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## GOVERNMENT NOTICES

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. R. 658

13 June 2008

The Minister of Environmental Affairs and Tourism hereby publishes the second 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 attached Schedules.

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 12 JULY 2008. COMMENTS RECEIVED AFTER THE CLOSING DATE WILL NOT BE CONSIDERED.**

**No. R. 659****13 June 2008**

**AMENDMENT OF REGULATIONS IN TERMS OF CHAPTER 5 OF THE  
NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

The Minister of Environmental Affairs and Tourism hereby publishes, in terms of section 24(5) read with section 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), the second amendment draft to the Environmental Impact Assessment Regulations published in Government Notice No. R. 385 of 21 April 2006, which provides for the investigation, assessment and communication of the potential impact of identified activities.

**DRAFT AMENDMENT REGULATIONS**

To amend the Environmental Impact Assessment Regulations published in Government Notice No. R. 385 of 21 April 2006 in terms of section 24(5) of the National Environmental Management Act, 1998, so as to provide for certain textual alterations, the insertion of new definitions and substitution of others, amendments to certain aspects of the assessment process and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

## **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.

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## CHAPTER 1 INTERPRETATION AND PURPOSE OF THESE REGULATIONS

### Interpretation

1. (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 –

**“activity”** means an activity identified –

- (a) in Government Notice No. R. 386 and No. R. 387 of 2006 as a listed activity; or
- (b) in any other notice published by the Minister or MEC in terms of section 24D of the Act as a listed activity or specified activity;

**“alternatives”**, in relation to a proposed activity, means different means of meeting the general purpose and requirements of the activity, which may include alternatives to –

- (a) the property on which or location where it is proposed to undertake the activity;
- (b) the type of activity to be undertaken;
- (c) the design or layout of the activity;
- (d) the technology to be used in the activity; and
- (e) the operational aspects of the activity;

**“applicant”** means a person who has submitted or intends to submit an application;

**“application”** means an application for –

- (a) an environmental authorisation in terms of Chapter 3 of these Regulations;
- (b) an amendment to an environmental authorisation in terms of Chapter 4 of these Regulations or
- (c) an exemption from a provision of these Regulations in terms of Chapter 5 of these Regulations;

**“basic assessment”** means a process contemplated in regulation 22;

**“basic assessment report”** means a report contemplated in regulation 23;

**“cumulative impact”**, in relation to an activity, means the impact of an activity that in itself may not be significant but may become significant when added to the existing and potential impacts eventuating from similar or diverse activities or undertakings in the area;

**“EAP”** means an environmental assessment practitioner as defined in section 1 of the Act;

**“environmental impact assessment”**, in relation to an application to which scoping must be applied, means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to the consideration of that application;

**“environmental impact assessment report”** means a report contemplated in regulation 32;

**“environmental management p[lan]rogramme”** means an environmental management p[lan]rogramme in relation to identified or specified activities envisaged in Chapter 5 of the Act and described in regulation 34;

**“guidelines”** means any national guidelines and provincial guidelines issued in terms of Chapter 8 of these Regulations;

**“independent”**, in relation to an EAP or a person compiling a specialist report or undertaking a specialised process or appointed as a member of an appeal panel, means –

- (a) that such EAP or person has no business, financial, personal or other interest in the activity, application or appeal in respect of which that EAP or person is appointed in terms of these

Regulations other than fair remuneration for work performed in connection with that activity, application or appeal; or

(b) that there are no circumstances that may compromise the objectivity of that EAP or person in performing such work;

***“interested and affected party”*** means an interested and affected party contemplated in section 24(4)(d) of the Act, and which in terms of that section 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;

***“linear activity”*** means an activity that is undertaken across several properties and which affects the environment or any aspect of the environment along the course of the activity in different ways, and includes a road, railway line, power line, pipeline or canal;

**“mining area”** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

***“ocean-based activity”*** means an activity in the territorial waters of the Republic;

**“petroleum”** means any liquid, solid hydrocarbon or combustible gas as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**‘production area’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**‘production operation’** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**'production right'** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**"plan of study for environmental impact assessment"** means a document contemplated in regulation 29(1)(i) which forms part of a scoping report and sets out how an environmental impact assessment must be conducted;

**"public participation process"** means a process in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to, specific matters;

**"Regional Mining Development and Environmental Committee"** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002

**"registered interested and affected party"**, in relation to an application, means an interested and affected party whose name is recorded in the register opened for that application in terms of regulation 57;

**"scoping"** means a process contemplated in regulation 28(e);

**"scoping report"** means a report contemplated in regulation 29;

**"significant impact"** means an impact that by its magnitude, duration, intensity or probability of occurrence may have a notable effect on one or more aspects of the environment;

**"site"** when used in terms of these Regulations means the area directly affected by the total development footprint of the listed or specified activity;

**"specialised process"** means a process to obtain information which –

- (a) is not readily available without undertaking the process; and
  - (b) is necessary for informing an assessment or evaluation of the impacts of an activity,
- and includes risk assessment and cost benefit analysis;

**“the Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

(2) 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.

#### **Purpose of these Regulations**

2. (1) The purpose of these Regulations is to regulate procedures and criteria as contemplated in Chapter 5 of the Act for the submission, processing, consideration and decision of applications for environmental authorisation of activities and for matters pertaining thereto.

(2) For any action contemplated in terms of these regulations, for which a timeframe is prescribed, the period of 15 December to 2 January must be excluded in the reckoning of days.

(3) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.”

(4) Where an objection on an application has been referred to the Regional Mining Development and Environmental Committee, in terms of regulation 6(5), the applicable timeframe is deemed to be extended by 45 days.

## CHAPTER 2 COMPETENT AUTHORITIES

### Identification of competent authorities

3. (1) All applications in terms of these Regulations must be decided by a competent authority.

(2) The competent authority who must consider and decide an application in respect of a specific activity must be determined with reference to Government Notice No. R. 386 and No. R. 387 of 2006, including any further notices that may be issued in terms of section 24D of the Act.

(3) Any dispute or disagreement in respect of who the competent authority should be in relation to any specific application must be resolved by the Minister and the MEC of the relevant province or by the Minister and **[delegated]** designated organ of state, as the case may be.

### Where to submit applications

4. (1) If the Minister is the competent authority in respect of a specific application, the application must be submitted to the Department of Environmental Affairs and Tourism.

(2) If an MEC is the competent authority in respect of a particular application, the application must be submitted to the provincial department responsible for environmental affairs in that province.

(3) If the Minister or MEC has in terms of section 42 of the Act delegated any powers or duties of a competent authority in relation to an activity to which an application relates to an organ of state, the application must be submitted[ to that delegated organ of state.

(4) If the Minister of Minerals and Energy is the competent authority

in respect of a specific application, the application must be submitted to the relevant regional office of the Department of Minerals and Energy.

**Assistance by competent authorities to applicants**

**5 (1)** 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, if applicable, –

(a) give the applicant or EAP access to any guidelines, departmental policies and decision-making instruments 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; or[.]

(c) on written request, furnish the applicant or EAP with a written record of

any agreement reached between the competent authority and the applicant or

EAP as a result of a discussion as contemplated in subregulation 1(b).

(2) The competent authority and the applicant or EAP, must on written request by a registered interested or affected party, provide access to the record of any agreement as contemplated in subregulation 1(c), to such a registered interested or affected party.

**Consultation between competent authorities and other organs of state having jurisdiction**

**6. (1)** Where an application in respect of any activity requiring environmental authorisation in terms of these Regulations must also be made in terms of other legislation and that other legislation requires that information must be submitted or processes must be carried out that are

substantially similar to information or processes required in terms of these Regulations, the Minister or MEC, in giving effect to Chapter 3 of the Constitution and **[section 24(4)(g)]** sections 24(4)(a)(i), 24K and 24L of the Act, must take steps to enter into a written agreement with the authority responsible for administering the legislation in respect of the co-ordination of the requirements of the legislation and these Regulations to avoid duplication in the submission of such information or the carrying out of such processes.

(2) If the Minister, the Minister of Minerals and Energy, an MEC or identified competent authority considers an application for an environmental authorisation, the Minister, Minister of Minerals and Energy, MEC or competent authority must take into account all relevant factors including any comments received from a State department that administers a law relating to a matter affecting the environment.

(3) The Minister, the Minister of Minerals and Energy, an MEC or identified competent authority must consult with every State department that administers a law relating to a matter affecting the environment when he or she considers an application for an environmental authorisation.

(4) A State department consulted in terms of subsection (3) must submit comment within 40 days from the date on which the Minister, Minister of Minerals and Energy, MEC or identified competent authority requests such State department in writing to submit comment.

(5) Where comments submitted in terms of subregulation (4) constitute an objection as contemplated in section 24O(4) of the Act, the Minister of Minerals and Energy must refer such objection to the Regional Mining Development and Environmental Committee.

