

Activity 20:	Interpretation:
<p>The expansion of runways or aircraft landing strips where the expanded runways or aircraft landing strips will be longer than 1,4 kilometres in length.</p>	<ul style="list-style-type: none"> • Environmental authorisation for this activity is required in an event where this activity is proposed within an identified geographical area only. Geographical areas are province specific and the exclusion of this activity in 1 or more province does not necessarily imply that authorisation is not required in another province(s). • In an event where such an activity falls outside an identified geographical area, this activity cannot be triggered, irrespective the sensitivity of the receiving environment or close proximity thereof to such an identified geographical area. • This excludes the construction of airports, irrespective the size thereof. Refer to Listing Notice 2. • This excludes where the expanded runway or aircraft landing strip will be 1.4km in length or less. • This activity excludes the replacement of like with like on exactly the same footprint. • The widening or extension of runways or aircraft landing strips irrespective the increase of physical footprint or consequent throughput capacity would not trigger this activity. • Demolition and redevelopment of a runway or an aircraft landing strip, outside the existing footprint would trigger construction and not expansion. • The surfacing, hardening or re-surfacing of an existing landing strip or runway does not trigger this activity.

Activity 21:	Interpretation:
<p>The expansion of above ground cableways and funiculars where the development footprint will be increased.</p>	<ul style="list-style-type: none"> • Environmental authorisation for this activity is required in an event where this activity is proposed within an identified geographical area only. Geographical areas are province specific and the exclusion of this activity in 1 or more province does not necessarily imply that authorisation is not required in another province(s). • In an event where such an activity falls outside an identified geographical area, this activity cannot be triggered, irrespective the sensitivity of the receiving environment or close proximity thereof to such an identified geographical area. • No thresholds are prescribed for this activity, meaning that the expansion above ground cableways and funiculars of any size will trigger this activity, provided that this falls within an identified geographical area. • The relocation of an above ground cableway or funicular to another location (even on the same site) will trigger the

	<p>construction activity in the same listing notice.</p> <ul style="list-style-type: none"> • This activity excludes the replacement of like with like on exactly the same footprint. • Demolition and redevelopment of a runway or an aircraft landing strip, outside the existing footprint would trigger construction and not expansion. • This excludes foefieslides and zip lines.
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Activity 22:	Interpretation:
<p>The expansion of tracks or routes for the testing, recreational use or outdoor racing of motor powered vehicles excluding conversion of existing tracks or routes for the testing, recreational use or outdoor racing of motor powered vehicles, where the development footprint will be expanded.</p>	<ul style="list-style-type: none"> • Environmental authorisation for this activity is required in an event where this activity is proposed within an identified geographical area only. Geographical areas are province specific and the exclusion of this activity in 1 or more province does not necessarily imply that authorisation is not required in another province(s). • In an event where such an activity falls outside an identified geographical area, this activity cannot be triggered, irrespective the sensitivity of the receiving environment or close proximity thereof to such an identified geographical area. • No thresholds are prescribed for this activity, meaning that the expansion of such tracks or routes for the testing, recreational use or outdoor racing of motor powered vehicles any size will trigger this activity, provided that this falls within an identified geographical area. • It excludes the conversion of existing tracks or routes for the testing, recreational use or outdoor racing of motor powered vehicles. • The relocation of such tracks or routes to another location (even on the same site) may trigger the construction activity. • This activity excludes the replacement of like with like on exactly the same footprint. • The expansion of 4X4 tracks are covered under this activity. • The trigger is expansion; it is not the physical activity of racing of riding for pleasure that is listed, but the expansion of the facility for that purpose.

Activity 23:	Interpretation:
<p>The expansion of facilities or infrastructure for the storage, or storage and handling of a dangerous</p>	<ul style="list-style-type: none"> • Environmental authorisation for this activity is required in an event where this activity is proposed within an identified

<p>good, where such storage facilities will be expanded by 30 cubic metres or more but less than 80 cubic metres.</p>	<p>geographical area only. Geographical areas are province specific and the exclusion of this activity in 1 or more province does not necessarily imply that authorisation is not required in another province(s).</p> <ul style="list-style-type: none"> • In an event where such an activity falls outside an identified geographical area, this activity cannot be triggered, irrespective the sensitivity of the receiving environment or close proximity thereof to such an identified geographical area. • This excludes the expansion of such a facility, where the increased capacity would be less than 30 cubic metres. • This includes the expansion of such a facility, where the increased capacity would be 30 cubic metres exactly. • This includes the expansion of such a facility, where the increased capacity would be more than 30 cubic metres (provided that the increased capacity is less than 80 cubic metres). • This activity excludes the replacement of like with like on exactly the same footprint. • The size of increased footprint has no relevance to the applicability of this activity. The trigger is increase in the capacity of the facility or infrastructure. • Demolition and redevelopment of a facility outside the existing footprint would trigger construction and not expansion. • Relocation of tanks within the existing footprint of the facility (i.e. tank farm) does not trigger this activity. • In cases where a material or substance falls outside the scope the material as defined in SANS code No 10234, supplement 2008 1.00: designated "List of classification and labeling of chemicals in accordance with the Globally Harmonized System (GHS)" published by South African Bureau of Standards, this activity will not be triggered. • Not all tanks or containers are expanded for the primary purpose of storage. In this regard such a facility expanded for e.g. <i>leaching purposes, galvanizing, acid baths or mixing of chemicals as part of the process is excluded from this activity.</i> • This activity includes either above or underground storage or a combination thereof.
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Activity 24:	Interpretation:
<p>The expansion of :</p> <ul style="list-style-type: none"> (a) jetties where the jetty will be expanded by 10 square metres in size or more; (b) slipways where the slipway will be expanded by 10 square metres or more; (c) buildings where the buildings will be expanded 	<ul style="list-style-type: none"> • Environmental authorisation for this activity is required in an event where this activity is proposed within an identified geographical area only. Geographical areas are province specific and the exclusion of this activity in 1 or more province does not necessarily imply that authorisation is not required in another province(s).

