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CONTENTS • INHOUD*No.**Page
No. Gazette
No.***GOVERNMENT NOTICES****Environmental Affairs, Department of***Government Notices*

R. 543	National Environmental Management Act (107/1998): Environmental Impact Assessment Regulations, 2010	3	33306
R. 544	do.: Listing Notice 1: List of activities and competent authorities identified in terms of sections 24 (2) and 24D	80	33306
R. 545	do.: Listing Notice 2: List of activities and competent authorities identified in terms of sections 24 (2) and 24D	105	33306
R.546	do.: Listing Notice 3: List of activities and competent authorities identified in terms of sections 24 (2) and 24D	116	33306
R. 547	do.: Environmental Management Framework Regulations, 2010.....	188	33306

GOVERNMENT NOTICES

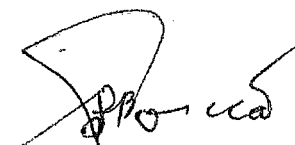
DEPARTMENT OF ENVIRONMENTAL AFFAIRS

No. R. 543

18 June 2010

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

I, Buyelwa Patience Sonjica, Minister of Water and Environmental Affairs, hereby make the regulations pertaining to environmental impact assessments under sections 24(5), 24M and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) in the Schedule hereto.



**BUYELWA SONJICA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

SCHEDULE

ARRANGEMENT OF REGULATIONS

CHAPTER 1

INTERPRETATION AND PURPOSE OF THESE REGULATIONS

1. Interpretation
2. Purpose of Regulations

CHAPTER 2

COMPETENT AUTHORITY

3. Identification of competent authority
4. Where to submit application
5. Assistance by competent authority to applicant
6. Consultation between competent authority and State departments administering a law relating to a matter affecting the environment
7. Competent authority's right of access to information
8. Criteria to be taken into account by competent authority when considering application
9. Timeframes for competent authority
10. Notification of decision on application
11. Registry of applications and record of decisions

CHAPTER 3

APPLICATION FOR ENVIRONMENTAL AUTHORISATION

Part 1: General matters

12. Application
13. Checking of application for compliance with formal requirements
14. Combination of applications
15. Activity on land owned by person other than applicant
16. Appointment of EAPs to manage application
17. General requirements for EAPs or a person compiling a specialist report or undertaking a specialised process
18. Disqualification of EAPs

19. Determination of assessment process applicable to application
20. Determining whether basic assessment or scoping and environmental impact reporting is to be applied to application

Part 2: Application subject to basic assessment

21. Submission of application to competent authority and steps to be taken after submission of application
22. Content of basic assessment report
23. Submission of application to competent authority
24. Consideration of application
25. Decision on application

Part 3: Application subject to scoping and environmental impact reporting

26. Submission of application to competent authority
27. Steps to be taken after submission of application
28. Content of scoping report
29. Submission of scoping report to competent authority
30. Consideration of scoping report
31. Environmental impact assessment report
32. Specialist report and report on specialised processes
33. Content of draft environmental management programme
34. Consideration of environmental impact assessment report
35. Decision on application

Part 4: Environmental authorisation

36. Issue of environmental authorisation
37. Contents of environmental authorisation

CHAPTER 4

**AMENDMENT AND SUSPENSION OF ENVIRONMENTAL
AUTHORISATION AND ENVIRONMENTAL MANAGEMENT
PROGRAMME**

38. General

***Part 1: Amendment on application by holders of environmental
authorisation***

- 39. Applications for amendment
- 40. Submission of application for amendment
- 41. Consideration of application and decision on non-substantive amendments
- 42. Decision on application

Part 2: Amendment on initiative of competent authority

- 43. Purposes for which competent authority may amend environmental authorisation
- 44. Process
- 45. Decision

Part 3: Amendment of environmental management programme

- 46. Amendment of environmental management programme

Part 4: Suspension of environmental authorisation

- 47. Suspension of environmental authorisation
- 48. Suspension procedure
- 49. Decision

