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## GENERAL NOTICE

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### NOTICE 603 OF 2010

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS

#### **NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) PUBLICATION OF IMPLEMENTATION GUIDELINES FOR COMMENT**

The Minister of Water and Environmental Affairs hereby gives notice of her intention to publish under section 24J of the National Environmental Management Act, 1998 (Act No. 107 of 1998) the following draft Implementation Guidelines attached hereto for general public comment:

- (a) Companion Document on the Environmental Impact Assessments Regulations, 2010;
- (b) Public Participation Guideline;
- (c) Environmental Management Framework Guidelines.

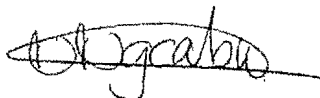
Members of the public are invited to submit written representations or comments to the Director –General: Environmental Affairs, within 30 days of the publication of the notice in the *Gazette*, to the following addresses:

By post to: The Director-General: Environmental Affairs  
Attention: Mr S. Moganetsi  
Private Bag X447  
Pretoria, 0001

Delivered to: The Department of Environmental Affairs  
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By fax to: (012) 310-3688, and e-mail to [SMoganetsi@environment.gov.za](mailto:SMoganetsi@environment.gov.za)

Comments received after the closing date may not be considered.



**NOSIPHO NGCABA**  
**DIRECTOR-GENERAL: ENVIRONMENTAL AFFAIRS**



**environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

**INTEGRATED ENVIRONMENTAL MANAGEMENT GUIDELINE SERIES 5**

**COMPANION TO THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT  
(NEMA) ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REGULATIONS  
OF 2010**

Further titles in this series of guideline documents are being prepared and will be made available periodically. Sequence of release and titles are subject to change

Guideline Series 1	Environmental Management Co-operation Agreements
Guideline Series 2	NEMA S24G(ECA applications)
Guideline Series 3	NEMA S24G
Guideline Series 4	Strategic Environmental Assessment
Guideline Series 5	Companion to the NEMA EIA Regulations of 2010
Guideline Series 6	Environmental Management Framework
Guideline Series 7	Public Participation
Guideline Series 8	Handbook for authorities on handling the appeals in terms of NEMA S43

**ISSUED BY:**

Department of Environmental Affairs  
Private Bag X447  
Pretoria  
0001  
South Africa

These documents are available on the DEA website <http://www.environment.gov.za>

PLEASE NOTE: These documents are guidelines and serve as reference and supportive text only and cannot take the place of legal advice in a specific situation governed by legislation. These documents will not take the place of any regulations published by DEA.

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**ENQUIRIES AND COMMENTS**

All enquiries and comments should be addressed to:  
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**REFERENCING**

When referencing this document, it should be cited as follows:

DEA (2010), Companion to the EIA Regulations 2010, Integrated Environmental Management Guideline Series 5, Department of Environmental Affairs  
(DEA), Pretoria, South Africa  
ISBN:

**PREFACE**

This document is one of the series of guideline documents on environmental impact management legislation and regulations. The material in this document is intended to be used as an accompanying document to the NEMA EIA regulations 2010; it makes available the content of the new EIA regulations in laymen's terms.

## ACKNOWLEDGEMENTS

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**ABBREVIATIONS**

BA	Basic assessment
BAR	Basic assessment report
CA	Competent authority
CBO	Community based organisation
DEA	Department of Environmental Affairs
DMR	Department of Mineral Resources
EA	Environmental authorisation
EAP	Environmental assessment practitioner
ECA	Environment Conservation Act (Act No. 73 of 1989)
EIA	Environmental impact assessment
EIR	Environmental impact report
EMF	Environmental management framework
EMPr	Environmental management programme
I&APs	Interested and/or affected parties
IEM	Integrated environmental management
MEC	Member of the Executive Council (Provincial government)
MPRDA	Minerals and Petroleum Resources Development Act (Act 28 of 2002)
NEMA	National Environmental Management Act (Act No. 107 of 1989) as amended
PAIA	Promotion of Access to Information Act (Act No. 2 of 2000)
PAJA	Promotion of Administrative Justice Act (Act No. 3 of 2000)
S & EIR	Scoping and environmental impact assessment report
SR	Scoping report
PoS-EIR	Plan of study for environmental impact report

## **1. INTRODUCTION AND LEGAL BACKGROUND**

Section 24 of the Constitution of the Republic of South Africa of 1996 guarantees everyone a right to an environment that is not harmful to their health and well-being and to have the environment protected for the benefit of present and future generations. In order to give effect to this right, the National Environmental Management Act (NEMA), Act 62 of 2008 came into effect in May 2009. Section 24J provides for the Minister or MEC, with concurrence of the Minister, to publish guidelines.

This document is one of a series of guidelines developed by the Department of Environmental Affairs (DEA) to provide clarity on aspects of the environmental impact assessment (EIA) regulations of 2010, as related to the concepts of integrated environmental management (IEM). The key challenge of IEM is to support sustainable development through the use of appropriate tools for environmental impact assessment and management. To this end, IEM in South Africa is being actively promoted through the ongoing development and implementation of environmental policy and legislation, systems and tools as well as training, communication and awareness programmes.

This document serves as a guideline for the 2010 regulations and their implementation and it provides:

- clarification on the regulations and the related provisions of NEMA and its amendments;
- answers to frequently asked questions regarding the implementation of the EIA regulations; and
- guidance on the interpretation of listed activities.

## **2. PURPOSE OF THE GUIDELINE**

The aim of this guideline is to provide a detailed consideration on the practical implementation of the regulations. Specifically, the guideline provides clarity on the processes to be followed when applying for an environmental authorisation in terms of the EIA regulations and gives a comprehensive interpretation of the listed activities. This guideline should be used as a reference document to the NEMA EIA regulations of 2010.

## **3. GENERAL MATTERS**

### **3.1 Identification of the Competent Authority (CA)**

The competent authority (CA) is defined in terms of section 1 of NEMA as the organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, with granting or refusing an environmental authorisation in respect of that activity. As such the CA is the body or entity that fulfils the administrative function of registering, considering and approving (where applicable) all documentation related to the assessment.

In most cases, the MEC responsible for environmental affairs in a province is the CA if the application is province specific. The Minister of Environmental Affairs is the CA for all applications that are being processed by the national department (DEA).

The Minister of Mineral Resources will be the competent authority for mining related applications.

The Minister/MEC can delegate certain responsibilities to officials within their respective departments.

The CA provides guidance on the relevant legislation and associated information sources such as guidelines and policies (both national and provincial) that are compulsory and that will enhance the processing of the environmental impact assessment applications. The CA may provide specific input on the scope of the environmental impact assessment process and will require information from the environmental assessment practitioner (EAP) that will allow the CA to reach an informed decision.

### **3.2 The Applicant**

An applicant is a person (including juristic person) who has submitted an application for environmental authorisation, exemption or amendments to environmental authorisations.

The regulations require the applicant to appoint an environmental assessment practitioner (EAP) who will comply with the regulations on behalf of the applicant. The applicant must therefore provide the environmental impact assessment team and specifically the EAP, with a detailed but precise statement of the purpose and need for the proposed activity, as well as information that will allow the EAP to determine the appropriate level of the environmental impact assessment.