<p>by 10 square metres or more in size; (d) infrastructure where the infrastructure will be expanded by 10 square metres or more where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.</p>	<ul style="list-style-type: none"> • In an event where such an activity falls outside an identified geographical area, this activity cannot be triggered, irrespective the sensitivity of the receiving environment or close proximity thereof to such an identified geographical area. • This activity excludes the replacement of like with like on exactly the same footprint. • Even if such expansion activities is proposed within an identified geographical area, if this is outside a watercourse or further away than 32 metres of a watercourse, measured from the edge of a watercourse, this activity will not be triggered. • This excludes expansion behind the development setback line. • Expansions of activities identified in 24(a)-(d) of less than 10 square meters are excluded. • The increase of height of existing structures where there will not be an increased development footprint will not trigger this activity.
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Activity 25	Interpretation:
<p>The expansion of facilities, infrastructure or structures of any size of any form of aquaculture.</p>	<ul style="list-style-type: none"> • Environmental authorisation for this activity is required in an event where this activity is proposed within an identified geographical area only. Geographical areas are province specific and the exclusion of this activity in 1 or more province does not necessarily imply that authorisation is not required in another province(s). • In an event where such an activity falls outside an identified geographical area, this activity cannot be triggered, irrespective the sensitivity of the receiving environment or close proximity thereof to such an identified geographical area. • No thresholds are prescribed for this activity, meaning that any expansion will trigger this activity.

Activity 26	Interpretation:
<p>Phased activities for all activities listed in this Schedule and as it applies to a specific geographical area, which commenced on or after the effective date of this Schedule, where any phase of the activity may be below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.</p>	<ul style="list-style-type: none"> • This activity applies activities, which commenced on or after the effective date of this Schedule, where any phase of the activity may be below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

INTEGRATED ENVIRONMENTAL MANAGEMENT GUIDELINE SERIES 7

PUBLIC PARTICIPATION IN THE EIA PROCESS

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

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

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

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PREFACE

This document is one of the series of guideline documents on environmental impact management legislation and regulations. It provides guidance on the procedure and the provisions of the public participation process in terms of NEMA and its EIA Regulations as well as other relevant legislation.

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ABBREVIATIONS

BA	Basic assessment
BAR	Basic assessment report
CA	Competent authority
CBO	Community based organisation
DEA	Department of Environmental Affairs
DMR	Department of Mineral Resources
EA	Environmental authorisation
EAP	Environmental assessment practitioner
ECA	Environment Conservation Act (Act No. 73 of 1989)
EIA	Environmental impact assessment
EIR	Environmental impact report
EMF	Environmental management framework
EMP	Environmental management programme
I&APs	Interested and/or affected parties
IEM	Integrated environmental management
MEC	Member of the Executive Council (Provincial government)
MPRDA	Minerals and Petroleum Resources Development Act (Act 28 of 2002)
NEMA	National Environmental Management Act (Act No. 107 of 1998)
PAIA	Promotion of Access to Information Act (Act No. 2 of 2000)
PAJA	Promotion of Administrative Justice Act (Act No. 3 of 2000)
PPP	Public Participation Process
S & EIR	Scoping and environmental impact assessment report
SR	Scoping report
PoS-EIR	Plan of study for environmental impact report

1. INTRODUCTION AND LEGAL BACKGROUND

Section 24 of the Constitution of the Republic of South Africa of 1996 guarantees everyone a right to an environment that is not harmful to their health and well-being and to have the environment protected for the benefit of present and future generations. In order to give effect to this right, the National Environmental Management Amendment Act (NEMA), Act 62 of 2008 came into effect in May 2009. Section 24J of NEMA allows the Minister or MEC, with concurrence of the Minister, to publish guidelines. The public participation guideline is developed in line with Chapter 6 of the NEMA environmental impact assessment (EIA) regulations of 2010 which outline the public participation process for environmental authorisations.

