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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## GOVERNMENT NOTICES

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. R. 764

25 June 2004

#### PROPOSED REGULATIONS UNDER SECTION 24(5) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT No. 107 OF 1998) AS AMENDED

The Minister of Environmental Affairs and Tourism intends making the regulations under section 24(5) of the National Environmental Management Act, 1998 (Act No. 107 Of 1998) as amended as set out in the Schedule hereto.

Interested parties are requested to submit comments in connection with the proposed regulations within 60 days from the date of publication of this notice. Comments must be submitted to the Director-General: Environmental Affairs and Tourism, Private Bag X447, Pretoria, 0001.

These proposed regulations are published for initial comment, for the purposes of initiating public consultation. The regulations will be published again for formal comment before they are promulgated.

**C. Olver**

Director-General: Environmental Affairs and Tourism

#### SCHEDULE

##### 1. Definitions and interpretation

- (1) In these regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise-
- (a) **"activity"** unless otherwise indicated means a listed activity or specified activity in terms of section 24(2)(a), (b) or (d) of the Act;
  - (b) **"environmental impact assessment"** means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to a decision contemplated in regulation 9 in respect of the potential impacts of a proposed activity;
  - (c) **"identified activity"** means activities listed or specified in terms of the Act;
  - (d) **"interested and affected party"** means person or group of persons interested or affected by a proposed activity;
  - (e) **"initial assessment"** means the assessment contemplated in regulation 7 to determine whether there is a likelihood of significant impacts that require further

investigation or whether a decision can be made based on the information provided as a result of the initial assessment;

- (f) **“issues report”** means a report contemplated in regulation 8 and which contains information on identified issues of and alternatives to the proposed developed;
  - (g) **“plan of study for environmental impact assessment”** means a document that sets out how the environmental impact assessment will be conducted;
  - (h) **“Public participation”** means furnishing interested and affected parties with an opportunity to comment on, or raise issues relevant to, an application for environmental authorisation;
  - (i) **“the Act”** means the National Environmental Management Act 107 of 1998, as amended;
- (2) Where a term is not defined in this section, the term shall have its ordinary dictionary meaning, unless the context indicates otherwise.
- (3) Unless otherwise specified in these regulations, a reference to a number of days shall mean working days.

## 2. Application of regulations

- (1) These regulations are applicable to –
- (a) any listed activity identified in terms of section 24(2)(a) and (d) of the Act, and
  - (b) any specified activity identified within a listed area in terms of section 24(2) (b) of the Act:
- provided that where the application is in respect of an activity which will be undertaken on land where there are existing operations or activities, the competent authority may require that the impacts of the existing operations or activities be taken into consideration in the submission of the application or any other further information which is produced to support the application.
- (2) These regulations, read with the necessary changes, shall also be applicable where the Minister or MEC directs an applicant to prepare a report in terms of section 24G of the Act.

### **3. The identification of geographical areas in which specified activities may be excluded from environmental authorisation**

- (1) The Minister or MEC may identify specified activities within a geographical area that may be excluded from requiring environmental authorisation, or required to comply with an initial assessment or other specified process only, if the area has an environmental management framework that has been compiled through a process approved by the competent authority and the environmental management framework for the area has been approved by the competent authority.
- (2) An environmental management framework report that is submitted to the competent authority for approval must contain –
  - (a) the name and qualifications of the person responsible for the management of the process of formulating the environmental management framework,
  - (b) the relevant experience of the person responsible for the management of the process of formulating the environmental management framework;
  - (c) a description of the area covered by the environmental management framework;
  - (d) a comprehensive description of the process followed in compiling the environmental management framework report, including –
    - (i) the public participation process through which a vision for the area as well as strategic issues and priorities that must be addressed in the environmental management framework report;
    - (ii) a situation assessment that must include a detailed environmental resource inventory of the area, sustainability criteria and environmental opportunities and constraints;
    - (iii) the establishment of sustainability parameters and guidelines for the assessment of proposed activities in the area;
    - (iv) the determination of environmental control zones in the area and control mechanisms for each zone based on the sensitivity of the environment;
    - (v) the determination of activities that will be managed in terms of the environmental management framework, and

- (vi) a zoning of the area in respect of the activities in a way that will determine areas where an activity may be allowed without further investigation, areas where an activity may be allowed subject to further more detailed investigation and areas where an activity should not be considered;
- (e) any specific requirements of the competent authority; and
- (f) a motivation for the implementation of environmental management framework, with specific reference to administrative efficiency;
- (g) a proposal regarding the frequency with which the plan should be reviewed, if at all, and
- (h) a proposal for the period of duration for which the environmental management framework should be valid.