(6) The Regional Mining Development and Environmental Committee must, within 45 days after the date of receiving such an objection, consider



the objection and must make written recommendations to the Minister of Minerals and Energy.

### **Competent authorities' right of access to information**

7. (1) A competent authority is entitled to all information that reasonably has or may have the potential of influencing any decision with regard to an application.

(2) Unless that information is protected by law, an applicant or EAP or other person in possession of that information must, on request by the competent authority, disclose that information to the competent authority, whether or not such information is favourable to the applicant.

### **Criteria to be taken into account by competent authorities when considering applications**

8. When considering an application the competent authority must –

(a) comply with the Act, these Regulations and all other applicable legislation; and

(b) take into account all relevant factors, including –

(i) any pollution, environmental impacts and environmental degradation likely to be caused if the application is approved or refused;

(ii) any implications for climate change;

(iii) the impact on the environment of the activity which is the subject of the application, whether alone or together with existing operations or activities;

~~[(iii)]~~ (iv) measures that may [could] be taken –

the (aa) to protect the environment from harm as a result of activity which is the subject of the application; and

(bb) to prevent, control, abate or mitigate any pollution, environmental impacts or environmental degradation;

and (iv) the ability of the applicant to implement mitigation measures application to comply with any conditions subject to which the application may be granted;

- (vi) where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment;
- (vii) any information and maps compiled in terms of section 24 (3) of the Act, including any environmental management frameworks compiled in terms of Part 1 of Chapter 8 of these Regulations, to the extent that such information and maps and frameworks are relevant to the application;
- (viii) the information contained in the application form, reports, comments, representations and other documents submitted in terms of these Regulations to the competent authority in connection with the application;
- ~~[(viii)]~~ (ix) any comments received from organs of state that have jurisdiction over any aspect of the activity which is the subject of the application; ~~[and]~~
- ~~[(ix)]~~ (x) any guidelines, departmental policies and decision making instruments that have been developed or any other information in the possession of the competent authority, that are relevant to the application; and
- (xi) any matters referred to in sections 24(4)(a) and (b) of the Act.

#### **Timeframes for competent authorities**

9. (1) A competent authority must strive to meet timeframes applicable to competent authorities in terms of these Regulations.

(2) 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 and the applicant.

**Notification of(n) [D]decision on applications by competent authorities**

10. (1) After a competent authority has reached a decision on an application, the competent authority must, in writing and within 10 days –
- (a) notify the applicant of the decision **[and of the period within which the applicant must comply with subregulation (2)];**
  - (b) give reasons for the decision to the applicant; and
  - (c) draw the attention of the applicant to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.

(2) The applicant must, in writing, within 10 days of being notified in terms of subregulation (1)(a) **[a period determined by the competent authority]** –

- (a) notify all registered interested and affected parties of –
  - (i) the outcome of the application; and
  - (ii) the reasons for the decision; and
- (b) draw their attention to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.

**Registry of applications and record of decisions**

11. A competent authority must keep –
- (a) a register of all applications received by the competent authority in terms of these Regulations; and
  - (b) records of all decisions in respect of environmental authorisations.

**Liability of competent authorities as to costs of applications**

12. A competent authority is not liable for any costs incurred by an applicant in complying with these Regulations.

### CHAPTER 3 APPLICATIONS FOR ENVIRONMENTAL AUTHORISATIONS

#### *Part 1: General matters*

#### **Applications**

13. (1) An application for environmental authorisation of an activity must be made to the competent authority referred to in regulation 3.

(2) An application must –

- (a) be made on an official application form published by or obtainable from the relevant competent authority; and
- (b) when submitted in terms of regulation 24(b) or 27(b) be accompanied by –
  - (i) the written **[consent]** notice referred to in regulation 16(1) **[or proof that regulation 16(3) has been complied with]**, if the applicant is not the owner of the land on which the activity is to be undertaken; and
  - (ii) the prescribed application fee, if any.

(3) An application for an environmental authorisation may

- (a) be submitted simultaneously with an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002;
- (b) where section 24L of the Act applies, be submitted in the manner stipulated by that section.

#### **Checking of applications for compliance with formal requirements**

14. (1) On receipt of an application, the competent authority to which the application is submitted must check whether the application –

- (a) is properly completed and that it contains the information required in the application form;
- (b) is accompanied by any reports, other documents and fees required in terms of these Regulations; and
- (c) has taken into account any guideline applicable to the submission of applications.

(2) The competent authority must, within 14 days of receipt of the application, and in writing –

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

(3) The EAP managing an application that has been rejected in terms of subregulation (2) may correct that application and resubmit it to the competent authority.

(4) Subregulations (1) and (2) apply afresh to a corrected application submitted to the competent authority in terms of subregulation (3).

(5) In terms of section 240 of the Act and where basic assessment must be applied, the competent authority must refer a basic assessment report to any State department that administers a law relating to a matter affecting the environment with a request for comments within 40 days.

#### **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 within the area of jurisdiction of the competent authority [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 subregulation (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.

#### **Activities on land owned by person other than applicant**

16. (1) If the applicant is not the owner, manager or person in control 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]** where reasonably possible, give written notice of the proposed activity to the owner, manager or person in control of the land on which the activity is to be undertaken, and inform such person that he may participate in the public participation process as contemplated in regulation 56.

(2) Subregulation (1) does not apply to applications for a prospecting right or renewal thereof, mining right or renewal thereof, reconnaissance permit, exploration right or renewal thereof and production right or renewal thereof, in which case the notice contemplated in subregulation (1) must be served on acceptance of the above applications by the Minister of Minerals and Energy and such notice must inform such person that he may make any submissions to the competent authority in this regard within the timeframe prescribed in such notice.

(3) The format of a [A] written notice [consent] contemplated in subregulation (1) or (2) [must be in a form agreed to or determined] may be prescribed by the competent authority and such written notice must be submitted to the competent authority as proof that sub regulation (1) or (2) has been complied with, as the case may be.

**[(3) Subregulation (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.]**

#### **Appointment of EAPs to manage applications**

**17. (1)** Before applying for environmental authorisation of an activity, an applicant must appoint an EAP at own cost to manage the application.

**(2)** The applicant must –

- (a)** take all reasonable steps to verify whether the EAP to be appointed complies with regulation 18(a) and (b); and
- (b)** provide the EAP with access to all information at the disposal of the applicant regarding the application, whether or not such information is favourable to the applicant.

#### **General requirements for EAPs**

**18.** An EAP appointed in terms of regulation 17(1) must –

- (a)** be independent;
- (b)** have expertise in conducting environmental impact assessments, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;
- (c)** perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;
- (d)** comply with the Act, these Regulations and all other applicable legislation;
- (e)** take into account, to the extent possible, the matters listed in regulation 8(b) when preparing the application and any report relating to the application; and

- (f) disclose to the applicant and the competent authority all material information in the possession of the EAP that reasonably has or may have the potential of influencing –
- (i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or
  - (ii) the objectivity of any report, plan or document to be prepared by the EAP in terms of these Regulations for submission to the competent authority.

### **Disqualification of EAPs**

19. (1) If the competent authority at any stage of considering an application has reason to believe that the EAP managing an application may not be independent in respect of the application, the competent authority must –

- (a) notify the EAP of the reasons for the belief; and
- (b) afford the EAP an opportunity to make representations to the competent authority regarding his or her independence, in writing.

(2) If, after considering the matter, the competent authority is unconvinced of the independence of the EAP, the competent authority must in writing, inform the EAP and the applicant accordingly and may –

- (a) refuse to accept any further reports or input from the EAP in respect of the application in question;
- (b) request the applicant to commission, at own cost, an external review by an independent person of any reports prepared or processes conducted by the EAP in connection with the application;
- (c) request the applicant to appoint, at own cost, another EAP –
  - (i) to redo any specific aspects of the work done by the previous EAP in connection with the application; and
  - (ii) to complete any unfinished work in connection with the application; or
- (d) request the applicant to take such action as the competent authority requires to remedy the effects of the lack of independence of the EAP on the application.



(3) If the application has reached a stage where a register of interested and affected parties has been opened in terms of regulation 57, the applicant must inform all registered interested and affected parties of any decisions taken by the competent authority in terms of subregulation (2).

**Determination of assessment process applicable to application**

20. (1) When appointed in terms of regulation 17(1), an EAP must in accordance with regulation 21 determine whether basic assessment or scoping must be applied to the application, taking into account –

- (a) any guidelines applicable to the activity which is the subject of the application; and
- (b) any advice given by the competent authority in terms of regulation 5 (b).

(2) An application must be managed in accordance with –

- (a) Part 2 of this Chapter if basic assessment must be applied to the application; or
- (b) Part 3 of this Chapter if scoping must be applied to the application.