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

The document serves as a guideline for the EIA regulations and their implementation in terms of providing guidance on the procedure and the provisions of the public participation process in terms of NEMA and its EIA regulations.

2. PURPOSE

The document provides guidance on the procedure and the provisions of the public participation process in terms of NEMA and its EIA regulations of 2010 as well as other relevant legislations such as the Promotion of Administrative Justice Act (PAJA), Act No. 3 of 2000 and the Promotion of Access to Information Act (PAIA), Act No. 2 of 2000.

The guideline is designed to:

- Provide clarity on the roles, rights and responsibilities of all parties involved in the public participation process;
- Ensure compliance with relevant legislation on public participation; and
- Ensure mutual understanding between all parties involved in the process.

3. GENERAL MATTERS

In terms of Section 24 (4) of NEMA, procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment must, *inter alia*, ensure, with respect to every application:

- coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;
- that the findings and recommendations flowing from an investigation, the general objectives of integrated environmental management laid down in NEMA and the principles of environmental management set out in Section 2 of NEMA are taken into account in any decision made by an organ of state in relation to any proposed policy, programme, process, plan or projects, consequences or impacts; and
- public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in those information and participation procedures.

One of the general objectives of integrated environmental management laid down in Section 23(2) (d) of NEMA is to "ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment".

The National Environmental Management Principles as stipulated in NEMA say:-

- environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably;
- the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary to achieve equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured".

With public information and participation procedures being specified as a requirement in terms of NEMA of every application, exemption from having to undertake public participation cannot be applied for in terms of either NEMA or the EIA regulations. Exemption from having to comply with some of the specific requirements in terms of the EIA regulations related to the public participation steps to be taken can however be applied for.

4. WHEN TO CONDUCT THE PUBLIC PARTICIPATION PROCESS?

The NEMA EIA regulations require that public participation must be done after submission on an application for both BA and S&EIR.

5. NOTIFICATION OF I&APs

A applicant/environmental assessment practitioner (EAP) conducting a public participation process (PPP) must give notice to all potential I&APs of the application.

5.1 Method of notification

The applicant or EAP must give notice to I&APs by:

- (a) fixing a notice board at a place noticeable and eye-catching to the public at the boundary or on the fence of the site where the activity to be undertaken as well as any alternative sites being considered.

Note: The site notice must be displayed for the duration of the commenting period.

- (b) giving written notice to:

- (i) owners and occupiers of the site or of any alternative site on which the activity is proposed to be undertaken;
- (ii) the owners and occupiers of land adjacent to the site or any alternative site where the activity is proposed to be undertaken;
- (iii) the owners and occupiers of land within 100 metres of the boundary of the site on which the activity is proposed to be undertaken as well as within 100 metres of alternative sites being considered;
- (iv) the municipal councillor of the ward (3)(5), as well as alternative sites being considered, are situated and any organisation of ratepayers that represents the community in the area;
- (v) the relevant officials (e.g. health officer, planner, environmental manager, engineer, etc.) of the municipality which has jurisdiction in the area;

Note: Take note that both the local municipality and the district municipality must be notified.

- (vi) any organ of state having jurisdiction in respect of any aspect of the activity (e.g. Department of Water Affairs for water use authorisations); and
- (vii) any other party as required by the competent authority (CA).

- (c) placing an advertisement in:

- (i) one local newspaper; (this should be an appropriate newspaper in terms of accessibility and language to the I&APs); or
- (ii) any official *Gazette* that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these regulations (i.e. a *Gazette* that is specifically concerned with publications with respect to the NEMA EIA regulations); and

- (d) if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality and an advertisement is not being placed in any official *Gazette* (referred to in (c)(ii) above), placing an advertisement in at least one provincial newspaper or national newspaper.

Note: With no *Gazette* specifically concerned with publications in respect to the NEMA EIA regulations currently existing, all applications for activities where it is anticipated that the impacts will not extend beyond the boundaries of the local municipality, an advertisement must be placed in one local newspaper. For such applications, applicants may, however, decide to also place an advertisement in a provincial or national paper. In this regard it must further be noted that the requirements specified in the EIA Regulations constitute the minimum requirements, and depending on the facts and circumstances of each application, additional public participation measures might be required.

- (e) using reasonable alternative methods as agreed to by the CA to accommodate disadvantaged individuals due to illiteracy, disability or any other disadvantage.

5.2 Content of the notice, notice board or advertisement

When notifying the I&APs, the applicant/EAP conducting public participation must:

- (a) give details of the particular application; and
- (b) state-
- (i) that the application has been submitted to the CA in terms of the NEMA EIA regulations;
 - (ii) whether basic assessment or scoping procedures are being applied, in the case of an application for an EA;
 - (iii) the nature and location of the activity to which the application relates;
 - (iv) where further information on the application or activity can be obtained; and
 - (iv) the method and the person to whom representations in respect of the application may be made.

If applicable, the following must also be indicated in the notice:

- an indication of whether or not an application has been submitted or is to be submitted to the competent authority for exemption(s) from provisions of the regulations; and
- an indication if permission has been granted by the competent authority to apply scoping and EIA instead of basic assessment to the application.

