

No. 393

4 May 2007

The Minister of Environmental Affairs and Tourism hereby publishes the first amendment draft to the National Environmental Management Environmental Impact Assessment Regulations, 2006, which provides for the further regulation of environmental impact assessments, environmental authorizations and incidental matters. More details are set out in the explanatory memorandum and the attached Schedule.

Written comments and inputs are invited from interested parties and the general public, which must be submitted to:

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THE CLOSING DATE FOR COMMENTS IS 4 JUNE 2007. COMMENTS RECEIVED AFTER THE CLOSING DATE WILL NOT BE CONSIDERED.

EXPLANATORY MEMORANDUM

The Minister of Environmental Affairs and Tourism has in terms of section 24(5) read with section 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("the Act"), made the Environmental Impact Assessment Regulations, 2006, published in Government Notice No. R. 385 of 21 April 2006.

The Minister has furthermore, published, in Government Notice No. R. 386 of 2006, a list of activities identified in terms of section 24(2)(a) and (d) of the Act, which may not commence without environmental authorisation from the competent authority and in respect of which the investigation, assessment and communication of potential impact of activities must follow the procedure as described in regulations 22 to 26 of the Environmental Impact Assessment Regulations, 2006, promulgated in terms of section 24(5) of the Act.

The Minister has furthermore, published, in Government Notice No. R. 387 of 21 April 2006, a list of activities identified in terms of section 24(2)(a) and (d) of the Act, which may not commence without environmental authorisation from the competent authority and in respect of which the investigation, assessment and communication of potential impact of activities must follow the procedure as described in regulations 27 to 36 of the Environmental Impact Assessment Regulations, 2006, promulgated in terms of section 24(5) of the Act.

The Environmental Impact Assessment Regulations, 2006 are currently implemented by both the provincial and national spheres of government. Since the time when the regulations came into effect, vast amounts of enquiries in respect of these regulations, as well as a number of implementation workshops held with provinces, highlighted a number of amendments that are necessary to the Environmental Impact Assessment regulations. Such proposed amendments range from purely editorial corrections and augmenting certain definitions to specific amendments to certain listed activities in order to clarify which activities should be included to undergo an assessment process or the exclusion of certain listed activities which should not undergo an assessment process.

The Minister of Environmental Affairs and Tourism, after consultation with the relevant competent Provincial Authorities, hereby publishes for public comment proposed amendments to the regulations published in Government Notice No. R. 385 of 21 April 2006 as set out in the Schedule.

SCHEDULE

General Explanatory Note

"[]" Words in bold type in square brackets indicate omissions from existing enactments.

"__" Words underlined with a solid line indicate insertions in existing enactments.

Definition

1. In these Regulations-

"**the Act**" means the National Environmental Management Act, 1998 (Act No.107 of 1998); and

"**the Regulations**" means the Environmental Impact Assessment Regulations, 2006 published in Government Notice No. R. 385 of 21 April 2006.

Substitution of regulation 5 of the Regulations

2. The following regulation is hereby substituted for regulation 5 of the Regulations:

"Assistance by competent authorities to applicants

5. A competent authority may, on its own initiative, or on request by an applicant or an EAP managing an application, and subject to the payment of any reasonable charges –

- (a) give the applicant or EAP access to any guidelines and information on practices that have been developed or to any other information in the possession of the competent authority that is relevant to the application; or
- (b) advise the applicant or EAP, either in writing or by way of discussions, of the nature and extent of any of the processes that must be followed in order to comply with the Act and these Regulations.”

