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### Abbreviations

- **EAP**  Environmental assessment practitioner
- **ECA**  Environment Conservation Act, 1989 (Act No. 73 of 1989)
- **EIA**  Environmental impact assessment
- **EMF**  Environmental management framework
- **I&APs**  Interested and affected parties
- **PSEIA**  Plan of Study for Environmental Impact Assessment
1. INTRODUCTION

In April 2006 the Minister of Environmental Affairs and Tourism passed environmental impact assessment regulations (the Regulations) in terms of Chapter 5 of the National Environmental Management Act, 1998 (NEMA). The Regulations replace the environmental impact assessment (EIA) regulations which were promulgated in terms of the Environment Conservation Act, 1989 in 1997.

In order to assist potential applicants, environmental assessment practitioners ("EAPs") and interested and affected parties ("I&APs") to understand what is required of them in terms of the Regulations, what their rights are and/or what their role may be, the Department of Environmental Affairs and Tourism has expanded its Integrated Environmental Management Guideline Series to include the following documents:

- Guideline 3: General guide to the EIA Regulations
- Guideline 4: Public participation
- Guideline 5: Assessment of alternatives and impacts
- Guideline 6: Environmental management frameworks

The additional documents are intended to be guides only and should be read in conjunction with NEMA and the Regulations. The documents are not intended to be a substitute for the provisions of NEMA or the Regulations in any way.

This document is Guideline 3. It provides a broad introduction to the Regulations by explaining the roles and responsibilities of the people involved in environmental authorisation applications, the processes that are involved in applying for environmental authorisation and answering a set of key questions may arise.

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1 Environmental Impact Assessment Regulations, 2006
2 Act No. 107 of 1998
3 Act No. 73 of 1989
2. OBJECTIVES OF THE REGULATIONS

Section 24(2) of NEMA empowers the Minister and any MEC, with the concurrence of the Minister, to identify activities which must be considered, investigated, assessed and reported on to the competent authority responsible for granting the relevant environmental authorisation.

The objective of the Regulations is to establish the procedures that must be followed in the consideration, investigation, assessment and reporting of the activities that have been identified. The purpose of these procedures is to provide the competent authority with adequate information to make decisions which ensure that activities which may impact negatively on the environment to an unacceptable degree are not authorised, and that activities which are authorised are undertaken in such a manner that the environmental impacts are managed to acceptable levels.

The procedures are also intended to ensure that:

- the minimum information that is necessary for decision-making is provided;
- adequate information is provided to I&APs to enable them to participate effectively;
- issues, ideas and concerns raised by I&APs are properly considered;
- issues, impacts and alternatives are considered and assessed in a structured and objective manner; and
- the requirements for the management of impacts over the life cycle of activities.
3. UNDERSTANDING THE ROLES OF PLAYERS IN AN ASSESSMENT PROCESS

There are five main role-players, which are likely to be involved in an EIA process. These are the applicant, the environmental assessment practitioner (“EAP”), the public, the competent authority and the Minister or MEC. Each of these role players have different interests and/or responsibilities. The Regulations set out how these interests are given effect to and how the responsibilities must be discharged.

3.1 APPLICANTS

An applicant is a person who applies for an environmental authorisation in order to undertake a listed activity lawfully. The applicant must appoint an independent EAP to manage the application process.

To ensure that the EAP can do his or her work properly and objectively, the applicant must give the EAP access to all information that is relevant to the application – even if that information is not favourable to the application. (The applicant must also make this information available to the competent authority).

The applicant is responsible for certain costs. These may include any relevant application fees, the fees of the EAP, the costs of external reviews if it is determined that the EAP is not independent, the costs of specialist reviews and costs in respect of the provision of security.

3.2 ENVIRONMENTAL ASSESSMENT PRACTITIONERS

An EAP is a person who manages an application for environmental authorisation for an applicant.

Any EAP, who is responsible for managing an application for environmental authorisation, must be both competent and independent. A definition of independence is contained in the Regulations and if the EAP contravenes this requirement, the competent authority has powers to redress the situation.
Apart from being competent and independent, the EAP must also undertake the work objectively - even if this results in findings that are not favourable to the applicant. In view of this, the EAP must disclose all information that has the potential to influence a decision of the competent authority on the application.