CHAPTER 5

EXEMPTION FROM PROVISIONS OF REGULATIONS

- 50. Application for exemption
- 51. Submission of application
- 52. Consideration of application
- 53. Decision on application

CHAPTER 6

PUBLIC PARTICIPATION PROCESS

- 54. Public participation process

- 55. Register of interested and affected parties
- 56. Registered interested and affected parties entitled to comment on submissions
- 57. Comments of interested and affected parties to be recorded in reports submitted to competent authority

CHAPTER 7

APPEALS

- 58. Application of this Chapter
- 59. Jurisdiction of Minister and MEC to decide appeals
- 60. Notice of intention to appeal
- 61. Submission of appeal
- 62. Time within which appeal must be lodged
- 63. Responding statement
- 64. Processing of appeal
- 65. Appeal panel
- 66. Decision on appeal

CHAPTER 8

GENERAL MATTERS

- 67. Failure to comply with requirements for consideration of application
- 68. Resubmission of similar application
- 69. Compliance monitoring
- 70. Assistance to people with special needs
- 71. Offences

CHAPTER 9

TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT

- 72. Definition
- 73. Continuation of things done and authorisations issued under previous regulations
- 74. Pending applications and appeals (ECA)

- 75 Continuation of things done and authorisations issued under previous NEMA regulations
- 76 Pending applications and appeals (NEMA)
- 77. Continuation of regulations regulating authorisations for activities in certain coastal areas
- 78 Repeal of Environmental Impact Regulations, 2006
- 79. Short title and commencement

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

“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;
- (e) the operational aspects of the activity; and
- (f) the option of not implementing the activity.

“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;
- (c) an amendment to an environmental management programme; or
- (c) an exemption from a provision of these Regulations in terms of Chapter 5 of these Regulations;

“basic assessment report” means a report contemplated in regulation 22;

“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 audit report” means a document that provides verifiable findings and recommendations for improvement, in a structured and systematic manner, on the performance and compliance of an organisation and/or project against environmental policies, objectives, laws, regulations, licences, permits, conditions of authorisation, norms and standards;

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

“environmental impact assessment report” means a report contemplated in regulation 31;

“exploration” has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

“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;

“linear activity” means an activity that is undertaken across one or more properties and which affects the environment or any aspect of the environment along the course of the activity in different ways, and includes railways, roads, funiculars, pipelines, conveyor belts, cableways, powerlines, fences, runways, aircraft landing strips, and telecommunication lines;

“mining” has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

“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 28(1)(l), which forms part of a scoping report and sets out how an environmental impact assessment must be conducted;

“production right” has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

“prospecting” has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

“reconnaissance” has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002;

“registered environmental assessment practitioner / registered EAP” means an environmental assessment practitioner registered with

an appointed registration authority contemplated in section 24H of the Act;

“registered interested and affected party”, in relation to an application, means an interested and affected party whose name is recorded in the register opened for that application in terms of regulation 55;

“respondent” means a person submitting a responding statement in terms of regulation 63(2)(a);

“scoping report” means a report contemplated in regulation 28;

“S&EIR” means the scoping and environmental impact reporting process as contemplated in regulation 26 to regulation 35;

“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;

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

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

(2) Subject to paragraphs (3), (4) and (5), 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.

(3) For any action contemplated in terms of these regulations for which a timeframe is prescribed, the period of 15 December to 2 January must be excluded in the reckoning of days.

(4) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.

(5) Where an objection on an application has been referred to the Regional Mining Development and Environmental Committee, in terms of regulation 6(5) or (6), the applicable timeframe is deemed to be extended by 45 days.

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

Purpose of Regulations

2. The purpose of these Regulations is to regulate the procedure and criteria as contemplated in Chapter 5 of the Act relating to the submission, processing and consideration of, and decision on, applications for environmental authorisations for the commencement of activities in order to avoid detrimental impacts on the environment, or where it can not be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts, and for matters pertaining thereto.