### **3.3 Environmental Assessment Practitioner**

An EAP is an individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management programmes or any other appropriate environmental management instruments introduced through regulations. The EAP must be independent, objective and have expertise in conducting environmental impact assessments. Such expertise should include knowledge of all relevant legislation and of any guidelines that have relevance to the proposed activity.

An EAP or parent company may not be involved in post decision (including Appeal decision) activities, including but not limited to, landscaping, design, engineering work, and environmental monitoring and compliance as this could impact on an EAP's objectivity.

### **3.4 Interested and Affected Parties**

An interested and affected party (I&AP) is defined as any person, group of persons or organisation interested in or affected by an activity, and any organ of state that may have jurisdiction over any aspect of



the activity. There is however a difference between I&AP and a registered I&AP. A registered I&AP is a person who has formally registered for the environmental impact assessment process.

An I&AP can be directly or indirectly impacted on by a proposed activity. For instance, an I&AP may be a resident in close proximity to the proposed activity, a member of the wider public, a worker or member of staff in a nearby business premises or residence, non-governmental organisations (NGOs), community-based organisations (CBOs), and/or organs of state. If not directly affected but rather an interested party, an I&AP can be almost any person, group of persons, or organisations.

### **3.5 Timeframes for the Competent Authority**

Timeframes are outlined in Regulation 9 and clearly specified in the respective process (basic assessment and scoping and environmental impact report) of the EIA regulations of 2010. The CA has 14 days to acknowledge receipt of the application, and 30 days to consider the basic assessment report [regulation 24(1)(a)] or scoping report [regulation 30(1)] (i.e. accept the report if it's in order or reject it if not in order). It has 60 days to consider an environmental impact assessment report [regulation 34(2)], and 30 days to issue a decision on an application [regulation 25(1)] or 45 days to decide on a scoping application in terms of Regulation 35.

The timeframes for the accepting of the environmental reports i.e. basic assessment report (BAR), scoping report (SR) and environmental impact assessment report (EIR) or required information are automatically extended by 60 days if they are not met by the CA. Similarly, the timeframe for issuing decisions on applications (i.e. granting or refusal of applications for environmental authorisation) are automatically extended by 60 days if they are not met by the CA.

Upon the lapsing of such an extension of timeframes related to the consideration of the above mentioned reports or deciding on applications, the competent authority must use the available information to make a decision within 30 days in terms of the provisions of sections 6(2)(g) and (3) of PAJA.

When the competent authority requests comments from other departments of state on the draft reports, those departments must provide such comments within 40 days.

#### 4. APPLICATION FOR ENVIRONMENTAL AUTHORISATION

The following is an explanation of the regulations in the format of frequently asked questions and must be read with the regulations.

<b>Where to submit an application?</b>	
Regulation 4 Regulation 12	<p>An application must be submitted to the relevant competent authority.</p> <p>In a case where:</p> <ul style="list-style-type: none"> <li>the Minister is the competent authority,- an application must be submitted to the DEA;</li> <li>the MEC is the competent authority,- an application must be submitted to the relevant provincial department responsible for environmental affairs; or</li> <li>the Minister of Mineral Resources is the competent authority,- an application must be submitted to the relevant regional office of the Department of Mineral Resources (DMR).</li> </ul> <p>The listing notices containing the listed activities indicate the CA for each of the listed activities.</p>
<b>What to consider when submitting an application?</b>	
Regulation 12 (2) Regulation 15 (1)	<p>An application form for EA must always be submitted before conducting either BA or S&amp;EIR.</p> <p>For <b>basic assessment applications</b> [regulation 23 (b)], an EAP / applicant must submit the prescribed fee, where applicable, as well as at least 5 copies of the following documents:</p> <ul style="list-style-type: none"> <li>basic assessment report;</li> <li>any representations, objections and comments received in connection with the application or BA report;</li> <li>the minutes of any meetings held by the EAP with I&amp;APs and other role players which record the views of the participants;</li> <li>any responses by the EAP to those representations, comments and views;</li> <li>declaration of interest by the EAP on a form provided by the CA(if applicable);</li> <li>if the applicant is not the owner of the land, a copy of a written notice of the proposed activity to the owner, the manager or person in control of the land; and</li> <li>proof of receipt of such notice by the owner, manager or person in control of the land.</li> </ul> <p>For <b>scoping and environmental impact report (S&amp;EIR) applications</b> [regulation 26 (b)], an EAP / applicant must first submit the application form followed by the prescribed fee if any, together with the following documents:</p>

	<ul style="list-style-type: none"> <li>• declaration of interest by the EAP on a form provided by the CA(if applicable);</li> <li>• if the applicant is not the owner of the land, a copy of a written notice of the proposed activity to the owner, the manager or person in control of the land;</li> <li>• proof of receipt of such notice by the owner, manager or person in control of the land; and</li> <li>• 5 copies of the scoping report.</li> </ul> <p>In terms of the Mineral and Petroleum Resources Development Act (MPRDA), an application for any right or permit may be submitted simultaneously with an application for an environmental authorisation (EA) [regulation 12 (3a)].</p>
<b>What happens after an application has been submitted?</b>	
Regulation 13	<p>A competent authority must, within 14 days of receipt of the application, and in writing:</p> <ul style="list-style-type: none"> <li>• acknowledge receipt of and accept the application if it is in order, or</li> <li>• acknowledge receipt and inform the applicant if it's not in order.</li> </ul> <p>An application must:</p> <ul style="list-style-type: none"> <li>• be properly completed and contain the required information;</li> <li>• be accompanied by any reports, other documents and fees required; and</li> <li>• take into account any applicable guidelines to the submission of the application.</li> </ul> <p>Any application that has been rejected may be corrected and resubmitted to comply with the above requirements.</p> <p>No applicant may submit an application which is substantially similar to a previous application which has been refused, unless the new application contains new or material information not previously submitted to the CA, or a period of three years has lapsed (regulation 68).</p> <p>An application 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 relating to the consideration of the application, unless the reasons for failure have been communicated to and accepted by the CA (regulation 67).</p>
<b>Can applications be combined?</b>	
Regulation 14	<p>In a case where more than one activity requires authorisation and such activities form part of the same development, a single application should be submitted. In a case where the same activity is to be undertaken in different locations, different applications must be submitted.</p>

	<p>However, the CA may grant permission for a single application to be submitted. Such a single application is limited to activities that fall within the jurisdiction of the relevant CA. For clarity on CA jurisdiction, refer to section 24C of NEMA</p> <p>An applicant can decide, in consultation with the CA, whether to submit such a single application or different applications. All implications for both scenarios should be carefully considered.</p>
<b>What happens if the applicant is not the owner of the land?</b>	
Regulation 15	<p>An applicant must give written notice of the proposed activity to the owner or the person in control of the land and inform such person that he/she may participate in the public participation process.</p> <p>Proof of such written notice to the owner or person in control of the land must be submitted with the BAR or scoping report.</p> <p>In case the owner is unable to understand the content of the notice due to disability, illiteracy or any other disadvantage, the applicant may use alternative means approved by the CA to notify the owner.</p>
<b>Can an applicant manage his/her own application?</b>	
Regulation 17	<p>An applicant may in his/her own right submit an application form (only the application form).</p> <p>An applicant must appoint an EAP at own cost to manage the application.</p> <p>An applicant may apply for exemption from the requirement to appoint an EAP [regulation 50].</p> <p>Such exemption must be obtained prior to conducting the applicable assessment process.</p>
<b>What are the requirements for appointing an EAP?</b>	
Regulation 17	<p>An EAP must:</p> <ul style="list-style-type: none"> <li>• be independent;</li> <li>• have expertise in conducting EIAs, including knowledge of the Act and Regulations and any guidelines relevant to the proposed activity;</li> <li>• be objective;</li> <li>• be compliant with the Act and all relevant legislation;</li> <li>• consider all other relevant factors for application and any reports [regulation 8]; and</li> <li>• disclose all relevant available information to the applicant and CA.</li> </ul>
<b>Can an EAP be disqualified?</b>	
Regulation 18	If the CA is not convinced that the EAP is independent, the CA must:

