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## GENERAL NOTICES

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### NOTICE 733 OF 2014

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS

#### NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

#### ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014

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

Members of the public are invited to submit to the Minister, within 30 days after the publication of the notice in the *Gazette*, written comments or inputs to the following addresses:

By post to: The Director-General: Department of Environmental Affairs  
Attention: Mr Neo Nkotsoe  
Private Bag X447  
Pretoria  
0001

By hand at: Reception, Environment House, 473 Steve Biko Street, Arcadia, Pretoria, 0083

By e-mail: [NNkotsoe@environment.gov.za](mailto:NNkotsoe@environment.gov.za)

Any inquiries in connection with the notice can be directed to Ms Amanda Britz at (012) 399 9283 /9285.

Comments received after the closing date will not be considered.



**BOMO EDITH EDNA MOLEWA**  
**MINISTER OF ENVIRONMENTAL AFFAIRS**

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## CHAPTER 1

### INTERPRETATION AND PURPOSE OF THESE REGULATIONS

#### Interpretation

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

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

“**Agreement**”, for the purpose of regulation 1(3) and (4) means the Agreement reached between the Minister, Minister responsible for mineral resources and Minister responsible for water affairs titled **One Environmental System** for the country with respect to mining, which includes—

(a) that all environmental related aspects would be regulated through one environmental system which is the principal Act and that all environmental provisions would be repealed from the Mineral and Petroleum Resources Development Act, 2002;

(b) that the Minister sets the regulatory framework and norms and standards, that the Minister responsible for mineral resources will implement the provisions of the Act and the subordinate legislation as far as it relates to prospecting, exploration, mining or operations;

(c) that the Minister responsible for mineral resources will issue environmental authorisations in terms of the Act for prospecting, exploration, mining or operations, and that the Minister will be the appeal authority for these authorisations;

(d) that the Minister, the Minister responsible for mineral resources and the Minister responsible for water affairs agree on fixed timeframes for the consideration and issuing of the authorisations in their respective legislation and agree to synchronise the timeframes;

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

(a) property on which or location where the activity is proposed to be undertaken;

(b) type of activity to be undertaken;

- (c) design or layout of the activity;
- (d) technology to be used in the activity; and
- (e) operational aspects of the activity;

and includes the option of not implementing the activity;

**“application”** means an application for an—

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

**“basic assessment report”** means a report contemplated in regulation 20;

**“closure plan”** means a plan contemplated in regulation 20;

**“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;

**“EMPr”** means an environmental management programme contemplated in regulations 20 and 24;

**“environmental audit report”** means a report contemplated in regulation 34, prepared by an external independent person with the relevant expertise, which provides verifiable findings and recommendations for improvement, in a structured and systematic manner, on the performance and compliance of an organization and/or project against environmental policies, objectives, laws, regulations, licenses, permits, conditions of authorization, 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 24;

**“independent”**, in relation to an EAP or a specialist, means—

(a) that such EAP or person has no business, financial, personal or other interest in the activity or application 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 or application; 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, canals, channels, funiculars, pipelines, conveyor belts, cableways, power lines, fences, runways, aircraft landing strips, and telecommunication lines;

**“national Appeal Regulations”** means the National Appeal Regulations, 2014;

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

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

**“receipt”** means the date indicated in writing on the relevant document as the date on which the relevant document was received by the competent authority;

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

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

**“scoping report”** means a report contemplated in regulation 22;

**“S&EIR”** means the scoping and environmental impact reporting process contemplated in regulation 22 to regulation 25;

**“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;

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

**“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), as amended.

- (2) Any reference in these Regulations to an environmental assessment practitioner will, from a date to be determined by the Minister by notice in the *Gazette*, be deemed to be a reference to a registered environmental assessment practitioner, as defined.
- (3) Any proposed amendments to the provisions in the Agreement relating to prospecting, exploration, mining or operations in these Regulations must be subject to concurrence between the Minister, the Minister responsible for mineral resources and the Minister responsible for water affairs.
- (4) Any intervention contemplated in regulation 1(3) that may lead to the amendment of the provisions of the Agreement must be tabled in Parliament prior to any steps being taken to effect those changes and Parliament may express its view on the proposed amendment of the Agreement.

### **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 preparation, evaluation, submission, processing and consideration of, and decision on, applications for environmental authorisations for the commencement of activities, subjected to environmental impact assessment, in order to avoid detrimental impacts on the environment, or where it cannot be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts, and for matters pertaining thereto.

## CHAPTER 2

### TIMEFRAMES

#### Timeframes

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

(2) For any action contemplated in terms of these Regulations for which a timeframe is prescribed, the period of 15 December to 5 January must be excluded in the reckoning of days.

(3) Unless justified by exceptional circumstances, as agreed to by the competent authority, the applicant must refrain from conducting any public participation process during the period of 15 December to 5 January.

(4) A State department consulted in terms of these Regulations must submit its comments within 30 days from the date on which it was requested to submit comments.

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

(6) The competent authority must acknowledge receipt of all applications and documents contemplated in regulations 16, 28, 32 and 35 within seven days of receipt thereof.

(7) In the event where the scope of work must be expanded based on the outcome of an assessment done in accordance with these Regulations, which outcome could not be anticipated prior to the undertaking of the assessment, or in the event where the applicant can demonstrate exceptional circumstances, the competent authority may, prior to the lapsing of the relevant prescribed timeframe, in writing, extend the relevant prescribed timeframe and agree with the applicant on the length of such extension.

(8) Any public participation process must be conducted for a period of at least 30 days.

**Notification of decision on application**

4. (1) Unless indicated otherwise, after a competent authority has reached a decision on an application, the competent authority must, in writing and within five days—

- (a) provide the applicant with the decision;
- (b) give reasons for the decision to the applicant; and
- (c) where applicable, draw the attention of the applicant to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.

(2) The applicant must, in writing, within eight days of the date of the decision on the application—

- (a) provide all registered interested and affected parties with the reasons for the decision and the decision; and
- (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 the National Appeals Regulations, if such appeal is available in the circumstances of the decision.

## CHAPTER 3

### GENERAL REQUIREMENTS FOR APPLICATIONS

#### General

5. (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) Unless access to the information contemplated in regulation 10 is protected by law, an applicant or EAP or other person in possession of that information must disclose that information to the competent authority, whether or not such information is favourable to the applicant.

(4) A competent authority must keep—

(a) a register of all applications received by the competent authority in terms of these Regulations;

(b) a register of all decisions in respect of environmental authorisations;

(c) copies of all applications; and

(d) copies of all decisions.

(5) When a national electronic system is provided for the recording of applications for environmental authorisation, this system must be used by all competent authorities to keep the records referred to in subregulation (4)(a) and (b).

(6) When providing coordinates as part of the information submitted regarding the location of an activity as part of an application for environmental authorisation, this must be

provided in degrees, minutes and seconds using the Hartebeesthoek 94; WGS84 co-ordinate system.

### **Where to submit application**

6. (1) An application for an environmental authorisation or environmental authorisations for the commencement of an activity must be made to the competent authority referred to in regulation 5.

(2) If the Minister is the competent authority in respect of a specific application, the application must be submitted to the Department.

(3) 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.

(4) 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.

(5) If the Minister responsible for mineral resources is the competent authority in respect of a particular application, the application must be submitted to the relevant regional office of the Department responsible for mineral resources as identified by that Department.

### *Part 1: Duties of the competent authority*

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

7.

- (1) Where an agreement has been reached in order to give effect to Chapter 3 of the Constitution of the Republic of South Africa, 1996 and sections 24(4)(a)(i), 24K and 24L of the Act, the application must be dealt with in accordance with such agreement.
- (2) The competent authority or EAP 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 such competent authority considers the application.
- (3) Where an applicant submits an application for environmental authorisation in terms of these Regulations and an application for an authorisation, permit or licence in terms of a specific environmental management Act or any other legislation—
  - (a) the processing of such applications must be done in accordance with sections 24K and 24L of the Act; and
  - (b) the competent authority and the authority empowered under such specific environmental management Act or other legislation must manage the respective processes in a cooperative governance manner.
- (4) Where the processes prescribed in terms of these Regulations are used to inform applications in terms of other legislation, application processes must be aligned to run concurrently.
- (5) Where a competent authority is requested by an applicant to comment in terms of these Regulations, such competent authority must submit its comments to the applicant within 30 days.

#### **Guidance by competent authority to applicant**

8. A competent authority, subject to the payment of any reasonable charges, if applicable—
  - (a) may advise or instruct the applicant of the nature and extent of any of the processes that must be followed or assessment tools that must be used in order to comply with the Act and these Regulations;
  - (b) may advise the applicant of any matter that may prejudice the success of the application;
  - (c) must, on written request, furnish the applicant with officially adopted minutes of any official meeting held between the competent authority and the applicant or EAP; or

- (d) must, on written request, provide access to the officially adopted minutes of meetings contemplated in paragraph (c), to any a registered interested or affected party.