#### **4. General responsibilities and obligations**

(1) An applicant –

- (a) must, where the applicant is not the owner of the land on which it is proposed to undertake the activity, obtain the consent of the landowner to undertake the proposed activity in a form agreed to, or indicated by, the competent authority;
- (b) must appoint an environmental assessment practitioner where required in terms of these regulations;
- (c) must provide the environmental assessment practitioner and the competent authority with access to all information at its disposal regarding the application, whether such information is favourable to the applicant or not;
- (d) is responsible for all costs incurred in complying with these regulations, including but not limited to –
  - (i) costs incurred in connection with the employment of the environmental assessment practitioner or any person contracted by the environmental assessment practitioner for the purposes of the applications;
  - (ii) costs incurred in respect of the undertaking of any process required in terms of these regulations;
  - (iii) costs in respect of any fee prescribed by the competent authority;
  - (iv) costs in respect of specialist reviews; and

- (v) the provision of financial or asset security to ensure compliance with conditions attached to an environmental authorisation should it be required by the competent authority;
  - (e) must ensure that the environmental assessment practitioner, while complying with these regulations, has-
    - (i) expertise in the area of compiling environmental impact assessments;
    - (ii) the ability to perform all the relevant tasks contemplated in these regulations;
    - (iii) the ability to manage the public participation process contemplated in paragraph (f);
    - (iv) the ability to timeously produce thorough, readable and informative documents;
    - (v) adequate recording and reporting systems to ensure the preservation of all data gathered; and
    - (vi) a good working knowledge of all relevant policies, legislation, guidelines, norms and standards;
  - (f) is responsible for ensuring that the environmental assessment practitioner undertakes public notification, information dissemination and participation which provides all interested and affected parties, including all organs of state at all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in such information and participation procedures; and
  - (g) must indemnify the government of the Republic, the competent authority and all its officers, agents and employees, from any liability arising out of the content of any report, any procedure or any action for which the applicant or environmental assessment practitioner is responsible in terms of these regulations.
- (2) If any provision of subregulation (1) is not complied with by the applicant within six months, after having been made aware of it by the relevant competent authority, the application is regarded to have been withdrawn.
- (3) An environmental assessment practitioner must –
- (a) when performing any work in terms of these regulations, have expertise in conducting environmental impact assessments, including knowledge and understanding of any guidelines or policies that have been developed in respect of the activity;

- (b) when performing any work in terms of these regulations, undertake such work in an objective manner, even if this results in findings and views which are not favourable to the applicant;
  - (c) have no financial interest in the undertaking of the activity, other than remuneration fees for work performed in terms of these regulations;
  - (d) have no vested interest in the proposed activity proceeding, nor any other conflicting interest in the undertaking of the activity, other than in complying with the regulations;
  - (e) when performing work in terms of these regulations, disclose to the competent authority any material factors which have or may have the potential to influence the decision of the competent authority or the objectivity of any report, plan or document required in terms of these regulations;
  - (f) ensure that public information is distributed and participation facilitated which provides all interested and affected parties, including all organs of state at all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in such information and participation procedures;
  - (g) provide the competent authority with reasonable access to all information at its disposal regarding the application, whether such information is favourable to the applicant or not; and
  - (h) submit a declaration of interest to the competent authority in a form which may be indicated by the competent authority.
- (4) Where it comes to the attention of the competent authority that the environmental assessment practitioner has an interest in the application which, in the opinion of the competent authority may affect the objectivity of the environmental assessment practitioner, the competent authority may –
- (a) indicate to the applicant and environmental assessment practitioner that it will not accept any reports from the environmental assessment practitioner,
  - (b) advise the applicant and environmental assessment practitioner that the environmental assessment practitioner must notify any registered interested and affected parties of the interest, or

- (c) advise the applicant and environmental assessment practitioner that an independent review of the environmental assessment practitioner's work must be undertaken by a person approved by the competent authority and for the cost of the environmental assessment practitioner.
- (5) Interested and affected parties who register as interested and affected parties in respect of an application must –
- (a) furnish comments within the timeframes that have been approved or provided for by the competent authority;
  - (b) disclose any issue which the interested or affected party believes may be of significance to the decision of the competent authority during the comment periods provided for; and
  - (c) disclose any competitive or direct financial interest that the interested and affected party may have in the approval or refusal of an application.
- (6) The competent authority must –
- (a) ensure that officers or agents employed by the competent authority to evaluate any reports submitted in terms of these regulations have-
    - (i) knowledge in the area of environmental matters and integrated environmental management;
    - (ii) the ability to perform the evaluation tasks contemplated in these regulations efficiently; and
    - (iii) a good working knowledge of all relevant policies, legislation, guidelines, norms and standards;
  - (b) ensure that the evaluation and decisions required in terms of these regulations are done or reached efficiently and within the timeframes indicated in these regulations, or where timeframes are not indicated, within a reasonable time, and that the applicant is informed immediately of any delay and is provided with a written explanation for any delay that may occur;
  - (c) provide the applicant, on request, with access to any guidelines or information that is relevant to the application and is in the possession of the competent authority, that may assist the applicant in fulfilling its obligations in terms of these regulations;