	<ul style="list-style-type: none"> <li>• notify the EAP and applicant that the application has been suspended until the matter is resolved and the reasons therefore; and</li> <li>• afford the EAP and applicant an opportunity to make representations to the CA, in writing.</li> </ul> <p>If after consideration of the matter, the CA is still not convinced that the EAP is independent, the CA must in writing inform the EAP and applicant, and may:</p> <ul style="list-style-type: none"> <li>• refuse to accept any further reports or inputs from the EAP;</li> <li>• request the applicant to commission an external review at own cost;</li> <li>• request appointment of another EAP at own cost; or</li> <li>• request the applicant to undertake remedial actions.</li> </ul> <p>It is the responsibility of the applicant to inform I&amp;APs of any decision taken and give reasons for the decision (regulation 53).</p>
<b>What are the criteria to determine the process required for an application?</b>	
Regulation 20	<p>Basic assessment must be applied:</p> <ul style="list-style-type: none"> <li>• to the activities that are listed under GNR.....; or</li> <li>• if the applicant has been granted permission by the CA to apply BA instead of scoping and EIR.</li> </ul> <p>Scoping and EIR must be applied:</p> <ul style="list-style-type: none"> <li>• to the activities that are listed under GNR.....;</li> <li>• if the applicant has been granted permission by the CA to apply scoping and EIR instead of BA; or</li> <li>• the application is for two or more activities as part of the same development and any requires scoping and EIR.</li> </ul> <p>The CA may grant permission to the EAP/applicant to conduct a BA process for activities listed as S&amp;EIR and vice versa.</p>

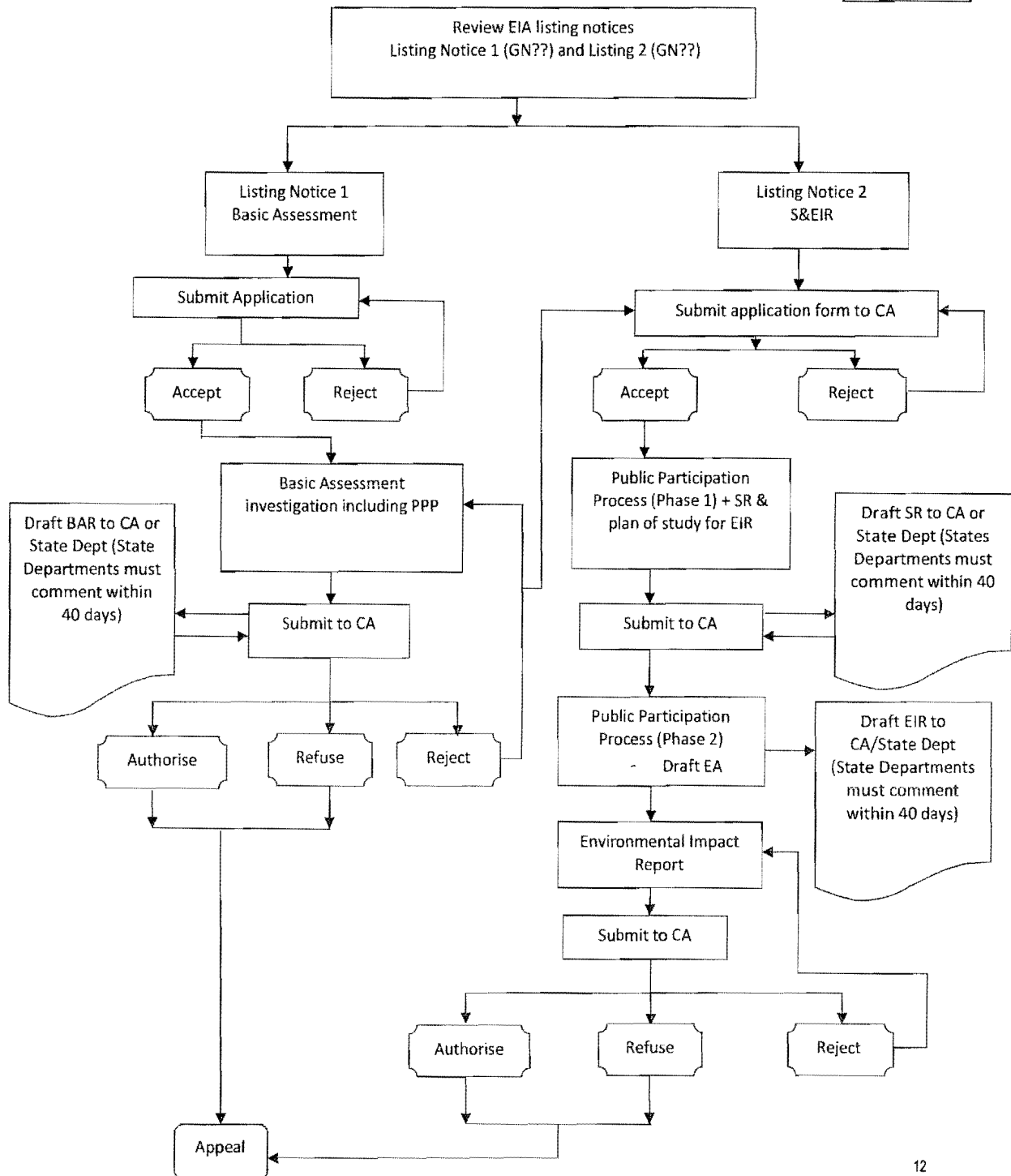
## 5. ENVIRONMENTAL AUTHORISATION PROCESSES

An EIA process can be defined as a process of examining the possible/potential environmental effects of a development. In the NEMA EIA regulations, the process has been split into two types of assessment, namely a basic assessment process and a scoping and EIA process as indicated in the listing notices.

The difference between the processes relates to the nature of the proposed development in terms of its potential impact on the environment, and this is reflected in the level of detail of the information that is collected.

