

- proposed activity or alternatives may have on the environment and the community that may be affected by the activity;
- (h) an indication of the methodology used in determining the significance of potential environmental impacts;
- (i) a description and comparative assessment of all alternatives identified during the environmental impact assessment process;
- (j) a summary of the findings and recommendations of any specialist report or report on a specialised process;
- (k) a description of all environmental issues that were identified during the environmental impact assessment process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures;
- (l) an assessment of each identified potentially significant impact, including—
 - (i) cumulative impacts;
 - (ii) the nature of the impact;
 - (iii) the extent and duration of the impact;
 - (iv) the probability of the impact occurring;
 - (v) the degree to which the impact can be reversed;
 - (vi) the degree to which the impact may cause irreplaceable loss of resources; and
 - (vii) the degree to which the impact can be mitigated;
- (m) a description of any assumptions, uncertainties and gaps in knowledge;
- (n) a reasoned opinion as to whether the activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;
- (o) an environmental impact statement which contains—
 - (i) a summary of the key findings of the environmental impact assessment; and
 - (ii) a comparative assessment of the positive and negative implications of the proposed activity and identified alternatives;

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

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

Specialist reports and reports on specialised processes

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

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

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

- (a) details of—
 - (i) the person who prepared the report; and
 - (ii) the expertise of that person to carry out the specialist study or specialised process;
- (b) a declaration that the person is independent in a form as may be specified by the competent authority;
- (c) an indication of the scope of, and the purpose for which, the report was prepared;
- (d) a description of the methodology adopted in preparing the report or carrying out the specialised process;

- (e) a description of any assumptions made and any uncertainties or gaps in knowledge;
- (f) a description of the findings and potential implications of such findings on the impact of the proposed activity, including identified alternatives, on the environment;
- (g) recommendations in respect of any mitigation measures that should be considered by the applicant and the competent authority;
- (h) a description of any consultation process that was undertaken during the course of carrying out the study;
- (i) a summary and copies of any comments that were received during any consultation process; and
- (j) any other information requested by the competent authority.

Content of draft environmental management programme

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

- (a) details of –
 - (i) the person who prepared the environmental management programme; and
 - (ii) the expertise of that person to prepare an environmental management programme;
- (b) information on any proposed management or mitigation measures that will be taken to address the environmental impacts that have been identified in a report contemplated by these Regulations, including environmental impacts or objectives in respect of—
 - (i) planning and design;
 - (ii) pre-construction and construction activities;
 - (iii) operation or undertaking of the activity;
 - (iv) rehabilitation of the environment; and
 - (v) closure, where relevant.
- (c) a detailed description of the aspects of the activity that are covered by the draft environmental management programme;

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

Consideration of environmental impact assessment reports

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

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

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

(a) accept the report; or

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

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

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

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

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

(b) On receipt of the amended report, the competent authority must reconsider the report in accordance with subregulation (2).

Decision on applications

35. (1) A competent authority must within 45 days of acceptance of an environmental impact assessment report in terms of regulation 34 or, if the report was referred for specialist review in terms of

section 24I of the Act, within 45 days of receipt of the findings of the specialist reviewer, or within 30 days of the lapsing of the 60 days contemplated in regulation 9(2), in writing—

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

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

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

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

Part 4: Environmental authorisation

Issue of environmental authorisation

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

(2) If in the case of an application referred to in regulation 14, the competent authority decides to grant authorisation in respect of more than one activity, the competent authority may issue a single environmental authorisation covering all the activities for which authorisation was granted.