5.3 Proof of notification

The NEMA EIA regulations requires "*proof that notice boards, advertisements and notices notifying potentially interested and affected parties in relation to the application have been displayed, placed or given*". In terms of the required "proof" the applicant/EAP must therefore submit the following to the competent authority:

- (a) a copy of the newspaper advertisement ("newspaper clipping") that was placed, indicating the name of the newspaper and date of publication (of such quality that the wording in the advertisement is legible);
- (b) a site map showing where the site notice was displayed, a dated photographs showing the notice displayed on site and a copy of the text displayed on the notice;
- (c) in terms of the written notices given, a copy of the written notice sent, as well as:
 - (i) if registered mail was sent, a list of the registered mail sent (showing the registered mail number, the name of the person the mail was sent to, the address of the person and the date the registered mail was sent); and
 - (ii) if a facsimile was sent, a copy of the facsimile report; and
 - (iii) if an electronic mail was sent, a copy of the electronic mail sent; and

5.4 Minimum size of notice boards and newspaper notices

The EIA regulations specify that the minimum size of the notice boards must be at least 60cm by 42cm and display the required information in lettering and in a format that may be determined by the competent authority.

Note: Where circumstances prevent compliance to notification of I&APs, the person conducting the PPP may deviate from the requirements in agreement with the CA.

5.5 Commenting periods and consultation with state departments and other I&APs

In accordance with the EIA regulations, I&APs must be provided with an opportunity to make representations on proposed applications and all written submissions made to the CA by the applicant or the EAP. In this regard it is important that notices to I&APs explicitly indicate the duration of the commenting period. In accordance with the requirements of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA"), I&APs must be provided with a reasonable opportunity to make representations.

A minimum of 40 days must be allowed for registered I&APs, including all the relevant state departments, to make representations on draft basic assessment reports, draft scoping reports and draft EIRs. These 40 days must be read as 60 days in a case of waste management activities.

Note: Applicants may make a draft basic assessment report or draft scoping report available on first notification of all potential I&APs. In such instance the notices to the I&APs must also clearly indicate that a draft basic assessment report or scoping report is available for written comment and indicate when, where and for how long the report will be available for comment.

It must be noted that days means calendar days. When a period of days must in terms of these regulations be reckoned from or after a particular day, that period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday. The period of 15 December to 2 January must be excluded in the reckoning of days. Where a timeframe is affected by the 15 December to 2 January period, the timeframe must be extended by the number of days falling within the 15 December to 2 January period. Where a timeframe is affected by one or more public holidays that will affect work days, the timeframe must be extended by the number of public holiday days falling within that timeframe.

5.6 Identifying and approaching specific stakeholders

Over and above the placement of general notices in the media calling for I&APs to participate, certain stakeholders should be specifically approached. The following means of identifying stakeholders should be used when appropriate:

- Social profiles or probes provide a comprehensive summary of the key characteristics of the people of a community or area and can serve as a starting point for identifying stakeholders.
- Brainstorming sessions with the proponent and/or authorities, based on previous experience, to identify key stakeholders who may be interested or affected by the proposal.

- Established lists and databases, held by consultancies, authorities or research institutions, may hold additional contact details of residents, non-government organisations, community based organisations or constituents.
- Network or chain referral systems according to which key stakeholders are asked to assist in identifying other stakeholders.

5.7 Broadening participation, capacity building & special needs

Appropriate participation measures should be put in place to deal with the range of cultural and language requirements of I&APs. The language used by the I&APs must be taken into account when serving a notice and when selecting a newspaper.

Where I&APs include rural or historically disadvantaged communities or people with special needs (e.g. a lack of skills to read or write, disability, or any other disadvantage), the following could, *inter alia*, be considered:

- the project and public participation process could be announced on an appropriate local radio station in a local language, at an appropriate time (e.g. peak hours);
- participatory rural appraisal ("PRA") and participatory learning and action ("PLA") approaches and techniques could be used to build the capacity of these stakeholders to engage and participate more effectively;
- existing community structures, committees and leaders must specifically be approached;
- public meetings could be held at times and venues suitable to the community;
- determine the need for separate meetings with vulnerable and marginalised groups;
- appropriate access to information must be provided; and
- reasonable assistance to people with special needs must be provided.

6 GUIDANCE ON THE LEVEL OF PUBLIC PARTICIPATION

The minimum requirements for public participation outlined in the regulations will not necessarily be sufficient for all applications. This is because the circumstances of each application are different, and it may be necessary in some situations to incorporate extra steps in the public participation process. This section provides guidance for deciding on the required level of public participation.

Three categories of variables need to be taken into account when deciding on the level of public participation and the process to be followed:

- the scale of anticipated impacts of the proposed project;
- the sensitivity of the affected environment and the degree of controversy of the project; and
- the characteristics of the potentially affected parties.