- (d) keep the inputs required from the applicant to the minimum that are necessary to make an informed decision on the application, without putting any limitation on the rights that interested parties may have in terms of these regulations;
  - (e) inform the applicant of the nature and extent of the public participation process to be followed in the compiling of any report required in terms of these regulations;
  - (f) maintain a register of all applications received in terms of these regulations and in terms of which an environmental authorisation has been issued;
  - (g) adhere to the time periods specified in these regulations unless the competent authority informs the applicant or appellant of a delay; and
  - (h) in considering any report in terms of these regulations, take into account the principles set out in section 2 of the Act as well as any relevant guidelines published by a national or provincial department.
- (7) The competent authority may develop and publish guidelines or policies in respect of an activity, group of activities or the processes contemplated in these regulations, with the aim of ensuring efficiency and the protection of the environment.
- (8) Any guidelines or policies that have been developed and published in terms of subregulation (7) above shall be taken into account when preparing any report required by these regulations and any proposed deviation from a guideline or policy must be justified.

## **5. Applications**

- (1) Any person who intends undertaking an activity listed in Schedules 3 or 4 or in an area identified in Schedule 1 must submit an application form together with the prescribed fee and undertake an initial assessment process as contemplated in these regulations.
- (2) Any person who intends undertaking an activity listed in Schedule 2 and in respect of which an environmental impact assessment is required, must submit an application form together with the prescribed fee, and may include a plan of study for environmental impact assessment as contemplated in these regulations, together with the application.
- (3) Where an activity is listed in Schedule 2, but the applicant believes that the environmental impact of the applicant's proposed activity is known and of a limited nature, the applicant may request the competent authority, in writing, to grant permission to compile an initial assessment report.

- (4) Where an activity is listed in Schedules 3 or 4 or will be undertaken in an area identified in Schedule 1 and the applicant believes that the environmental impact of the applicant's proposed activity is of such a nature that it is unlikely that the competent authority will be able to reach a decision if an initial assessment process is followed, the applicant may request the competent authority, in writing, to grant permission to compile a plan of study for environmental impact assessment and to undertake an environmental impact assessment contemplated in regulation 9
- (5) Applications must be made on the relevant application form obtainable from the competent authority.
- (6) Any person who intends undertaking two or more activities on the same property or as part of the same development proposal must submit a combined application form for the purposes of complying with these regulations.
- (7) Any person who intends undertaking more than one of the same type of activity may request the competent authority for permission to submit a combined application form and undertake a consolidated process in respect of those activities.
- (8) Where the competent authority grants permission for an applicant to submit a combined application form, the competent authority may issue one environmental authorisation or notification of rejection of the application.
- (9) The competent authority shall be the environmental authority in the province in which the activity is to be undertaken unless it is an application for an activity contemplated in section 24C(2) of the Act in which case the competent authority shall be the Minister.
- (10) Any dispute or disagreement concerning the competent authority to which an application should be submitted shall be referred to the Minister.

## **6. Assessment of applications**

- (1) On receipt of an application, the competent authority must within 10 days –
  - (a) acknowledge receipt of the application; or
  - (b) notify the applicant if the applicant has incorrectly applied for initial assessment.
- (2) An application form which is submitted without containing the information required by the competent authority in the application form or any guideline which has been developed by the competent authority in respect of the submission of applications may be referred back to the applicant by the competent authority.

- (3) In the event of the application form being referred back to the applicant on the grounds that it does not contain the information required by the competent authority, the resubmission of the application will be deemed to be a new application and will be subject to payment of the prescribed fee referred to in regulation 5.

## **7. Initial Assessment**

- (1) An applicant who wishes to undertake an activity listed Schedules 3 or 4 or in an area identified in Schedule 1 must appoint an environmental assessment practitioner to conduct a public participation process and to compile an initial assessment report.
- (2) Unless agreed otherwise by the competent authority, the environmental assessment practitioner shall follow any relevant guidelines developed by the competent authority in respect of public participation and shall at least –
- (a) inform the following people that an application will be submitted to the competent authority in terms of these regulations and the manner in which such persons may make representations-
    - (i) adjacent landowners or occupiers of adjacent land,
    - (ii) landowners and occupiers of land in the vicinity who may be directly affected by the proposed activity, and
    - (iii) ward councils, or organisations that represent the community in the area;
  - (b) place a notice indicating that an application will be submitted to the competent authority in terms of these regulations on the land where the applicant proposes to undertake the activity and in the format indicated by the competent authority;
  - (c) place a notice in at least one local newspaper indicating that an application will be submitted to the competent authority in terms of these regulations in the format indicated by the competent authority; and
  - (d) where the proposed activity may have impacts that are not only localised, place a notice in at least one provincial or national newspaper indicating that an application will be submitted to the competent authority in terms of these regulations in the format indicated by the competent authority.
- (3) The initial assessment report must –
- (a) contain the information specified in regulation 15;