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

Content of environmental authorisation

37. (1) An environmental authorisation must specify—
 - (a) the name, address and telephone number of the person to whom the authorisation is issued;
 - (b) a description of the activity that is authorised;
 - (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is—
 - (i) a linear activity, a description of the route of the activity; or
 - (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken;
 - (d) the conditions subject to which the activity may be undertaken, including conditions determining—
 - (i) the period for which the environmental authorisation is valid, if granted for a specific period;
 - (ii) requirements for the management, monitoring and reporting of the impacts of the activity on the environment throughout the life cycle of the activity as contained in the approved environmental management programme; and
 - (iii) the transfer of rights and obligations when there is a change of ownership in the property on which the activity is to take Place; and
 - (e) where applicable, indicate the manner in which and when the competent authority will approve the environmental management programme; and
 - (f) the requirements on the manner in which and the frequency when the environmental management programme will be approved, amended or updated.
- (2) An environmental authorisation may—
 - (a) provide that the authorised activity may not commence before specified conditions are complied with;

- (b) require the holder of the authorisation to furnish the competent authority with reports prepared by the holder of the authorisation or a person who is independent, at specified times or intervals—
 - (i) indicating the extent to which the conditions of the authorisation are or are not being complied with;
 - (ii) providing details of the nature of, and reasons for, any non-compliance with a condition of the authorisation; and
 - (iii) describing any action taken, or to be taken, to mitigate the effects of any non-compliance or to prevent any recurrence of the non-compliance;
- (c) require the holder of the authorisation to furnish the competent authority with environmental audit reports on the impacts of the authorised activity on the environment, at specified times or intervals or whenever requested by the competent authority;
- (d) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with the requirements regarding financial provision;
- (e) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with the applicable requirements regarding closure; and
- (f) include any other condition that the competent authority considers necessary for the protection of the environment.

CHAPTER 4

AMENDMENT AND SUSPENSION OF ENVIRONMENTAL AUTHORISATION AND ENVIRONMENTAL MANAGEMENT PROGRAMME

General

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

(2) An environmental authorisation may be amended—

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

(3) An environmental authorisation may be amended by—

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

Part 1: Amendment on application by holders of environmental authorisation

Applications for amendment

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

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

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

Submission of application for amendment

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

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

Consideration of application and decision on non-substantive amendments

41. (1) Upon receipt of an application made in terms of regulation 39, the competent authority—

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

(2) The competent authority must within 30 days of acknowledging receipt of the application decide the application if—

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

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

- (a) to conduct a public participation process as referred to in regulation 54 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity;
- (b) to conduct such investigations and assessments as the competent authority may direct, to prepare reports on those investigations and

assessments, and, if the competent authority so directs, to make use of an EAP for this purpose; and

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

Decision on application

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

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

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

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

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

Part 2: Amendment on initiative of competent authority

Purposes for which competent authority may amend environmental authorisations

43. The relevant competent authority may on own initiative amend an environmental authorisation if it is necessary or desirable—

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

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

Process

44. (1) If a competent authority intends amending an environmental authorisation in terms of regulation **43**, the competent authority must first—

- (a) notify the holder of the environmental authorisation, in writing, of the proposed amendment;
- (b) give the holder of the environmental authorisation an opportunity to submit representations on the proposed amendment, in writing; and
- (c) if necessary, conduct a public participation process as referred to in regulation **54** or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.

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

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

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

Decision

45. (1) The competent authority must, within 30 days of completing the actions in regulation 44(1), reach a decision to amend or not amend the environmental authorisation.

(2) Within 30 days of completion of the process contemplated in regulation 44 and where 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 an addendum to the relevant environmental authorisation.

(3) On having made a decision, the competent authority must in writing and within 2 days—

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

(4) The competent authority must, in writing, within 12 days of the date of the decision—

- (a) notify all registered interested and affected parties, if any, of—
 - (i) the decision;
 - (ii) the reasons for the decision;
- (b) draw the attention of all registered interested and affected parties, if any, to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision, and
- (c) draw the attention of all registered interested and affected parties, if any, to the manner in which they could access the decision.

Part 3: Amendment of environmental management programme**Amendment of environmental management programme**

46. (1) The competent authority may, on own initiative or upon application, amend an environmental management programme if it is necessary or desirable—

- (a) to prevent deterioration or further deterioration of the environment;
- (b) to achieve prescribed environmental standards;
- (c) to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
- (d) to ensure compliance with the conditions of the environmental authorisation;
- (e) in order to assess the continued appropriateness and adequacy of the environmental management programme; or
- (f) when an environmental management programme is in conflict with the principles set out in the Act

(2) An application contemplated in subregulation (1) must be in writing and must be supported by the necessary motivation.