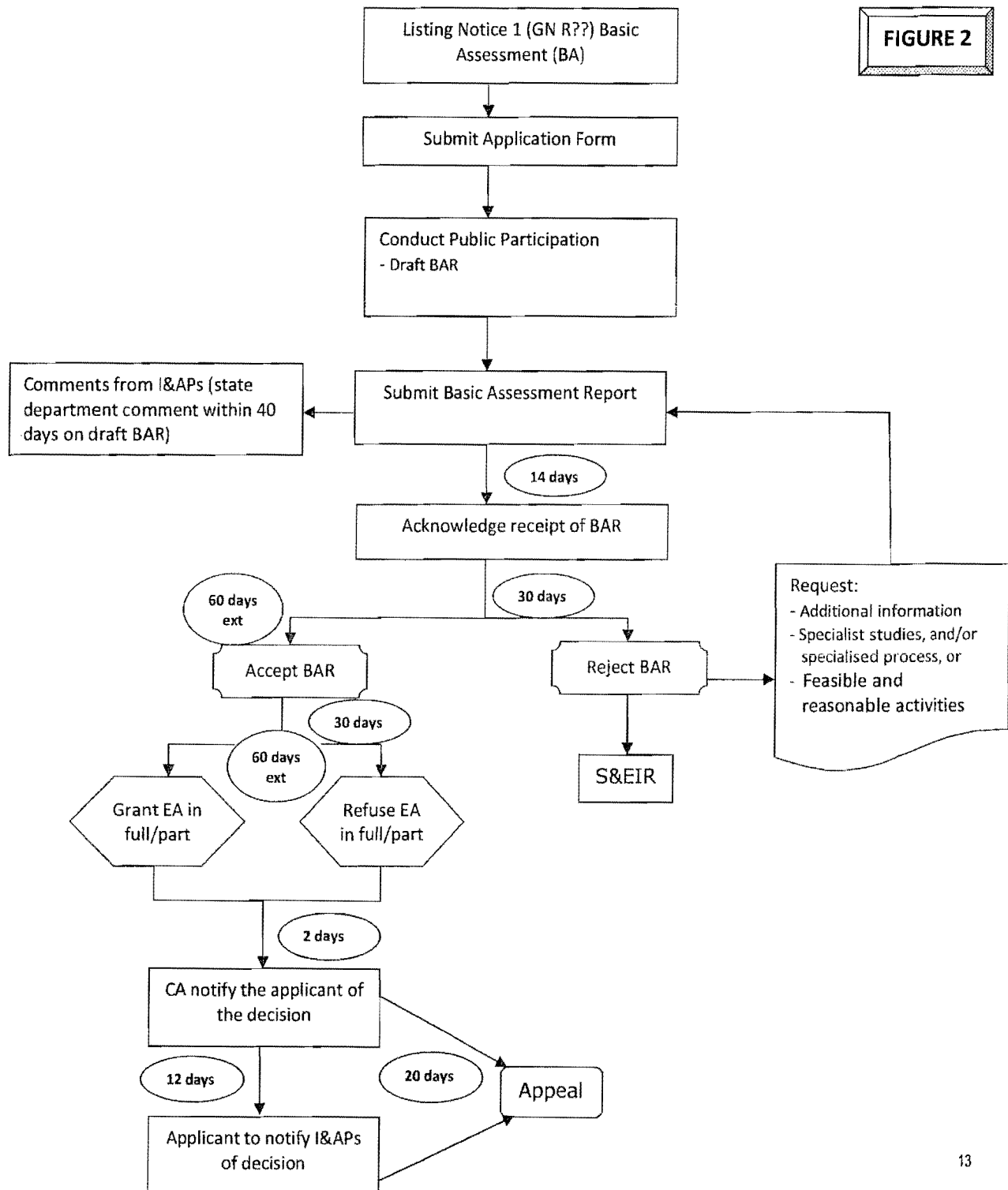
## THE IMPACT ASSESSMENT PROCESS

FIGURE 1



## 6. BASIC ASSESSMENT

A basic assessment (BA) is the procedure designed for listing notices 1 and 3 where the impacts of activities are more generally known and can be easily managed. Even if the activity is listed in notice 2, a request can be made to the CA to rather conduct BA instead of S&EIA. BA is a shorter process with a minimum number of interactions with the CA. The BA process is completed prior to application being made to the CA.



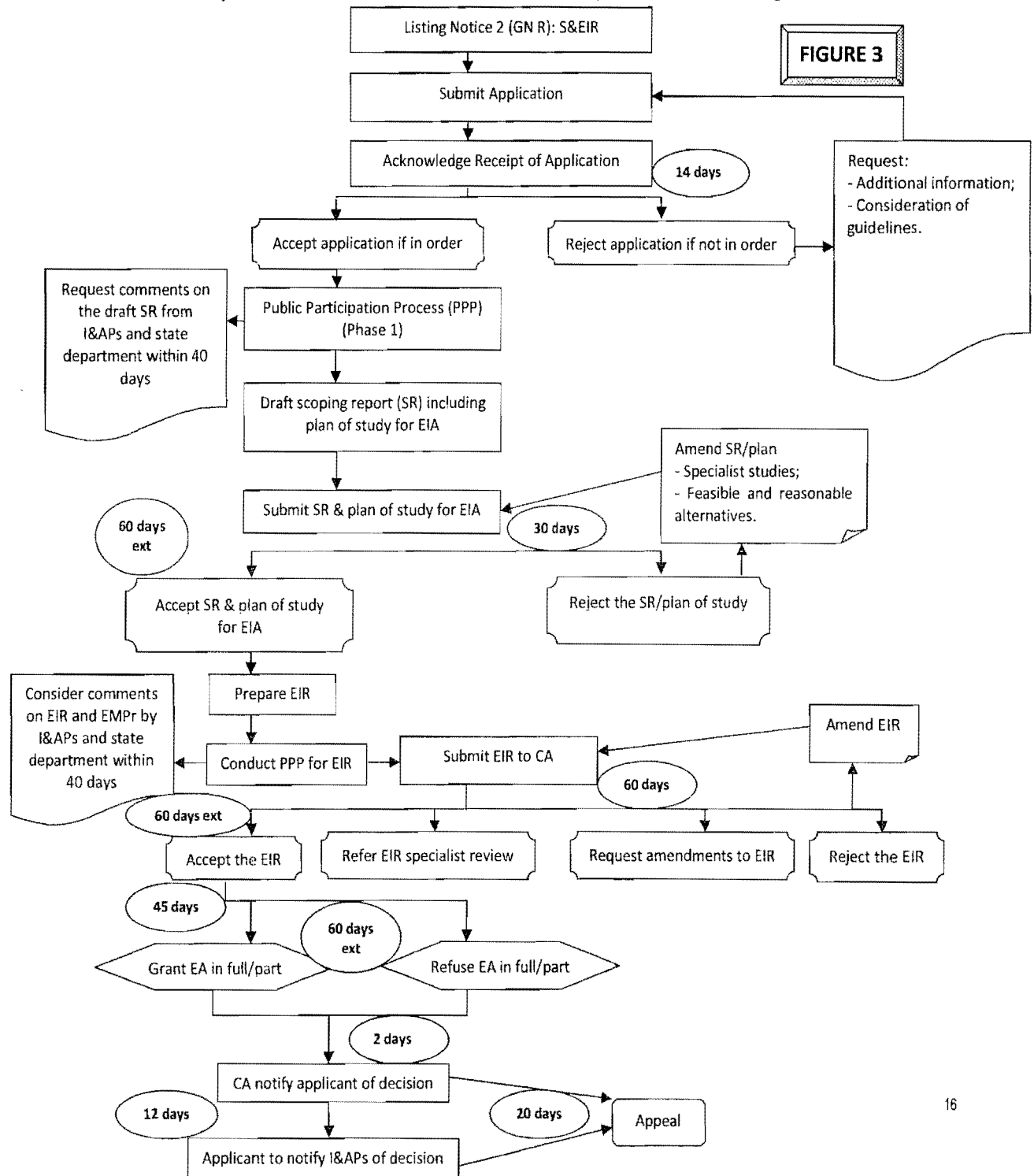
<b>Description of the BA process</b>	
Regulations 21-25	<p>The applicant/EAP must submit an application form together with the EAP's declaration of interest and the land owner notification documentation.</p> <p>The EAP must:-</p> <ul style="list-style-type: none"> <li>- conduct public participation (regulation 54-57)</li> <li>- open and maintain register of I&amp;APs;</li> <li>- consider objections and representations of I&amp;APs;</li> <li>- conduct a BA investigation;</li> <li>- prepare the BA report; and</li> <li>- give all I&amp;APs the chance to comment on the basic assessment report (BAR).</li> </ul> <p>After having complied with regulation 21, the EAP must submit to the CA, where applicable, the prescribed fee and at least 5 copies of-</p> <ul style="list-style-type: none"> <li>- the basic assessment report;</li> <li>- any representations, objections and comments received;</li> <li>- minutes of any meetings held with I&amp;APs and other role players which record the views of the participants;</li> <li>- any responses by the EAP to those representations, objections, comments and views;</li> <li>- any responses by the EAP to those representations, objections, comments and views.</li> </ul> <p>The CA must, within 14 days of receipt of the BAR, and in writing acknowledge receipt thereof.</p> <p>The CA must within 30 days of acknowledging receipt of the BAR and in writing:</p> <ul style="list-style-type: none"> <li>- accepts the report if it's in order; or</li> <li>- reject it if: <ul style="list-style-type: none"> <li>• it does not contain material information required; or</li> <li>• it has not considered applicable guidelines.</li> </ul> </li> </ul> <p>The EAP managing an application that has been rejected must be requested to:</p> <ul style="list-style-type: none"> <li>- submit such additional information as required;</li> <li>- submit a report on any specialised process as required;</li> <li>- suggest, consider or comment on feasible and reasonable alternatives; or</li> <li>- subject the application to scoping an environmental impact report.</li> </ul> <p>The competent authority may reject the basic assessment report if it does not</p>