- (b) include a comments and response report containing the information specified in regulation 21;
  - (c) be made in the form;
  - (d) contain the information; and
  - (e) be accompanied by the prescribed fee;  
determined by the competent authority.
- (4) The competent authority may specify the form and additional requirements regarding the contents of an initial assessment report and a comments and response report.
- (5) The competent authority may require that the requirements of an initial assessment report be submitted together with, or as part of the application form, in which instance, the competent authority shall take the decisions contemplated in regulation 6 and subregulation (6) concurrently.
- (6) After an initial assessment report has been received by the competent authority, the competent authority may decide within 30 days -
- (a) that the information contained in the initial assessment report is sufficient for the consideration of the application without further investigation;
  - (b) that further or additional information or investigation is required before a decision can be reached on the application; or
  - (c) that the information contained in the initial assessment report is insufficient to make a decision on the grounds that it does not furnish the information required in terms of these regulations, any guidelines which have been developed in respect of the activity which is the subject of the application or specified by the competent authority.
- (7) Where the competent authority decides in terms of subregulation (6)(a) that the initial assessment report contains sufficient information to make a decision, the competent authority may –
- (a) grant authorisation with any conditions; or
  - (b) refuse authorisation.
- (8) Where the competent authority decides in terms of subregulation (6)(b) that further or additional information or investigation is required before a decision can be reached because –
- (a) the issues and potential impacts are unclear;

- (b) more detailed information is required in respect of the proposed activity;
- (c) more detailed information in respect of any environmental aspect, including a social or cultural impact, is required;
- (d) more information is required on alternatives to the activity, or
- (e) more comprehensive public participation is required,

the competent authority must advise the applicant that the information is insufficient to make a decision, stating the reasons for reaching the decision, and advising the applicant to comply with the provisions of regulation 8 or instruct the applicant to furnish only the information specified by the competent authority.

- (9) Where the competent authority decides in terms of subregulation (6)(c) that the information contained in the initial assessment report is insufficient to make a decision on the grounds that it does not furnish the information required, the competent authority may notify the applicant and refer the initial assessment report back to the applicant.
- (10) In the event of the initial assessment report being referred back to the applicant in terms of subregulation (9), the resubmission of the application will be deemed to be a new application and will be subject to payment of the prescribed fee.

#### **8. Plan of study for assessment and issues report**

- (1) The applicant must appoint an environmental assessment practitioner to compile a plan of study for environmental impact assessment containing the information specified in regulation 16.
- (2) On receipt of an application for environmental impact assessment, the competent authority must request the applicant to prepare a plan of study for environmental impact assessment if the applicant has not submitted a plan of study for environmental impact assessment together with the application form.
- (3) On receipt of a plan of study for environmental impact assessment, the competent authority may, within 30 days –
  - (a) accept the plan of study for environmental impact assessment submitted by the environmental assessment practitioner and instruct the applicant to submit an issues report before preparing an environmental impact assessment report;

- (b) accept the plan of study for environmental impact assessment prepared by the environmental assessment practitioner and advise the applicant to proceed with the activities contemplated in the plan of study for environmental impact assessment;
  - (c) request the applicant to make such amendments that the relevant authority may require to accept the plan of study for environmental impact assessment; or
  - (d) refer the plan of study for environmental impact assessment back to the applicant where it does not contain the information specified in regulation 16 and advise the applicant that the report must be resubmitted with the requisite information.
- (4) An issues report must contain the information specified in regulation 17 and –
- (a) be made in the form;
  - (b) contain the information; and
  - (c) be accompanied by the prescribed fee;  
determined by the competent authority.
- (5) The competent authority may, after receiving an issues report, within 30 days –
- (a) accept the report;
  - (b) request the applicant to make the amendments that the relevant authority requires to accept the report; or
  - (c) reject the report because it does not contain the information required in terms of these regulations or specified by the competent authority .
- (6) In the event of the issues report being rejected on the grounds that it does not contain the information required in terms of these regulations, the applicant will be required to resubmit the report with the complete information.

## **9. Environmental impact assessment**

- (1) The applicant must appoint an environmental assessment practitioner to compile an environmental impact assessment report.
- (2) Where the competent authority has notified the applicant in terms of regulation 7(8) to comply with the provisions of this regulation, or where the competent authority has accepted a plan of study for environmental impact assessment or issues report, the environmental assessment practitioner must submit an environmental impact assessment report which contains the information specified in regulation 18, including an environmental management plan which indicates how potential impacts will be mitigated:

provided that where the competent authority has instructed the applicant to submit a draft environmental impact assessment report, the applicant shall do so prior to submitting an environmental impact assessment report.

- (3) The environmental impact assessment report must contain the information specified in regulation 18 and –
  - (a) be made in the form;
  - (b) contain the information; and
  - (c) be accompanied by the prescribed fee;  
determined by the competent authority.
- (4) The competent authority may, within 45 days after receiving the environmental impact assessment –
  - (a) accept the report;
  - (b) request the applicant to make the amendments that the relevant authority requires to accept the environmental impact assessment report; or
  - (c) reject the report because it does not contain the information required in terms of these regulations or specified by the competent authority.
- (5) In the event of the environmental impact assessment report being referred back to the applicant on the grounds that it does not contain the information required in terms of these regulations or specified by the competent authority, the applicant will be required to resubmit the report with the complete information.
- (6) The competent authority may appoint external specialist reviewers to review the environmental impact assessment report, or parts thereof and instruct such reviewers to issue a report on their findings, before making a decision.
- (7) On receipt of the environmental impact assessment report which the competent authority has accepted or, where the environmental impact assessment report has been referred for external specialist review, on receipt of the findings of the specialist reviewer, the competent authority may within 60 days –
  - (a) grant authorisation with any conditions; or
  - (b) refuse authorisation.