### **Format of forms and notices**

- 9. The format of any application form must be determined by the competent authority and must include the sector classification of the activity applied for.

### *Part 2: Duties of applicants*

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

- 10. An applicant must
  - (a) use the application form or notice contemplated in regulation 9 when submitting an application or documentation in terms of these Regulations;
  - (b) comply with any minimum information requirements prescribed by the competent authority for purposes of these Regulations; and
  - (c) provide the competent authority with all information that reasonably has or may have the potential of influencing any decision with regard to an application unless access to that information is protected by law.

#### **Combination of applications**

- 11. (1) If an applicant or applicants intend to undertake one or more than one activity of the same type at different locations within the area of jurisdiction of a competent authority, the competent authority may, on written request, grant permission for the submission of a single application in respect of those activities.

(2) If an applicant intends undertaking more than one activity as part of the same development within the area of jurisdiction of a competent authority, a single application must be submitted for such development, including its associated structures and infrastructure, and such application shall be deemed to include all activities requiring environmental authorisation in terms of section 24 of the Act, and the assessment of impacts, including cumulative impacts,

and consideration of the application, undertaken in terms of these Regulations, will include an assessment of all such activities forming part of the development.

(3) 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.

(4) If one or more applicants intend undertaking interrelated activities at the same or different locations within the area of jurisdiction of a competent authority, the competent authority may, in writing, agree or instruct the applicant or applicants to submit a single application in respect of all of those activities and to conduct a consolidated assessment process but the potential environmental impacts of each activity, including its cumulative impacts, must be considered in terms of the location where the activity is to be undertaken.

(5) Where a combined application is submitted as contemplated in these Regulations, the applicant must, prior to submission of the application, confirm with the competent authority the fee payable for such combined application.

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

12. (1) Before submitting an application for environmental authorisation, an applicant must appoint an EAP at own cost to manage the application.

(2) An applicant may appoint a specialist at own cost if the level of assessment required identifies that a specialist will be required.

(3) The applicant must—

(a) take all reasonable steps to verify whether the EAP and specialist complies with regulation 13(1)(a) and (b); and

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

### **General requirements for EAPs or a specialist**

13. (1) An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must—
- (a) be independent;
  - (b) have expertise in ensuring compliance to these Regulations;
  - (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) take into account, to the extent possible, the matters referred to in regulation 18 when preparing the application and any report relating to the application; and
  - (e) disclose to the applicant and the competent authority all material information in the possession of the EAP or specialist, that reasonably has or may have the potential of influencing—
    - (i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or
    - (ii) the objectivity of any report, plan or document to be prepared by the EAP or specialist, in terms of these Regulations for submission to the competent authority.
- (2) In the event where the EAP or specialist does not comply with subregulation (1)(a), the competent authority may, upon the applicant's request, in writing and before any reports are submitted in support of an application, agree to the appointment of another external EAP or specialist to review all work undertaken by the EAP or specialist, at the applicant's cost.

- (3) The applicant must inform all potential or registered interested and affected parties of any decisions taken by the competent authority in terms of subregulation (2) within a timeframe agreed to between the applicant and competent authority.
- (4) An EAP or specialist contemplated in subregulation (2) must comply with subregulation (1)(a).

#### **Disqualification of EAPs or a specialist**

14. (1) If the competent authority at any stage of considering an application has reason to believe that the EAP or specialist may not comply with the requirements of regulation 13 in respect of the application, the competent authority may—
  - (a) notify the EAP and applicant of the reasons therefore, that the application is suspended until the matter is resolved and the extended timeframe for the processing of the application; and
  - (b) afford the EAP 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 13.
- (3) Where an interested and affected party notifies the competent authority of suspected non-compliance with regulation 13, the competent authority must investigate the allegation.
- (4) The notification referred to in subregulation (2) must be submitted in writing and must contain any 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 13 by the EAP or specialist, the competent authority must in writing, inform the EAP or specialist and the applicant accordingly and may—
- (a) refuse to accept any further reports or input from the EAP or specialist in respect of the application in question;
  - (b) request the applicant to –
    - (i) commission, at own cost, an external review, by another EAP or specialist that complies with the requirements of regulation 13, of any reports prepared or processes conducted in connection with the application;
    - (ii) redo any specific aspects of the work done by the previous EAP or specialist in connection with the application; or
    - (iii) complete any unfinished work in connection with the application; or
    - (iv) 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 45, the applicant must, within the timeframe stipulated by the competent authority, 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**

15. (1) An EAP must determine whether basic assessment or S&EIR must be applied to the application, taking into account—
- (a) any notices published in terms of section 24D of the Act;

- (b) any guidelines applicable to the activity which is the subject of the application; and
  - (c) any advice given by the competent authority in terms of regulation 8.
- (2) An application must be managed in accordance with—
- (a) regulation 19 and 20 if basic assessment must be applied to the application; or
  - (b) regulation 21 to 24 if S&EIR must be applied to the application.
- (3) S&EIR must be applied to an application if the application is for two or more activities as part of the same development and S&EIR must be applied in respect of any of the activities.

## CHAPTER 4

### APPLICATION FOR ENVIRONMENTAL AUTHORISATION

#### *Part 1: General*

#### **General application requirements**

- 16.** (1) An application for an environmental authorisation must—
- (a) be made on an official application form obtainable from the relevant competent authority; and
  - (b) when submitted in terms of regulation 19 or 21, be accompanied by—
    - (i) the written consent referred to in regulation 42(1), if the applicant is not the owner or person in control of the land on which the activity is to be undertaken;
    - (ii) proof of payment of the prescribed application fee, if any;
    - (iii) a declaration of interest by the EAP or specialist;
    - (iv) an undertaking under oath or affirmation that all the information submitted or to be submitted for the purposes of the application is true and correct;
    - (v) once established, the results of the geographic information system based screening procedure;
    - (vi) coordinates in degrees, minutes and seconds using the Hartebeesthoek 94; WGS84 co-ordinate system, where applicable; and
    - (vii) where applicable, proof of acceptance of an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002.
- (2) An application for an environmental authorisation may—
- (a) where applicable, only be submitted after the acceptance of an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;
  - (b) where section 24L of the Act applies, be submitted in the manner as agreed to by the relevant authorities.
- (3) Any report submitted as part of an application must —
- (a) comply with minimum requirements, if prescribed;
  - (b) be prepared in a format that may be determined by the competent authority; and
  - (c) take into account any relevant government policies and plans, guidelines, environmental management instruments and other decision making instruments that have been adopted in the prescribed manner by the competent authority in respect of the kind of activity which is the subject of the application and indicate which information has been considered and how the relevant information has been incorporated.

**Checking of application for compliance with formal requirements**

17. (1) Upon receipt of an application, the competent authority must check whether the application—
- (a) is properly completed and that it contains the information required in the application form; and
  - (b) is accompanied by any other documents as required in terms of these Regulations; and
  - (c) has taken into account any minimum requirements applicable or instructions or guidance provided by the competent authority to the submission of applications.
- (2) The competent authority must, within ten days of receipt of the application, and in writing acknowledge receipt of, and
- (a) accept the application, if the application is in order; or
  - (b) reject, in writing, the application, if it is not in order.
- (3) On acceptance of the application in terms of subregulation (2)(a) and where an authorisation, permit or licence is also required in terms of a specific environmental management Act, an application for such authorisation, permit or licence must be submitted in terms of such specific environmental management Act to the authority empowered under a specific environmental management Act and must be processed in accordance with section 24L of the Act by the competent authority and the authority empowered under a specific environmental management Act.
- (4) The applicant managing an application that has been rejected in terms of subregulation (2) may correct that application and resubmit it to the competent authority.
- (5) Subregulations (1) and (2) apply afresh to a corrected application submitted to the competent authority in terms of subregulation (4).

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

18. When considering an application the competent authority must have regard to section 24O and 24(4) of the Act as well as the need for and desirability of the activity, and must comply with any minimum information requirements prescribed by the competent authority.

*Part 2: Basic assessment*

**Submission of basic assessment report and EMPr, and where applicable closure plan, to competent authority**

19. (1) Where basic assessment must be applied to an application, the applicant must, within 90 days of receipt of the application by the competent authority, submit to the competent authority –
- (a) a basic assessment report and an EMPr, and where applicable a closure plan, including any specialist reports compiled, which have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including the comments of the competent authority; or
  - (b) a notification in writing that the basic assessment report and EMPr, including any specialist reports compiled, and where applicable the closure plan, will be submitted within 140 days of receipt of the application by the competent authority, as the initial public participation process contemplated in subregulation (1)(a) resulted in significant changes or new information being added to the basic assessment report or EMPr or closure plan and that the revised basic assessment report or, EMPr or closure plan will be subjected to another public participation process of at least 30 days.
- (2) In the event where subregulation (1)(b) applies, the basic assessment report and EMPr, and where applicable the closure plan, which reflects the incorporation of comments received, including the comments of the competent authority, must be submitted to the competent authority within 140 days of receipt of the application by the competent authority.
- (3) A basic assessment report must contain the information set out in Appendix 1 to these Regulations and where the application for environmental authorisation relates to prospecting, exploration, mining or operations, the basic assessment report must also comply with the requirements as set in the regulations pertaining to Financial Provisioning for the Rehabilitation or Management of Negative Environmental Impacts Associated with Prospecting and Mining Operations, 2014.
- (4) An EMPr must contain the information set out in Appendix 4 to these Regulations and where the application for environmental authorisation relates to prospecting, exploration, mining or operations, the EMPr must also comply with the requirements as set in the Regulations

pertaining to Financial Provisioning for the Rehabilitation or Management of Negative Environmental Impacts Associated with Prospecting and Mining Operations, 2014.