	<p>comply with –</p> <ul style="list-style-type: none"> <li>- the steps taken before submission of application; or</li> <li>- the prescribed content of the BA report.</li> </ul> <p>A basic assessment report that has been rejected may be amended and resubmitted. If the amended BA report contains new information, that revised report should be subjected as per the regulation 21 process.</p> <p>Comments made by I&amp;APs must be attached to the amended BA report, but the EAP need not make further changes to the report in response to such comments.</p> <p>On receipt of any information, reports, suggestions or comments requested the CA must reconsider the application.</p> <p>If the CA request that the application be subjected to S&amp;EIR, the S&amp;EIR process should apply.</p> <p>A competent authority must within 30 days of accepting a BAR, or within 30 days of the lapsing of the 60 days extension [regulation 9(2)] consider the application and basic assessment report and in writing:</p> <ul style="list-style-type: none"> <li>- grant EA in respect of all or part of the activity applied for; or</li> <li>- refuse authorisation in respect of all or part of the activity.</li> </ul> <p>If authorisation is granted for an alternative, it is regarded that such alternative has been applied for.</p> <p>The CA must in writing:</p> <ul style="list-style-type: none"> <li>- notify the applicant of the decision within 2 days of having reached the decision;</li> <li>- give the reasons for the decision; and</li> <li>- inform the applicant that an appeal may be lodged within 20 days of the decision.</li> </ul> <p>The applicant must in writing:</p> <ul style="list-style-type: none"> <li>- notify the I&amp;APs within 12 days of the date of the decision;</li> <li>- give the reasons for the decision;</li> <li>- inform them that an appeal may be lodged within 20 days of the decision;</li> <li>- draw attention of all registered I&amp;APs as to how they can access the EA; and</li> <li>- publish a notice in the newspapers that were used for placing an advert informing I&amp;AP of the decision, where it can be accessed and draw their attention that an appeal may be lodged within 20 days of the decision.</li> </ul>
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## 7. SCOPING AND EIR

Scoping and EIR (S&EIR) entails a comprehensive environmental impact assessment that includes a scoping phase and an environmental impact assessment phase. In the scoping phase, issues are identified and it includes a plan of study for EIA. The environmental impact assessment phase assesses issues identified in the scoping phase and includes an environmental management programme (EMPr). The EMPr addresses the impacts of the proposed activity. This process is required for all activities in listing notice 2 (R....) and where the EAP or applicant believes a BA is not sufficient and is granted permission by the CA to carry out a full EIA; and/or, where the authorities request a full EIA following a BA.



**Description of the scoping and EIR process**Regulations  
26-27

An applicant /EAP must submit an application form together with the following:

- declaration of interest by the EAP on a form provided by the CA;
- if the applicant is not the owner of the land, a copy of a written notice of the proposed activity to the owner, the manager or person in control of the land;
- proof of receipt of such notice by the owner, manager or person in control of the land;
- 5 copies of scoping report; and
- the prescribed fee, where applicable.

The CA must, within 14 days of receipt of the application, and in writing-

- acknowledge receipt of the application if it is in order; or
- reject the application, if it is not in order.

The EAP managing an application that has been rejected may correct the application and resubmit it to the CA. The CA must then within 14 days of receipt of the application acknowledge the receipt.

After having submitted an application, the EAP managing the application must :

- conduct the public participation process;
- give written notice of the proposed application to an affected organ of state which has jurisdiction in respect of any aspect of the activity;
- open and maintain a register of all I&APs ;
- consider all objections and representations received from I&APs;
- subject the application to scoping by identifying:-
  - relevant issues for consideration of an application;
  - the potential environmental impacts of the proposed activity; and
  - alternatives to the proposed activity that are feasible and reasonable.
- prepare a scoping report;
- give all registered interested and affected parties an opportunity to comment on the scoping report; and
- submit 5 copies of the scoping report within stipulated timeframe to the CA, where applicable.