**10. Considerations for issue of environmental authorisations**

- (1) In considering an application, the competent authority must take into account all relevant factors, which shall include -
  - (a) the principles of the National Environmental Management Act,
  - (b) the objectives of any environmental or applicable other management plans,
  - (c) the pollution being or likely to be caused by the carrying out of the activity or work concerned and the likely impact of that pollution on the environment,
  - (d) the cumulative impacts to which the activity may contribute,
  - (e) the environmental opportunity costs that may arise as a result of the activity,
  - (f) the practical measures that could be taken-
    - (i) to prevent, control, abate or mitigate that pollution, and
    - (ii) to protect the environment from harm as a result of that pollution,
  - (g) any documents accompanying the application, including any submission from an interested and affected party; and
  - (h) any regulations or guidelines issued by the Minister or competent authority relating to the exercise of functions under these regulations.
- (2) The competent authority may also take into account the following –
  - (a) any environment policies, or
  - (b) any economic or social policies that contribute to sustainable development.

**11. Decisions of competent authority**

- (1) After the competent authority has reached a decision in respect of an application for environmental authorisation, it must –
  - (a) notify the applicant of the decision;
  - (b) give written reasons for the decision;
  - (c) instruct the applicant to notify all interested and affected parties of the decision within a determined time period; and
  - (d) draw the applicant's attention to the appeal provisions contained in these regulations.

**12. Requirements of environmental authorisations**

- (1) An environmental authorisation issued in terms of these regulations must specify-
  - (a) the name, address and telephone number of the applicant to whom the authorisation is issued;
  - (b) a description of the activity which is being undertaken or is to be undertaken;
  - (c) a detailed description of the property or properties, location and area where the activity will be undertaken;
  - (d) the conditions of the authorisation, including –
    - (i) conditions regarding the ongoing management and monitoring of the impacts of the activity throughout the life cycle of the activity; and
    - (ii) transfer of rights and obligations when there is a change of ownership of the property and a provision that the conditions in any environmental authorisation shall be binding on any person to who the authorisation is transferred.
- (2) An environmental authorisation contemplated in these regulations may -
  - (a) where appropriate, specify the duration for which the authorisation is valid;
  - (b) require the holder of the authorisation to supply the appropriate competent authority with a statement that is certified by the holder or by another person approved by that authority as correct and that states all or any of the following:
    - (i) the extent to which the conditions of the authorisation have or have not been complied with,
    - (ii) particulars of any failure to comply with the conditions,
    - (iii) the reasons for any failure to comply with the condition,
    - (iv) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure;
  - (c) require that the holder of the authorisation must furnish financial or asset security for any mitigation or rehabilitation measures contained in the authorisation.

**13. Application for transfer of an environmental authorisation**

- (1) If there is a change of ownership in the property where an activity takes place and which is authorised in terms of these regulations, the holder of the environmental authorisation must –
  - (a) notify the competent authority of the change of ownership; and

- (b) comply with any conditions in the environmental authorisation relating to the transfer of rights and obligations.

#### **14. Variation of environmental authorisations**

- (1) The competent authority may at any stage vary an environmental authorisation, including the conditions of an environmental authorisation, –
  - (a) if it is necessary or desirable to prevent deterioration of the environment;
  - (b) if it is necessary or desirable for the purposes of achieving prescribed standards;
  - (c) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
  - (d) at the request of the holder of the environmental authorisation; or
  - (e) on transfer of an environmental authorisation.
- (2) A variation includes the attaching of a condition to an environmental authorisation, the substitution of a condition, the removal of a condition or the amendment of a condition.
- (3) An environmental authorisation may be varied at any time during its currency, including on its being transferred to another person.
- (4) An environmental authorisation is varied by notice in writing given to the holder of the environmental authorisation.
- (5) Where the holder of an environmental authorisation has requested the competent authority to vary an environmental authorisation, the competent authority may request the holder to pay the prescribed fee and to furnish such additional information or undertake such studies as it deems necessary to reach a decision on the request for variation.
- (6) Where the holder of an environmental authorisation has requested the competent authority to vary an environmental authorisation, the competent authority shall require the person applying for variation to take such steps as the competent authority deems necessary to bring the application to the attention of relevant organs of state, interested and affected persons and the public and to provide such persons with an opportunity to submit comment on the application.