CHAPTER 2

COMPETENT AUTHORITY

Identification of competent authority

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

(2) The competent authority, who must consider and decide upon an application in respect of a specific activity, must be determined with reference to the notice published under section **24D**(1) 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, the Minister and the Minister of Mineral Resources, or by the Minister and the designated organ of state, as the case may be.

Where to submit application

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.

(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 application for the commencement of an activity, the application must be submitted to that delegated organ of state.

(4) If the Minister of Mineral Resources is the competent authority in respect of a specific application, the application must be

submitted to the relevant regional office of the Department of Mineral Resources.

Assistance by competent authority to applicant

5. (1) A competent authority may, on its own initiative, or upon request by an applicant or an EAP managing an application, and subject to the payment of any reasonable charges, if applicable—

- (a) give the applicant or EAP access to any guidelines, departmental policies, decision-making instruments 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.

(2) A competent authority must, on written request, furnish the applicant or EAP with officially adopted minutes of any meeting held or discussion that took place, as contemplated in subregulation (1)(b), between the competent authority and the applicant or EAP .

(3) The competent authority and the applicant or EAP, must on written request by a registered interested or affected party, provide access to the officially adopted minutes of meetings as contemplated in subregulation (2), to such a registered interested or affected party.

Consultation between competent authority and State departments administering a law relating to a matter affecting the environment

6. (1) Where an application 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, and where an agreement has been reached in order

to give effect to Chapter 3 of the Constitution and sections 24(4)(a)(i), 24K and 24L of the Act, the application must be dealt with in accordance with such agreement.

(2) If the Minister, MEC, Minister of Mineral Resources or identified competent authority considers an application for an environmental authorisation, the Minister, MEC, Minister of Mineral Resources or competent authority must take into account all relevant factors including any comments received from a relevant State department that administers a law relating to a matter affecting the environment relevant to that application for environmental authorisation.

(3) The Minister, MEC, Minister of Mineral Resources or identified competent authority must consult with every State department that administers a law relating to a matter affecting the environment relevant to that application for an environmental authorisation when he or she considers the application.

(4) A State department consulted in terms of subregulation (3) must submit its comments within 40 days from the date on which the Minister, MEC, Minister of Mineral Resources or identified competent authority requests such State department, in writing to, submit comments.

(5) Where comments submitted in terms of subregulation (4) constitute an objection as contemplated in section 24O(4) of the Act, the Minister of Mineral Resources must refer such objection to the Regional Mining Development and Environmental Committee and provide a copy of such objection to the applicant.

(6) Where comments submitted by interested and affected parties to the EAP constitute an objection against an application for prospecting, mining, reconnaissance, exploration, production or related

activities in a prospecting, mining, reconnaissance, exploration or production area, the EAP must—

- (a) refer such objections to the Minister of Minerals Resources who in turn refers it to the Regional Mining Development and Environmental Committee; and
- (b) provide a copy of such objections to the competent authority.

(7) The Regional Mining Development and Environmental Committee must, within 45 days after the date of receiving such an objection, consider the objection and must make written recommendations to the Minister of Mineral Resources.

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 unless access to that information is protected by law.

(2) Unless access to the information contemplated in subregulation (1) 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 have regard to section 240 and 24(4) of the Act as well as the need for and desirability of the activity.

Timeframes for competent authorities

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

(2) Where the applicable timeframes contemplated in regulations **24(1)(a)**, **25(1)**, **30(1)**, **34(2)** or **35**, as the case may be, are not met, those applicable timeframes are automatically extended by 60 days.

(3) Upon the lapsing of an extension contemplated in subregulation (2) for decisions contemplated in regulations **24(1)(a)**, **30(1)(a)** or (c) or **34(2)(a)** or (d), the competent authority must base his or her decision on the available information.