<p>Regulations 30-35</p>	<p>The CA must , in writing, within 30 days of receiving the scoping report, or on receipt of the required information, reports, or comments, or the amended scoping report, consider it and:</p> <ul style="list-style-type: none"> <li>• accept the report and advise the EAP to proceed with tasks as stipulated in the plan of study for EIA;</li> <li>• request the EAP to make amendments to the report if required; or</li> <li>• reject the report if it:- <ul style="list-style-type: none"> <li>- doesn't contain material information required; or</li> <li>- has not taken applicable guidelines into account.</li> </ul> </li> </ul> <p>The rejected scoping report or plan of study for environmental impact assessment may be amended and resubmitted by the EAP.</p> <p>The CA must re-consider the amended scoping report or plan of study for EIA.</p> <p>If the CA accepts a scoping report an EAP must be advised to proceed with the tasks contemplated in the plan of study for EIA, including the public participation process, and prepare an EIR.</p> <p>An environmental impact assessment report must contain all information that is necessary for the CA to consider the application and to reach a decision.</p> <p>An applicant or the EAP managing an application must appoint a person who is independent to carry out a specialist study or specialised process.</p> <p>The EAP must submit 5 copies of the environmental impact assessment report (EIR) within the timeframes stipulated by the CA.</p> <p>The EAP must compile and submit the environmental management programme (EMPr).</p> <p>The CA must, within 60 days of receipt of an EIR, in writing either–</p> <ul style="list-style-type: none"> <li>- accept the EIR;</li> <li>- notify the applicant that the EIR has been referred for specialist review;</li> <li>- request the applicant to make such amendments to the EIR as the competent authority may require for acceptance thereof; or</li> <li>- reject the EIR if it does not comply with content requirements.</li> </ul> <p>An EIR that is rejected may be amended and resubmitted by the EAP.</p> <p>On receipt of an amended EIR, the CA must reconsider the EIR.</p>
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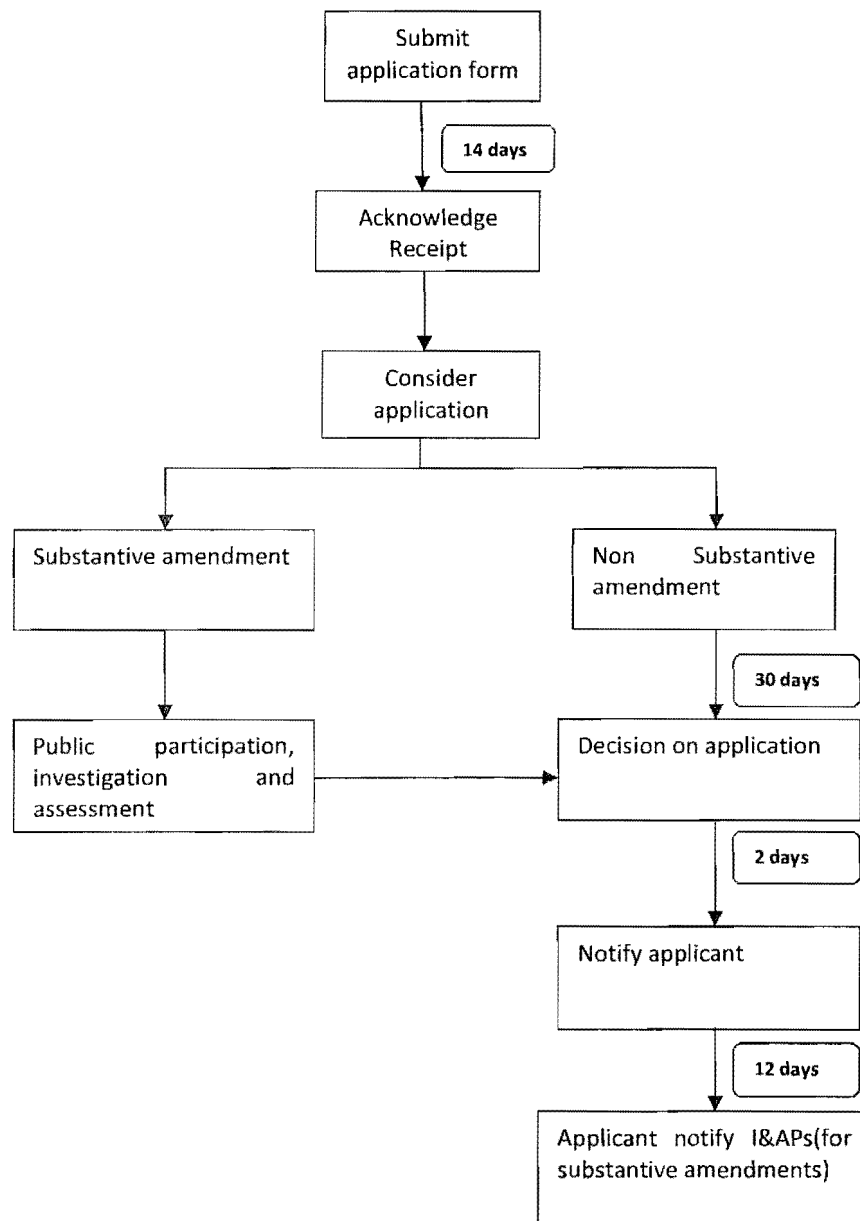
	<p>Within 45 days of accepting the EIR, or within 45 days of receipt of the specialist review, or within 30 days of the lapsing of the 60 days extension, the CA must:</p> <ul style="list-style-type: none"> <li>- grant authorisation in respect of all or part of the activity; or</li> <li>- refuse authorisation in respect of all or part of the activity.</li> </ul> <p>If the authorisation is granted for an alternative, it is regarded that such alternative was applied for.</p> <p>The CA must in writing within 2 days of having reached the decision:</p> <ul style="list-style-type: none"> <li>- notify the applicant of the decision,</li> <li>- give the reasons for the decision; and</li> <li>- inform the applicant that an appeal may be lodged within 20 days of the date of the decision.</li> </ul> <p>The applicant must in writing within 12 days of the date of the decision:</p> <ul style="list-style-type: none"> <li>- notify the I&amp;APs of the decision;</li> <li>- give the reasons for the decision; and</li> <li>- inform them that an appeal may be lodged within 20 days of the decision; and</li> <li>- draw attention of all registered I&amp;APs as to how they can access the EA.</li> </ul> <p>If the CA decides to grant authorisation for a combination of applications, the CA may issue a single EA covering all activities for which authorisation was granted. The CA may issue an integrated EA.</p>
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## 8. AMENDMENT AND WITHDRAWAL OF AN EA

The CA who issued an EA has jurisdiction in all matters pertaining to the amendment of that authorisation. Amendments may be applied for by the holder of the authorisation or may be initiated by the CA. An authorization may be amended by attaching an additional condition or requirement, or by substituting, removing or changing an existing condition or requirement. Further, details may be updated or changed on the authorization and technical or editorial errors may also be corrected (regulation 38).

### APPLICATION FOR AMENDMENT BY THE HOLDER OF AN EA

**FIGURE 4**



**How to apply for amendment by the holder of an EA?**

Regulation 39-42

The amendment process entails the following:

- The holder must submit the completed application form together with a motivation for amendment.
- The CA must within 14 days of receipt in writing acknowledge the receipt of the application.
- On receipt of application the CA:
  - must consider whether granting the application is likely to adversely affect the environment or the right or interests of other parties; and
  - may request additional information from the applicant.
- The CA must within 30 days of acknowledging receipt of application establish whether an application for amendment is substantive or non substantive to make the decision.
- In a case where the amendment is substantive, the CA may request public participation, conduct investigation and assessment and compile reports thereof.
- Following the above, if the environment is still likely to be adversely affected, the CA must return the application and request for new application for authorisation (chapter 3).
- CA must within 30 days make a decision on the application and notify the holder and give reasons for the decision (regulation10).
- If an application is approved, the CA must issue and amendment to an EA.