- (5) A closure plan is required where the application for environmental authorisation relates to the decommissioning or closure of a facility.
- (6) A closure plan must contain the information set out in Appendix 5 and where the application for environmental authorisation relates to prospecting, exploration, mining or operations, the closure plan must also comply with the requirements as set in the Regulations pertaining to Financial Provisioning for the Rehabilitation or Management of Negative Environmental Impacts Associated with Prospecting and Mining Operations, 2014.
- (7) A basic assessment report is applicable in cases where an application for environmental authorisation is submitted for an activity identified in terms of Listing Notice 4 of 2014.

#### **Decision on basic assessment application**

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

*Part 3: S&EIR***Submission of scoping report to competent authority**

21. (1) If S&EIR must be applied to an application, the applicant must, within 44 days of receipt of the application by the competent authority, submit to the competent authority a scoping report which has been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including the comments of the competent authority.
- (2) The submission of a scoping report as contemplated in subregulation (1) need not be complied with in cases where a scoping report was accepted but the application for environmental authorisation was refused because of insufficient information, on condition that regulation 16(1) and (2) be complied with and an environmental impact assessment report is submitted within a period of two years from the acceptance of the scoping report.
- (3) A scoping report must contain all information set out in Appendix 2 to these Regulations.

**Consideration of scoping report**

22. (1) The competent authority must, within 43 days of receipt of a scoping report –
- (a) accept the scoping report, with or without conditions, and advise the applicant to proceed or continue with the tasks contemplated in the plan of study for environmental impact assessment; or
  - (b) refuse environmental authorisation if the scoping report does not comply to the policy directives of government or does not substantially comply with Appendix 2 to these Regulations.
- (2) A plan of study for environmental impact assessment must contain all information set out in item 3(j) of Appendix 2 to these Regulations.

**Submission and consideration of environmental impact assessment report and EMPr**

23. (1) The applicant must within 106 days of the acceptance of the scoping report submit to the competent authority—
- (a) an environmental impact report and an EMPr, which must have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including the comments of the competent authority; or
  - (b) a notification in writing that the environmental impact report and EMPr will be submitted within 156 days of receipt of the application by the competent authority, as the initial public participation process contemplated in subregulation (1)(a) resulted in significant changes or new information being added to the environmental impact report or EMPr and that the revised environmental impact report or EMPr will be subjected to another public participation process of at least 30 days.
- (2) In the event where subregulation (1)(b) applies the environmental impact report and EMPr, which reflects the incorporation of comments received, including the comments of the competent authority, must be submitted to the competent authority within 156 days of receipt of the application by the competent authority.
- (3) An environmental impact report must contain all information set out in Appendix 3 to these Regulations and where the application for environmental authorisation relates to prospecting, exploration, mining or operations, the environmental impact report must also comply with the requirements as set in the Regulations pertaining to Financial Provisioning for the Rehabilitation or Management of Negative Environmental Impacts Associated with Prospecting and Mining Operations, 2014.
- (4) An EMPr must contain all information set out in Appendix 5 to these Regulations and where the application for environmental authorisation relates to prospecting, exploration, mining or operations, the EMPr must also comply with the requirements as set in the Regulations pertaining to Financial Provisioning for the Rehabilitation or Management of Negative Environmental Impacts Associated with Prospecting and Mining Operations, 2014.

**Decision on S&EIR application**

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

*Part 4: Environmental authorisation***Issue of environmental authorisation**

25. (1) If the competent authority decides to grant authorisation, the competent authority must issue an environmental authorisation or environmental authorisations complying with regulation 26 to, and in the name of, the applicant or applicants.
- (2) If in the case of an application referred to in regulation 11(1) or (4), the competent authority decides to grant authorisation in respect of more than one activity, the competent authority may issue a single environmental authorisation or multiple environmental authorisations covering all the activities for which authorisation was granted.
- (3) A competent authority may issue an integrated environmental authorization as contemplated in section 24L of the Act.

**Content of environmental authorisation**

26. (1) An environmental authorisation must specify—

- (a) the name, address and contact details of the person to whom the environmental authorisation is issued;
- (b) a description of the activity that is authorised;
- (c) a description of the location of the activity, including
  - (i) the 21 digit Surveyor General code of each cadastral land parcel,
  - (ii) where available, the physical address or farm name,
  - (iii) where the required information in sub-regulation (i) and (ii) is not available, the coordinates of the boundary of the property or properties,
  - (iv) coordinates of the activity, or, if it is—
    - (aa) a linear activity, a description and coordinates of the proposed route of the activity;
    - (bb) an ocean-based activity, the coordinates of the proposed activity; or
    - (cc) on land where the property has not been defined, the coordinates within which the activity is proposed ;

on condition that, where coordinates are provided, it is provided in degrees, minutes and seconds using the Hartebeesthoek 94; WGS84 co-ordinate system;

- (d) the conditions subject to which the activity may be undertaken, including conditions determining—
  - (i) the period within which commencement must occur;
  - (ii) where the environmental authorisation does not include operational aspects, the period for which the environmental authorisation is granted and the date on which the activity is deemed to have been concluded;
  - (iii) requirements for the management, monitoring and reporting of the impacts of the activity on the environment throughout the life of the activity additional to those contained in the approved EMPr, and where applicable the closure plan; and
  - (iv) the requirements that will apply where change of ownership or transfer of rights and obligations occurs;
- (e) the manner and frequency of monitoring and auditing of compliance with the conditions of the environmental authorisation;
- (f) the manner and frequency of monitoring and auditing of compliance with the EMPr, and

- where applicable the closure plan, in order to determine whether such EMPr and closure plan continuously meet mitigation requirements and addresses environmental impacts;
- (g) the frequency of updating the EMPr, and where applicable the closure plan, and the manner in which the updated EMPr and closure plan will be approved, taking into account processes for such amendments prescribed in terms of these Regulations; and
  - (h) any relevant conditions which the competent authority deems appropriate.
- (2) An environmental authorisation granted for an activity contemplated in regulation 11(2) shall be deemed to include all activities requiring environmental authorisation in terms of section 24 of the Act, on condition that the assessment of impacts, including cumulative impacts undertaken in terms of these Regulations, included an assessment of all such activities forming part of the activity/development/application.
- (3) If the competent authority at any stage after granting environmental authorisation has reason to believe that there could be a detrimental impact on the environment which impact is not sufficiently provided for, the competent authority may request such information as it deems necessary to assess and address such impacts.

## CHAPTER 5

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

#### General

27. (1) The competent authority that issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment of that environmental authorisation as long as the environmental authorisation is still valid and provided that the competent authority that issued such environmental authorisation still has jurisdiction in terms of the Act.
- (2) An environmental authorisation may be amended—

- (a) on application by the holder of the environmental 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 only if—
- (a) the amendment will not change the scope of the activity/development or increase the level or nature of the impact, which impact was initially assessed and considered when application was made for an environmental authorisation;
  - (b) the amendment is of an administrative nature;
  - (c) the amendment relates to the change of ownership or transfer of rights and obligations where construction or expansion has not yet commenced;
  - (d) the amendment is necessary as a result of monitoring undertaken; or
  - (e) the amendment is necessary to address an impact which becomes known during the construction, expansion or operation of the activity and which could not have been anticipated through the assessment process leading to the environmental authorisation.
- (4) An environmental authorisation may not be amended to extend for a period exceeding ten years from the date on which the environmental authorisation was issued to the date of commencement of the activity.
- (5) Where the environmental authorisation does not include operational aspects, the period for which such environmental authorisation is granted may only be extended for a period of five years.

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

**Application for amendment**

28. (1) The holder of an environmental authorisation may at any time apply to the relevant competent authority for the amendment of the environmental authorisation as long as such environmental authorisation is still valid.

- (2) An application in terms of subregulation (1) must be in writing and accompanied by a motivation for such amendment.