(4) Upon the lapsing of an extension contemplated in subregulation (2) regarding decisions to grant or refuse authorisation contemplated in regulations **25** or **35**, as the case may be, the provisions of section 6(2)(g) and (3) of the Promotion of Administrative Justice Act, 2000 will apply.

Notification of decision on application

10. (1) After a competent authority has reached a decision on an application, the competent authority must, in writing and within 2 days—

- (a) notify the applicant of the decision;
- (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 12 days of the date of the decision on the application—

- (a) notify all registered interested and affected parties of-
 - (i) the outcome of the application; and
 - (ii) the reasons for the decision;
- (b) draw the attention of all registered interested and affected parties 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;

- (c) draw the attention of all registered interested and affected parties to the manner in which they can access the decision; and
- (d) publish a notice—
 - (i) informing interested and affected parties of the decision;
 - (ii) informing interested and affected parties where the decision can be accessed; and
 - (iii) drawing the attention of interested and affected parties 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 under the circumstances of the decision,in the newspapers contemplated in regulation 54(2)(c) and (d) and which newspaper was used for the placing of advertisements as part of the public participation process.

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.

CHAPTER 3

APPLICATIONS FOR ENVIRONMENTAL AUTHORISATION

Part 1: General matters

Applications

12. (1) An application for an environmental authorisation for the commencement 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 obtainable from the relevant competent authority; and
- (b) when submitted in terms of regulation 21(1) or 26(b), be accompanied by—
 - (i) the written notice referred to in regulation 15(1) as well as proof of serving of such notice on the owner or person in control of the land, if the applicant is not the owner or person in control of the land on which the activity is to be undertaken; and
 - (ii) the prescribed application fee, if any.

(3) An application for an environmental authorisation may—

- (a) be submitted simultaneously with an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;
- (b) where section 24L of the Act applies, be submitted in the manner as agreed to by the relevant authorities.

Checking of applications for compliance with formal requirements

13. (1) Upon 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; and

- (b) is accompanied by any reports, other documents and fees as 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 and accept the application, if the application is in order; or
- (b) acknowledge receipt and reject, in writing, the application, if it is not in order.

(3) The applicant or 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

14. (1) If an applicant intends undertaking more than one activity of the same type at different locations within the area of jurisdiction of the competent authority, 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.

(2) If the competent authority grants permission in terms of subregulation (1), 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.

Activity on land owned by person other than applicant

15. (1) If the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the applicant must give written notice of the proposed activity to the owner or person in control of the land on which the activity is to be undertaken, and inform such person that he may participate in the public participation process as contemplated in regulation **54**.

(2) In circumstances where a notice as contemplated in subregulation (1) will not serve the purpose of notifying the owner or person in control of the land as that person is unable to understand the content of the notice due to—

- (i) illiteracy;
- (ii) disability; or
- (iii) any other disadvantage,

alternative means of notifying the owner or person in control of the land must be agreed to with the competent authority and a record of such agreement as well as proof of compliance with the requirement to give notice must be provided.

(3) Proof of the notice contemplated in subregulation (1) must be submitted with the application form as contemplated in regulation 12(2).

(4) The format of a notice contemplated in subregulation (1) or (2) may be determined by the competent authority and proof of service of such notice must be submitted to the competent authority.

Appointment of EAPs to manage applications

16. (1) Before conducting basic assessment or S&EIR, 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 17(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 or a person compiling a specialist report or undertaking a specialised process

17. An EAP appointed in terms of regulation 16(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 referred to in regulation 8 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 or a person compiling a specialist report or undertaking a specialised process

18. (1) If the competent authority at any stage of considering an application has reason to believe that the EAP managing an application

or a person compiling a specialist report or undertaking a specialised process may not comply with the requirements of regulation 17 in respect of the application, the competent authority must—

- (a) notify the EAP and applicant of the reasons therefore and that the application is suspended until the matter is resolved; and
- (b) afford the EAP and applicant an opportunity to make representations to the competent authority regarding the independence of the EAP, in writing.