The EAP is also responsible for ensuring that a public participation process is undertaken in accordance with the requirements of the Regulations and for taking into account any comments that are made during this process in the compilation of the reports that will be submitted to the competent authority.

### 3.3 THE PUBLIC

The Regulations require that the public be given an opportunity to comment on applications for environmental authorisation. Members of the public who want to participate in an assessment process are registered and called I&APs. (A more detailed explanation of the public participation process is set out in Guideline 5).

I&APs may participate and make representations to the EAP regarding an application. I&APs are also entitled to comment on all written submissions which the applicant or EAP makes to the competent authority subject to three requirements –

- comments must be submitted within the timeframes that have been set;
- if the comments are made directly to the competent authority, a copy of the comments must be sent to the applicant or EAP; and
- if the I&AP has any direct business, financial, personal or other interest in the approval or refusal of the application, that interest must be disclosed.

I&APs may also comment on certain other applications, such as applications for the amendment of an environmental authorisation and applications for exemption, where the application may affect the rights or interests of other people.

### 3.4 THE COMPETENT AUTHORITY

The person who makes decisions in respect of applications for environmental authorisations is known as the competent authority. According to the Regulations, the competent authority is the Minister or an MEC. However, in most cases, these powers are delegated to an official in the relevant department.

The overarching task of the competent authority is to make decisions in respect of the application process and whether to grant or refuse environmental authorisation. (The
competent authority also has other obligations such as making decisions on applications for changes to environmental authorisations and applications for exemption). In order to provide for certainty, the Regulations indicate timeframes within which the competent authority should make these decisions.

The competent authority must also give reasonable assistance to people who want to object to the application if they are unable to comply with a requirement of the Regulations due to illiteracy, disability or any other disadvantage.

3.5 THE MINISTER OR MEC

If the Minister or MEC is not the competent authority i.e. where the Minister or MEC has delegated decision-making powers in respect of applications for environmental authorisation to a departmental official, the Minister or MEC is responsible for hearing any appeals that are made in respect of the decisions of the relevant department. If the Minister or MEC is the competent authority, there is no appeal in terms of the Regulations. The Minister or MEC may appoint an appeal panel to assist the Minister or MEC.

Like the competent authority, the Minister or MEC must also give reasonable assistance to people who want to appeal if they are unable to comply with a requirement of the Regulations due to illiteracy, disability or any other disadvantage.

Other powers of the Minister and MECs include making guidelines for the implementation of the Regulations and adopting environmental management frameworks.
When an applicant proposes to undertake a listed activity, an application must be made for environmental authorisation. The application must be supported by a report, which has been compiled as a result of an assessment procedure. After the competent authority has made a decision on the application, an appeal may be made against the decision, or parts of the decision.

The diagramme below sets out an abbreviated representation of the processes and the relationship between the different processes. A comprehensive diagramme setting out all the possible steps that may be taken in an authorisation process is set out at the end of the chapter.

Diagramme 1: Abbreviated process flow
GUIDELINE 3: GENERAL GUIDE TO THE EIA REGULATIONS, 2006

(a) BASIC ASSESSMENT

Basic assessment

- Submit application
- Acknowledge receipt
- Consider basic assessment
- Revise / add to basic assessment
- Decision

(b) SCOPING PROCEDURE

- Conduct scoping process
- Public participation
- Scoping
- Consider scoping report and PSEIA
- Revise scoping report
- PSEIA
- Public participation
- Request amendments
- Request more alternatives
- Reject scoping report or PSEIA
- Accept scoping report and PSEIA
- Specialist studies
- Specialized processes
- EIA
- Public participation
- Draft EMP
- Specialised processes
- Revise EIA report
- Revise scoping report / PSEIA
- Public participation
- Decision

(c) APPEAL PROCEDURE

- Notice of intention to appeal
- Submission of appeal
- Processing of appeal
- Decision of appeal
- Request amendments
- Specialist review
- Specialist review
- Reject report
- Accept EIA report
- Grant authorisation
- Refuse authorisation
- Accept scoping report and PSEIA
- Specialist studies
- Decision