### **Consideration of application for amendment and decision**

29. (1) Upon receipt of an application made in terms of regulation 28 the competent authority—
- (a) may request the applicant to furnish additional information and such request must accompany the acknowledgement of receipt of the application; and
  - (b) must reject the application for amendment if the amendment being applied does not fall within the ambit of regulation 27(3).
- (2) The competent authority must within 30 days of acknowledging receipt of the application or of receipt of the additional information contemplated in subregulation (1)(a) decide the application.
- (3) Where the competent authority decides to amend the environmental authorisation, the competent authority must issue an amendment to the environmental authorization either by way of a new environmental authorization or new environmental authorizations or an addendum to the relevant environmental authorization.
- (4) The applicant must, once a decision has been reached in terms of subregulation (2), comply with regulation 4(2).

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

#### **Process**

30. If a competent authority intends amending an environmental authorisation in terms of regulation 27, the competent authority must first—
- (a) notify the holder of the environmental authorisation, in writing, of the proposed amendment; and
  - (b) give the holder of the environmental authorisation an opportunity to submit representations on the proposed amendment, in writing.

**Decision**

31. (1) The competent authority must, within 30 days of completing the actions in regulation 30, reach a decision to amend or not amend the environmental authorisation.
- (2) If the competent authority decides to amend the environmental authorisation, the competent authority must issue an amendment to the environmental authorisation either by way of a new environmental authorisation or new environmental authorisations or an addendum to the relevant environmental authorisation.
- (3) On having reached a decision, the competent authority must in writing and within five days—
- (a) provide the holder of the environmental authorisation with the decision;
  - (b) give reasons for the decision to the holder of the environmental authorisation; and
  - (c) where applicable, draw the attention of the holder of the environmental authorisation to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.

*Part 3: Auditing and amendment of environmental authorisation, environmental management programme and closure plan*

**32. Auditing of environmental authorisation, environmental management programme and closure plan**

- (1) The holder of an environmental authorisation must, for the period during which the environmental authorisation and approved EMPr, and where applicable the approved closure plan, remain valid—
- (a) ensure that the environmental authorisation and the approved EMPr, and where applicable the approved closure plan, is audited; and
  - (b) submit an environmental audit report to the relevant competent authority.

- (2) The environmental audit report contemplated in subregulation (1) must be conducted at three year intervals, calculated from the date of commencement of the activity that is authorised in the environmental authorisation, provided that an environmental audit report, indicating the findings of such audit, is submitted to the competent authority no later than 60 days prior to the lapsing of the three year period.
- (3) The environmental audit report contemplated in subregulation (1) must determine –
- (a) the ability of the approved EMPr, and where applicable the approved closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity on an ongoing basis and to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the closure of the facility; and
  - (b) the level of compliance with the provisions of environmental authorisation, EMPr and where applicable the closure plan.
- (4) Where the findings of the environmental audit report contemplated in subregulation (1) included recommendations to amend the EMPr or closure plan, the environmental audit report contemplated in subregulation (1) must be accompanied by an amended EMPr or amended closure plan, if applicable, which has been subjected to a public participation process which was appropriate to bring the proposed amendment of the EMPr and closure plan 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 and the competent authority, for approval by the competent authority.
- (5) An environmental audit report must contain all information set out in Appendix 7 to these Regulations.

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

(1) The competent authority must consider the environmental audit report and amended EMPr and, where applicable the amended closure plan, contemplated in regulation 32 and approve such amended EMPr, and where applicable the amended closure plan, if it is satisfied that it sufficiently provides for management and mitigation of environmental impacts associated with the undertaking of the activity, or where applicable the closure of the facility, and that it has been subjected to an appropriate public participation process.

(2) Prior to approving an amended EMPr or closure plan contemplated in subregulation (1), the competent authority may request such amendments to the EMPr or closure plan as it deems appropriate to ensure that the EMPr sufficiently provides for management and mitigation of environmental impacts associated with the undertaking of the activity or to ensure that the closure plan sufficiently provides for management and mitigation of environmental impacts associated with the closure of the facility.

*Part 4: Other amendments of approved environmental management programme or closure plan*

**34. Other amendments of approved environmental management programme or closure plan**

Where an amendment to the impact management outcomes or objectives of an approved EMPr or an amendment of a closure plan is necessary before an audit is required in terms of regulation 32, an approved EMPr or closure plan may be amended on application by the holder of the environmental authorisation.

**Amendment of approved EMPr or closure plan by holder of environmental authorisation**

**35.** (1) The holder of an environmental authorisation may identify amendments to the impact management outcomes or objectives of the approved EMPr or amendments to the closure plan and must notify the competent authority of its intention to amend the approved EMPr or closure plan at least 60 days prior to submitting such amendments to the approved EMPr or closure plan to the competent authority for approval.

(2) The holder of the environmental authorisation must invite comments on the proposed amendments to the impact management outcomes or objectives of the approved EMPr or amendments to the closure plan from potentially interested and affected parties, including the

competent authority, by using any of the methods provided for in the Act for a period of at least 30 days.

- (3) Reasonable alternative methods, as agreed to by the competent authority, to invite comments as contemplated in subregulation (2), may be used in those instances where a person desires but is unable to participate in the process due to—
  - (i) illiteracy;
  - (ii) disability; or
  - (iii) any other disadvantage.
  
- (4) The invitation to comment as contemplated in subregulation (2) must include an indication that any objections to the proposed amendments must be submitted to the competent authority, together with motivation for such an objection, within 30 days of such invitation to comment.
  
- (5) If no objections are received, the holder of the environmental authorisation may amend the approved EMPr or closure plan in accordance with its intention contemplated in subregulation (1) and submit the amended EMPr or closure plan to the competent authority for approval.
  
- (6) Prior to approving an amended EMPr or closure plan contemplated in subregulation (5), the competent authority may request such amendments to the EMPr or closure plan as it deems appropriate to ensure that the EMPr sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity or to ensure that the closure plan sufficiently provides for avoidance, management and mitigation of environmental impacts associated with the closure of the facility.
  
- (7) If objections are submitted to the competent authority, the competent authority must consider the proposed amendments and all objections thereto, and decide whether to approve the amended EMPr or closure plan or not.
  
- (8) After the competent authority has reached a decision in terms of subregulation (5) or (7), the competent authority must, within five days—

- (a) provide the holder of the environmental authorisation and all objectors with its decision, including the amended EMPr or closure plan if the decision was to approve the amended EMPr or closure plan, as well as reasons for the decision; and
- (b) draw the attention of the holder of the environmental authorisation and any objectors to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.

#### *Part 5: Suspension of environmental authorisation*

#### **Suspension of environmental authorisation**

36. (1) The competent authority may suspend with immediate effect an environmental authorisation if the authorisation was obtained through the misrepresentation or non-disclosure of material information.

(2) The relevant competent authority may suspend an environmental authorisation only where no activity contained in such environmental authorisation has been commenced with.

#### **Suspension procedures**

37. (1) If the competent authority considers the suspension of an environmental authorisation, the competent authority must—

- (a) notify the holder of the environmental authorisation, in writing, of the proposed suspension and the reasons why suspension of the environmental authorisation is considered; and
- (b) give the holder of the environmental authorisation an opportunity to submit any representations on the proposed suspension which the holder of the environmental authorisation wishes to make.

(2) Subregulation (1)(a) and (b) may be complied with either before or after a suspension.

(3) Subregulation 1(a) and (b) may be complied with after a suspension only where suspension of the authorisation is necessary to prevent harm or further harm to the environment or where the procedures contemplated in subregulation 1(a) or (b) will defeat the purpose of the suspension.

### **Decision**

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

(2) If the decision is to suspend the environmental authorisation, the competent authority must—

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

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

(4) The competent authority may—

- (a) take any steps to remedy any defects of the suspended environmental authorisation;
- (b) request the holder of a suspended environmental authorisation to take such action as the competent authority requires to remedy the defects;
- (c) withdraw the environmental authorisation as contemplated in regulation 39 of these Regulations; or

- (d) reinstate the environmental authorisation on such conditions as it may deem appropriate.

*Part 6: Withdrawal of environmental authorisations*

**Circumstances in which withdrawals are permissible**

39. (1) The relevant competent authority may withdraw an environmental authorisation if the environmental authorisation was obtained through the misrepresentation or non-disclosure of material information.

(2) The relevant competent authority may withdraw an environmental authorisation only where no activity contained in such environmental authorisation has been commenced with.

**Withdrawal proceedings**

40. If the competent authority intends to consider the withdrawal of an environmental authorisation, the competent authority must –

- (a) notify the holder of the environmental authorisation, in writing, of the proposed withdrawal and the reasons why withdrawal of the environmental authorisation is considered; and
- (b) give the holder of the environmental authorisation an opportunity to submit any representations on the proposed withdrawal which the holder of the environmental authorisation wishes to make.

**Withdrawal decision**

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

- (2) If the decision is to withdraw the environmental authorisation, the competent authority must—
- (a) give to the holder of the environmental authorisation the reasons for the decision; and
  - (b) draw the attention of the holder of the environmental authorisation to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, if such appeal is available in the circumstances of the decision.
- (3) The provisions of this Part do not affect the institution of criminal proceedings against the holder of an environmental authorisation in terms of the Act.