(2) An interested and affected party may notify the competent authority of suspected non-compliance with regulation 17.

(3) Where an interested and affected party notifies the competent authority of suspected non-compliance with regulation 17, the competent authority must investigate the allegation.

(4) The notification referred to in subregulation (2) must be submitted in writing and must contain documentation supporting the allegation, which is referred to in the notification.

(5) If, after considering the matter, the competent authority is unconvinced of compliance with regulation 17 by the EAP or person compiling a specialist report or undertaking a specialised process, the competent authority must in writing, inform the EAP or person compiling a specialist report or undertaking a specialised process and the applicant accordingly and may—

- (a) refuse to accept any further reports or input from the EAP or person compiling a specialist report or undertaking a specialised process in respect of the application in question;
- (b) request the applicant to –
 - (i) commission, at own cost, an external review by an independent person or persons of any reports prepared or processes conducted by the EAP or person compiling a

- specialist report or undertaking a specialised process in connection with the application;
 - (ii) redo any specific aspects of the work done by the previous EAP or person compiling a specialist report or undertaking a specialised process in connection with the application; and
 - (iii) to complete any unfinished work in connection with the application; or
- (c) request the applicant to take such action as the competent authority requires to remedy the defects.

(6) If the application has reached a stage where a register of interested and affected parties has been opened in terms of regulation 55, the applicant must inform all registered interested and affected parties of any suspension of the application as well as of any decisions taken by the competent authority in terms of subregulation (5).

Determination of assessment process applicable to application

19. (1) When appointed in terms of regulation 16(1), an EAP must in accordance with regulation 20 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.

(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 S&EIR must be applied to the application.

Determining whether basic assessment or S&EIR is to be applied to application

20. (1) Basic assessment must be applied to an application if the authorisation applied for is in respect of an activity—

- (a) listed in 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; or
- (b) for which permission has been granted in terms of subregulation (4) for basic assessment instead of S&EIR to be applied to the application.

(2) S&EIR must be applied to an application if—

- (a) the authorisation applied for is in respect of an activity listed in 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 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 S&EIR 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 S&EIR instead of basic assessment to the application.

(4) If an applicant intends undertaking an activity to which S&EIR must be applied in terms of subregulation (2) and the applicant, on the advice of the EAP managing the application, is for any reason of the view that it is likely 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 basic assessment instead of S&EIR to the application.

Part 2: Application subject to basic assessment

Submission of application to competent authority and steps to be taken after submission of application

21. (1) If a basic assessment must be applied to an application, the applicant or EAP managing the application must submit an application form, including a declaration of interest by the EAP and any documents referred to in regulation 12(2)(b), to the competent authority before conducting basic assessment.

(2) After having submitted an application, the EAP managing the application, must—

- (a) conduct at least a public participation process as set out in regulation 54;
- (b) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 55;
- (c) consider all comments 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;
- (d) prepare a basic assessment report in accordance with regulation 22; and
- (e) give all registered interested and affected parties an opportunity to comment on the basic assessment report in accordance with regulation 56.

- (3) The format of an application form as contemplated in subregulation (1) may be determined by the competent authority.

Content of basic assessment reports

22. (1) The EAP managing an application to which this Part applies must prepare a basic assessment report in a format that may be determined by 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 25, 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 and a map 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 21(2)(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 55 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;
- (g) a description of the need and desirability of the proposed activity;
- (h) a description of 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;
- (i) a description and assessment of the significance of any environmental impacts, including—
 - (i) 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;
 - (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;
- (j) any environmental management and mitigation measures proposed by the EAP;
- (k) any inputs and recommendations made by specialists to the extent that may be necessary;
- (l) a draft environmental management programme containing the aspects contemplated in regulation 33;

- (m) a description of any assumptions, uncertainties and gaps in knowledge;
- (n) a reasoned 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
- (o) any representations, and comments received in connection with the application or the basic assessment report;
- (p) 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;
- (q) any responses by the EAP to those representations, comments and views;
- (r) any specific information required by the competent authority; and;
- (s) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

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

- (a) any relevant guidelines; and
- (b) any departmental policies, environmental management instruments and other decision making instruments that have been developed or adopted by the competent authority in respect of the kind of activity which is the subject of the application.