**Criteria for determining whether basic assessment or scoping is to be applied to applications**

21. (1) Basic assessment must be applied to an application if the authorisation applied for is in respect of an activity listed in –

- (a) Government Notice No. R. 386 of 2006; or
- (b) a notice issued by the Minister or an MEC in terms of section 24D of

the Act identifying further activities for which environmental authorisation is required and stipulating that the procedure described

in Part 2 of this Chapter must be applied to applications for environmental authorisation in respect of those activities.

- (2) Scoping must be applied to an application if –
- (a) the authorisation applied for is in respect of an activity listed in –
- (i) Government Notice No. R. 387 of 2006;
- (ii) a notice issued by the Minister or an MEC in terms of section 24 D of the Act identifying further activities for which environmental authorisation is required and stipulating that the procedure described in Part 3 of this Chapter must be applied to applications for environmental authorisation in respect of those activities;
- (b) permission has been granted in terms of subregulation (3) for scoping instead of basic assessment to be applied to the application; or
- (c) the application is for two or more activities as part of the same development and scoping must in terms of paragraph (a) or (b) be applied in respect of any of the activities.

(3) If an applicant intends undertaking an activity to which basic assessment must be applied in terms of subregulation (1) and the applicant, on the advice of the EAP managing the application, is for any reason of the view that it is unlikely that the competent authority will be able to reach a decision on the basis of information provided in a basic assessment report, the applicant may apply, in writing, to the competent authority for permission to apply scoping instead of basic assessment to the application.

### ***Part 2: Applications subject to basic assessment***

#### **Steps to be taken before submission of application**

22. (1) 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 and before conducting the public participation contemplated in 22(2)(a), give notice in writing, of his or her intent to submit the proposed application, to-

- (i) the competent authority; and

(ii) any organ of state which has jurisdiction in respect of any aspect of the activity.

(2) If basic assessment must be applied to an application, the EAP managing the application, must

(a) conduct at least a public participation process as set out in regulation 56;

(b) **[give notice, in writing, of the proposed application to –**

**(i) the competent authority; and**

**(ii) any organ of state which has jurisdiction in respect of any aspect of the activity; ]**

**(b)[(c)]** open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 57;

**(c) [(d)]** consider all objections and representations received from interested

and affected parties following the public participation process conducted in terms of subregulation 2(a) [paragraph (a)], and subject the proposed application to basic assessment by assessing –

(i) the potential impacts of the activity on the environment and the potential impacts of the environment on the activity;

(ii) whether and to what extent those impacts can be mitigated; and

(iii) whether there are any significant issues and impacts that require further investigation;

**[(e)](d)** prepare a basic assessment report in accordance with **regulation 23; and**

(f) (e)give all registered interested and affected parties an opportunity to comment on the basic assessment report in accordance with regulation 58.

(3) The format of a written notice as contemplated in sub regulation (1) may be prescribed by the competent authority and such written notice must be submitted to the competent authority as proof that sub regulation (1) has been complied with.

### **Content of basic assessment reports**

**23. (1)** The EAP managing an application to which this Part applies must prepare a basic assessment report **[in a format published by, or obtainable from, the competent authority]**.

(2) A basic assessment report must contain all the information that is necessary for the competent authority to consider the application and to reach a decision contemplated in regulation 26, and must include –

- (a) details of –
  - (i) the EAP who prepared the report; and
  - (ii) the expertise of the EAP to carry out basic assessment procedures;
- (b) a description of the proposed activity;
- (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –
  - (i) a linear activity, a description of the route of the activity; or
  - (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken;
- (d) a description of the environment that may be affected by the proposed activity and the manner in which the geographical, physical, biological,  
social, economic and cultural aspects of the environment may be affected by the proposed activity;
- (e) an identification of all legislation and guidelines that have been considered in the preparation of the basic assessment report;
- (f) details of the public participation process conducted in terms of regulation 22(a) in connection with the application, including –
  - (i) the steps that were taken to notify potentially interested and affected parties of the proposed application;
  - (ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the proposed application have been displayed, placed or given;

- (iii) a list of all persons, organisations and organs of state that were registered in terms of regulation 57 as interested and affected parties in relation to the application; and
- (iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;
- (g) a description of the need and desirability of the proposed activity and any identified alternatives to the proposed activity that are feasible and reasonable, including the advantages and disadvantages that the proposed activity or alternatives will have on the environment and on the community that may be affected by the activity;
- (h) a description and assessment of the significance of any environmental impacts, including cumulative impacts, that may occur as a result of the undertaking of the activity or identified alternatives or as a result of any construction, erection or decommissioning associated with the undertaking of the activity;
- (i) any environmental management and mitigation measures proposed by the EAP;
- (j) any inputs made by specialists to the extent that may be necessary;
- (k) a draft environmental management programme containing the aspects contemplated in regulation 34(a)-(g); [and]
- ~~[(k)]~~ (l) any specific information required by the competent authority; and
- (m) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

23(2A) For purposes of this regulation, section 24(4)(b) of this Act is deemed to be applicable.

(3) In addition, a basic assessment report must take into account –

- (a) any relevant guidelines; and

(b) any [practices] departmental policies, environmental management instruments and other decision making instruments that have been developed or adopted by the competent authority in respect of the kind of activity which is the subject of the application.

(5) The EAP managing the application must provide the competent authority with a detailed, written motivation if no reasonable or feasible alternatives, as contemplated in subregulation 23(2)(g), exists.

#### **Submission of application to competent authority**

24. After having complied with regulation 22, the EAP managing the application may –

- (a) complete the application form for environmental authorisation of the relevant activity; and
- (b) submit, to the competent authority, with the prescribed fee, if any, at least five copies of the completed application form [to the competent authority], and of [together with] –
  - (i) the basic assessment report;
  - (ii) **[copies of]** any representations, objections and comments received in connection with the application or the basic assessment report;
  - (iii) **[copies of]** the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants;
  - (iv) any responses by the EAP to those representations, objections, comments and views;
  - (v) a declaration of interest by the EAP on a form provided by the competent authority; and
  - (vi) any documents referred to in regulation 13(2)(b).

#### **Consideration of applications**

25. (1) On submission of the basic assessment report, the competent authority must refer the application to every State department that administers a law relating to a matter affecting the environment with a

request for written comments.

(2) A competent authority must within 30 days of acknowledging receipt of an application in terms of regulation 14(2)(a), consider the application and the basic assessment report.

[(2)] (3) If the competent authority is unable to decide the application on the basic assessment report alone, the competent authority must request the EAP managing the application –

- (a) to submit such additional information as the competent authority may require;
- (b) to submit a report on any specialist study or specialised process as the competent authority may require in relation to any aspect of the proposed activity;
- (c) to suggest, consider or comment on feasible and reasonable alternatives; or
- (d) to subject the application to scoping and environmental impact assessment.

[(3)] (4) The competent authority may reject the basic assessment report if [–

- (a) it does not comply with regulation 22 or 23 in a material respect; or
- (b) it is based on an insufficient public participation process].

(5) (a) A basic assessment report that has been rejected in terms of subregulation (3), may be amended and resubmitted by the EAP to the competent authority.

(b) Comments that are made by interested and affected parties in respect of an amended basic assessment report must be attached to the report, but the EAP need not make further changes to the report in response to such comments.

(6) On receipt of any information, reports, suggestions or comments requested in terms of subregulation (2)(a), (b) or (c) or any amended basic assessment report submitted in terms of subregulation (4), as the case may be, the competent authority must reconsider the application.

(7) If the competent authority requests in terms of subregulation (2) (d) that the application be subjected to scoping, the application must be proceeded with in accordance with regulations 30, 31, 32, 33, 34, 35 and 36.

### **Decision on applications**

26. (1) A competent authority must within 30 days of acknowledging receipt of an application in terms of regulation 14 or, if regulation 25(2)(a), (b) or (c) has been applied or if the basic assessment report has been rejected in terms of regulation 25(3), within 30 days of receipt of the required information, reports, suggestions or comments or the amended basic assessment report, in writing –

- (a) grant authorisation in respect of all or part of the activity applied for;
- or
- (b) refuse authorisation in respect of all or part of the activity.

(2) To the extent that authorisation is granted for an alternative, such alternative must for the purposes of subregulation (1) be regarded as having been applied for.

(3) On having reached a decision, the competent authority must comply with regulation 10(1).

### ***Part 3: Applications subject to scoping and environmental impact assessment***

#### **Submission of application to competent authority**

27. If scoping must be applied to an application, the EAP managing the application must –



- (a) complete the application form for environmental authorisation of the relevant activity; and
- (b) submit the completed application form to the competent authority, together with –
  - (i) a declaration of interest by the EAP on a form provided by the competent authority; and
  - (ii) the prescribed application fee, if any, and any documents referred to in regulation 13(2)(b).