Diagram: Detailed process flow
4.1 DETERMINATION OF THE ROUTE THE APPLICATION MUST FOLLOW

All applications for environmental authorisation must be supported by an assessment. The Regulations provide for two types of assessment processes i.e. the basic assessment process and the scoping and EIA process. The purpose of basic assessment is to provide a mechanism for the complete but concise assessment of activities. A scoping and environmental impact assessment process is reserved for activities which have the potential to result in significant impacts which are complex to assess. Scoping and environmental impact assessment accordingly provides a mechanism for the comprehensive assessment of activities that are likely to have more significant environmental impacts.

The EAP must determine which of these procedures is applicable to the application.

In general, the type of procedure to be followed will be indicated in the notice that lists the activity. However, in certain instances the Regulations provide that the type of procedure indicated in the notice should, or must, differ from the one indicated.

Examples of this include where –

- an activity being applied for is made up of more than one activity and the scoping and EIA process is required for one or more of those activities, the scoping and EIA process must be followed for the whole application;
- the EAP believes that the circumstances surrounding the application, such as the environment in which the activity is situated, is such that it will not be possible for a competent authority to make a decision on the basis of a basic assessment process, the competent authority may authorise the EAP to follow a scoping and EIA process instead of a basic assessment process.

4.2 BASIC ASSESSMENT

The basic assessment process includes all the aspects required by NEMA but in a way that facilitates a concise process. This is mainly achieved by indicating what information the competent authority requires in the Regulations, thereby limiting the number of interactions between the EAP and the competent authority.
This means that the competent authority is presented with all the appropriate documentation at the time it receives the application since the EAP would already have conducted the public participation process and complied a basic assessment report containing the information specified in the Regulations. Because the public participation process and assessment take place before an application is made, the EAP must notify the competent authority of the intention to submit an application.

4.2.1 Submission of application and basic assessment report

The application to the competent authority can only be made once the basic assessment report is completed. The basic assessment report and all other documentation required in terms of the Regulations must be submitted together with the application form to the competent authority.

After receiving the basic assessment report the competent authority must either –

- acknowledge receipt of the application and the basic assessment report, or
- reject the application and basic assessment report.

The application and basic assessment report can be rejected where it does not comply with the requirements set out in the Regulations or specified by the competent authority, for example, where information on potential impacts or alternatives is omitted. A report that is rejected may be resubmitted after the necessary changes have been made.

4.2.2 Consideration of basic assessment report

If the basic assessment report is accepted, the competent authority will consider the contents of the basic assessment report, including any attachments, and make a decision to:

- grant authorisation in respect of all or part of the application;
- refuse authorisation in respect of all or part of the application;
- request further information or investigation, where the report is not adequate for the purposes of decision-making but could be adequate if limited additional information is provided; or
- refer the application to a scoping process where substantial additional investigations or assessments are required to make a decision.

A request for further investigation can include a request for further public participation, a specialist study, a specialised process or consideration of alternatives.
Where additional information or investigations are requested by the competent authority, a revised basic assessment report or supplementary document must be produced and submitted to the competent authority. The revised report or supplementary document must be made available to I&APs for comment.

4.3 SCOPING AND ENVIRONMENTAL IMPACT ASSESSMENT

The scoping and EIA process involves a more complex and intensive assessment of the potential impacts of an activity. The process takes place in three broad phases, namely submission of an application form, scoping and the EIA.

4.3.1 Submission of application

Where an application for environmental authorisation must be supported by a scoping and EIA process, an application form, which can be obtained from the competent authority, must be completed and submitted to the competent authority before scoping is undertaken.

The applicant may request a pre-scoping consultation with the competent authority before conducting scoping.

4.3.2 Scoping

The purpose of scoping is to determine the “scope” of the EIA that will be conducted in respect of the activity for which authorisation is being applied for. The emphasis during scoping is to identify:

- issues;
- potential impacts; and
- potential alternatives.

Public participation is a key element of scoping and must be conducted in accordance with at least the minimum requirements as set out in the Regulations. The scoping process culminates in the compilation of a scoping report. The minimum requirements of a scoping report are set out in the Regulations and include a plan of study for EIA.