**15. Contents of initial assessment report**

Initial assessment reports must contain at least the following information:

- (a) the name or names of the author or authors,
- (b) the qualifications, relevant experience and details of registration with any environmental assessment authority of the author or authors,
- (c) a description of the activity;
- (d) a description of the need and desirability of the activity;
- (e) the need for the activity with specific reference to the benefits it will have to society in general and the community where it will be located in particular;
- (f) facility information including:
  - (i) the site position, co-ordinates and geographic area;
  - (ii) the site plan at an appropriate scale that includes details in respect to the aspects that should be included on the site plan;
- (g) a site assessment which should include an assessment of:
  - (i) land forms;
  - (ii) visual character;
  - (iii) land use character sensitivity;
  - (iv) sensitive environmental elements on and surrounding the site;
  - (v) gradient of the site;
  - (vi) ground cover of the site, including whether the cover is natural or not;
  - (vii) the occurrence of rare and endangered flora or fauna species;
  - (viii) basic information on the soil conditions and geology;
  - (ix) erosion potential of the site;
  - (x) the prevalence of cultural and/or historical features,
  - (xi) social impacts,
  - (xii) cultural impacts; and
  - (xiii) details of public consultation in accordance with the requirements of regulation 15;
- (h) potential construction phase impacts which must include:
  - (i) waste and pollution management; and
  - (ii) site services including ablution and temporary construction facilities.

- (i) an environmental impact statement that makes provision for:
  - (i) a short description of the anticipated environmental impact; and
  - (ii) the inclusion of environmental management and mitigation measures proposed by the applicant and which set out the information required in regulation 22.
- (j) high resolution colour photographs must be provided in a specified manner.
- (k) declarations by both the environmental assessment practitioner and the applicant certifying the correctness and completeness of information contained in the form.
- (l) A description of legislation, policies and guidelines which are relevant to the application.

#### **16. Contents of plan of study for environmental impact assessment**

- (1) A plan of study for environmental impact assessment must include –
  - (a) a detailed description of the activity to be undertaken;
  - (b) a description of all tasks to be undertaken as part of the assessment process, including any specialist reports or specialised processes;
  - (c) a schedule setting out the tasks to be performed during assessment;
  - (d) an indication of the stages at which the competent authority will be consulted;
  - (e) a description of the proposed method of identifying the environmental issues and alternatives, including the no-go option; and
  - (f) the nature and extent of any public participation processes.

#### **17. Contents of issues report**

An issues report that is submitted to the competent authority in terms of these regulations must include-

- (a) the name or names of the author or authors,
- (b) the qualifications and relevant experience of the author or authors,
- (c) a description of the proposed project;
- (d) a brief description of how the physical, social and cultural environment may be affected;
- (e) a description of environmental issues identified;
- (f) a description of all alternatives identified; and

- (g) an appendix containing a description of the public participation process followed, including a list of interested parties, their comments and a copy of their comments where they have been made in writing.

## **18. Contents of environmental impact assessment reports**

- (1) An environmental impact assessment report that is submitted to the competent authority in terms of these regulations must contain -
  - (a) the name or names of the author or authors;
  - (b) the qualifications, relevant experience and details of registration with any environmental assessment authority of the author or authors;
  - (c) a detailed description of the proposed activity;
  - (d) a motivation for the proposed activity, including a description of the need and desirability, and
  - (e) a summary of the potential benefits and negative impacts that will arise out of the proposed activity to the applicant, community and environment.
- (2) Where the environmental impact assessment has been preceded by an initial assessment or issues report, the environmental impact assessment report must also contain –
  - (a) a description of the environment reflected in the initial assessment report,
  - (b) a list of issues identified in the initial assessment or issues process,
  - (c) a list of potential impacts indicated in the initial assessment or issues process,
  - (d) a list of feasible alternatives identified in the issues report, if any, and
  - (e) a summary of public consultation and participation processes conducted, including a comments and response report.
- (3) Where the environmental impact assessment has not been preceded by a initial assessment or issues report, the environmental impact assessment report must contain –
  - (a) information on the project, including the site position, location and a site plan at an appropriate scale that includes details in respect to the aspects that should be included on the site plan,
  - (b) a comprehensive site and area assessment that includes physical, social and cultural aspects;

- (c) details of public consultation
- (d) a description of the environmental issues identified,
- (e) a description and comparative assessment of all alternatives identified,
- (f) a summary of the findings of any specialist studies,
- (g) a summary of the findings of any specialised processes,
- (h) an assessment of each identified potentially significant impact in terms of the:
  - (i) nature of the impact,
  - (ii) extent of the impact in terms of spatial size or area of influence,
  - (iii) duration of the impact,
  - (iv) intensity of the impact,
  - (v) probability of the impact actually occurring,
  - (vi) degree to which the impact can be mitigated,
  - (vii) degree to which the impact can be reversed when the activity is terminated, and
  - (viii) the significance of the impact based the information listed in (i) to (vii) above,
- (i) assessment of each issue indicating the –
  - (i) significance of the issue based on the impacts that will arise from the activity;
  - (ii) extent to which the issue is addressed by mitigation; and
  - (iii) determination of whether the issue caused by the activity will cause external costs that must be borne by society or individuals;
- (j) a description of assumptions, uncertainties and gaps in knowledge,
- (k) an environmental impact statement that 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.
- (l) an environmental management plan that contains the information specified in regulation 22.