## CHAPTER 6

### PUBLIC PARTICIPATION

#### Activity on land owned by person other than applicant

42. (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, before applying for an environmental authorisation in respect of such activity, obtain the written consent of the landowner or person in control of the land to undertake such activity on that land.

- (2) Subregulation (1) does not apply in respect of—
- (a) linear activities;
  - (b) activities directly related to prospecting or exploration of a mineral and petroleum resource or extraction and primary processing of a mineral resource; and
  - (c) strategic integrated projects as contemplated in the Infrastructure Development Act, 2014.

### **Purpose of public participation**

43. (1) The public participation process to which the basic assessment report and EMPr, and where applicable the closure plan, submitted in terms of regulation 19, the scoping report submitted in terms of regulation 21 and the environmental impact assessment report and EMPr submitted in terms of regulation 23 were subjected to must give all potential or registered interested and affected parties, including the competent authority, a 30 day opportunity to comment on the basic assessment report, EMPr, scoping report and environmental impact assessment report, and where applicable the closure plan, in accordance with regulation 44 and inform such potential or registered interested and affected parties, including the competent authority, to submit comments to the applicant within 30 days.

(2) The public participation processes contemplated in this regulation must include consultation with—

- (a) the competent authority;
- (b) every State department that administers a law relating to a matter affecting the environment relevant to an application for an environmental authorisation; and
- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

(3) A potential or registered interested and affected party is entitled to comment on 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.

### **Public participation process**

44. (1) This regulation only applies in instances where adherence to the provisions of this regulation is specifically required.

(2) The person conducting a public participation process must take into account any guidelines applicable to public participation as contemplated in section 24J of the Act and must give notice to all potential interested and affected parties of the application which is subjected to public participation by—

- (a) fixing a notice board at a place conspicuous to the public at the boundary or on the fence of—

- (i) the site where the activity to which the application relates is or is to be undertaken; and
  - (ii) any alternative site mentioned in the application;
- (b) giving written notice to—
  - (i) the occupiers of the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;
  - (ii) owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;
  - (iii) the municipal councillor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represent the community in the area;
  - (iv) the municipality which has jurisdiction in the area;
  - (v) any organ of state having jurisdiction in respect of any aspect of the activity; and
  - (vi) any other party as required by the competent authority;
- (c) placing an advertisement in—
  - (i) one local newspaper; or
  - (ii) any official *Gazette* that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these Regulations;
- (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is or will be undertaken: Provided that this paragraph need not be complied with if an advertisement has been placed in an official *Gazette* referred to in paragraph (c)(ii); and
- (e) using reasonable alternative methods, as agreed to by the competent authority, in those instances where a person is desiring of but unable to participate in the process due to—
  - (i) illiteracy;
  - (ii) disability; or

(iii) any other disadvantage.

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

(a) give details of the application which is subjected to public participation; and

(b) state—

(i) that the application has been submitted to the competent authority in terms of these Regulations;

(ii) whether basic assessment or S&EIR procedures are being applied to the application, in the case of an application for environmental authorisation;

(iii) the nature and location of the activity to which the application relates;

(iv) where further information on the application or activity can be obtained; and

(v) the manner in which and the person to whom representations in respect of the application may be made.

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

(a) be of a size at least 60cm by 42cm; and

(b) display the required information in lettering and in a format as may be determined by the competent authority.

(5) Where deviation from subregulation (2) may be appropriate, the person conducting the public participation process may deviate from the requirements of that subregulation to the extent and in the manner as may be agreed to by the competent authority.

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

(a) information containing all relevant facts in respect of the application is made available to potential interested and affected parties; and

- (b) participation by potential or registered interested and affected parties is facilitated in such a manner that all potential or registered interested and affected parties are provided with a reasonable opportunity to comment on the application.
- (7) Where an environmental authorisation is required in terms of these Regulations and an authorisation, permit or licence is required in terms of a specific environmental management Act, the public participation process contemplated in this Chapter may be combined with any public participation processes prescribed in terms of a specific environmental management Act, on condition that all relevant authorities agree to such combination of processes.

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

45. (1) An applicant must ensure the opening and maintenance of a register which contains the names, contact details and addresses of—

- (a) all persons who, as a consequence of the public participation process conducted in respect of that application in terms of regulation 47, have submitted written comments or attended meetings with the applicant or EAP;
- (b) all persons who, after completion of the public participation process referred to in subregulation (1)(a), have requested the applicant, in writing, for their names to be placed on the register; and
- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

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

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

46. (1) A registered interested and affected party is entitled to comment, in writing, on all written submissions submitted to the competent authority by the applicant and to bring to the attention of the applicant any issues which that party believes may be of significance to the consideration of the application, provided that—

- (a) comments are submitted within—

- (i) the timeframes that have been approved or set by the competent authority; or
  - (ii) any extension of a timeframe agreed to by the competent authority and applicant; and
- (b) the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.
- (2) The competent authority or EAP must, in order to give effect to section 24O of the Act, request any State department that administers a law relating to a matter affecting the environment, to comment within 30 days.
- (3) (a) When a State department is requested to comment, such State department must, within 30 days of being requested to comment provide comments.
- (b) If a State department fails to submit comments within 30 days from the date it was requested to submit comment, it will be regarded that there are no comments.

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

47. (1) The applicant must ensure that the comments of interested and affected parties are recorded in reports and that such written comments, including records of meetings, are attached to the reports that are submitted to the competent authority in terms of these Regulations.

- (2) Where a person desires but is unable to access written comments as contemplated in subregulation (1) due to—
- (i) a lack of skills to read or write;
  - (ii) disability; or
  - (iii) any other disadvantage,

reasonable alternative methods of recording comments must be provided for.

**CHAPTER 7****GENERAL MATTERS****Failure to comply with requirements for consideration of applications**

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

**Resubmission of similar applications**

49. No applicant may submit an application which is substantially similar to a previous application which has been refused unless the appeal on such refusal, if any, has been finalised.

**Assistance to people with special needs**

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

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

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

**Offences**

51. (1) A person is guilty of an offence if that person—
- (a) provides incorrect or misleading information in any form, including any document submitted in terms of these Regulations to a competent authority;
  - (b) fails to comply with regulation 10(c);
  - (c) fails to comply with regulation 32;
  - (d) fails to comply with regulation 35; or
  - (e) commences with an activity where the environmental authorisation was suspended in terms of regulation 38 or withdrawn in terms of regulation 41.

(2) A person convicted of an offence in terms of subregulation (1) (a), (b), (c) or (d) is liable to the penalties as contemplated in section 49B(2) of the Act.

(3) A person convicted of an offence in terms of subregulation (1) (e) is liable to the penalties as contemplated in section 49B(1) of the Act.

## CHAPTER 8

### TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT

#### Definitions

52. In this Chapter –

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

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

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

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

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

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

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

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

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

#### **Pending applications and appeals (ECA)**

54. (1) An application submitted in terms of the ECA regulations and which is pending when these Regulations take effect, must despite the repeal of those regulations be dispensed with in terms of those regulations as if those regulations were not repealed.
- (2) If a situation arises where an activity or activities listed under the ECA Notices that are not listed similarly under the current lists of activities and competent authorities identified in terms of sections 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or in terms of the National Environmental Management: Waste Act, 2008 (Act No.

59 of 2008), and where a decision on an application submitted under the ECA regulations is still pending, the competent authority will consider such application to be withdrawn.

(3) Where an application submitted in terms of the ECA regulations is pending in relation to an activity of which a component of the same activity was not listed under the ECA Notices, but is now identified in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of those ECA regulations and may authorise the activity identified in terms of section 24(2) as if it was applied for, on condition that all impacts of the newly listed activity and requirements of these Regulations have also been considered and adequately assessed by the applicant.

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

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

(2) Any authorisation issued in terms of the previous NEMA Regulations must be regarded to be an environmental authorisation issued in terms of these Regulations.

#### **Pending applications and appeals (NEMA)**

56. (1) An application submitted in terms of the previous NEMA regulations and which is pending when these Regulations take effect, must despite the repeal of those regulations be dispensed with in terms of those previous NEMA regulations as if those previous NEMA regulations were not repealed.

(2) If a situation arises where an activity or activities, identified under the previous NEMA notices, are not identified similarly under the current identification of activities and competent authorities in terms of section 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), and where a decision on an application submitted under the

previous NEMA regulations is still pending, the competent authority will consider such application to be withdrawn.

(3) Where an application submitted in terms of the previous NEMA regulations, is pending in relation to an activity of which a component of the same activity was not identified under the previous NEMA notices, but is now identified in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of the previous NEMA regulations and may authorise the activity identified in terms of section 24(2) as if it was applied for, on condition that all impacts of the newly identified activity and requirements of these Regulations have also been considered and adequately assessed by the applicant.

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

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

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

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

58. The Environmental Impact Assessment Regulations published in Government Notice No. R. 543, in the *Gazette* No. 33306 of 18 June 2010, is hereby repealed.