Substitution of regulation 9 of the Regulations

3. The following regulation is hereby substituted for regulation 9 of the Regulations:

“Timeframes for competent authorities

9. (1) A competent authority must strive to meet timeframes applicable to competent authorities in terms of these Regulations.
- (2) A competent authority may consider the reasonable extension of a timeframe applicable to the issuing or refusal of an environmental authorization or an appeal submitted in terms of these regulations where the applicable timeframe fall within an extended holiday period or festive season.
- (3) If the competent authority is an organ of state acting under delegated powers and duties in terms of section 42 or 42A of the Act and that organ of state is unable to meet any timeframe set by a provision of these Regulations, the delegated organ of state must notify the Minister or MEC.
- (4) The applicant or EAP managing the environmental assessment process must give consideration to applicable timeframes, which fall within an extended holiday or festive season period. “

Substitution of regulation 15 of the Regulations

4. The following regulation is hereby substituted for regulation 15 of the Regulations:

“Combination of applications

15. (1) If an applicant intends undertaking two or more activities as part of the same development, a single application on one application form must be submitted in respect of all those activities.
- (2) If an applicant intends undertaking more than one activity of the same type at different locations in the same province, different applications in respect of the different locations must be submitted, but the competent authority may, at the written request of the applicant, grant permission for the submission of a single application in respect of all those activities, whether or not the application is submitted on one or more application forms.
- (3) If the competent authority grants permission in terms of sub regulation (2), the application must be dealt with as a consolidated process in respect of all the activities covered by the application, but the potential environmental impacts of each activity must be considered in terms of the location where the activity is to be undertaken.
- (4) If an applicant intends undertaking a development which has a single component that is a listed or specified activity, the entire development must be assessed as part of the relevant environmental assessment process.”

Substitution of regulation 16 of Regulations

5. The following regulation is hereby substituted for regulation 16 of the principal Regulation:

“Activities on land owned by person other than applicant

- 16(1) If the applicant is not the owner of the land on which the activity is to be undertaken, the applicant must, before applying for an environmental authorisation in respect of that activity, **[obtain the written consent of the landowner to undertake the proposed activity on that land]** give written notice of the proposed activity to the owner of the land on which the activity is to be undertaken, and inform the owner of the land that he may participate in the public participation process as contemplated in regulation 56.
- (2) A written **[consent]** notice as contemplated in sub regulation (1) must be in a form agreed to or determined by the competent authority and such form must be submitted to the competent authority as proof that sub regulation (2) has been complied with.
- [(3) Sub regulation (1) does not apply in respect of a linear activity, provided the applicant has given notice of the proposed activity to the owners of the land on which the activity is to be undertaken as soon as the proposed route or alternative routes have been identified.]”**

Amendment of regulation 22 of the Regulations

6. Regulation 22 is hereby amended by –

- (a) the deletion of paragraph (b) of subregulation (1);
- (b) the addition of the following subregulation (2);

“(2) If basic assessment must be applied to an application, the applicant or EAP managing the application must before submitting the application to the competent authority give notice, in writing, of the proposed application to –

- (a) the competent authority; and

- (b) any organ of state which has jurisdiction in respect of any aspect of the activity."

Amendment of regulation 23 of the Regulations

7. The addition of subregulation (3) after subregulation (2) of regulation 23 of the principal Regulation:

- "(3) In addition, a basic assessment report must take into account –
- (a) any relevant guidelines; and
 - (b) any **[practices]** departmental policies and decision making instruments that have been developed by the competent authority in respect of the kind of activity which is the subject of the application."

Amendment of subregulation (1) regulation 29 of the Regulations

8. Subregulation (1) of regulation 29 of the Regulations is hereby amended by the addition of the following paragraph after paragraph (h):

- "(i) a description of the need and desirability of the proposed activity and identified potential alternatives to the proposed activity, including advantages and disadvantages that the proposed activity or alternatives may have on the environment and the community that may be affected by the activity;"

Substitution of subregulation (3) regulation 53 of the Regulations

9. The following subregulation is hereby substituted for subregulation (3) of regulation 53 of the Regulations:

“(3) The competent authority must, within thirty days of the acknowledgement of the receipt of an application, [promptly] decide the application if the rights or interests of other parties are not likely to be adversely affected by the proposed exemption.”