The following aspects need to be considered in this regard:

Scale of anticipated impacts:
Are the impacts of the project likely to extend beyond the boundaries of the local municipality?
Are the impacts of the project likely to extend beyond the boundaries of the province?
Is the project a greenfields development (a new development in a previously undisturbed area)?
Does the area already suffer from socio-economic problems (e.g. job losses) or environmental problems (e.g. pollution), and is the project likely to exacerbate these?
Is the project expected to have a wide variety of impacts (e.g. socio-economic and environmental)?
Public and environmental sensitivity of the project:
Are there widespread public concerns about the potential negative impacts of the project?
Is there a high degree of conflict among I&APs?
Will the project impact on private land other than that of the applicant?
Does the project have the potential to create unrealistic expectations (e.g. that a new factory would create a large number of jobs)?
Potentially affected parties:
Has very little previous public participation taken place in the area?
Did previous public participation processes in the area result in conflict?
Are there existing organisational structures (e.g. local forums) that can represent I&APs?
What is the literacy level of the community in terms of their ability to participate meaningfully within the public participation process?
Is the area characterised by high social diversity (i.t.o. socio-economic status, language or culture)?
Were people in the area victims of unfair expropriations or relocation in the past?
Is there a high level of unemployment in the area?
Do the I&APs have special needs (e.g. a lack of skills to read or write, disability, etcetera).

Based on the above, the use of the following public participation mechanisms, over and above the requirements, should also be considered

- Public meetings and open days
- Conferences
- Press releases
- Questionnaires or opinion surveys
- Information desks and/or info lines (helplines)

- Meetings/workshops with constituencies (e.g. national standing committees, non-government organisations / community based organisations)

7 INTERESTED AND AFFECTED PARTIES

7.1 Distinction between I&APs and Registered I&APs

The regulations distinguish between I&APs and registered I&APs. I&APs includes: (a) any person, group of persons or organisation interested in or affected by an activity; and (b) any organ of state that may have jurisdiction over any aspect of the activity.

In terms of the regulations "**registered interested and affected parties**" means:

an interested and affected party whose name is recorded in the register opened for that application.

For that purpose, an EAP managing an application must open and maintain a register which contains the names, contact details and addresses of-

- all persons who; have submitted written comments or attended meetings with the applicant or EAP;
- all persons who; have requested the applicant or EAP managing the application, in writing, for their names to be placed on the register; and
- all organs of state which have jurisdiction in respect of the activity to which the application relates.

An EAP must give access to the register to any person who requests such in writing.

7.2 Access and opportunity to comment on all written submissions

Before the EAP submits a **final** basic assessment report, or a scoping and environmental impact report to the competent authority, the EAP must give registered I&APs access to, and an opportunity to comment on the report in writing. A registered I&AP is entitled to comment on all written submissions made to the competent authority by the applicant or the EAP managing an application, and to bring to the attention of the competent authority any issues which the registered I&AP believe may be of significance in the consideration of the application, provided that:

- comments are submitted within the specified timeframes or any extension of a timeframe agreed to by the applicant or EAP;
- a copy of comments submitted directly to the competent authority is served on the applicant or EAP; and

- (c) the I&AP discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

7.3 List of reports to be commented on by Registered I&APs

Before awarding the I&APs an opportunity to comment, the EAP must submit the following **draft versions** of the report to the CA:-

- basic assessment reports;
- basic assessment reports amended and resubmitted
- scoping reports;
- scoping reports amended and resubmitted
- specialist reports and reports on specialised processes compiled
- environmental impact assessment reports submitted
- environmental impact assessment reports amended and resubmitted; and
- draft environmental management programmes compiled.

Written comments on draft report submitted by I&APs should be recorded by the EAP. The I&APs must submit written comments on final reports to the CA and provide a copy of such comments to the applicant or EAP.

The CA must request all state departments that administer a law relating to a listed activity to comment on the draft reports within 40 days. The 40 days should be considered as 60 days for waste management activities in terms of National Environmental Management: Waste Act (NEMWA), Act No. 59 of 2008. If the state department fails to comment within 40 days or 60 days as the case may be, it will be regarded as though there are no comments.

Only registered I&APs:

- will be notified of the availability of reports and other written submissions made (or to be made) to the CA by the applicant, and be entitled to comment on these reports and submissions;
- will be notified of the outcome of the application, the reasons for the decision, and that an appeal may be lodged against a decision; and
- will be notified of the applicant's intention to appeal the decision of the competent authority, together with an indication of where and for what period the appeal submission will be available for inspection.

7.4 Responding to comments received

All comments received from I&APs must be acknowledged by the EAP, with the EAP indicating how the comments received will be responded to (even if just referring to the fact that a response will be contained in the "comments & response report"). Comments and responses must be indicated in the comments & response report (submitted with the BAR or S&EIR).

Note: The EAP is responsible for ensuring that the issues raised by I&APs are addressed in an objective manner. Where issues are not addressed the reasons for this must be provided in the comments & response report.

7.5 Disclosure of I&APs' interests

I&APs must disclose any direct business, financial, personal or other interests which they may have in the approval or refusal of an application.