#### **Short title**

59. These Regulations are called the Environmental Impact Assessment Regulations, 2014.

## Appendix 1

### Basic assessment process

1.

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

### Objective of the basic assessment process

2.

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

- (a) determine the policy and legislative context within which the activity is located and how the activity complies with and responds to the policy and legislative context;
- (b) motivate the need and desirability of the proposed activity;
- (c) identify the preferred site through a detailed site selection process, which includes an impact and risk assessment process inclusive of cumulative impacts and a ranking process of all the identified alternatives focusing on the geographical, physical, biological, social, economic and cultural aspects of the environment;
- (d) determine the significance, duration and probability of the impacts occurring to inform the technology and micro-siting of the activity on the site;
- (e) identify the most ideal position of the activity on the proposed site;
- (f) identify the most compatible micro-siting for the activity;
- (g) identify, assess and rank the impacts and risks the activity will impose on the preferred site through the life of the activity;

- (h) identify suitable measures to avoid, reverse, mitigation or manage identified impacts;
- (i) identify residual risks that need to be managed and monitored; and
- (j) identify the preferred technology alternative.

### **Scope of assessment and content of basic assessment reports**

#### **3.**

- (1) A basic assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include—
    - (a) details of—
      - (i) the EAP who prepared the report; and
      - (ii) the expertise of the EAP;
    - (b) the location of the activity, including:
      - (i) the 21 digit Surveyor General code of each cadastral land parcel;
      - (ii) where available, the physical address and farm name;
      - (iii) where the required information in items (i) and (ii) is not available, the coordinates of the boundary of the property or properties on which the activity is to be undertaken;
      - (iv) coordinates of the activity on the property or properties;
      - (v) a map at an appropriate scale of the property on which the activity is to be undertaken clearly indicating the location of the activity on the property or properties;
- or, if it is—
- (aa) a linear activity, a description and coordinates of the route of the activity and a map at an appropriate scale clearly indicating the route of the activity;
  - (bb) an ocean-based activity, the coordinates within which the activity is to be undertaken and a map at an appropriate scale clearly indicating the area within which the activity is to be undertaken; or
  - (cc) on land where the property has not been defined, the coordinates within which the activity is to be undertaken and a map at an appropriate scale clearly indicating the area within which the activity is to be undertaken;

on condition that, where coordinates are provided, it is provided in degrees, minutes and seconds using the Hartebeesthoek 94; WGS84 co-ordinate system;

- (c) a description of the proposed activity, including—
  - (i) all listed and specified activities triggered and being applied for;
  - (ii) the project type;
  - (iii) a description of the activities to be undertaken and for a linear activity, a description of the route of the activity, and
  - (iv) the sector classification of the activity as identified in the national electronic register;
- (d) the need and desirability for the proposed activity;
- (e) the activity context and environmental factors, including:
  - (i) an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks and instruments that are applicable to this activity and have been considered in the preparation of the report; and
  - (ii) how the proposed activity complies with and responds to the legislation and policy context, plans, guidelines, tools frameworks and instruments;
- (f) the period for which the environmental authorisation is required and the date on which the activity is concluded and the post construction monitoring requirements finalised;
- (g) a full description of the process followed to reach the proposed preferred site including:
  - (i) details of the sites considered, including maps and coordinates;
  - (ii) details of the public participation process undertaken at each of the sites in terms of regulation 44 of these Regulations, including copies of the supporting documents and inputs;
  - (iii) a summary of the issues raised by interested and affected parties, and an indication of the manner in which the issues were incorporated, or the reasons for not including them;
  - (iv) the environmental attributes associated with the sites identified focusing on the geographical, physical, biological, social, economic and cultural aspects;

- (v) the impacts identified including the significance, probability and duration of the impacts;
  - (vi) the methodology used in determining the significance of potential environmental impacts and risks;
  - (vii) the advantages and disadvantages that the proposed activity and alternatives will have on the environment and on the community that may be affected;
  - (viii) the possible mitigation measure that could be applied and level of residual risk;
  - (ix) the outcome of the site selection matrix;
  - (x) if no alternative sites were investigated, the motivation for not considering alternative sites; and
  - (xi) a statement motivating the preferred site.
- (h) a full description of the process undertaken to identify, assess and rank the impacts and risks the activity will impose on the preferred site through the life of the activity, including—
- (i) a description of all environmental issues and risks that were identified during the environmental impact assessment process; and
  - (ii) an assessment of the significance of each issue and risk and an indication of the extent to which the issue and risk could be avoided or addressed by the adoption of mitigation measures;
- (i) an assessment of each identified potentially significant impact and risk, including—
- (i) cumulative impacts;
  - (ii) the nature, significance and consequences of the impact and risk;
  - (iii) the extent and duration of the impact and risk;
  - (iv) the probability of the impact and risk occurring;
  - (v) the degree to which the impact and risk can be reversed;
  - (vi) the degree to which the impact and risk may cause irreplaceable loss of resources; and
  - (vii) the degree to which the impact and risk can be mitigated;
- (j) an environmental impact statement which contains—
- (i) a summary of the key findings of the environmental impact assessment; and
  - (ii) a summary of the positive and negative implications and risks of the proposed activity and identified alternatives;

- (k) where applicable, a summary of the findings and recommendations of any specialist report complying with Appendix 6 to these Regulations and an indication as to how these findings and recommendations have been included in the final assessment report;
- (l) based on the assessment and, where applicable, recommendations from specialist reports, the proposed impact management objectives and the impact management outcomes for the development for inclusion in the EMPr;
- (m) the final micro-siting layout which implements and responds to the impact avoidance, mitigation and management measures identified through the assessment;
- (n) a description of any assumptions, uncertainties and gaps in knowledge which relate to the assessment and mitigation measures proposed;
- (o) a reasoned opinion as to whether the proposed activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;
- (p) an undertaking under oath or affirmation by the EAP in relation to:
  - (i) the correctness of the information provided in the reports;
  - (ii) the inclusion of comments and inputs from stakeholders and I&APs ;
  - (iii) the inclusion of inputs and recommendations from the specialist reports where relevant;  
and
  - (iv) the acceptability of the project in relation to the finding of the assessment and level of mitigation proposed;
- (q) an assessment of the activity against sustainability indicators identified by the competent authority;
- (r) details of any financial provisions for the management of negative environmental impacts, rehabilitation and closure of the proposed activity;
- (s) any specific information that may be required by the competent authority; and
- (t) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

- (2) Where the activity relates to the change of ownership or the transfer of rights and obligations, the basic assessment report must include –
- (a) the name, address and contact details of the proposed new holder of the environmental authorisation;
  - (b) the name, address, contact details and expertise of the specialist undertaking the due diligence study contemplated in this Appendix;
  - (c) an affidavit by the proposed new holder of the environmental authorisation indicating that such holder has the financial ability to comply with the environmental authorisation and EMPr; and
  - (d) the outcomes of a due diligence study, undertaken by a specialist, including at least—
    - (i) confirmation of the impacts of the activity on the environment;
    - (ii) a consideration of the ability of the current EMPr to mitigate and manage the risks associated with the activity;
    - (iii) recommendations for required amendments to the EMPr;
    - (iv) an undertaking, under oath or affirmation, by the proposed new holder of the environmental authorisation in relation to:
      - (aa) the understanding of the new holder of the risks associated with the activity;
      - (bb) the acceptability of the amendments proposed to the EMPr; and
      - (cc) the ability of the new holder to comply with the environmental authorisation, EMPr and the reporting and auditing requirements associated with the activity.
- (3) Where a proposed development and the geographical area within which it is located has been subjected to a pre-assessment using a spatial development tool, and the output of the pre-assessment in the form of a site specific development protocol has been adopted in the prescribed manner, the scope of assessment and content of a basic assessment report will be determined by the adopted site specific development protocol applicable to the specific proposed development in the specific geographical area it is proposed in.

## Appendix 2

### Scoping Process

#### 1.

The scoping phase may commence before the submission of the application for environmental authorisation, except, where applicable, an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002 has not yet been accepted by the department responsible for mineral resources.

### Objective of the Scoping Process

#### 2.

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

- (a) determine the policy and legislative context within which the activity is located;
- (b) motivate the need and desirability of the proposed activity;
- (c) identify and confirm the preferred site, through a detailed site selection process, which includes an impact and risk assessment process inclusive of cumulative impacts and a ranking process of all the identified alternatives focusing on the geographical, physical, biological, social, economic and cultural aspects of the environment;
- (d) agree on the level of assessment to be undertaken, including the methodology to be applied, the expertise required as well as the extent of further consultation to be undertaken to determine the impacts and risks the activity will impose on the preferred site through the life of the activity, including the significance, duration and probability of the impacts to inform the technology and micro-siting of the activity on the site; and
- (e) identify suitable measures to avoid, reverse, mitigate or manage identified impacts and to determine the extent of residual risks that need to be managed and monitored.