Substitution of paragraph (d) of subregulation (2) of regulation 54 of the Regulations

10. The following paragraph is hereby substituted for paragraph (d) of subregulation (2) of regulation 54 of the Regulations:

“2(d) the conditions subject to which exemption is granted, [,] including conditions relating to the transfer of the written exemption notice; and”

Amendment of subregulation (2) of regulation 56 of the Regulations

11. The following regulation is hereby substituted for subregulation (2) of regulation 56 of the Regulations:

“(2) The person conducting a public participation process must take into account any guidelines applicable to public participation and must give notice to all potential interested and affected parties of the application which is subjected to public participation by –

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

- (i) the site where the activity to which the application relates is or is to be undertaken; and
 - (ii) any alternative site mentioned in the application;
- (b) giving written notice to –
 - (i) the owners and occupiers of land adjacent to the **[site]** locality where the activity is or is to be undertaken or to any alternative locality where the activity is to be undertaken; and [site];
 - (ii) any other party as instructed by the competent authority.
 - [(ii) the owners and occupiers of land within 100 metres of the boundary of the site or alternative site who are or may be directly affected by the activity;]**

Substitution of regulation 61 of the Regulations

12. The following regulation is hereby substituted for regulation 61 of the Regulations:

“Jurisdiction of Minister and MEC to decide appeals

61. An appeal against a decision must be **[lodged]** submitted with –
- (a) the Minister, if the Minister is the competent authority for the activity in relation to which the decision was taken;
 - (b) the MEC, if the MEC is the competent authority for the activity in relation to which the decision was taken or
 - (c) the delegated organ of state, where relevant.”

Substitution of subregulation (1) of regulation 62 of the Regulations

13. The following subregulation is hereby substituted for subregulation (1) of regulation 62 of the Regulations:

- “(1) A person affected by a decision referred to in regulation 60(1) who wishes to appeal against the decision, must **[lodge]** submit a notice of intention to appeal with the Minister, MEC, or delegated organ of state, as the case may be, within 10 days after that person has been notified in terms of these Regulations of the decision.”

Substitution of subregulation (1) of regulation 63 of the Regulations

14. The following subregulation is hereby substituted for subregulation (1) of regulation 63 of the Regulations:

- “(1) An appeal **[lodged]** submitted to **[with]** –
- (a) the Minister for all decisions taken by the **[must be submitted to the]** Department of Environmental Affairs and Tourism;
 - (b) the MEC for all decisions taken by the **[must be submitted to the]** provincial department responsible for environmental affairs in the relevant province or
 - (c) the delegated organ of state, where relevant, for all decisions taken by **[the] [must be submitted to]** that delegated organ of state.”

Substitution of subregulation (1) of regulation 64 of the Regulations

15. The following subregulation is hereby substituted for subregulation (1) of the regulation 64 of the Regulations:

“(1) An appeal must be submitted to the relevant department within 30 days of submitting [lodging of] the notice of intention to appeal referred to in regulation 62(1).”

Substitution of paragraph (b) of subregulation (2) of regulation 65 of the Regulations

16. The following paragraph is hereby substituted for paragraph (b) of subregulation (2) of regulation 65 of the Regulations:

“(b) If a respondent introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister, MEC or delegated organ of state, as the case may be, within 30 days of being served a copy as per sub regulation (2). [receipt of the responding statement.]”

Substitution of subregulation (1) of regulation 68 of the Regulations

17. The following subregulation is hereby substituted for subregulation 1) of regulation 68 of the Regulations:

“(1) The Minister, MEC or delegated organ of state, as the case may be, must reached a final decision, in writing, on an appeal submitted, within 180 days of receipt of all relevant information, including any statements, supporting documentation, reports or any other additional information requested, or recommendations of an appeal panel which may assist the Minister, MEC or delegated organ of state, as the case may be, in the decision making process.”

Amendment of regulation 79 of the Regulations

18. Regulation 79 of the Regulations is hereby amended by the addition of the following subregulation:

“(7) Sub regulations (1), (2), (3), (4), (5) and (6) must be read together with the provisions of chapter 7 of the principal Act.”

Short title and commencement

19. These Regulations shall be cited as Environmental Impact Assessment Amendment Regulation, 2007 and take effect on a date determined by the Minister by notice in the Government Gazette.