7.6 Notifying I&APs of the Department's Decision

The applicant must, in writing, within 12 days after having been notified of the decision of the CA, notify all registered I&APs of the outcome of the application and the reasons for the decision, and draw their attention to the fact that an appeal may be lodged against the decision. The applicant must also draw the attention of all registered interested and affected parties to the manner in which they can access the decision, and publish a notice-

- (i) informing interested and affected parties of the decision;
- (ii) informing interested and affected parties where the decision can be accessed; and
- (iii) drawing the attention of interested and affected parties to the fact that an appeal may be lodged against the decision, if such appeal is available under the circumstances of the decision, and which newspaper was used for the placing of advertisements as part of the public participation process.

8 APPLICATIONS FOR EXEMPTIONS / DEVIATIONS FROM PROVISIONS OF THE REGULATIONS

The EIA regulations make provision for deviations from the requirements of considering any guidelines applicable to the PPP and giving notice to I&APs of the application to the extent and manner as may be agreed to by the CA.

9 AMENDMENTS OF ENVIRONMENTAL AUTHORISATIONS

If a holder of an environmental authorisation applies for a substantive amendment of an authorisation or if the proposed amendment is likely to adversely affect the environment or the rights or interests of other parties, the

applicant must, to the extent indicated by the CA, conduct a public participation process, open and maintain a register of I&APs, and give registered I&APs an opportunity to submit comments on any reports prepared on the investigations and assessments undertaken for the proposed amendment. While a new public participation process will be required for the amendment, the I&APs that registered during the original process must also be informed of the proposed amendment and given an opportunity to comment.

If the CA on its own initiative intends to substantively amend an environmental authorisation, the competent authority will notify, in writing, the holder of the authorisation and give him/her an opportunity to comment on the proposed amendment. The CA may where necessary also, conduct a public participation process that may appropriate.

10 LAPSING OR DELAYS

In terms of the EIA regulations, an application lapses if the applicant after having submitted the application, fails for a period of six months to comply with a requirement in terms of the regulations relating to the consideration of the application. An EAP must inform the registered interested and affected parties if the application has lapsed or if the CA has accepted delays caused on an application.



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

INTEGRATED ENVIRONMENTAL MANAGEMENT GUIDELINE SERIES 6

**ENVIRONMENTAL MANAGEMENT FRAMEWORK (EMF)
REGULATIONS OF 2010 IN TERMS OF THE NATIONAL
ENVIRONMENTAL MANAGEMENT ACT (NEMA)**


ENVIRONMENTAL MANAGEMENT FRAMEWORKS: Guideline 6

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

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

ISSUED BY:

Department of Environmental Affairs

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South Africa

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

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PREFACE

This document is one of the series of guideline documents on environmental impact management legislation and regulations.

The material in this document is intended to be used as an accompanying document to the NEMA EMF regulations 2010; it makes available the content of the EMF regulations in laymen's terms.

**ENVIRONMENTAL MANAGEMENT FRAMEWORKS: Guideline 6****ACKNOWLEDGEMENTS**

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SUMMARY

The practice of EMFs in South Africa is largely in a relatively 'young' stage of development, especially in its use and recognition in the broader IEM tools application. There is similarly a considerable amount of confusion in the application of EMFs as well as the appropriate technical methodology to be used in compiling an EMF. The purpose of these guidelines are to provide clarity with regards to the purpose and application of EMFs in the South African context, as well as to provide the appropriate amount of knowledge and detail to support the EMF Regulations, 2010.

EMFs are inherently part of the authority suite of IEM tools necessary for decision support in making informed decisions regarding the management of impacts on the environment due to influence of development projects, policies and programmes.

This document provides guidance on the current thinking and practice of EMFs and draws upon the first draft EMF Guidelines compiled in 2005. The 2005 document provided the foundation for the development of this guideline document, which introduces the concept of, and principles for, the development of EMFs. While the principles and broad concept of EMFs are generally accepted and understood, there is less understanding regarding the basic steps, technical processes and tools required, as well as the technique to be adopted, and structure of the final out-put of the EMF process. This guideline document provides detailed guidance on the fundamentals of the EMFs as well as a descriptive step-by-step process to the technical development and public participation process required.

This guideline provides the philosophical, conceptual and historical perspective on EMFs, as well as sufficient detail for the technical development to enhance the practice of compiling EMFs in South Africa.


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**ENVIRONMENTAL MANAGEMENT FRAMEWORKS: Guideline 6****ABBREVIATIONS**

BID	Background information document
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
DWA	Department of Water Affairs
EAP	Environmental assessment practitioner
ECA	Environment Conservation Act, Act No. 73 of 1989
EIA	Environmental impact assessment
EMF	Environmental management framework
ENPAT	Environmental Potential Atlas
GIS	Geographic information system
I&APs	Interested and affected parties
IEM	Integrated Environmental Management
MEC	Member of the Executive Committee
NEMA	National Environmental Management Amendment Act (Act No. 62 of 2008)
PPP	Public Participation Process
SANBI	South African National Biodiversity Institute



DEFINITIONS / GLOSSARY OF TERMS

Categories

Categories relate to a larger grouping of similar, homogenous baseline information comprised of data features. Typical categories include hydrology, vegetation, geology, soils etc.