(3) A competent authority must acknowledge receipt of an application for amendment within 14 days.

- (4) (a) If a competent authority initiates the amendment of an environmental management programme, the competent authority must first—
 - (i) notify the holder of the environmental management programme, in writing, of the proposed amendment;
 - (ii) give the holder of the environmental management programme an opportunity to submit representations on the proposed amendment, in writing; and
 - (iii) where appropriate, conduct a public participation process as referred to in regulation 54 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment

to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.

- (b) The process referred to in subregulation (4)(a) must, where applicable, afford an opportunity to—
 - (i) potential interested and affected parties to submit to the competent authority written representations on the proposed amendment; and
 - (ii) the holder of the environmental management programme to comment on any representations received in terms of paragraph (a) in writing.
- (c) Subregulations (4)(a)(iii) and (b) need not be complied with if the proposal to amend the environmental management programme is for a non-substantive amendment.

(5) (a) If the holder of an environmental authorisation applies for the amendment of an environmental management programme, such holder must first, where appropriate, conduct a public participation process as referred to in regulation 54 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.

- (b) Subregulation (a) need not be complied with if the application to amend the environmental management programme is for a non-substantive amendment.

(6) The competent authority must, within 30 days of receiving all information and, where applicable, completing all prescribed processes —

- (a) in the case of an application to amend an environmental management programme that was approved in terms of the Act through the issuing of an environmental authorisation, refuse the application or approve the application by issuing an addendum to the relevant environmental authorisation; or
- (b) in the case of an application to amend an environmental management programme that was approved in terms of the Minerals and Petroleum Resources Development Act, refuse or approve the application to amend the environmental management programme and communicate the decision in writing to the holder of the prospecting, mining, reconnaissance, exploration or production right or permit.

(7) Where an environmental management programme was amended, the competent authority must in writing and within 2 days—

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

(8) Where the amendment was initiated by the competent authority and where a public participation process was undertaken as per subregulation (4)(a)(iii), the competent authority must, in writing, within 12 days of the date of the amendment—

- (a) notify all registered interested and affected parties of—
 - (i) the amendment;
 - (ii) the reasons for the amendment;
- (b) draw the attention of all registered interested and affected parties to the fact that an appeal may be lodged against the amendment in

terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision, and

- (c) draw the attention of all registered interested and affected parties to the manner in which they could access the amendment.

(9) Where the amendment was applied for by the holder of the environmental management programme and where a public participation process was undertaken as per subregulation (5)(a), the applicant or EAP must, in writing, within 12 days of the date of the amendment—

- (a) notify all registered interested and affected parties of—
 - (i) the amendment;
 - (ii) the reasons for the amendment;
- (b) draw the attention of all registered interested and affected parties to the fact that an appeal may be lodged against the amendment in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision, and
- (c) draw the attention of all registered interested and affected parties to the manner in which they could access the amendment.

Part 4: Suspension of environmental authorisation

Suspension of environmental authorisation

47. (1) The competent authority may by written notice, providing the reasons for the suspension, to the holder of an environmental authorisation suspend with immediate effect an environmental authorisation which may or may not be the subject of proceedings in terms of this Part if—

- (a) there are reasonable grounds for believing that the contravention or non-compliance with a condition of the authorisation is causing harm to the environment; or
- (b) suspension of the authorisation is necessary to prevent harm or further harm to the environment; or
- (c) a condition of the authorisation has been contravened or is not being complied with;
- (d) the authorisation was obtained through—

- (i) fraudulent means; or
- (ii) the misrepresentation or non-disclosure of material information; or
- (e) the activity has permanently or indefinitely been discontinued; or
- (f) unforeseen circumstances lead to potential significant detrimental effects on the environment or on human rights.