### **Steps to be taken after submission of application**

28. (1) After having submitted an application, the EAP managing the application must –

- (a) conduct at least the public participation process set out in regulation 56;
- (b) give notice, in writing, of the proposed application to any organ of state which has jurisdiction in respect of any aspect of the activity;
- (c) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 57;
- (d) consider all objections and representations received from interested and affected parties following the public participation process;
- (e) subject the application to scoping by identifying –
  - (i) issues that will be relevant for consideration of the application;
  - (ii) the potential environmental impacts of the proposed activity; and
  - (iii) alternatives to the proposed activity that are feasible and reasonable;
- (f) prepare a scoping report in accordance with regulation 29; **[and]**
- (g) give all registered interested and affected parties an opportunity to comment on the scoping report in accordance with regulation 58;
- (h) where applicable, submit the scoping report within the timeframes stipulated by the competent authority; and
- (i) submit at least 5 copies of the scoping report contemplated in (f) simultaneously to the competent authority.

(2) The competent authority must refer the scoping report contemplated in (1)(f) to every State department that administers a law relating to a matter affecting the environment with a request for comments.

### **Content of scoping reports**

- 29.** (1) A scoping report must contain all the information that is necessary for a proper understanding of the nature of issues identified during scoping, and must include –
- (a) details of –
    - (i) the EAP who prepared the report; and
    - (ii) the expertise of the EAP to carry out scoping procedures;
  - (b) a description of the proposed activity and of any feasible and reasonable alternatives that have been identified;
  - (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –
    - (i) a linear activity, a description of the route of the activity; or
    - (ii) an ocean-based activity, the coordinates where the activity is to be undertaken;
  - (d) a description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
  - (e) an identification of all legislation and guidelines that have been considered in the preparation of the scoping report;
  - (f) a description of environmental issues and potential impacts, including cumulative impacts, that have been identified;
  - (g) information on the methodology that will be adopted in assessing the potential impacts that have been identified, including any specialist studies or specialised processes that will be undertaken;
  - (h) details of the public participation process conducted in terms of regulation 28(a), including –
    - (i) the steps that were taken to notify potentially interested and affected parties of the application;

- (ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the application have been displayed, placed or given;
  - (iii) a list of all persons or organisations that were identified and registered in terms of regulation 57 as interested and affected parties in relation to the application; and
  - (iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;
- (i) scoping 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; and

[(i)] (j) a plan of study for environmental impact assessment which sets out the proposed approach to the environmental impact assessment of the application, which must include –

- (i) a description of the tasks that will be undertaken as part of the environmental impact assessment process, including any specialist reports or specialised processes, and the manner in which such tasks will be undertaken;
- (ii) an indication of the stages at which the competent authority will be consulted;
- (iii) a description of the proposed method of assessing the environmental issues and alternatives, including the option of not proceeding with the activity; and
- (iv) particulars of the public participation process that will be conducted during the environmental impact assessment process; **[and]**

[(j)] (k) any specific information required by the competent authority; and

(l) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

(2) In addition, a scoping report must take into account any guidelines applicable to the kind of activity which is the subject of the application.

(3) The EAP managing the application must provide the competent authority with a detailed, written motivation if no reasonable or feasible alternatives, as contemplated in subregulation 29(1)(b), exists.

(4) For purposes of this regulation, section 24(4)(b) of this Act is deemed to be applicable.

### **Submission of scoping reports to competent authority**

**30.** The EAP managing an application must submit the scoping report compiled in terms of regulation 28(f) to the competent authority, together with –

- (a) copies of any representations, objections and comments received in connection with the application or the scoping report from interested and affected parties;
- (b) copies of the minutes of any meetings held by the EAP with interested and affected parties and other role players which record the views of the participants; and
- (c) any responses by the EAP to those representations, objections, comments and views.

### **Consideration of scoping reports**

**31.** (1) The competent authority must, within 30 days of receipt of a scoping report, consider the report, and in writing –

- (a) accept the report and the plan of study for environmental impact assessment contained in the report and advise the EAP to proceed with the tasks contemplated in the plan of study for environmental impact assessment;
- (b) request the EAP to make such amendments to the report or the

- plan of study for environmental impact assessment as the competent authority may require;
- (c) reject the scoping report or the plan of study for environmental impact assessment if it –
- (i) does not contain material information required in terms of these Regulations; or
  - (ii) has not taken into account guidelines applicable in respect of scoping reports and plans of study for environmental impact assessment.

(2) In addition to complying with subregulation (1), the competent authority may advise the EAP of any matter that may prejudice the success of the application.

(3) A scoping report or plan of study for environmental impact assessment that has been rejected by the competent authority in terms of subregulation (1)~~[(d)]~~ (c) may be amended and resubmitted by the EAP.

(4) On receipt of the amended scoping report or plan of study for environmental impact assessment, the competent authority must reconsider the scoping report or plan of study for environmental impact assessment in accordance with subregulation (1).

### **Environmental impact assessment reports**

**32.** (1) If a competent authority accepts a scoping report and advises the EAP in terms of regulation 31(1)(a) to proceed with the tasks contemplated in the plan of study for environmental impact assessment, the EAP must proceed with those tasks, including the public participation process for environmental impact assessment referred to in regulation 29(1)(i)(iv) and prepare an environmental impact assessment report in respect of the proposed activity.

(2) An environmental impact assessment report must contain all information that is necessary for the competent authority to consider the

application and to reach a decision contemplated in regulation 36, and must include –

- (a) details of –
  - (i) the EAP who compiled the report; and
  - (ii) the expertise of the EAP to carry out an environmental impact assessment;
- (b) a detailed description of the proposed activity;
- (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –
  - (i) a linear activity, a description of the route of the activity; or
  - (ii) an ocean-based activity, the coordinates where the activity is to be undertaken;
- (d) a description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
- (e) details of the public participation process conducted in terms of subregulation (1), including –
  - (i) steps undertaken in accordance with the plan of study;
  - (ii) a list of persons, organisations and organs of state that were registered as interested and affected parties;
  - (iii) a summary of comments received from, and a summary of issues raised by registered interested and affected parties, the date of receipt of these comments and the response of the EAP to those comments; and
  - (iv) copies of any representations, objections and comments received from registered interested and affected parties;
- (f) 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;
- (g) an indication of the methodology used in determining the significance of potential environmental impacts;

- (h) a description and comparative assessment of all alternatives identified during the environmental impact assessment process;
- (i) a summary of the findings and recommendations of any specialist report or report on a specialised process;
- (j) a description of all environmental issues that were identified during the environmental impact assessment process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures;
- (k) an assessment of each identified potentially significant impact, including –
  - (i) cumulative impacts;
  - (ii) the nature of the impact;
  - (iii) the extent and duration of the impact;
  - (iv) the probability of the impact occurring;
  - (v) the degree to which the impact can be reversed;
  - (vi) the degree to which the impact may cause irreplaceable loss of resources; and
  - (vii) the degree to which the impact can be mitigated;
- (l) a description of any assumptions, uncertainties and gaps in knowledge;
- (m) a[n] reasoned opinion as to whether the activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;
- (n) an environmental impact statement which 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 and identified alternatives;
- (o) a draft environmental management programme [lan] containing the aspects contemplated in regulation 34(a)-(j);
- (p) copies of any specialist reports and reports on specialised processes complying with regulation 33; **[and]**
- (q) any specific information that may be required by the competent

authority; and

(r) any other matters required in terms of sections 24(4)(a) and (b) of the Act.

(3) The EAP managing the application must provide the competent authority with a detailed, written motivation if no reasonable or feasible alternatives, as contemplated in subregulations 32(2)(f),(h) and (n), exists.

(4) For purposes of this regulation, section 24(4)(b) of this Act is deemed to be applicable.

### **Specialist reports and reports on specialised processes**

**33.** (1) An applicant or the EAP managing an application may appoint a person who is independent to carry out a specialist study or specialised process.

(2) A specialist report or a report on a specialised process prepared in terms of these Regulations must contain –

- (a) details of –
  - (i) the person who prepared the report; and
  - (ii) the expertise of that person to carry out the specialist study or specialised process;
- (b) a declaration that the person is independent in a form as may be specified by the competent authority;
- (c) an indication of the scope of, and the purpose for which, the report was prepared;
- (d) a description of the methodology adopted in preparing the report or carrying out the specialised process;
- (e) a description of any assumptions made and any uncertainties or gaps in knowledge;
- (f) a description of the findings and potential implications of such findings on the impact of the proposed activity, including identified alternatives, on the environment;



- (g) recommendations in respect of any mitigation measures that should be considered by the applicant and the competent authority;
- (h) a description of any consultation process that was undertaken during the course of carrying out the study;
- (i) a summary and copies of any comments that were received during any consultation process; and
- (j) any other information requested by the competent authority.