Constraint zones

Constraint zones refer to the spatial areas identified in the EMF which illustrate a specific environmental opportunity or constraint towards development pressure.

Development Guidelines

Development guidelines refer to the specific provisions applied in the management of each individual attribute or activity. Management guidelines are usually comprised of existing policy, guideline and statutory provisions.

(Environmental) attributes

Environmental attributes means the quality ascribed to an element in the environment that distinguishes it in character, form or nature from other elements in the environment, and are depicted in the EMF as data categories and features.

Environmental Management Framework (EMF)

It is the mechanism or study of the biophysical and socio-cultural systems of a geographically defined area to reveal where specific land uses may best be practiced and to offer performance standards for maintaining appropriate use of such land.

EMF Regulations

Regulations promulgated in terms of NEMA specifically for the compilation of EMFs. Further referred to in this document as the EMF regulations.



Facet Map

A facet map is also referred to as a 'spaghetti layer'. It is a GIS term to describe the sum and integration of all the baseline information into a single spatial layer.

Features

Features refer to the finer, individual environmental elements that comprise a data category, e.g. Hydrology – *rivers, streams, wetlands, dams, etc.*

Framework Legislation

High order / level statute which establishes the framework for the promulgation of regulations.

Geographical Areas

A logical spatially demarcated area defined by an EMF as being sensitive, requiring specific management intervention to ensure its future environmental integrity.

Management Zones

Management zones refer to a specific demarcated geographical area, represented spatially on a map illustrating a specific sensitive feature which needs to be managed in a pro-active and dedicated way.

MEC

Member of the Executive Committee to whom the Premier has assigned responsibility for environmental affairs.

Minister

The Minister of Water and Environmental Affairs.

Overlay Planning

A spatial planning approach whereby various multiple baseline data sets are overlaid, one on another, and unioned to provide a single facet map.

(Project) Initiator

The individual, department or organ of state who initiates an EMF in terms of the provisions of the Environmental Management Framework Regulations, 2010.



Project Steering Committee

The development of the EMF is overseen by a Project Steering Committee. The committee should be composed of as a minimum by the initiator, relevant local, provincial and national competent authorities, and additional members and expertise as deemed appropriate by the aforementioned.

'Spaghetti Layer'

A 'spaghetti layer' is also referred to as a 'facet map'. It is a GIS term to describe the sum and integration of all the baseline information into a single spatial layer.

'Trigger' / Driver

The trigger or driver is the potential impact or aspect which has lead to the requirement for the EMF to be compiled, e.g. mining pressure on endangered grassland vegetation types.

'Unioned'

A GIS term to describe the process of integrating multiple baseline spatial information layers into a single facet map.

**ENVIRONMENTAL MANAGEMENT FRAMEWORKS: Guideline 6****1. INTRODUCTION**

Within the context of the development of environmental legislation and associated provisions in South Africa, the environment, and specifically environmental sensitivity was never adequately and directly integrated into impact management. One of the first attempts was made in the development of the Integrated Environmental Management Guideline Series published by the Department of Environmental Affairs and Tourism in 1992, whereas Guideline 5 made specific reference to sensitive environments. Although it was a step in the right direction the document was merely a guideline and not underpinned by any statutory provisions.

Through the DEAT Law Reform Process of 1997-1998 a major restructuring of South African framework environmental legislative provisions in the country was undertaken. The result was the drafting of the National Environmental Management Act, Act No.107 of 1998, commonly known as NEMA, which was earmarked to replace the Environment Conservation Act, Act No. 73 of 1989 (ECA) over time.

For the first time in South African environmental legislative history, provision was made for environments and specifically sensitive environments in framework legislation (Acts) through the provision for the development of environmental management frameworks.

In April 2006 the Minister of Environmental Affairs and Tourism passed regulations¹ in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA). The regulations replace the environmental impact assessment regulations which were promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) in 1997 and introduce new provisions regarding environmental management frameworks.

The Department of Environmental Affairs (DEA) has produced a series of guidelines to assist potential applicants and interested and affected parties (I&APS) to understand what is required of them and what their role may be. The guidelines are intended to be guides only and should be read in conjunction with NEMA and the regulations. They are not intended to be a substitute for the provisions of NEMA or the regulations in any way. NEMA further provided an introduction to the compilation of environmental management frameworks (EMFs) as per Chapter 8 of the EIA Regulations. The importance of EMFs in

¹ Environmental Impact Assessment Regulations, 2006

**ENVIRONMENTAL MANAGEMENT FRAMEWORKS: Guideline 6**

the future of impact management in South Africa has further necessitated the strengthening of the statutory provisions for EMFs.