Suspension procedures

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

- (a) notify the holder of the authorisation, in writing, of the proposed suspension and the reasons why suspension of the authorisation is considered;
- (b) give the holder of the authorisation an opportunity—
 - (i) to comment on any environmental audit report submitted to or obtained by the competent authority in terms of regulation 69(2); and
 - (ii) to submit any representations on the proposed suspension which the holder of the 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

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

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

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

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

CHAPTER 5

EXEMPTION FROM PROVISIONS OF REGULATIONS

Applications for exemption

50. Any person to whom a provision of these Regulations applies may, subject to the provisions of section 24M of the Act, apply to the Minister or the MEC, or the Minister of Mineral Resources, where appropriate, for an exemption from any provision of the Act as it relates to environmental impact assessment or from any provision of these regulations.

Submission of application

51. (1) An application in terms of regulation **50** must be in writing, and must be accompanied by—

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

(2) The Minister, MEC or Minister of Mineral Resources where appropriate must, within 14 days of receipt of an application, acknowledge receipt of the application in writing.

(3) The applicant or EAP must communicate his or her intention to apply for exemption in terms of regulation **50** by giving notice in the manner prescribed in subregulation **54(2)(a), (b), (c) or (d)** or a combination thereof which is appropriate in the circumstances and as agreed to with the Minister, MEC or Minister of Mineral Resources, to the land owner or person in control of the land and all potential or registered interested and affected parties, as the case may be.

(4) The notice contemplated in subregulation (3), must, as a minimum, contain—

- (a) the provisions from which exemption is applied for;
- (b) the manner in which and the person to whom comments on the application for such exemption must be submitted; and
- (c) the date on which comments on the application for exemption must be submitted.

Consideration of application

52. (1) Upon receipt of an application in terms of regulation **50**, the Minister or MEC or Minister of Mineral Resources, where appropriate, may request the applicant to furnish additional information or may advise the applicant of any matter that may prejudice the success of the application.

(2) The Minister, MEC or Minister of Mineral Resources must consider the application, additional information, if such information was submitted in terms of subregulation (1), and any comments and reach a decision within 30 days of receipt of all information, except where an application for exemption relates to an action to be taken after the granting or refusal of the environmental authorisation, in which case the decision on the exemption and environmental authorisation may be combined.

Decision on application

53. (1) On having reached a decision on whether to grant or refuse the application, the Minister, MEC or Minister of Mineral Resources, where appropriate, must comply with regulation 10.

(2) If an application is approved, the Minister, MEC or Minister of Mineral Resources, where appropriate, must issue a written exemption notice to the applicant, stating—

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

CHAPTER 6

PUBLIC PARTICIPATION PROCESS

Public participation process

54. (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 owner or person in control of that land if the applicant is not the owner or person in control of the land;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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;
 - (v) the municipality which has jurisdiction in the area;
 - (vi) any organ of state having jurisdiction in respect of any aspect of the activity; and
 - (vii) 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 subregulation (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, as the case may be;
 - (ii) whether basic assessment or scoping procedures are being applied to the application, in the case of an application for environmental authorisation;
 - (iii) the nature and location of the activity to which the application relates;
 - (iv) where further information on the application or activity can be obtained; and
 - (vi) 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) Where a basic assessment report, scoping report or environmental impact assessment report as contemplated in regulations 22, 28 and 31 respectively is amended because it has been rejected or because of a request for additional information by the competent authority, and such amended report contains new information, the amended basic assessment report, scoping report or environmental impact assessment report must be subjected to the processes contemplated in regulations 21, 27 and 31, as the case may be, on the understanding that the application form need not be resubmitted.

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

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

(8) Unless justified by exceptional circumstances, as agreed to by the competent authority, the applicant and EAP managing the environmental assessment process must refrain from conducting any public participation process during the period of 15 December to 2 January.

Register of interested and affected parties

55. (1) An EAP managing an application must open and maintain 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 54, have submitted written comments or attended meetings with the applicant or EAP;

- (b) all persons who, after completion of the public participation process referred to in paragraph (a), have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and
- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

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

Registered interested and affected parties entitled to comment on submissions

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

- (a) comments are submitted within—
 - (i) the timeframes that have been approved or set by the competent authority; or
 - (ii) any extension of a timeframe agreed to by the applicant or EAP;
- (b) a copy of comments submitted directly to the competent authority is served on the EAP; and
- (c) the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

(2) Before the EAP managing an application for environmental authorisation submits a final report compiled in terms of these

Regulations to the competent authority, the EAP must give registered interested and affected parties access to, and an opportunity to comment on the report in writing.