### Content of the scoping report

#### 3.

A scoping report must contain the information that is necessary for a proper understanding of the site selection process, the scope of the assessment and the consultation process to be undertaken through the environmental impact assessment process, and must include—

- (a) details of—
  - (i) the EAP who prepared the report; and
  - (ii) the expertise of the EAP;
  
- (b) the location of the activity, including:
  - (i) the 21 digit Surveyor General code of each cadastral land parcel;
  - (ii) where available, the physical address and farm name;
  - (iii) where the required information in items (i) and (ii) is not available, the coordinates of the boundary of the property or properties on which the activity is to be undertaken;
  - (iv) coordinates of the activity on the property or properties;
  - (v) a map at an appropriate scale of the property on which the activity is to be undertaken clearly indicating the location of the activity on the property or properties;

or, if it is—

- (aa) a linear activity, a description and coordinates of the route of the activity and a map at an appropriate scale clearly indicating the route of the activity;
- (bb) an ocean-based activity, the coordinates within which the activity is to be undertaken and a map at an appropriate scale clearly indicating the area within which the activity is to be undertaken; or
- (cc) on land where the property has not been defined, the coordinates within which the activity is to be undertaken and a map at an appropriate scale clearly indicating the area within which the activity is to be undertaken;

on condition that, where coordinates are provided, it is provided in degrees, minutes and seconds using the Hartebeesthoek 94; WGS84 co-ordinate system;

- (c) a description of the proposed activity, including:
  - (i) all listed and specified activities triggered and being applied for;
  - (ii) the project type;
  - (iii) a description of the activities to be undertaken and for a linear activity, a description of the route of the activity; and
  - (iv) the sector classification of the activity as identified in the national electronic register;

- (d) the need and desirability for the proposed activity;
- (e) the activity context and environmental factors, including:
  - (i) an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks and instruments that are applicable to the activity and have been considered in the preparation of the scoping report; and
  - (ii) how the proposed activity complies with and responds to the legislation and policy context, plans, guidelines, tools frameworks and instruments;
- (f) the process followed to reach the proposed preferred site including:
  - (i) details of the sites considered, including maps and coordinates;
  - (ii) details of the public participation process undertaken at each of the sites in terms of regulation 44 of these Regulations, including copies of the supporting documents and inputs;
  - (iii) a summary of the issues raised by interested and affected parties, and an indication of the manner in which the issues were incorporated into the scoping document, or the reasons for not including them;
  - (iv) the environmental attributes associated with the sites identified focusing on the geographical, physical, biological, social, economic and cultural aspects;
  - (v) the impacts identified including the significance, probability and duration of the impacts;
  - (vi) the methodology used in determining the significance of potential environmental impacts and risks;
  - (vii) description of the advantages and disadvantages that the proposed activity and alternatives will have on the environment and on the community that may be affected;
  - (viii) the possible mitigation measure that could be applied and level of residual risk;
  - (ix) the outcome of the site selection matrix;
  - (x) if no alternatives sites were investigation, the motivation for not considering; alternative sites; and
  - (xi) a statement motivating the preferred site;

- (g) a map of the site considered for the development of the activity and the location of the property on the site;
- (h) the period for which the environmental authorisation is required and the date on which the activity is concluded and the post construction monitoring requirements finalised;
- (i) where applicable, any specific information required by the competent authority;
- (j) a plan of study for undertaking the environmental impact assessment process to be undertaken on the preferred site, including:
  - (i) a description of the alternatives to be considered and assessed, including the option of not proceeding with the activity;
  - (ii) a description of the aspects to be assessed as part of the environmental impact assessment process;
  - (iii) aspects to be assessed by specialists;
  - (iv) a description of the proposed method of assessing the environmental aspects including a description of the proposed method of assessing alternatives including alternatives to be assessed by specialists;
  - (v) a description of the proposed method of assessing significance;
  - (vi) an indication of the stages at which the competent authority will be consulted;
  - (vii) particulars of the public participation process that will be conducted during the environmental impact assessment process; and
  - (viii) a description of the tasks that will be undertaken as part of the environmental impact assessment process;
- (k) an undertaking under oath or affirmation by the EAP in relation to the level of agreement between the EAP and interested and affected parties on the plan of study for undertaking the environmental impact assessment; and
- (l) any other matter required in terms of sections 24(4)(a) and (b) of the Act.

## Appendix 3

### Environmental impact assessment process

#### 1.

- (1) The environmental impact assessment process must be undertaken in line with the approved plan of study for environmental impact assessment.
- (2) The EAP may, at own risk, commence with specialist assessments prior to the approval of the plan of study for environmental impact assessment.
- (3) The environmental impacts, mitigation and closure outcomes as well as the residual risks of the proposed activity must be comprehensively assessed, quantified and mitigation measures defined in the environmental impact assessment report.

### Objective of the environmental impact assessment process

#### 2.

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

- (a) determine the policy and legislative context within which the activity is located and how the activity complies with and responds to the policy and legislative context;
- (b) motivate the need and desirability of the proposed activity;
- (c) identify the preferred site through a detailed site selection process, which includes an impact and risk assessment process inclusive of cumulative impacts and a ranking process of all the identified alternatives focusing on the geographical, physical, biological, social, economic and cultural aspects of the environment;
- (d) determine the significance, duration and probability of the impacts occurring to inform the technology and micro-siting of the activity on the site;
- (e) identify the most ideal position of the activity on the proposed site;
- (f) identify the most compatible micro-siting for the activity;
- (g) identify, assess and rank the impacts and risks the activity will impose on the preferred site through the life of the activity;
- (h) identify suitable measures to avoid, reverse, mitigation or manage identified impacts;

- (i) identify residual risks that need to be managed and monitored; and
- (j) identify the preferred technology alternative.

### **Scope of assessment and content of environmental impact assessment reports**

#### **3.**

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

- (a) details of—
  - (i) the EAP who prepared the report; and
  - (ii) the expertise of the EAP;
  
- (b) the location of the activity, including:
  - (i) the 21 digit Surveyor General code of each cadastral land parcel;
  - (ii) where available, the physical address and farm name;
  - (iii) where the required information in items (i) and (ii) is not available, the coordinates of the boundary of the property or properties on which the activity is to be undertaken;
  - (iv) coordinates of the activity on the property or properties;
  - (v) a map at an appropriate scale of the property on which the activity is to be undertaken clearly indicating the location of the activity on the property or properties;

or, if it is—

- (aa) a linear activity, a description and coordinates of the route of the activity and a map at an appropriate scale clearly indicating the route of the activity;
- (bb) an ocean-based activity, the coordinates within which the activity is to be undertaken and a map at an appropriate scale clearly indicating the area within which the activity is to be undertaken; or
- (cc) on land where the property has not been defined, the coordinates within which the activity is to be undertaken and a map at an appropriate scale clearly indicating the area within which the activity is to be undertaken;

on condition that, where coordinates are provided, it is provided in degrees, minutes and seconds using the Hartebeesthoek 94; WGS84 co-ordinate system;

- (c) a description of the proposed activity, including—
  - (i) all listed and specified activities triggered and being applied for;
  - (ii) the project type;
  - (iii) a description of the activities to be undertaken and for a linear activity, a description of the route of the activity, and
  - (iv) the sector classification of the activity as identified in the national electronic register;
- (d) the need and desirability for the proposed activity;
- (e) the activity context and environmental factors, including:
  - (i) an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks and instruments that are applicable to this activity and have been considered in the preparation of the report; and
  - (ii) how the proposed activity complies with and responds to the legislation and policy context, plans, guidelines, tools frameworks and instruments;
- (f) the period for which the environmental authorisation is required and the date on which the activity is concluded and the post construction monitoring requirements finalised;
- (g) a full description of the process followed to reach the proposed preferred site including:
  - (i) details of the sites considered, including maps and coordinates;
  - (ii) details of the public participation process undertaken at each of the sites in terms of regulation 44 of these Regulations, including copies of the supporting documents and inputs;
  - (iii) a summary of the issues raised by interested and affected parties, and an indication of the manner in which the issues were incorporated, or the reasons for not including them;
  - (iv) the environmental attributes associated with the sites identified focusing on the geographical, physical, biological, social, economic and cultural aspects;

- (v) the impacts identified including the significance, probability and duration of the impacts;
  - (vi) the methodology used in determining the significance of potential environmental impacts and risks;
  - (vii) the advantages and disadvantages that the proposed activity and alternatives will have on the environment and on the community that may be affected;
  - (viii) the possible mitigation measure that could be applied and level of residual risk;
  - (ix) the outcome of the site selection matrix;
  - (x) if no alternative sites were investigated, the motivation for not considering alternative sites; and
  - (xi) a statement motivating the preferred site;
- (h) a full description of the process undertaken to identify, assess and rank the impacts and risks the activity will impose on the preferred site through the life of the activity, including—
- (i) a description of all environmental issues and risks that were identified during the environmental impact assessment process; and
  - (ii) an assessment of the significance of each issue and risk and an indication of the extent to which the issue and risk could be avoided or addressed by the adoption of mitigation measures;
- (i) an assessment of each identified potentially significant impact and risk, including—
- (i) cumulative impacts;
  - (ii) the nature, significance and consequences of the impact and risk;
  - (iii) the extent and duration of the impact and risk;
  - (iv) the probability of the impact and risk occurring;
  - (v) the degree to which the impact and risk can be reversed;
  - (vi) the degree to which the impact and risk may cause irreplaceable loss of resources; and
  - (vii) the degree to which the impact and risk can be mitigated;
- (j) an environmental impact statement which contains—
- (i) a summary of the key findings of the environmental impact assessment; and