- (m) appendices containing copies of all applicable project documentation including completed application forms, initial assessment report, plan of study for environmental impact assessment, specialist reports, reports on specialised processes and a comments and response report.

#### **19. Contents of specialist reports**

- (1) Specialist reports, undertaken as part of an environmental impact assessment must contain -
  - (a) the field of specialisation covered by the report;
  - (b) the name or names of the specialist or specialists;
  - (c) the qualifications and relevant experience of the specialist or specialist;
  - (d) a description of the terms of reference and purpose of the specialist report in the context of the application;
  - (e) a description of the methodology followed in compiling the report;
  - (f) a description of the findings;
  - (g) a description of the implications of the report for the application;
  - (h) a description of any recommended mitigation measures related to the area of study; and
  - (i) a description of public consultation processes undertaken during the research undertaken in compiling the report, if any; and
- (2) a description of assumptions, uncertainties and gaps in knowledge.

#### **20. Contents of reports on specialised processes**

Reports on specialised processes undertaken as part of an environmental impact assessment, must contain:

- (a) the type of specialised process covered by the report;
- (b) the name or names of the author or authors,
- (c) the qualifications and relevant experience of the author or authors,
- (d) a description of the terms of reference and purpose of the specialist process,

- (e) a description of the methodology followed in compiling the report,
- (f) a description of the findings;
- (g) a description of any mitigation measures;
- (h) a description of the public consultation process which was conducted as part of the specialised process;
- (i) a description of the implications of the findings for the application;
- (j) a description of uncertainties and gaps in knowledge; and
- (k) a list of all references used.

## **21. Contents of comments and response reports**

A comments and response report must contain –

- (a) details regarding the notification of the application to potentially interested and affected parties,
- (b) proof of any advertisements that were placed soliciting comments from potentially interested and affected parties,
- (c) an indication of steps which were taken to ensure that any physical signs on the property advertising the application remained visible;
- (d) proof of the notification of the application to all organs of state that have jurisdiction over the activity contemplated in the application,
- (e) list the names of the persons or organisations that registered as interested and affected parties;
- (f) the name of each person or organisation that commented in writing, fax, e-mail verbally or telephonically,
- (g) the date of each comment received,
- (h) the date and method of response to each comment,
- (i) a list of comments received from each person or organisation in the left hand side column of two columns,
- (j) a response to each comment next to the comment in the right hand side column of two columns; and
- (k) copies of any minutes and workshop proceedings.

**22. Contents of environmental management plan**

- (1) An environmental management plan must include –
- (a) the name of the person responsible for preparing the environmental management plan;
  - (b) the qualifications and relevant experience of the person responsible for the drafting of the environmental management plan;
  - (c) the allocation of responsibilities for all aspects of the environmental management plan;
  - (d) information on proposed approaches to managing and mitigating environmental impacts;
  - (e) a detailed description of the activities which will be covered by the environmental management plan;
  - (f) a detailed description of the environment that will be affected by the activity;
  - (g) supporting maps and plans, where appropriate;
  - (h) management and mitigation responses to all issues and impacts identified in the environmental impact assessment report, including -
    - (i) planning and design,
    - (ii) establishment on site and pre-construction or pre-implementation,
    - (iii) construction or implementation,
    - (iv) rehabilitation, and
    - (v) operation;
  - (i) provisions for the periodic monitoring or auditing and reporting to the competent authority;
  - (j) provision for an incident recording and reporting system;
  - (k) periodic review and updating of the environmental management plan; and
  - (l) financial guarantees for adequate funding for the execution of the plan.

**23. Exemptions**

- (1) Any person may, in writing, apply for exemption from the application of any provision of these regulations to the competent authority.

- (2) An application for exemption shall comply with any written guideline, which the competent authority has produced with a view to facilitating administrative efficiency, consistency in applications and informed decision-making.
- (3) The application in terms of subregulation (1) must be accompanied by reasons.
- (4) In order to enable the competent authority to make a decision on an application for exemption, the competent authority may call for further information from the applicant.
- (5) The competent authority may require an applicant applying for exemption to take such steps as the competent authority deems necessary to bring the application to the attention of relevant organs of state, interested and affected persons and the public.
- (6) The competent authority may, after considering an application, within 60 days and in writing –
  - (a) refuse to grant exemption; or
  - (b) grant exemption from compliance with any or all of the provisions of these regulations, subject to such conditions as it may deem fit.
- (7) The competent authority may from time to time review any exemption granted or condition determined, and if it deems it necessary, withdraw such exemption or delete or amend such condition, or add new conditions.

#### **24. Compliance and enforcement**

- (1) Any of the compliance and enforcement mechanisms provided for in section 28 and Chapter 9A of the Act shall apply to these regulations, as read with the necessary changes.
- (2) If any condition contained in an authorization or exemption is not complied with, the Minister or competent authority, as the case may be, may in writing withdraw the authorization or exemption concerned or at his discretion determine new conditions, or take such other steps as are provided for in law.