(3) The report referred to in subregulation (2) include—

- (a) basic assessment reports;
- (b) basic assessment reports amended and resubmitted in terms of regulation **24 (4)**;
- (c) scoping reports;
- (d) scoping reports amended and resubmitted in terms of regulation **30(3)**;
- (e) specialist reports and reports on specialised processes compiled in terms of regulation **32**;
- (f) environmental impact assessment reports submitted in terms of regulation **31**;
- (g) environmental impact assessment reports amended and resubmitted in terms of regulation **34(4)**; and
- (h) draft environmental management programmes compiled in terms of regulation **33**.

(4) The draft versions of reports referred to in subregulation (3) must be submitted to the competent authority prior to awarding registered interested and affected parties an opportunity to comment.

(5) Registered interested and affected parties must submit comments on draft reports contemplated in subregulation (4) to the EAP, who should record it in accordance with regulations **21, 28 or 31**.

(6) Registered interested and affected parties must submit comments on final reports contemplated in subregulation (3) to the competent authority and provide a copy of such comments to the applicant or EAP.

(7) The competent authority must, in order to give effect to section 240 of the Act, on receipt of the draft reports contemplated in subregulation (5), request any State department that administers a law relating to a matter affecting the environment to comment within 40 days.

(8) The timeframe of 40 days as contemplated in subregulation (7) must be read as 60 days in the case of waste management activities as contemplated in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), on which the Department of Water Affairs must concur and issue a record of decision in terms of section 49(2) of the National Environmental Management: Waste Management Act, 2008 (Act No. 59 of 2008).

(9) (a) When a State department is requested by the competent authority to comment, such State department must, within 40 days or in the case of Department of Water Affairs, 60 days for waste management activities, of being requested to comment by the competent authority, provide comments to the competent authority.

(b) If a State department fails to submit comments within 40, or 60 days for waste management activities, from the date on which the Minister, MEC, Minister of Mineral Resources or identified competent authority requests such State department in writing 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

57. (1) The EAP managing an application for environmental authorisation 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 report, submitted to the competent authority in terms of these Regulations.

- (2) Where a person is desiring but 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

APPEALS

Application of this Chapter

- 58.** (1) This Chapter applies to decisions that—
- (a) are subject to an appeal to the Minister or MEC in terms of section 43 (1) or (2) of the Act; and
 - (b) were taken by an organ of state acting under delegation in terms of section 42 or 42A of the Act in the exercise of a power or duty vested by the Act or these Regulations in a competent authority.

(2) No appeal in terms of this Chapter is available if the Minister or MEC took decisions themselves in their capacity as the competent authority for the application for an environmental authorisation.

Jurisdiction of Minister and MEC to decide appeals

- 59.** An appeal must be decided as provided for in section 43 of the Act.

Notice of intention to appeal

- 60.** (1) A person affected by a decision referred to in these regulations who wishes to appeal against the decision, must submit a notice of intention to appeal with the Minister, MEC, or delegated organ of state, as the case may be, within 20 days after the date of the decision.

(2) If the appellant is an applicant, the appellant must provide each person and organ of state which was a registered interested and affected party in relation to the applicant's application, within 10 days of having submitted the notice contemplated in subregulation (1), with—

- (a) a copy of the notice referred to in subregulation (1); and
- (b) a notice indicating that the appeal submission will be made available on the day of lodging it with the Minister or MEC and where and for what period the appeal submission will be available for inspection by such person or organ of state.

(3) If the appellant is a person other than an applicant, the appellant must provide the applicant, within 10 days of having lodged the notice contemplated in subregulation (1), with—

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

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

Submission of appeal

61. (1) An appeal lodged must be submitted to the appeal authority as indicated in section 43 of the Act.