(4) The EAP managing the application must provide the competent authority with detailed, written proof of an investigation as required by section 24(4)(b)(i) of the Act and motivation if no reasonable or feasible alternatives, as contemplated in subregulation 22(2)(h), exist.

Submission of basic assessment report to competent authority

23. After having complied with regulation 21, the EAP managing the application must submit to the competent authority, where applicable,

within the timeframes stipulated by the competent authority, the prescribed fee, and at least 5 copies of —

- (a) the basic assessment report;
- (b) any representations, and comments received in connection with the application or the basic assessment report;
- (c) 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
- (d) any responses by the EAP to those representations, comments and views.

(2) The competent authority must, within 14 days of receipt of the basic assessment report, and in writing, acknowledge receipt thereof.

Consideration of application

24. (1) A competent authority must within 30 days of acknowledging receipt of the basic assessment report and in writing—

- (a) accept the basic assessment report, if the basic assessment report complies with the requirements of regulation 22;
- (b) reject the basic assessment report, 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 basic assessment reports.

(2) If the basic assessment report is rejected, 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 S&EIR.

(3) The competent authority may reject the basic assessment report if it does not substantially comply with regulation **21** or **22**.

(4) 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.

(5) 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.

(6) Upon 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), the competent authority must reconsider the application as per regulation 24(1).

(7) If the competent authority requests in terms of subregulation (2)(d) that the application be subjected to S&EIR, the application must be proceeded with in accordance with regulations **26** to **35**.

Decision on application

25. 1) A competent authority must—

- (a) within 30 days of accepting a basic assessment report in terms of regulation **24**(1), or within 30 days of the lapsing of the 60 days contemplated in regulation 9(2); or
- (b) if paragraphs (a), (b) or (c) of regulation **24**(2) are applicable or if the basic assessment report has been rejected in terms of regulation **24**(3), within 30 days of receipt of the required information, reports, suggestions or comments or the amended

basic assessment report, consider the application and basic assessment report and in writing—

- (i) grant the authorisation in respect of all or part of the activity applied for; or
- (ii) refuse the 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), after which an applicant must comply with regulation 10(2).

Part 3: Application subject to scoping and environmental impact reporting

Submission of application to competent authority

26. If S&EIR must be applied to an application, the applicant or 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 determined by the competent authority; and
 - (ii) any documents referred to in regulation 12(2)(b).

Steps to be taken after submission of application

27. After having submitted an application, the EAP managing the application must—

- (a) conduct at least the public participation process set out in regulation 54;
- (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 55;
- (d) consider all comments 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 28;

- (g) give all registered interested and affected parties an opportunity to comment on the scoping report in accordance with regulation 56;
- (h) where applicable, submit the scoping report within the timeframes stipulated by the competent authority; and
- (i) submit at least five copies of the scoping report contemplated in paragraph (f) simultaneously to the competent authority.

Content of scoping report

28. (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;
- (c) a description of any feasible and reasonable alternatives that have been identified;
- (d) 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;
- (e) a description of the environment that may be affected by the activity and the manner in which activity may be affected by the environment;
- (f) an identification of all legislation and guidelines that have been considered in the preparation of the scoping report;
- (g) a description of environmental issues and potential impacts, including cumulative impacts, that have been identified;
- (h) details of the public participation process conducted in terms of regulation 27(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 55 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 description of the need and desirability of the proposed activity;
 - (j) a description of 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;
 - (k) copies of any representations, and comments received in connection with the application or the scoping report from interested and affected parties;
 - (l) 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
 - (m) any responses by the EAP to those representations and comments and views;
 - (n) 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;
- (o) any specific information required by the competent authority; and
- (p) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

(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.