**Content of draft environmental management programmes[lan]**

**34.** A draft environmental management programme [lan] must include

- 
- (a) details of –
  - (i) the person who prepared the environmental management programme [lan]; and
  - (ii) the expertise of that person to prepare an environmental management programme [lan];
- (b) information on any proposed management or mitigation measures that will be taken to address the environmental impacts that have been identified in a report contemplated by these Regulations, including environmental impacts or objectives in respect of –
  - (i) planning and design;
  - (ii) pre-construction and construction activities;
  - (iii) operation or undertaking of the activity;
  - (iv) rehabilitation of the environment; and
  - (v) closure, where relevant.
- (c) a detailed description of the aspects of the activity that are covered by the draft environmental management programme [lan];
- (d) an identification of the persons who will be responsible for the implementation of the measures contemplated in paragraph (b);
- [(e) where appropriate, time periods within which the measures contemplated in the draft environmental management plan must be implemented; and]**

- [(f)] (e) proposed mechanisms for monitoring compliance with the environmental management programme [lan] and reporting thereon;
- (f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development;
- (g) a description of the manner in which it intends to—
- (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
  - (ii) remedy the cause of pollution or degradation and migration of pollutants;
  - (iii) comply with any prescribed environmental management standards or practices;
  - (iv) comply with any applicable provisions of the Act regarding closure, where applicable;
  - (v) comply with any provisions of the Act regarding financial provisions for rehabilitation, where applicable;
- (h) time periods within which the measures contemplated in the environmental management programme must be implemented;
- (i) measures regulating responsibilities for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of prospecting or mining operations or related mining activities which may occur inside and outside the boundaries of the prospecting area or mining area in question; and
- (i) an environmental awareness plan describing the manner in which—
- (i) the applicant intends to inform his or her employees of any environmental risk which may result from their work; and
  - (ii) risks must be dealt with in order to avoid pollution or the degradation of the environment.

**Consideration of environmental impact assessment reports**

**35.** (1)(a) Where applicable, the EAP must submit the environmental impact assessment report within the timeframes stipulated by the competent authority.

(b) On completion of the environmental impact assessment report, the EAP must submit at least 5 copies of the environmental impact assessment report to the competent authority.

(c) On receipt of the documents contemplated in (1)(a), the competent authority must refer such documents to every State department that administers a law relating to a matter affecting the environment with a request for comments.

**[(1)](2)** The competent authority must, within 60 days of receipt of an environmental impact assessment report, in writing –

- (a) accept the report;
- (b) notify the applicant that the report has been referred for specialist review in terms of section 24I of the Act ;
- (c) request the applicant to make such amendments to the report as the competent authority may require for acceptance of the environmental impact assessment report; or
- (d) reject the report if it does not comply with regulation 32(2) in a material respect.

**[(2)] (3)** (a) An environmental impact assessment report that is rejected in terms of subregulation (1)(d) may be amended and resubmitted by the EAP.

(b) On receipt of the amended report, the competent authority must reconsider the report in accordance with subregulation (1).

**Decision on applications**

**36.** (1) A competent authority must within 45 days of acceptance of an environmental impact assessment report in terms of regulation 35 or, if the report was referred for specialist review in terms of section 24I of the

Act, within 45 days of receipt of the findings of the specialist reviewer, in writing –

- (a) grant authorisation in respect of all or part of the activity applied for;
- or
- (b) refuse authorisation in respect of all or part of the activity.

(2) To the extent that authorisation is granted for an alternative, such alternative must for the purposes of subregulation (1) be regarded as having been applied for.

(3) On having reached a decision, the competent authority must comply with regulation 10(1).

(4) The Minister of Minerals and Energy may only grant authorization if section 24P(1) of the Act has been complied with.

#### ***Part 4: Environmental authorisations***

##### **Issue of environmental authorisations**

37. (1) If the competent authority decides to grant authorisation, the competent authority must issue an environmental authorisation complying with regulation 38 to and in the name of the applicant.

(2) If in the case of an application referred to in regulation 15, the competent authority decides to grant authorisation in respect of more than one activity, the competent authority may issue a single environmental authorisation covering all the activities for which authorisation was granted.

(3) A competent authority may issue an integrated environmental authorisation as contemplated in section 24L of the Act.

##### **Contents of environmental authorisations**

38. (1) An environmental authorisation must specify –

- (a) the name, address and telephone number of the person to whom the authorisation is issued;
  - (b) a description of the activity that is authorised;
  - (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –
    - (i) a linear activity, a description of the route of the activity; or
    - (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken; and
  - (d) the conditions subject to which the activity may be undertaken, including conditions determining –
    - (i) the period for which the environmental authorisation is valid, if granted for a specific period;
    - (ii) requirements for the management, monitoring and reporting of the impacts of the activity on the environment throughout the life cycle of the activity and as contained in the approved environmental management programme; and
    - (iii) the transfer of rights and obligations when there is a change of ownership in the property on which the activity is to take place.
- (2) An environmental authorisation may –
- (a) provide that the authorised activity may not commence before specified conditions are complied with;
  - (b) require the holder of the authorisation to furnish the competent authority with reports prepared by the holder of the authorisation or a person who is independent, at specified times or intervals –
    - (i) indicating the extent to which the conditions of the authorisation are or are not being complied with;
    - (ii) providing details of the nature of, and reasons for, any non-compliance with a condition of the authorisation; and
    - (iii) describing any action taken, or to be taken, to mitigate the effects of any non-compliance or to prevent any recurrence of the non-compliance;

- (c) require the holder of the authorisation to furnish the competent authority with environmental audit reports on the impacts of the authorised activity on the environment, at specified times or intervals or whenever requested by the competent authority; and
- (d) include any other condition that the competent authority considers necessary for the protection of the environment;
- (e) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with applicable requirements regarding financial provisions; and
- (f) where applicable, require the holder of the authorisation to furnish the competent authority with proof of compliance with applicable requirements regarding closure.

#### **CHAPTER 4**

#### **AMENDMENT AND WITHDRAWAL OF ENVIRONMENTAL AUTHORISATIONS**

##### **General**

**39.** (1) The competent authority [**referred to in regulation 3**] who issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment or withdrawal of that authorisation.

(2) An environmental authorisation may be amended –

- (a) on application by the holder of the authorisation in accordance with Part 1 of this Chapter; or
- (b) on the initiative of the competent authority in accordance with Part 2 of this Chapter.

(3) An environmental authorisation may be amended by –

- (a) attaching an additional condition or requirement;
- (b) substituting a condition or requirement;
- (c) removing a condition or requirement;
- (d) changing a condition or requirement;

- (e) updating or changing any detail on the authorisation; or
- (f) correcting a technical or editorial error.

(4) An environmental authorisation may be withdrawn by the competent authority in accordance with Part 3 of this Chapter.

***Part 1: Amendments on application by holders of environmental authorisations***

**Applications for amendment**

40. The holder of an environmental authorisation may at any time apply to the relevant competent authority for the amendment of the authorisation.

**Submission of applications for amendment**

41. (1) An application in terms of regulation 40 must be in writing and accompanied by a motivation for such amendment.

[–

- (a) **on an official application form published by or obtainable from the competent authority; and**
- (b) **accompanied by the prescribed application fee, if any.]**

(2) The competent authority must, within 14 days of receipt of an application, acknowledge receipt of the application, in writing.

**Consideration of applications**

42. (1) On receipt of an application made in terms of regulation 40, the competent authority –

- (a) must consider whether granting the application is likely to adversely affect the environment or the rights or interests of other parties; and
- (b) may for that purpose request the applicant to furnish additional information.

(2) The competent authority must promptly decide the application

if –

- (a) the application is for a non-substantive amendment to the environmental authorisation; or
- (b) the environment or the rights or interests of other parties are not likely to be adversely affected.

(3) If the application is for a substantive amendment, or if the environment or the rights or interests of other parties are likely to be adversely affected, the competent authority must, before deciding the application, request the applicant to the extent appropriate –

- (a) if necessary, to conduct a public participation process as referred to in regulation 56 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity;
- (b) to open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 57;
- (c) to conduct such investigations and assessments as the competent authority may direct, to prepare reports on those investigations and assessments, and, if the competent authority so directs, to make use of an EAP for this purpose;
- (d) to give registered interested and affected parties an opportunity to submit comments on those reports; and
- (e) to submit to the competent authority those reports, together with any comments on those reports from registered interested and affected parties.

(4) If the environment is likely to be adversely affected in a way that would significantly impact on the environment, the competent authority must –

- (a) return the application to the applicant; and



- (b) request the applicant to submit an application in terms of Chapter 3 of these Regulations as if it is a new application for environmental authorisation.