#### **25. Environmental audits**

- (1) The competent authority may require any person to submit an environmental audit conducted by an independent person in a form indicated by the competent authority and to the satisfaction of the authority where the competent authority reasonably suspects that the person has on one or more occasions contravened the conditions of an

environmental authorisation and that the contravention or contraventions have caused, or are likely to cause harm to the environment.

- (2) Any information in an audit report or other documentation supplied to the competent authority in connection with an audit may be taken into consideration by the competent authority and used for the purposes of these regulations.
- (3) Any person who fails to submit information or submits false or misleading information during the compilation of the audit shall be guilty of an offence, whether or not the information, or failure to furnish the information, might incriminate that person.

## **26. Use of information or statements**

- (1) Any information or statements supplied to the appropriate competent authority as required by these regulations or the Act, may be taken into consideration by that authority and used for the purposes of these regulations or the Act.
- (2) Without limiting (1) above, any such information and statements are admissible as evidence in any prosecution for any offence in terms of Chapter 5 of the Act or these regulations, whether or not the information or statements might incriminate that person.

## **27. Offences**

- (1) In addition to any offences contained in the Act, the following shall be offences for the purposes of these regulations –
  - (a) Any person who supplies information, or on whose behalf information is supplied, to the appropriate competent authority is guilty of an offence if the information is false or misleading in a material respect;
  - (b) The failure to comply with a condition of an exemption shall constitute an offence.

## **28. Penalties**

The penalties as prescribed in the Act, as amended, will be applicable to these regulations.

## **29. Interdict or other order by High Court**

A High Court may, on application by the Minister or MEC, grant an interdict or any other appropriate order against any person who has contravened any provision of these regulations, including an order to discontinue any activity constituting the contravention and to remedy the adverse effects of the contravention.

### 30. Appeal

- (1) Any affected person may appeal against a decision as provided for by the Act.
- (2) An appeal must be made within 30 days after –
  - (a) the environmental authorisation is issued or any provision or condition of such authorisation forming part of the subject of the appeal is issued to the applicant; or
  - (b) notice of the decision forming the subject of the appeal has been sent to the appellant by the applicant,whichever occurs last.
- (3) Any applicant who appeals a decision shall give a copy of his appeal to those interested or affected parties specified by the competent authority.
- (4) The competent authority shall furnish a copy of any appeal received from a person other than the applicant to the applicant.
- (5) Any person receiving notification of an appeal in terms of subregulation (3) or (4) shall be entitled to submit a response to the appeal to the Minister or MEC within 30 days of such receipt.
- (6) An appeal shall be made in writing and shall at least contain –
  - (a) the name of the appellant,
  - (b) the grounds of the appeal,
  - (c) any supporting documentation which is referred to in the appeal and which is not in the Minister or MEC's possession,
  - (d) proof that a copy of the appeal has been given to interested and affected parties, where the appellant is the applicant for an environmental authorisation or exemption, and
  - (e) any other information specified in a guideline published by the competent authority.
- (7) After receipt of an appeal, the Minister or MEC shall -
  - (a) acknowledge receipt of the appeal within 10 days,
  - (b) advise the appellant, or other persons who have responded to the appeal, that a process set out in a guideline, if any, will be followed,
  - (c) advise the appellant, or other persons who have responded to the appeal, if further information is required,
  - (d) advise the appellant, or other persons who have responded to the appeal, if the appeal will be referred to an appeal panel, and

- (e) reach a decision within 60 days of being in possession of all the relevant information, including any recommendations of an appeal panel, which he requires to reach a decision.
- (8) Notwithstanding the provisions of subregulation (2), the competent authority may condone late submission of appeals on good cause shown, including where the appellant was unaware that the competent authority had issued a decision, within 60 days of –
  - (a) the environmental authorisation is issued or any provision or condition of such authorisation forming part of the subject of the appeal is issued to the applicant; or
  - (b) notice of the decision forming the subject of the appeal has been sent to the appellant by the applicant,whichever occurs last.
- (9) A decision of the Minister or MEC must be in writing and must indicate –
  - (a) the reasons for the decision; and
  - (b) the extent to which the decision being appealed against is upheld or overturned.

### **31. Limitation of liability.**

Neither the State nor any other person is liable for any damage or loss caused by-

- (a) the exercise of any power or the performance of any duty under these regulations; or
- (b) the failure to exercise any power, or perform any functions or duty under these regulations,
- (c) unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

### **32. Repeal of regulations**

The regulations passed in terms of the Environment Conservation Act, 1989, (Act No. 73 of 1989) in Government Notices R. 1182, R.1183 and R.1184 of 5 September 1997 as amended will be repealed on the commencement date of these regulations.

### **33. Transitional arrangements**

The transitional arrangements as prescribed in the Act, as amended, will be applicable to these regulations.

### **34. Commencement**

These regulations commence on a date determined by the Minister in the *Gazette*.