(3) The EAP managing the application must provide the competent authority with detailed, written proof of an investigation as required by section 24(4)(b)(i) of the Act and motivation if no reasonable or feasible alternatives, as contemplated in subregulation (1)(c), exist.

Submission of scoping reports to competent authority

29. The EAP managing an application must submit 5 copies of the scoping report compiled in terms of regulation 28 to the competent authority, together with —

- (a) copies of any representations, 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 and comments and views.

Consideration of scoping reports

30. (1) The competent authority must, within 30 days of receipt of a scoping report, or receipt of the required information, reports, or comments or the amended scoping report, consider it, and in writing—

- (a) accept 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 as the competent authority may require; or
- (c) reject the scoping report 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 that has been rejected by the competent authority in terms of subregulation (1)(c) may be amended and resubmitted by the EAP.

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

Environmental impact assessment reports

31. (1) If a competent authority accepts a scoping report and advises the EAP in terms of regulation 30(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 28(1)(g)(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 35, 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 and comments received from registered interested and affected parties;
- (f) a description of the need and desirability of the proposed activity;
- (g) a description of 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;

- (h) an indication of the methodology used in determining the significance of potential environmental impacts;
- (i) a description and comparative assessment of all alternatives identified during the environmental impact assessment process;
- (j) a summary of the findings and recommendations of any specialist report or report on a specialised process;
- (k) 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;
- (l) 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;
- (m) a description of any assumptions, uncertainties and gaps in knowledge;
- (n) a reasoned 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;
- (o) 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;

- (p) a draft environmental management programme containing the aspects contemplated in regulation 33;
- (q) copies of any specialist reports and reports on specialised processes complying with regulation 32;
- (r) any specific information that may be required by the competent authority; and
- (s) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

(3) The EAP managing the application must provide the competent authority with detailed, written proof of an investigation as required by section 24(4)(b)(i) of the Act and motivation if no reasonable or feasible alternatives, as contemplated in subregulation 31(2)(g), exist.

Specialist reports and reports on specialised processes

32. (1) An applicant or the EAP managing an application may appoint a person to carry out a specialist study or specialised process.

(2) The person referred to in subregulation (1) must comply with the requirements of regulation 17.

(3) 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 programme

33. A draft environmental management programme must comply with section 24N of the Act and include –

- (a) details of –
 - (i) the person who prepared the environmental management programme; and
 - (ii) the expertise of that person to prepare an environmental management programme;
- (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 programme;

- (d) an identification of the persons who will be responsible for the implementation of the measures contemplated in paragraph (b);
- (e) proposed mechanisms for monitoring compliance with and performance assessment against the environmental management programme and reporting thereon;
- (f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development, including, where appropriate, concurrent or progressive rehabilitation measures;
- (g) a description of the manner in which it intends to—
 - (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
 - (ii) remedy the cause of pollution or degradation and migration of pollutants;
 - (iii) comply with any prescribed environmental management standards or practices;
 - (iv) comply with any applicable provisions of the Act regarding closure, where applicable;
 - (v) comply with any provisions of the Act regarding financial provisions for rehabilitation, where applicable;
- (h) time periods within which the measures contemplated in the environmental management programme must be implemented;
- (i) the process for managing any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of undertaking a listed activity;
- (j) an environmental awareness plan describing the manner in which—
 - (i) the applicant intends to inform his or her employees of any environmental risk which may result from their work; and
 - (ii) risks must be dealt with in order to avoid pollution or the degradation of the environment;
- (k) where appropriate, closure plans, including closure objectives.

Consideration of environmental impact assessment reports

34. (1) (a) Where applicable, the EAP must submit the environmental impact assessment report within the timeframes stipulated by the competent authority.