#### **Decision on applications**

43. (1) On having reached a decision on whether or not to grant the application, the competent authority must comply with regulation 10(1).

(2) If an application is approved, the competent authority has the discretion to issue a new environmental authorisation or an addendum to the relevant environmental authorization [must issue an amended environmental to the applicant].

#### ***Part 2: Amendments on initiative of competent authority***

#### **Purposes for which competent authority may amend environmental authorisations**

44. The relevant competent authority may on own initiative amend an environmental authorisation if it is necessary or desirable –
- (a) to prevent deterioration or further deterioration of the environment;
  - (b) to achieve prescribed environmental standards; or
  - (c) to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands.

#### **Process**

45. (1) If a competent authority intends amending an environmental authorisation in terms of regulation 44, the competent authority must first –
- (a) notify the holder of the environmental authorisation, in writing, of the proposed amendment;
  - (b) give the holder of the environmental authorisation an opportunity to submit representations on the proposed amendment, in writing; and
  - (c) if necessary, conduct a public participation process as referred to in regulation 56 or any other public participation process that may be appropriate in the circumstances to bring the proposed

amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.

(2) The process referred to in subregulation (1) must afford an opportunity to –

- (a) potential interested and affected parties to submit to the competent authority written representations on the proposed amendment; and
- (b) the holder of the environmental authorisation to comment on any representations received in terms of paragraph (a) in writing.

(3) Subregulations (1)(c) and (2) need not be complied with if the proposal is to amend the environmental authorisation in a non-substantive way.

#### **Decision**

46. (1) On having reached a decision on whether or not to amend the environmental authorisation, the competent authority must notify the holder of the authorisation of that decision.

(2) If the decision is to amend the environmental authorisation, the competent authority must –

- (a) give to the holder of the authorisation the reasons for the decision;
- (b) draw the attention of the holder to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision; and
- (c) issue an amended environmental authorisation or the relevant amendment(s) as an addendum to the original environmental authorisation to the holder of the authorisation.

#### **46A: Amendment of environmental management programmes**

- (1) The competent authority may, on own initiative or on application, amend an environmental management programme if it is necessary or desirable
- (a) to prevent deterioration or further deterioration of the environment;
  - (b) to achieve prescribed environmental standards;
  - (c) to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;
  - (d) to ensure compliance with the conditions of the environmental authorisation; or
  - (e) in order to assess the continued appropriateness and adequacy of the environmental management programme.
- (2) An application contemplated in subregulation (1) must be in writing and supported by the necessary motivation.
- (3) A competent authority must acknowledge receipt of an application for amendment within 14 days.
- (4) (a) If a competent authority intends amending an environmental management programme in terms of regulation 46A, the competent authority must first –
- (i) notify the holder of the environmental management programme, in writing, of the proposed amendment;
  - (ii) give the holder of the environmental management programme an opportunity to submit representations on the proposed amendment, in writing; and
  - (iii) if necessary, conduct a public participation process as referred to in regulation 56 or any other public participation process that may be appropriate in the circumstances to bring the proposed amendment to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.

(b) The process referred to in subregulation (1) must afford an opportunity to –

- (i) potential interested and affected parties to submit to the competent authority written representations on the proposed amendment; and
- (ii) the holder of the environmental management programme to comment on any representations received in terms of paragraph (a) in writing.

(c) Subregulations (A4)(1)(c) and (2) need not be complied with if the proposal is to amend the environmental management programme in a non-substantive way.

(5) The competent authority must

- (a) in the case where an environmental management programme was approved through the issuing of an environmental authorisation, issue an addendum to the relevant environmental authorisation to approve the amended environmental management programme; or
- (b) in the case where an environmental management programme was approved to the Minerals and Petroleum Resources Development Act, communicate the approval of the amended environmental management programme in writing.

### ***Part 3: Withdrawal of environmental authorisations***

#### **Circumstances in which withdrawals are permissible**

47. The relevant competent authority may in accordance with this Part withdraw an environmental authorisation if –

- [(a) a condition of the authorisation has been contravened or is not being complied with;**
- (b) the authorisation was obtained through –**
  - (i) fraudulent means; or**
  - (ii) the misrepresentation or non-disclosure of material information; or]**

**[(c)] (a) the activity is permanently or indefinitely discontinued; or**

[(d)] (b) unforeseen circumstance leading to potential substantial detrimental effect on environment or to human rights.

#### **Withdrawal proceedings**

48. [(1)] If the competent authority intends to consider the withdrawal of an environmental authorisation, the competent authority must –

- (a) notify the holder of the authorisation, in writing, of the proposed withdrawal and the reasons why withdrawal of the authorisation is considered;
- (b) give the holder of the authorisation an opportunity –
  - (i) to comment on any environmental audit report submitted to or obtained by the competent authority in terms of regulation 79(2); and
  - (ii) to submit any representations on the proposed withdrawal which the holder of the authorisation wishes to make; and

**[(c) conduct any appropriate public participation process to bring the proposed withdrawal to the attention of potential interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity, if the environment or rights or interests of other parties are likely to be adversely affected by the withdrawal.**

(2) The process referred to in subregulation (1)(c) must afford an opportunity to –

- (a) potential interested and affected parties to submit to the competent authority written representations on the proposed withdrawal; and
- (b) the holder of the environmental authorisation to comment on any representations received in terms of paragraph (a).]

#### **Suspension of environmental authorisations**

49. (1) The competent authority may by written notice to the holder of an environmental authorisation suspend with immediate effect an

environmental authorisation which is the subject of withdrawal proceedings in terms of this Part if –

- (a) there are reasonable grounds for believing that the contravention or non-compliance with a condition of the authorisation causes harm to the environment; and
- (b) suspension of the authorisation is necessary to prevent harm or further harm to the environment.

(2) Regulation 48(1)(b)[, (c) and (2)] may be complied with either before or after a suspension.

### **Decision**

50. (1) On having reached a decision on whether or not to withdraw the environmental authorisation, the competent authority must notify the holder of the authorisation of the decision in writing.

(2) If the decision is to withdraw the environmental authorisation, the competent authority must –

- (a) give to the holder of the authorisation the reasons for the decision; and
- (b) draw the attention of the holder of the environmental authorisation to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision.

(3) The provisions of this Part do not affect the institution of criminal proceedings against the holder of an environmental authorisation in terms of section 24F(2) of the Act.

## CHAPTER 5

### EXEMPTIONS FROM PROVISIONS OF THESE REGULATIONS

#### Applications for exemptions

51. (1) Any person to whom a provision of these Regulations applies may, subject to the provisions of section 24M of the Act, apply to the Minister or the MEC, or the Minister of Minerals and Energy, where appropriate, for an exemption from [such] any provision of these regulations [in respect of a specific activity to the competent authority referred to in regulation 3 who is the competent authority for the activity in respect of which the exemption is sought].

[(2) A person may be exempted from a provision of these Regulations requiring or regulating a public participation process, only if the rights or interests of other parties are not likely to be adversely affected by exemption from conducting a public participation process.]

(2) An application contemplated in subregulation (1) may be combined with an application for an environmental authorisation.

(3) An exemption notice issued by the Minister or an MEC in terms of section 24M of the Act and these regulations may be combined with an environmental authorisation issued under these regulations.

#### Submission of applications

52. (1) An application in terms of regulation 51 must be in writing, and must be accompanied by –

- (a) an explanation of the reasons for the application;
- (b) any applicable supporting documents; and
- (c) the prescribed application fee, if any.

(2) The Minister, MEC or Minister of Minerals and Energy where appropriate [competent authority] must, within 21 [14] days of receipt of an application, acknowledge receipt of the application in writing.

(3) The applicant or EAP must communicate its intention to apply for exemption in terms of regulation 51 by giving notice in the manner prescribed in subregulation 56(2)(a), (b), (c) or (d) or a combination thereof which is appropriate in the circumstances and as agreed to with the Minister or an MEC, to all potential or registered interested and affected parties, as the case may be.

(4) The notice contemplated in subregulation (3), must as a minimum, contain-

(a) the provisions from which exemption is applied for;

(b) the manner in which and the person to whom comments on the application for such exemption must be submitted; and

(c) the timeframes applicable to the submission of comments on the application for such exemption.

#### **Consideration of applications**

**53. (1) On receipt of an application in terms of regulation 51, the [competent authority –**

**(a) must consider whether the granting or refusal of the application is likely to adversely affect the rights or interests of other parties; and**

**(b) may for that purpose request the applicant to furnish additional information.]**

Minister or MEC or Minister of Minerals and Energy where appropriate, may request the applicant to furnish additional information or may advise the applicant of any matter that may prejudice the success of the application.