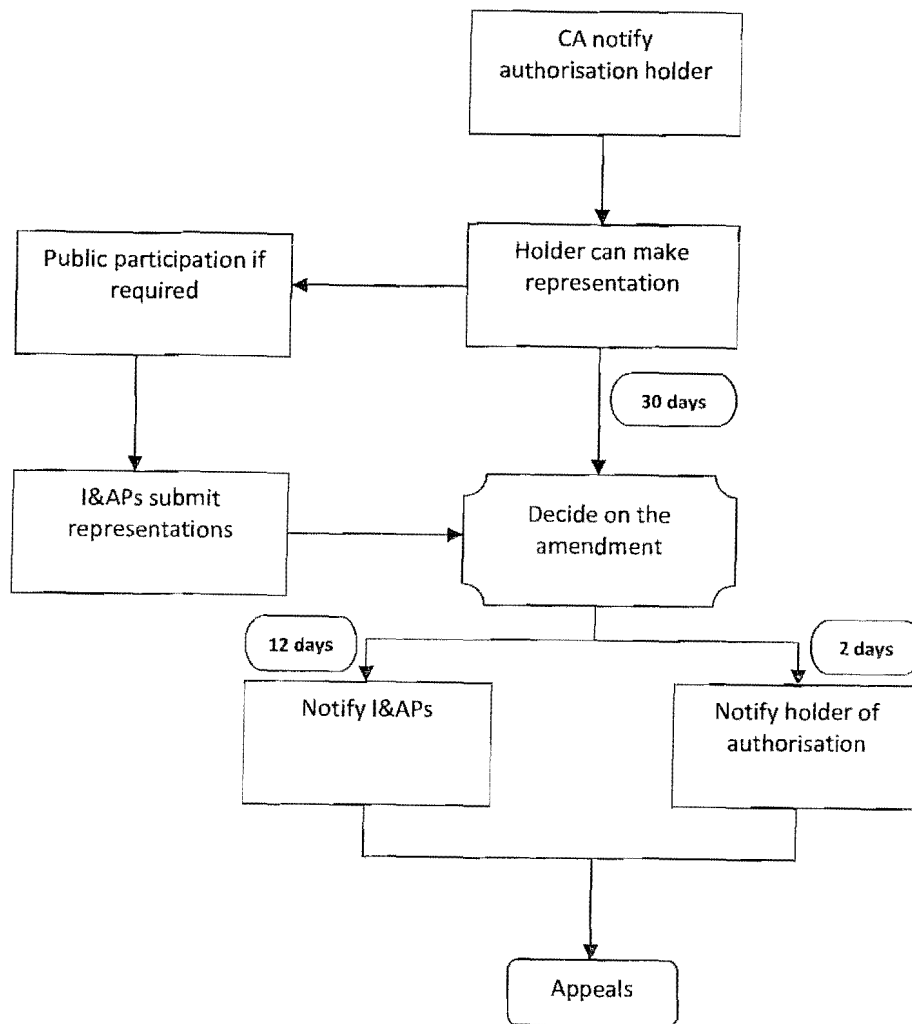
**9. APPLICATION FOR AMENDMENT BY CA**

<b>How to initiate amendment of EA by the CA?</b>	
Regulation 43-45	<p>The CA may amend the EA if it is necessary or desirable.</p> <ul style="list-style-type: none"> <li>• The CA must: <ul style="list-style-type: none"> <li>- notify the holder in writing of the proposed amendment;</li> <li>- give the holder an opportunity to submit in writing representations on the proposed amendment;</li> <li>- conduct public participation if necessary (regulation 54);</li> <li>- give the I&amp;APs an opportunity to submit in writing representations on the proposed amendment; and</li> <li>- afford the holder opportunity to comment in writing on the representations submitted by I&amp;APs.</li> </ul> </li> <li>• The CA must within 30 days after receipt of the representations make a decision on the amendment;</li> <li>• The CA must also notify the holder within 2 days, and the I&amp;APs within 12 days of the amendment decision and the reasons thereof.</li> <li>• The CA must inform both the holder and I&amp;APs that they may lodge an appeal within 20 days of the decision.</li> </ul>



# APPLICATION FOR AMENDMENT BY CA

FIGURE 5



**10. AMENDMENTS OF ENVIRONMENTAL MANAGEMENT PROGRAMMES**

<b>How to apply to amend the environmental management programmes (EMPr)?</b>	
Regulation 46	<p>The process of applying for amendment of the EMPr by the holder of an EA is as follows:</p> <ul style="list-style-type: none"> <li>• The holder must submit the completed application form together with a motivation for amendment.</li> <li>• CA must acknowledge the application in writing within 14 days of receipt.</li> <li>• CA must establish whether an application for amendment is substantive or non substantive to make the decision.</li> <li>• In a case where the amendment is substantive, the CA may request public participation.</li> <li>• CA must make a decision by means of an addendum to the relevant EA to approve the amended EMPr, and within 2 days notify the holder and give the reasons for the amendments.</li> <li>• CA must inform the holder that he may lodge an appeal within 20 days of the decision.</li> <li>• If the public participation was undertaken, the holder must notify I&amp;APs within 12 days and inform them that an appeal may be lodged within 20 days of the decision.</li> </ul> <p>In a case where the CA initiated the amendment of the EMPr, the CA must:-</p> <ul style="list-style-type: none"> <li>• Notify the holder in writing of the proposed amendment.</li> <li>• Give the holder an opportunity to submit in writing representations on the proposed amendment.</li> <li>• Conduct public participation if necessary (regulation 54).</li> <li>• Give the I&amp;APs an opportunity to submit in writing representations on the proposed amendment.</li> <li>• Afford the holder to comment in writing on the representations submitted by I&amp;APs.</li> <li>• CA must make a decision by means of an addendum to the relevant EA to approve the amended EMPr, and within 2 days notify the holder and give the reasons for the amendments.</li> <li>• Notify the holder within 2 days, and the I&amp;APs within 12 days of the amendment and the reasons.</li> <li>• Inform both the holder and I&amp;APs that they may lodge an appeal within 20 days of the decision.</li> </ul>

**11. SUSPENSION OF AN ENVIRONMENTAL AUTHORISATION**

<b>Can an EA be suspended?</b>	
Regulation 47	<p>An EA may be suspended if:-</p> <ul style="list-style-type: none"> <li>• the CA has reasonable grounds for believing that there is contravention or non-compliance with a condition of the authorisation; or</li> <li>• suspension is necessary to prevent harm to the environment; or</li> <li>• the authorisation was obtained fraudulently, through misrepresentation or non-disclosure of information; or</li> <li>• the activity is permanently or indefinitely discontinued; or</li> <li>• unforeseen circumstances lead to potential significant detrimental effect.</li> </ul>
<b>What is the process for suspending an EA?</b>	
Regulation 48 & 49	<p>The CA must:-</p> <ul style="list-style-type: none"> <li>• notify the holder in writing of the proposed suspension and the reasons thereof;</li> <li>• give the holder an opportunity to comment on any environmental audit report submitted or obtained by CA [regulation 69 (2)];</li> <li>• give the holder an opportunity to submit in writing representations on the proposed suspension;</li> <li>• notify in writing the holder of the decision;</li> <li>• if an EA is suspended, the CA must give the reasons for suspension and inform the holder that an appeal may be lodged within 20 days of the decision (chapter 7).</li> </ul> <p>The above however does not affect the institution of criminal proceedings against the EA holder in terms of section 24F (2) of the Act.</p>

## 12. EXEMPTIONS

An application may be submitted to the CA where appropriate for exemption from any provisions of the regulations. An exemption may be combined with an EA issued under the regulations (regulation 50). It must be noted that exemption from full requirements of the regulations is not possible, as NEMA determines that every listed activities must be authorised.