4.3.3.1 Consideration of scoping report and plan of study for EIA

After receiving a scoping report, the competent authority will consider the report and make a decision to:
request amendments to the report;
- request further alternatives to be considered;
- reject the scoping report or plan of study for EIA because it does not substantively comply with the requirements of the Regulations; or
- accept the scoping report.

A decision to grant or refuse the application cannot be made directly after the scoping process.

4.3.3.2 Revision or additions to the scoping report or plan of study for EIA

Where the competent authority requests amendments to a scoping report or a consideration of more alternatives, a revised scoping report or plan of study for EIA must be compiled and submitted to the competent authority. The revisions must be made available to I&APs for comment. A report that is rejected may be amended and resubmitted.

4.3.3 Environmental impact assessment

When the competent authority accepts a scoping report and a plan of study for EIA, the EAP must proceed with the EIA. The purpose of the EIA is to:

- address issues that have been raised during the scoping phase;
- assess alternatives to the proposed activity in a comparative manner;
- assess all identified impacts and determine the significance of each impact; and
- formulate mitigation measures.

Public participation is also an essential part of the EIA process. During the EIA process, public participation is conducted in accordance with the plan of study for EIA as opposed to the minimum requirements set out in the Regulations.

After the different aspects of the assessment have been undertaken, including any specialist studies and specialized processes, an EIA report is compiled, which must contain at least the information listed in the Regulations, including a draft environmental management plan.
4.3.4.1 Consideration of EIA report

The consideration of the EIA report occurs in two phases. In the first phase, the competent authority, after receipt of the EIA report, will make a decision to:

- accept the report;
- request amendments to be made to the report;
- refer the report for specialist review; or
- reject the EIA report because it does not contain the information required by the Regulations.

The second phase occurs after the competent authority has accepted an EIA report, or after receipt of the findings of a specialist reviewer. During this phase, the competent authority will make a decision to:

- grant all or part of the application; or
- refuse all or part of the application.

4.3.4.2 Revision of EIA report

In instances where the competent authority requests amendments, the EIA report must be revised and made available to I&APs for comment prior to being resubmitted.

4.4 APPEAL

Any affected person may appeal a decision of the competent authority to the Minister, where the national Department of Environmental Affairs and Tourism is the competent authority, or to the MEC, where the provincial department of environment is the competent authority. No appeal is provided where the Minister or MEC is the competent authority.

4.4.1 Notice of intention to appeal and appeal

To make an appeal, a notice of intention to appeal must be submitted to the Minister or MEC within 10 days of being notified of the decision. If the person appealing (the appellant) is the applicant, the appellant must provide a copy of the notice to all registered I&APs. If the appellant is someone other than the applicant, the appellant must provide a copy of the notice to the applicant. The appellant must also provide information indicating where and for what period the appeal submission will be available for inspection by I&APs.

The appeal must be submitted within 30 days of lodging the notice of intention to appeal on an official form published by the competent authority.
4.4.2 Responding and answering statements

A person who has received a notice of intention to appeal from an appellant may make a submission - called a responding statement - to the Minister or MEC within 30 days from the date that the appeal was made available for inspection.

Where new information is introduced in a responding statement, the appellant is entitled to make a further submission - called an answering statement - within 30 days of receipt of the responding statement.

4.4.3 Processing of appeal

After receiving an appeal as well as any responding and answering statements, the Minister or MEC will process the appeal. The Minister or MEC may appoint an appeal panel to assist his or her consideration of the appeal. Once the Minister or MEC has reached a decision he or she will notify the appellant and any respondents of the decision in writing.
5. FREQUENTLY ASKED QUESTIONS

5.1 WHEN IS AN ENVIRONMENTAL AUTHORISATION REQUIRED?
An environmental authorisation must be obtained in order to undertake any activity listed in Government Notices R. 386 and R. 387 of 21 April 2006. Lawfully Environmental authorisations will also be required for any activity that has been identified by the Minister or an MEC in terms of section 24(2)(a),(b) or(d) of NEMA and published in a government gazette. An application may not be made if the competent authority has refused a similar application within a period of three years unless new information is provided. If there is uncertainty as to whether authorisation is required, advice should be obtained from the relevant competent authority before the activity is undertaken.