**(2) [In addition to complying with subregulation (1), the competent authority may advise the applicant of any matter that may prejudice the success of the application.]**

On receipt of an application in terms of regulation 51, the Minister, MEC



or Minister of Minerals must consider the application, additional information and any comments and reach a decision within a reasonable timeframe.

**[(3) The competent authority must promptly decide the application if the rights or interests of other parties are not likely to be adversely affected by the proposed exemption.**

**(4) If the rights or interests of other parties are likely to be adversely affected by the proposed exemption, the competent authority must, before deciding the application, request the applicant**

- (a) to conduct at least a public participation process as set out in regulation 56, or any aspect of such process;**
- (b) to open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 57; and**
- (c) to submit any comments received from interested and affected parties following such public participation process, to the competent authority.]**

#### **Decision on applications**

**54. (1) On having reached a decision on whether or not to grant the application, the [competent authority] Minister, MEC or Minister of Minerals and Energy, where appropriate, must, in writing and within 10 days -**

- (a) notify the applicant of the decision;**
- (b) give reasons for the decision to the applicant;**
- (c) draw the attention of the applicant to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision**
- (d) request the applicant to notify potential or registered interested and affected parties, as the case may be of -**

- (i) the outcome of the application; and
- (ii) the reasons for the decision; and
- (e) request the applicant to draw the attention of potential or registered interested and affected parties[, **as the case may be,**] to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of these Regulations, if such appeal is available in the circumstances of the decision. .

(2) If an application is approved, the **[competent authority]** Minister, MEC or Minister of Minerals and Energy, where appropriate, must issue a written exemption notice to the applicant, stating –

- (a) the name, address and telephone number of the person to whom the exemption is granted;
- (b) the provision of these Regulations from which exemption is granted;
- (c) the activity in respect of which exemption is granted;
- (d) the conditions subject to which exemption is granted,, including conditions relating to the transfer of the written exemption notice; and
- (e) the period for which exemption is granted, if the exemption is granted for a period.

#### **Review of exemptions**

**55.** (1) A **[competent authority]** Minister, MEC or Minister of Minerals and Energy, where appropriate, may –

- (a) from time to time review any exemption notice issued by it in terms of regulation 54 ; and
- (b) on good grounds, by written notice to the person to whom exemption was granted, withdraw or amend the exemption notice.

(2) The **[competent authority]** Minister, MEC or Minister of Minerals and Energy, where appropriate, must, before withdrawing or amending an exemption notice give the person to whom exemption was granted an opportunity to comment on the reasons for the withdrawal or amendment in writing.

## CHAPTER 6

### PUBLIC PARTICIPATION PROCESSES

#### Public participation process

56. (1) This regulation only applies where specifically required by a provision of these Regulations.

(2) The person conducting a public participation process must take into account any guidelines applicable to public participation as contemplated in regulations 73 and 74 of these regulations 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 where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;
  - [(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;]**
  - (ii)[i]** the municipal councillor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represents the community in the area;
  - (iii)[v]** the municipality which has jurisdiction in the area; and
  - (iv) any organ of state having jurisdiction in respect of any aspect of the activity;
  - (v) any other party as required by the competent authority.**
- (c) placing an advertisement in –

- (i) one local newspaper; 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; **[and]**
- (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is or will be undertaken: Provided that this paragraph need not be complied with if an advertisement has been placed in an official *Gazette* referred to in subregulation (c)(ii); and
- (e) reasonable alternative methods in those instances where a person is desiring but unable to participate in the process due to –
  - (i) a lack of skills to read or write;
  - (ii) disability; or
  - (iii) any other disadvantage.

(3) A notice, notice board or advertisement referred to in subregulation (2) must –

- (a) give details of the application which is subjected to public participation; and
- (b) state –
  - (i) that the application has been or is to be submitted to the competent authority in terms of these Regulations, as the case may be;
  - (ii) whether basic assessment or scoping procedures are being applied to the application, in the case of an application for environmental authorisation;
  - (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
  - (v) the manner in which and the person to whom representations in respect of the application may be made.

- (4) A notice board referred to in subregulation (2) must –
- (a) be of a size at least 60cm by 42cm; and
  - (b) display the required information in lettering and in a format as may be determined by the competent authority .

(5) **[If an application is for a linear or ocean-based activity and strict compliance with subregulation (2) is inappropriate]** Where circumstances prevent compliance with subregulation (2), the person conducting the public participation process may deviate from the requirements of that subregulation to the extent and in the manner as may be agreed to by the competent authority.

- (6) When complying with this regulation, the person conducting the public participation process must ensure that –
- (a) information containing all relevant facts in respect of the application is made available to potential interested and affected parties; and
  - (b) participation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application.

(7) Unless justified by exceptional circumstances, the applicant and EAP managing the environmental assessment process must refrain from conducting any public participation process during the period of 15 December to 2 January.

#### **Register of interested and affected parties**

57. (1) An applicant or EAP managing an application must open and maintain a register which contains the names and addresses of –
- (a) all persons who, as a consequence of the public participation process conducted in respect of that application in terms of regulation 56, have submitted written comments or attended meetings with the applicant or EAP;

- (b) all persons who, after completion of the public participation process referred to in paragraph (a), have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and
- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

(2) An applicant or EAP managing an application must give access to the register to any person who submits a request for access to the register in writing.

**Registered interested and affected parties entitled to comment on submissions**

58. (1) A registered interested and affected party is entitled to comment, in writing, 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 that party believes may be of significance to the consideration of the application, provided that –

- (a) comments are submitted within –
  - (i) the timeframes that have been approved or set by the competent authority; or
  - (ii) any extension of a timeframe agreed to by the applicant or EAP;
- (b) a copy of comments submitted directly to the competent authority is served on the applicant or EAP; and
- (c) the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

(1A) (a) When a State department is requested to comment by the competent authority, as contemplated in regulations 14(5), 28(2) and 35(1), such State department must, within 40 days of receiving request for comment from the competent authority, provide

comments to the competent authority.

(b) The competent authority reserves the right to disregard comments not received within the stipulated period of 40 days.

(2) Before the EAP managing an application for environmental authorisation submits a report compiled in terms of these Regulations to the competent authority, the EAP must give registered interested and affected parties access to, and an opportunity to comment on the report in writing.

(3) Reports referred to in subregulation (2) include –

- (a) basic assessment reports;
- (b) basic assessment reports amended and resubmitted in terms of regulation 25 (4);
- (c) scoping reports;
- (d) scoping reports amended and resubmitted in terms of regulation 31(3);
- (e) specialist reports and reports on specialised processes compiled in terms of regulation 33;
- (f) environmental impact assessment reports submitted in terms of regulation 32; and
- (g) draft environmental management plans compiled in terms of regulation 34.

(4) Any written comments received by the EAP from a registered interested and affected party must accompany the report when the report is submitted to the competent authority.

**[(5) A registered interested and affected party may comment on any final report that is submitted by a specialist reviewer for the purposes of these Regulations where the report contains substantive information which has not previously been made available to a registered interested and affected party.]**

**Comments of interested and affected parties to be recorded in reports submitted to competent authority**

59. The EAP managing an application for environmental authorisation must ensure that the comments of interested and affected parties are recorded in reports, and that such written comments, including records of meetings are attached to the report, submitted to the competent authority in terms of these Regulations[: **Provided that any comments by interested and affected parties on a report which is to be submitted to the competent authority may be attached to the report without recording those comments in the report itself.**]

**CHAPTER 7  
APPEALS**

**Application of this Chapter**

60. (1) This Chapter applies to decisions that –

- (a) are subject to an appeal to the Minister or MEC in terms of section 43 (1), (2) or (3) of the Act; and
- (b) were taken by an organ of state acting under delegation in terms of section 42 or 42A of the Act in the exercise of a power or duty vested by the Act or these Regulations in a competent authority.

(2) **[No appeal in terms of this Chapter lies against decisions taken by the Minister or MEC themselves in their capacity as the competent authority for the activity to which the decision relates.]**

No appeal in terms of this chapter is available if the Minister or MEC took decisions themselves in their capacity as the competent authority for the application for an environmental authorisation.

**Jurisdiction of Minister and MEC to decide appeals**

61. An appeal against a decision must be decided by [lodged with] –

- (a) the Minister, if the Minister is the competent authority for the activity in relation to which the decision was taken or if the appeal is



against an environmental authorisation or conditions of such an environmental authorisation issued by the Minister of Minerals and Energy;

- (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 or
- (d) the Minister of Minerals and Energy if the appeal is on a process related decision if the Minister of Minerals and Energy is the competent authority.

### **Notices of intention to appeal**

**62.** (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]** 20 days after **[that person]** the applicant has been notified in terms of these Regulations of the decision.

