any.

**36. Authorisation of mining activities**

Any process followed or document prepared for the purposes of complying with these regulations by an applicant who intends undertaking a mining activity or on such applicant's behalf shall be deemed to comply with the requirements of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), provided that the competent authority has consulted with the Department of Minerals and Energy in respect of that department's requirements prior to approving any process or accepting any document.

**CHAPTER 9: MISCELLANEOUS****37. Limitation of liability**

Neither the State nor any other person is liable for any damage or loss caused by-

- (a) the exercise of any power or the performance of any duty under these regulations; or
- (b) the failure to exercise any power, or perform any functions or duty under these regulations;

unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

**38. Repeal of regulations**

The regulations passed in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) in Government Notices R. 1182, R. 1183 and R. 1184 of 5 September 1997, as amended, are hereby repealed.

**39. Transitional arrangements**

- (1) The transitional arrangements as prescribed in the Act are applicable to these regulations.
- (2) The provisions contained in these regulations in respect of the competent authority's powers to require an applicant to provide financial or other security may not be exercised until the Minister or MEC has published further regulations or a guideline on the exercise of such powers after consultation with the Minister of Finance.

**40. Commencement**

These regulations commence on a date determined by the Minister by notice in the *Gazette*.

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