5.2 WHEN MUST AN APPLICATION FOR AUTHORIZATION BE MADE?
An application for environmental authorisation must be made before the activity commences. An activity may not commence until an environmental authorisation has been obtained as it is illegal in terms of NEMA and the Regulations to start an activity without an environmental authorisation.

A possible exception to this requirement is where an activity has been identified in terms of section 24(2)(d) of NEMA. These activities relate to existing activities that may have a detrimental effect on the environment. In the case of these activities it will not always be possible to obtain authorisation before the activity commences and authorisation must be obtained as provided for in such notices. Although not a clear exception, it is a defence in terms of NEMA that an activity had to be undertaken as a result of an emergency.

5.3 WHO MUST AN APPLICATION BE MADE TO?
An application for environmental authorisation must be made to the competent authority. Section 24C indicates when the Minister, or the national Department of Environmental Affairs and Tourism, if the Minister has delegated the powers to the department, will be the competent authority. In all other instances, the competent authority will be the MEC responsible for environment, or the provincial department responsible for environment if the MEC has delegated the powers to the department.
Guideline 3: General Guide to the EIA Regulations, 2006

Contact details of the different competent authorities are set out in Appendix A.

5.4 Can Scoping and EIA be done for an activity listed for Basic Assessment and vice versa?

The list that prescribes basic assessment for certain activities has been constructed in such a way that the activities in the list are generally suitable for a concise process. There may, however, be instances where an application may be particularly complex and it will be difficult for a competent authority to make a decision based on a basic assessment report. In these cases, the applicant may apply to the competent authority for permission to apply scoping instead of basic assessment. Basic assessment may not be done for an activity where a scoping and EIA process is indicated.

5.5 Is an environmental authorisation still required if approvals or licenses have been obtained from other authorities?

Yes. The requirement to obtain an environmental authorisation is distinct from the requirements of other legislation.

5.6 What happens to authorisations and processes under the 1997 regulations?

Authorisations that have already been granted in terms of the 1997 regulations will be regarded as authorisations issued in terms of the new Regulations. No new application needs to be made in respect of the activities which are already authorised, although the provisions of the new Regulations will apply to the authorisation.

Any application or appeal which has been made in terms of the 1997 regulations and which is not finalised when the new Regulations commence, will be handled in terms of the provisions of the 1997 regulations.

5.7 How would a member of the public know that an application for authorisation has been, or will be, made?

The EAP has to comply with certain minimum notification requirements, including the placing of a notice on the site where the proposed activity is to be undertaken and publishing a notice in a newspaper. Government is currently in the process of establishing a Government Gazette in respect of EIA applications. Once the gazette is operational,
EAPs will be allowed to publish the required notices in the gazette. The EAP must also specifically notify certain people of the application. These people include those adjacent to the site or within 100 metres of the site if they may be directly affected by the activity, the municipal councillor and any organisation of ratepayers that represents the community in the area.

5.8 HOW ARE COMMENTS FROM THE PUBLIC TAKEN INTO ACCOUNT?

The EAP is obliged to include a summary and copies of all comments that are received from I&APs as well as an explanation of how the comments have been taken into account in a basic assessment report, scoping report and EIA report. The competent authority will consider the issues raised by I&APs in making its decision on the application.

5.9 CAN A PERSON REQUIRING AN ENVIRONMENTAL AUTHORISATION UNDERTAKE THE PROCESSES REQUIRED IN THE REGULATIONS?

An applicant cannot compile any of the reports or undertake the processes required by the Regulations. The applicant must appoint an EAP to manage an application on his or her behalf. There is a range of requirements of EAPs, including the fact that an EAP must be independent and have the appropriate expertise to conduct the assessment.

It is important that an applicant chooses an EAP carefully since the Regulations provide certain consequences if the EAP is not independent or competent. For example, if the EAP is not independent, the competent authority may require the applicant to appoint another EAP to redo the work, or may require the applicant to pay for an external review of work that has already been done. If the EAP does not provide work of an adequate standard to the competent authority, the competent authority may reject the reports, which will result in delays for the processing of the application.