<b>How to apply for exemption?</b>	
Regulation 50-53	<p>The applicant must submit an application in writing accompanied by:-</p> <ul style="list-style-type: none"> <li>- reasons for application;</li> <li>- supporting document; and</li> <li>- prescribed application fee, if any.</li> </ul> <p>The CA must acknowledge in writing the receipt of application within 14 days.</p> <p>The applicant/EAP must communicate his or her intent to apply for exemption by giving a notice in the prescribed manner for the public participation process.</p> <p>The CA may request additional information or provide advice on the application.</p> <p>As a minimum, the notice must contain:</p> <ul style="list-style-type: none"> <li>• the provisions from which exemption is applied for;</li> <li>• the manner in which and the person to whom comments must be submitted; and</li> <li>• the date for submitting comments on the application.</li> </ul> <p>The CA must consider the application and within 30 days make a decision on the application and notify the applicant within 2 days.</p> <p>The CA must inform the applicant that an appeal may be lodged within 20 days of the decision.</p> <p>The CA must request the applicant to inform registered I&amp;APs of the outcome of the application and the reasons.</p> <p>The CA must request the applicant to inform the I&amp;APs that they may lodge an appeal within 20 days of the decision.</p> <p>The CA must issue a written exemption notice to the applicant if the application was approved.</p>

### 13. PUBLIC PARTICIPATION

<b>Is public participation compulsory for the EIA process?</b>	
Regulation 54	<p>Public participation must be conducted only when required by provisions of the regulations and NEMA. It is a compulsory requirement that section 24(4)(a) must be complied with for all applications for environmental authorisation.</p> <p>The applicant must take into consideration any guidelines applicable to public participation and notify all I&amp;APs of the application which is subjected to public participation.</p> <p>Unless justified by exceptional circumstances, no public participation process</p>

	(PPP) should be conducted from the 15 <sup>th</sup> of December to the 2 <sup>nd</sup> of January due to the holiday period.
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	Note: Refer to the national guideline on Public Participation.
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**14. APPEALS**

<b>Can an appeal be lodged against a decision on the EA?</b>	
Regulation 58	<p>An appeal may be lodged by any interested or affected person to the CA (Minister, relevant MEC) against a decision taken by any person acting under a power delegated by the CA under NEMA.</p> <p>The interested or affected parties may appeal:-</p> <ul style="list-style-type: none"> <li>- to the CA against any decision to issue or refuse to issue an EA or to grant an exemption;</li> <li>- to any provision or condition of an EA or exemption; or</li> <li>- any directive issued in terms of Chapter 5 of NEMA (Section 43(1-3) of the Act.</li> </ul> <p>No appeal is available if the Minister or MEC took a decision in their capacity as the CA for the application for an EA.</p> <p>The decision on the appeal lodged must be taken by the Minister for all decisions taken by Environmental Affairs and all decisions on EA and management programmes taken by the Minister of Mineral Resources. The provincial MEC, decide on appeals where the decision was taken by the provincial departments.</p>

**How to appeal against a decision?**

Regulations 58 -  
66

The person who wishes to appeal against a decision must submit a notice of intention to appeal to the Minister, MEC or organ of state within 20 days after the date of the decision.

In a case where the appellant is an applicant, the appellant must, within 10 days of having submitted a notice, provide each registered organ of state or registered I&AP with a copy of the notice and a notice indicating where and for what period the appeal submission will be available for inspection by such I&AP or organ of state.

In a case where the appellant is not the applicant, the appellant must within 10 days of having lodged the notice, provide the applicant with a copy of the notice and a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.

The Minister, MEC or designated organ of state may in writing extend the period within which a notice of intention must be submitted.

An appeal must be submitted in writing to the appeal authority, within 30 days after the 20 days of notice and must be accompanied by:

- statement setting out the grounds of appeal;
- supporting documentation;
- a statement by the appellant that the notices referred to above have been served on relevant parties [regulation 60(2or3)]; and
- prescribed appeal fee, if any.

Appellant to take into account any guidelines applicable to appeals.

Responding statements must be submitted within 30 days from the date the appeal submission was made available for inspection.

The person who submitted a responding statement must within 10 days of having submitted the statement, serve a copy of the statement on the appellant.

If new information has been introduced by the respondent, the appellant is entitled to submit an answering statement to such new information to the CA within 30 days of being served with the above mentioned copy.

The appellant must serve a copy of the answering statement on the respondent who submitted the new info within 10 days of having submitted the answering statement.

The Minister or MEC must within 10 days acknowledge receipt of an appeal, responding statement or answering statement.



	<p>The CA must notify the appellant and each respondent of any directives issued in terms of section 43(7) of the Act, (if applicable) and an appeal panel has been appointed in terms of section 43(5) of the Act.</p> <p>The CA may request the appellant or a respondent to submit additional information in connection with the appeal if it's required.</p> <p>The CA must furnish the appeal panel with written instructions concerning the issues in respect of which the panel must make recommendations and the period within which recommendations must be submitted to the CA (regulation 65).</p> <p>A member of an appeal must be independent.</p> <p>The recommendations by appeal panel must be submitted in writing to the CA.</p> <p>The CA must reach a final decision on appeals submitted within 90 days of receipt of all relevant information including any statements, supporting documents, reports or any other information requested, or recommendations of appeal panel which may assist the CA in decision making process.</p> <p>After the decision has been reached by a CA, the appellant and each respondent must be notified in writing within 10 days of the decision and the extent to which the decision appealed against is upheld or overturned, and reasons for such decision.</p>
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## 15. GENERAL MATTERS AFFECTING APPLICATIONS AND APPEALS

<b>Can an application lapse?</b>	
Regulation 67	An application lapses if the applicant, after having submitted the application, fails for a period of six months to comply with a requirement in terms of the EIA regulations, unless the reasons for failure have been communicated to and accepted by the CA.
<b>Can an application which has been refused be re-submitted?</b>	
Regulation 68	<p>An application which has been refused cannot be re-submitted, unless:</p> <ul style="list-style-type: none"> <li>- it contains new information; or</li> <li>- a period of three years has lapsed since refusal.</li> </ul>
<b>How to monitor compliance to an EA?</b>	
Regulation 69	If a competent authority reasonably suspects that the person who holds an environmental authorisation or who has been granted an exemption 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.

	<p>If 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.</p> <p>The CA may request an explanation and environmental audit report to be submitted in a form and within a period determined.</p> <p>The CA may require the holder of an EA to appoint an independent person approved by the competent authority, to perform an environmental audit, and the holder is liable for all costs in connection with the environmental audit.</p> <p>On failure to submit an environmental audit report within the period determined, the competent authority may:-</p> <ul style="list-style-type: none"> <li>- appoint an independent person to perform the audit; and</li> <li>- recover the costs of the audit from the holder of the EA.</li> </ul> <p>Every holder of an EA must monitor and assess performance against the EMPr and conditions of the EA.</p>
<b>Is there any assistance for people with special needs?</b>	
Regulation 70	<p>The CA processing an application or the Minister or MEC processing an appeal must give reasonable assistance to people with:</p> <ul style="list-style-type: none"> <li>- lack of skills to read and write;</li> <li>- disability; or</li> <li>- any other disadvantage.</li> </ul>
<b>Under what circumstances does a person become guilty of an offence?</b>	
Regulation 71	<p>A person becomes guilty of an offence if that person:</p> <ul style="list-style-type: none"> <li>- proceed with a listed activity without an EA;</li> <li>- provides incorrect or misleading information;</li> <li>- fails to disclose the information to the CA, whether or not such information is favourable to the applicant [regulation 7(2)];</li> <li>- fails to submit in writing an environmental audit report on the harm, or suspected harm to the environment or on any specific matter determined [regulation 69(2)]; or</li> <li>- commences or continues with an activity where the EA was suspended;</li> <li>- contravened a condition in an EA or EMPr.</li> </ul> <p>Any person found guilty in terms of these regulations is liable to a fine up to R1 million, or imprisonment for a period up to one year or both.</p>