(2) An appeal must be—

- (a) submitted in writing; and
- (b) accompanied by—
 - (i) a statement setting out the grounds of appeal;
 - (ii) supporting documentation which is referred to in the appeal and which is not in the possession of the Minister, MEC, Minister of Mineral Resources or designated organ of state;
 - (iii) a statement by the appellant that regulation 60(2) or (3) has

- been complied with together with copies of the notices referred to in that regulation; and
- (iv) the prescribed appeal fee, if any.

(3) The appellant must take into account any guidelines applicable to appeals as contemplated in section 24J of the Act.

Time within which appeal must be lodged

62. (1) An appeal as contemplated in regulation 61(1), must be submitted within 30 days after the lapsing of the 20 days contemplated in regulation 60(1).

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

Responding statement

63. (1) A person or organ of state that receives a notice in terms of regulation 60(2), or an applicant who receives a notice in terms of regulation 60(3), may submit to the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, a responding statement within 30 days from the date the appeal submission was lodged with the Minister, MEC or Minister of Mineral Resources.

(2) (a) A person, organ of state or applicant who submits a responding statement in terms of subregulation (1), must within 10 days of having submitted the responding statement, serve a copy of the statement on the appellant.

(b) If the responding statement introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister, MEC, Minister of Mineral Resources or

designated organ of state, as the case may be, within 30 days of being served a copy in accordance with subregulation (2)(a).

(c) The appellant must, within 10 days of having submitted the answering statement, serve a copy of the answering statement on the respondent who submitted the new information.

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

Processing of appeal

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

(2) An appellant and each respondent is entitled to be notified of—

- (a) a direction in terms of section 43(7) of the Act, if the Minister, MEC or delegated organ of state, as the case may be, issues such a direction; and
- (b) the appointment of an appeal panel in terms of section 43(5) of the Act, if the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, appoints an appeal panel for purposes of the appeal.

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

the appeal as the Minister, MEC or Minister of Mineral Resources may require.

Appeal panel

65. (1) If the Minister, MEC or the Minister of Mineral Resources appoints an appeal panel, the Minister, MEC or Minister of Mineral Resources must furnish the panel with a written instruction concerning—

- (a) the issues in respect of which the panel must make recommendations; and
- (b) the period within which recommendations must be submitted to the Minister, MEC or Minister of Mineral Resources.

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

(3) If an appeal panel introduces any new information not dealt with in the appeal submission of the appellant or in the statements of the respondents, the appellant, each respondent and the applicant, if that applicant is not the appellant nor a respondent, are entitled to submit to the panel, within a period determined by the panel, any additional statements rebutting or supporting such new information.

(4) An appeal panel must submit its recommendations to the Minister, MEC or Minister of Mineral Resources in writing.

Decision on appeal

66. (1) The Minister, MEC, Minister of Mineral Resources or any other competent authority empowered under Chapter 5 of the Act to make a decision on an appeal, as the case may be, may combine his decision on appeals contemplated in regulation 60 where such appeals pertain to the same matter.

(2) The Minister, MEC, Minister of Mineral Resources or any other competent authority empowered under Chapter 5 of the Act to make a decision on an appeal, as the case may be, must reach a final

decision on an appeal or appeals submitted, within 90 days of receipt of all relevant information, including any statements, supporting documentation, reports or any other additional information requested, or recommendations of an appeal panel which may assist the Minister, MEC, Minister of Mineral Resources or designated organ of state, as the case may be, in the decision making process.

(3) When the Minister, MEC or Minister of Mineral Resources has reached a decision on an appeal, the appellant and each respondent must be notified of the decision within 10 days of the decision being reached and of the extent to which the decision appealed against is upheld or overturned in writing.

(4) The decision contemplated in subregulation (3) must contain reasons for such decision.

CHAPTER 8

GENERAL MATTERS

Failure to comply with requirements for consideration of applications

67. (1) An application in terms of these Regulations lapses if the applicant, after having submitted the application fails, for a period of six months, to comply with a requirement in terms of these Regulations.

(2) Subregulation (1) does not apply where reasons for failure have been communicated to the competent authority in writing and accepted by the competent authority.

Resubmission of similar applications

68. No applicant may submit an application which is substantially similar to a previous application which has been refused, unless—

- (a) the new application contains new or material information not previously submitted to the competent authority; or

- (b) a period of three years has elapsed since the refusal.