5.10 HOW LONG WILL IT TAKE THE AUTHORITY TO MAKE A DECISION?

The competent authority will make a decision on an application that has followed basic assessment within 30 days of receiving all the relevant information.

In respect of an application that has followed scoping and EIA, the competent authority will inform the applicant that the EIA report is accepted or rejected or request the applicant to make changes to the report or advise the applicant that the report has been sent for specialist review within 60 days and will make a decision to grant or refuse an application within 45 days of accepting the report or of receiving the findings of a specialist reviewer.
5.11 HOW ARE ENVIRONMENTAL AUTHORISATIONS TRANSFERRED?

An environmental authorisation is given to a person identified in the authorisation. The environmental authorisation may therefore need to be transferred in certain circumstances, for example, when a business, which involves the authorised activity, is sold. The environmental authorisation will specify any conditions that must be complied with for the transfer of the authorisation.

5.12 CAN AN ENVIRONMENTAL AUTHORISATION BE CHANGED?

Environmental authorisations can be changed at the request of the authorisation holder. To request a change to the environmental authorisation, the authorisation holder must submit a completed application form to the competent authority. If the request would amount to a substantial change to the current environmental authorisation, the competent authority will instruct the authorisation holder to undertake a public participation process and, in most cases, to conduct further investigations and assessments. The provision for amending environmental authorisations cannot be used to request changes that are likely to have a significant impact on the environment – these must be addressed by means of a new application for environmental authorisation.

The competent authority can also change environmental authorisations in certain circumstances. Before making any change, the competent authority will give the authorisation holder an opportunity to comment on the proposed changes and, if the proposed change is substantive, conduct a public participation process. In such an instance the public participation process must be conducted by the competent authority.

5.13 MUST ANY FEES OR COSTS BE PAID WHEN MAKING AN APPLICATION OR APPEAL?

The Regulations provide that fees may be imposed in four instances. These are –

- applications for environmental authorisation,
- applications for amendments to environmental authorisations that are requested by the authorisation holder,
- applications for exemption, and
- appeals.

Although no fees were prescribed when the Regulations came into force, these may be introduced in the future.
In addition to application fees, the competent authority is entitled to recover the costs of a specialist reviewer from an applicant where a high level of objectivity is required and it does not appear that the documents are objective or where the technical knowledge required to review any aspect of the report is not available within the competent authority.

5.14 HOW LONG IS AN ENVIRONMENTAL AUTHORISATION VALID?

The validity of an environmental authorisation is determined when the authorisation is given. The environmental authorisation will specify whether the authorisation is valid for a fixed or indefinite period.

5.15 WHAT HAPPENS IF A LISTED ACTIVITY IS UNDERTAKEN WITHOUT AN ENVIRONMENTAL AUTHORISATION?

A person who undertakes a listed activity without an environmental authorisation may be prosecuted and be liable to a fine of up to R5 million and/or to imprisonment for a period not exceeding 10 years. (The competent authority may also require that the activity cease and that the environment be rehabilitated).

People who have undertaken an activity without authorisation may apply for rectification in terms of section 24G of NEMA. The consideration of these applications is subject to an administrative fine of up to R1 million. This fine is separate from any criminal penalty that may be imposed.

5.16 IS IT POSSIBLE TO GET EXEMPTION FROM THE REGULATIONS?

A person who is subject to the Regulations may apply for exemption from the provisions of the Regulations, with the exception that no exemption from a public participation process may be granted where the rights or interests of other people may be affected.

To obtain exemption, an application form must be submitted to the competent authority which explains why an exemption is required and includes any necessary supporting documents.
5.17 CAN I&APS PARTICIPATE IN APPLICATIONS FOR EXEMPTION?

Where the rights or interests of other people may be affected by an application for exemption, the competent authority will instruct the person applying for exemption to undertake a public participation process. I&APs are accordingly entitled to participate in an exemption processes where the rights or interests of other people may be affected by a decision to grant or refuse exemption.
Appendix A: Contact details of competent authorities
(To be added)