The guidelines form part of the department's integrated environmental management guideline series and consists of four parts, namely –

- 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 importance of EMFs within the IEM suite of tools has been recognised and the potential for diversifying its application is being emphasised through the elevation of its statutory position within NEMA in the development of 'stand-alone' EMF regulations, which will be known as the *Environmental Framework Management Regulations, 2010*.

2. HISTORICAL DEVELOPMENT

2.1 International Development Trend

The international trend which led to the development of the EMFs was entrenched in the pioneering work conducted by the late Professor Ian McHarg, the father of ecological planning and author of *Design with Nature*. McHarg implemented and popularised the concept of 'overlay planning' where different spatial data sets represented on film paper were overlaid over each other and integrated to form a 'spaghetti layer'. Each of the facets on the final map had a unique set of properties, identity and characteristics.

The philosophy upon which the EMFs were developed in the late 1990's summarised the approach as follows:

"All systems aspire to survival and success. This state can be described as synthropic-fitness-health. Its antithesis is entropic-misfitness-morbidity. To achieve the first state requires systems to find the fittest environment, adapt it and themselves. Fitness of an environment for a system is defined as that requiring the minimum of work and adaptation. Fitness and fitting are indications of health and the process of fitness is health giving. The quest for fitness is entitled adaptation. Of all the



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instrumentalities available to man for successful adaptation, cultural adaptation in general and planning in particular, appear to be the most direct and efficacious for maintaining and enhancing human health and well-being (McHarg 1981, 112-113).

Arthur Johnson further elaborates on this philosophy as, "...the fittest environment for any organism, artefact, natural and social ecosystem, is that environment which provides the (energy) needed to sustain the health or well-being of the organism / artefact / ecosystem. This approach is not limited by scale."

The approach of the EMF is intrinsically established in sustainability. The best-known definition of sustainable development was promulgated by the World Commission on Environment and Development (WCED) or better known as the Brundtland Commission, as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs". A more comprehensive definition was provided by the US National Commission on the Environment, as "a strategy for improving the quality of life while preserving the environmental potential for the future, of living off interest rather than consuming natural capital. Sustainable development mandates that the present generation must not narrow the choices of future generations but must strive to expand them by passing on an environment and an accumulation of resources that will allow its children to live at least as well as, and preferably better than, people today. Sustainable development is premised on living within the Earth's means."

Ecological planning and design is the capacity to understand the ecological context within which humans live, to recognise the limitations, and ensure that limitations are not exceeded.

"The environment is both a source and a sink, but its capabilities to provide both resources and to assimilate wastes are not limitless." The EMF approach makes reference to biophysical, sociological, planning and policy imperatives, and the integration of these. The following sections elaborate on the stages and technical content of the development of a typical environmental management framework.

2.2 South African Development Trend

The development of the EMF concept started through the development of the Environmental Potential Atlas (ENPAT) by the Department of Environmental Affairs and Tourism in the early-mid 1990's. ENPAT started off as a repository of spatial digital information initially at a national level, and scale of 1:

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1 000 000. During the pursuing development years, ENPAT was expanded to include dedicated provincial atlases at an operating scale of 1: 250 000. In the mid 1990's limited spatial analysis were conducted through the integration of the spatial data to provide dedicated results indicating development, conservation and agricultural potential and constraints. The ENPAT digital atlases were further expanded at an operating scale of 1: 50 000 to the larger metropolitan areas of South Africa which included the whole of Gauteng, and the metropolitan centres of Cape Town, Durban, Bloemfontein and Port Elizabeth. The concepts and philosophies which lead to the development of these digital atlases provided the framework for the ENPAT National Atlas Book which was published in 1997. The atlas book is a repository of spatially represented information extending from biological resources, to economic and demographic information. The atlas book similarly initiated the integration and combination of specific datasets, hitherto unavailable in a spatial format to predict certain scenarios regarding impacts on resources, population pressures and demands on certain resources, and environmental resource sensitivity index. The atlas makes further recommendations and predictions regarding resource sustainability aspects. This contemporary and innovative spatial thinking provided the platform for the development of the EMF concept. The first EMFs were developed upon the ENPAT atlas platform for the North West, Mpumalanga and KwaZulu-Natal Provinces at a scale of 1:250 000, as pilot projects. The success of these leads to the further development of EMFs for the remaining provinces. The Centurion City Wide EMF was the first EMF to be developed at a local authority level in 2000, at an operative scale of 1:20 000 to 1:50 000.

2.3 The EMF Philosophy

The environmental management framework proposes a need for a common approach and methodology to establish social equity and ecological parity in land use decision making. The EMF must be able to transcend disciplinary territoriality and be applicable and implementable at all levels of government, incorporating both social and environmental issues and concerns. It proposes an approach that can assist in establishing a platform and framework for informed decision making, and analyse the problems of a region as they relate to each other, to the landscape, as well as the local political economic structure. The EMFs are based upon the use of biophysical and socio-cultural information to suggest opportunities and constraints for decision making about the use of the landscape, whereby the region is understood as a biophysical and social process comprehensible