- (ii) a summary of the positive and negative implications and risks of the proposed activity and identified alternatives;
- (k) where applicable, a summary of the findings and recommendations of any specialist report complying with Appendix 6 to these Regulations and an indication as to how these findings and recommendations have been included in the final assessment report;
- (l) based on the assessment and, where applicable, recommendations from specialist reports, the proposed impact management objectives and the impact management outcomes for the development for inclusion in the EMPr;
- (m) the final micro-siting layout which implements and responds to the impact avoidance, mitigation and management measures identified through the assessment;
- (n) a description of any assumptions, uncertainties and gaps in knowledge which relate to the assessment and mitigation measures proposed;
- (o) a reasoned opinion as to whether the proposed activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;
- (p) an undertaking under oath or affirmation by the EAP in relation to:
  - (i) the correctness of the information provided in the reports;
  - (ii) the inclusion of comments and inputs from stakeholders and I&APs;
  - (iii) the inclusion of inputs and recommendations from the specialist reports where relevant;  
and
  - (iv) the acceptability of the project in relation to the finding of the assessment and level of mitigation proposed;
- (q) an assessment of the activity against sustainability indicators identified by the competent authority;
- (r) details of any financial provisions for the management of negative environmental impacts, rehabilitation and closure of the proposed activity;

- (s) an indication of any deviation from the approved scoping report, including the plan of study, including—
  - (i) any deviation from the methodology used in determining the significance of potential environmental impacts and risks; and
  - (ii) a motivation for the deviation;
- (t) any specific information that may be required by the competent authority; and
- (u) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

## Appendix 4

### Content of environmental management programme (EMPr)

1. (1) An EMPr must comply with section 24N of the Act and include—
  - (a) details of—
    - (i) the EAP who prepared the EMPr; and
    - (ii) the expertise of that EAP to prepare an EMPr;
  - (b) a detailed description of the aspects of the activity that are covered by the EMPr as identified by the project description;
  - (c) a description of the impact management objectives, including management statements, identifying the impacts that need to be avoided, managed and/or mitigated as identified through the environmental impact assessment process for all phases of the development including—
    - (i) planning and design;
    - (ii) pre-construction activities;
    - (iii) construction activities;
    - (iii) where relevant operation activities; and
    - (iv) rehabilitation of the environment after construction and where applicable post closure;
  - (d) a description of impact management outcomes, identifying the standard of impact management required for the aspects contemplated in paragraph (c);
  - (e) a description of impact management actions, identifying the manner in which the impact management objectives and outcomes contemplated in paragraphs (c) and (d) will be achieved, and may include actions 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;
- (f) the method of monitoring the implementation of the impact management actions contemplated in paragraph (e);
- (g) the frequency of monitoring the implementation of the impact management actions contemplated in paragraph (e);
- (h) an indication of the persons who will be responsible for the implementation of the impact management actions;
- (i) the time periods within which the impact management actions contemplated in paragraph (e) must be implemented;
- (j) the mechanism for monitoring compliance with the impact management actions contemplated in paragraph (e);
- (k) a program for reporting on compliance, taking into account the requirements as prescribed by these Regulations; and
- (l) 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.

(2) Where a proposed development and the geographical area within which it is located has been subjected to a pre-assessment using a spatial development tool, and the output of the pre-assessment in the form of a site specific development protocol has been adopted in the prescribed manner, the content of a EMPr may be determined by the adopted site specific development protocol applicable to the specific proposed development in the specific geographical area it is proposed in.

## Appendix 5

### Content of closure plan

#### 1.

- (1) A closure plan must include—
- (a) details of –
    - (i) the EAP who prepared the closure plan; and
    - (ii) the expertise of that EAP;
  - (b) closure objectives;
  - (c) an identification of the persons who will be responsible for the implementation of the measures contemplated in the closure plan;
  - (d) proposed mechanisms for monitoring compliance with and performance assessment against the closure plan and reporting thereon;
  - (e) measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity and associated closure to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development, including a handover report, where applicable;
  - (f) information on any proposed management or mitigation measures that will be taken to address the environmental impacts resulting from the undertaking of the activity and closure;
  - (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 during closure;
    - (ii) remedy the cause of pollution or degradation and migration of pollutants during closure;

- (iii) comply with any prescribed environmental management standards or practices;
  - (iv) comply with any applicable provisions of the Act regarding closure;
  - (h) time periods within which the measures contemplated in the closure plan 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 closure; and
  - (j) details of all public participation processes conducted in terms of regulation 47 of these Regulations, including—
    - (i) copies of any representations and comments received from registered interested and affected parties;
    - (ii) a summary of comments received from, and a summary of issues raised by registered interested and affected parties, the date of receipt of these comments and the response of the EAP to those comments;
    - (iii) the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants; and
    - (iv) where applicable, an indication of the amendments made to the plan as a result of public participation processes conducted in terms of regulation 47 of these Regulations.
- (2) Where a proposed development and the geographical area within which it is proposed has been subjected to a pre-assessment using a spatial development tool, and the output of the pre-assessment in the form of a site specific development protocol has been adopted in the prescribed manner, the content of a closure plan may be determined by the adopted site specific development protocol applicable to the specific proposed development in the specific geographical area it is proposed in.

## Appendix 6

### Specialist reports

#### 1.

- (1) A specialist report prepared in terms of these Regulations must contain—
  - (a) details of—
    - (i) the specialist who prepared the report; and
    - (ii) the expertise of that specialist to compile a specialist report;
  - (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 specialist report;
  - (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.
  
- (2) Where a proposed development and the geographical area within which it is located has been subjected to a pre-assessment using a spatial development tool, and the output of the pre-assessment in the form of a site specific development protocol has been adopted in the prescribed manner, the content of a specialist report may be determined by the adopted site specific development protocol applicable to the specific proposed development in the specific geographical area it is proposed in.

## Appendix 7

### Environmental audit report

#### 1.

The environmental audit report will provide for well-motivated recommendations with regards to the need to amend the approved EMPr and, where applicable, the approved closure plan.

### Objective of the environmental audit report

#### 2.

The objective of the environmental audit report is to:

- (a) report on the level of compliance to the conditions of the environmental authorisation, including the approved EMPr and approved closure plan;
- (b) identify and assess any new impacts and risks as a result of undertaking the activity;
- (c) evaluate the effectiveness of the approved EMPr and approved closure plan;
- (d) identify shortcomings in the approved EMPr and approved closure plan; and
- (e) identify the need for any changes to the management, avoidance and mitigation measures provided for in the approved EMPr and approved closure plan.

### Content of environmental audit reports

3. (1) An environmental audit report prepared in terms of these Regulations must contain—

- (a) details of—
  - (i) the external independent person who prepared the environmental audit report; and
  - (ii) the expertise of external independent person that compiled the environmental audit report;
- (b) a declaration that the external independent auditor is independent in a form as may be specified by the competent authority;
- (c) an indication of the scope of, and the purpose for which, the environmental audit report was prepared;
- (d) a description of the methodology adopted in preparing the environmental audit report;
- (e) a well-motivated indication of the ability of the approved EMPr and, where applicable, the approved closure plan to:

- (i) sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity on an on-going basis; and
  - (ii) sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the closure of the facility; and
  - (iii) ensure compliance with the provisions of environmental authorisation, approved EMPr and, where applicable, approved closure plan.
- (f) well-motivated recommendations with regards to the need to amend the approved EMPr and, where applicable, approved closure plan;
- (g) where applicable, an amended EMPr and amended closure plan, which has been subjected to a public participation process conducted in terms of regulation 44 of these Regulations which was appropriate to bring the proposed amendment of the EMPr and proposed amendment of the closure plan 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 and the competent authority;
- (h) a description of any assumptions made and any uncertainties or gaps in knowledge;
- (i) a description of any consultation process that was undertaken during the course of carrying out the environmental audit report;
- (j) a summary and copies of any comments that were received during any consultation process; and
- (k) any other information requested by the competent authority.
- (2) Where a proposed development and the geographical area within which it is proposed has been subjected to a pre-assessment using a spatial development tool, and the output of the pre-assessment in the form of a site specific development protocol has been adopted in the prescribed manner, the content of an environmental audit report may be determined by the adopted site specific development protocol applicable to the specific proposed development in the specific geographical area it is proposed in.