Compliance monitoring

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

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

(3) An explanation and environmental audit report requested in terms of subregulations (1) or (2) must be submitted in a form and within a period determined by the competent authority.

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

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

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

- (a) appoint an independent person to perform the audit; and

(b) recover the cost of the audit from that person.

(7) Subregulations (1) to (6) must be read together with the provisions of chapter 7 of the Act.

(8) Every holder of an environmental authorisation must conduct such monitoring and such performance assessment of the approved environmental authorisation and environmental management programme as may be prescribed through conditions of the environmental authorisation.

Assistance to people with special needs

70. The competent authority processing an application or the Minister or MEC or Minister of Mineral Resources processing an appeal in terms of these Regulations must give reasonable assistance to people with

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

who can not, but desire to, comply with these regulations.

Offences

71. (1) In addition to section 24F of the Act, a person is guilty of an offence if that person—

- (a) provides incorrect or misleading information in any document submitted in terms of these Regulations to a competent authority;
- (b) fails to comply with regulation 7(2);
- (c) fails to comply with a request in terms of regulation 69(2); or
- (d) commences or continues with an activity where the environmental authorisation was suspended in terms of regulation 49.

(2) A person convicted of an offence in terms of subregulation (1) is liable to a fine not exceeding R1 million or to imprisonment for a

period not exceeding one year, or to both such fine and such imprisonment.

CHAPTER 9 TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT

Definition

72. 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);

“previous ECA notices” as contemplated in these transitional arrangements, means the previous 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);

“previous ECA regulations” as contemplated in these transitional arrangements, means the previous 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);

“previous NEMA regulations” as contemplated in these transitional arrangements means the previous Environmental Impact Assessment Regulations in terms NEMA (Government Notice No. R. 385 in the Government Gazette of 21 April 2006 refer).

Continuation of things done and authorisations issued under previous ECA regulations

73. (1) Anything done in terms of the previous 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 granted in terms of the previous ECA regulations, must be regarded to be an environmental authorisation issued in terms of these Regulations.

Pending applications and appeals (ECA)

74. (1) An application submitted in terms of the previous 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 previous regulations as if those previous regulations were not repealed.

(2) If a situation arises where activities listed under the previous 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 previous ECA regulations is still pending, the competent authority will consider such application to be withdrawn.

(3) Where an application submitted in terms of the previous ECA regulations is pending in relation to an activity of which a component of the same activity was not listed under the previous ECA Notices, but is

now listed in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of those previous ECA regulations and may authorise the activity listed 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.

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

Continuation of things done and authorisations issued under previous NEMA regulations

75. (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.

(3) Any environmental management programme or environmental management plan approved in terms of the Mineral and Petroleum Resources Development Act or regulations promulgated in terms thereof or any old order right approved in terms of the Minerals Act, 1991, prior to any provision relating to prospecting, mining, reconnaissance, exploration and production coming into effect in terms of the Act shall be deemed to be approved in terms of the Act.

Pending applications and appeals (NEMA)

76. (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 activities, listed under the previous NEMA Notices, are not listed similarly under the current lists of activities and competent authorities identified in terms of section 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), and where a decision on an application submitted under the previous NEMA regulations is still pending, the competent authority will consider such application to be withdrawn.

(3) Where an application submitted in terms of the previous NEMA regulations, is pending in relation to an activity of which a component of the same activity was not listed under the previous NEMA Notices, but is now listed 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 listed 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.

(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

77. These Regulations do not affect the continued application of the regulations published in terms of sections 26 and 28 of the Environment

Conservation Act, 1989 (Act No. 73 of 1989), by Government Notice R. 1528 of 27 November 1998.

Repeal of Environmental Impact Regulations, 2006

78. The Environmental Impact Assessment Regulations published in Notice No. R. 385, in the Gazette No. 28938 of 21 April 2006 is hereby repealed.

Short title and commencement

79. These Regulations are called the Environmental Impact Assessment Regulations, 2010, and take effect on a date determined by the Minister by notice in the Gazette.