(b) On completion of the environmental impact assessment report, the EAP must submit at least 5 copies of the environmental impact assessment report to the competent authority.

(2) The competent authority must, within 60 days of receipt of an environmental impact assessment report, in writing—

(a) accept the report; or

(b) reject the report if it does not substantially comply with regulation **31(2)** and

(i) notify the applicant that the report has been referred for specialist review in terms of section 24I of the Act; or

(ii) request the applicant to make such amendments to the report as the competent authority may require for acceptance of the environmental impact assessment report.

(3) The acceptance of the environmental impact assessment report in subregulation (2)(a) may include acceptance of the environmental management programme if it meets the requirements.

(4) (a) An environmental impact assessment report that is rejected in terms of subregulation (2)(b) 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 (2).

Decision on applications

35. (1) A competent authority must within 45 days of acceptance of an environmental impact assessment report in terms of regulation **34** 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, or within 30 days of the lapsing of the 60 days contemplated in regulation 9(2), 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).

(4) The Minister of Mineral Resources may only issue an authorisation if the provisions of section 24P(1) of the Act have been complied with.

Part 4: Environmental authorisation

Issue of environmental authorisation

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

(2) If in the case of an application referred to in regulation 14, 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.

(3) A competent authority may issue an integrated environmental authorisation as contemplated in section 24L of the Act.

Content of environmental authorisation

37. (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;
 - (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 as contained in the approved environmental management programme; 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; and
 - (e) where applicable, indicate the manner in which and when the competent authority will approve the environmental management programme; and
 - (f) the requirements on the manner in which and the frequency when the environmental management programme will be approved, amended or updated.
- (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;
- (d) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with the requirements regarding financial provision;
- (e) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with the applicable requirements regarding closure; and
- (f) include any other condition that the competent authority considers necessary for the protection of the environment.

CHAPTER 4

AMENDMENT AND SUSPENSION OF ENVIRONMENTAL AUTHORISATION AND ENVIRONMENTAL MANAGEMENT PROGRAMME

General

38. (1) The competent authority that issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment 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.

Part 1: Amendment on application by holders of environmental authorisation

Applications for amendment

39. (1) The holder of an environmental authorisation may at any time apply to the relevant competent authority for the amendment of the authorisation.

(2) An application contemplated in subregulation (1) may be submitted if

- (a) there is a material change in the circumstances which existed at the time of the granting of the environmental authorisation;
- (b) there has been a change of ownership in the property and transfer of rights and obligations must be provided for; or
- (c) a condition contained in the environmental authorisation must be amended, added, substituted, corrected, removed or updated.

Submission of application for amendment

40. (1) An application in terms of regulation **39** must be in writing and accompanied by a motivation for such amendment.

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

Consideration of application and decision on non-substantive amendments

41. (1) Upon receipt of an application made in terms of regulation 39, 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 and such request must accompany the acknowledgement of receipt of the application.

(2) The competent authority must within 30 days of acknowledging receipt of the application 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) to conduct a public participation process as referred to in regulation 54 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 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; and

- (c) to submit to the competent authority those reports, together with any comments on those reports from registered interested and affected parties.

Decision on application

42. (1) Within 30 days of completion of the process contemplated for substantive amendments in regulation 41(3), the competent authority must accept or reject the information contemplated in regulation 41(3)(c).

(2) On having accepted the information, the competent authority must reach a decision regarding the application for amendment.

(3) If the information contemplated in regulation 41(3)(c) was rejected, it may be amended and resubmitted, whereupon the competent authority must act in accordance with subregulation (1).

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

(5) If an application is approved, the competent authority must issue an amendment to the environmental authorisation either by way of a new environmental authorisation or an addendum to the existing environmental authorisation.

Part 2: Amendment on initiative of competent authority

Purposes for which competent authority may amend environmental authorisations

43. 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