(2) If the appellant is an applicant, the appellant must provide **[serve on]** each person and organ of state which was a registered interested and affected party in relation to the applicant's application, within 10 days of having lodged the notice contemplated in subregulation (1), –

- (a) a copy of the notice referred to subregulation (1); and
- (b) a notice indicating where and for what period the appeal submission will be available for inspection by such person or organ of state.

(3) If the appellant is a person other than an applicant, the appellant must **[serve on]** provide the applicant, within 10 days of having lodged the notice contemplated in subregulation (1), –

- (a) a copy of the notice referred to subregulation (1); and
- (b) a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.

(4) The Minister, MEC or **[delegated] designated** organ of state, may, as the case may be, in writing, on good cause extend the period within which a notice of intention to appeal must be submitted.

### Submission of appeals

63. (1) An appeal **[lodged with]** must be submitted to—
- (a) the Minister **[must be submitted to]** for all decisions taken by the Department of Environmental Affairs and Tourism and for all decisions on environmental authorisations and environmental management programmes taken by the Minister of Minerals and Energy;
  - (b) the MEC **[must be submitted to]** for all decisions taken by the provincial department responsible for environmental affairs in the relevant province; [or]
  - (c) **[the delegated]** where relevant, any other organ of state, [where relevant, must be submitted to that delegated] empowered under Chapter 5 of the Act to make a decision on an appeal, for all decisions taken by that organ of state or
  - (d) the Minister of Minerals and Energy for all process related decisions taken by that Minister.

(2) An appeal must be –

- (a) submitted in writing [on an official form published by or obtainable from the relevant department]; and
- (b) accompanied by –
  - (i) a statement setting out the grounds of appeal;
  - (ii) supporting documentation which is referred to in the appeal and which is not in the possession of the Minister, MEC, Minister of Minerals and Energy or [delegated] designated organ of state;
  - (iii) a statement by the appellant that regulation 62(2) or (3) has been complied with together with copies of the notices referred to in that regulation; and
  - (iv) the prescribed appeal fee, if any.

(3) **[When submitting an appeal, t]**The appellant must take into account any guidelines applicable to appeals as contemplated in regulations 73 and 74 of these regulations.

#### **Time within which appeals must be lodged**

**64.** (1) An appeal as contemplated in regulation 63(1), must be submitted **[to the relevant department]** within 30 days **[of the lodging of]** after submitting the notice of intent [intention] to appeal referred to in regulation **62(1).**

(2) The Minister, MEC, Minister of Minerals and Energy or **[delegated] designated** organ of state, as the case may be, may, in writing, on good cause extend the period within which an appeal must be submitted.

#### **Responding statements**

**65.** (1) A person or organ of state which receives a notice in terms of regulation **62(2)**, or an applicant who receives a notice in terms of regulation **62(3)**, may submit to the Minister, MEC, Minister of Minerals and Energy or **[delegated] designated** organ of state, as the case may be, a responding statement within 30 days from the date the appeal submission was made available for inspection in terms of that section.

(2) (a) A person, organ of state or applicant who submits a responding statement in terms of subregulation (1), (hereinafter referred to as a respondent), must within 10 days of having submitted the responding statement, serve a copy of the statement on the appellant.

(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, Minister of Minerals and Energy or **[delegated] designated** organ of

state, as the case may be, within 30 days of **[receipt of the responding statement]** being served a copy in accordance with subregulation (2)(a).

(c) The appellant must, within 10 days of having submitted the answering statement, serve a copy of the answering statement on the respondent who submitted the new information.

(3) The Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state, as the case may be, may, in writing, on good cause extend the period within which responding statements in terms of subregulation (1) or an appellant's answering statement in terms of subregulation (2)(b) must be submitted.

#### **Processing of appeals**

66. (1) Receipt by the Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state, as the case may be, of an appeal, responding statement or answering statement must be acknowledged within 10 days of receipt of the appeal, responding statement or answering statement.

(2) An appellant and each respondent is entitled to be notified of –

- (a) a direction in terms of section 43(7) of the Act, if the Minister, MEC or delegated organ of state, as the case may be, issues such a direction; and
- (b) the appointment of an appeal panel in terms of section 43(5) of the Act, if the Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state, as the case may be, appoints an appeal panel for purposes of the appeal.

(3) The Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state, as the case may be, may request the appellant or a respondent to submit such additional information in connection with the appeal as the Minister or MEC may require.

**Appeal panels**

67. (1) If the Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state, as the case may be, appoints an appeal panel, the Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state must furnish the panel with a written instruction concerning –

(a) the issues in respect of which the panel must make recommendations; and

(b) the period within which recommendations must be submitted to the Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state.

(2) A member of an appeal panel must be independent.

(3) If an appeal panel introduces any new information not dealt with in the appeal submission of the appellant or in the statements of the respondents, both the appellant and each respondent are entitled to submit to the panel, within a period determined by the panel, any additional statements rebutting or supporting such new information.

(4) An appeal panel must submit its recommendations to the Minister, MEC, Minister of Minerals and Energy or **[delegated]** designated organ of state, as the case may be, in writing.

**Decision on appeals**

68. (1) The Minister, MEC, Minister of Minerals and Energy or any other competent authority empowered under Chapter 5 of the Act to make a decision on an appeal, as the case may be, must reach a final decision on an appeal submitted, within 90 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, Minister of Minerals and

Energy or designated organ of state, as the case may be, in the decision making process.

(2) When the Minister, MEC, Minister of Minerals and Energy or **[delegated] designated** organ of state, as the case may be, has reached a final decision on an appeal, the appellant and each respondent must be notified of the decision and the extent to which the decision appealed against is upheld or overturned in writing.

**[(2)] (3)** Reasons for the decision must on written request be given to the appellant or a respondent in writing.

## CHAPTER 8

### GENERAL MATTERS AFFECTING APPLICATIONS AND APPEALS

#### *Part 1: Environmental management frameworks*

##### **Purpose of this Part**

69. (1) The purpose of this Part is to provide –
- (a) for the Minister or MEC with concurrence of the Minister to initiate the compilation of information and maps referred to in section 24(3) of the Act specifying the attributes of the environment in particular geographical areas; and
  - (b) for such information and maps to be used as environmental management frameworks in the consideration in terms of section 24 (4)(i) of the Act of applications for environmental authorisations in or affecting the geographical areas to which those frameworks apply.

(2) The provisions of this Part may not be read as purporting to affect the powers of the Minister or MEC in terms of section 24(3) of the Act to compile information and maps specifying the attributes of the environment in specific geographical areas.

##### **Draft environmental management frameworks**

70. (1) The Minister or MEC with the concurrence of the Minister may initiate an environmental management framework for an area.

(2) In order to initiate an environmental management framework for an area, the Minister or MEC must –

- (a) compile a draft environmental management framework;
- (b) subject the draft to a public participation process by –
  - (i) making the draft available for public inspection at a convenient place; and
  - (ii) inviting potential interested and affected parties by way of advertisements in newspapers circulating in the area and in any other appropriate way to inspect the draft and submit representations, objections and comments in connection with the draft to that person or organ of state; and
- (c) review the draft in the light of any representations, objections and comments received.

### **Contents**

71. A draft environmental management framework must –

- (a) identify by way of a map or otherwise the geographical area to which it applies;
- (b) specify the attributes of the environment in the area, including the sensitivity, extent, interrelationship and significance of those attributes;
- (c) identify any parts in the area to which those attributes relate;
- (d) state the conservation status of the area and in those parts;
- (e) state the environmental management priorities of the area;
- (f) indicate the kind of activities that would have a significant impact on those attributes and those that would not;
- (g) indicate the kind of activities that would be undesirable in the area or in specific parts of the area; and
- (h) include any other matters that may be specified.

## Adoption

72. (1) If the Minister or MEC adopts with or without amendments an environmental management framework initiated in terms of regulation 70, the environmental management framework must be taken into account in the consideration of applications for environmental authorisation in or affecting the geographical area to which the framework applies.

(2) When an environmental management framework has been adopted, notice must be given in the Government Gazette or the official Gazette of the relevant province of –

- (a) the adoption of the environmental management framework; and
- (b) the place where the environmental management framework is available for public scrutiny.

(3) Environmental management frameworks adopted as provided in subregulation (1) may from time to time, on the initiative of the Minister or an MEC, be revised.

(4) When an environmental management framework has been revised as provided in subregulation (3), notice must be given in the Government Gazette or the official Gazette of the relevant province of –

- (a) the review of the environmental management framework; and
- (b) the place where the revised environmental management framework is available for public scrutiny.

## ***Part 2: National and provincial guidelines, norms or standards***

### **National guidelines**

73. (1) The Minister may by notice in the Government Gazette issue national guidelines, as contemplated in section 24J of the Act, on the implementation of these Regulations with regard to –

- (a) any particular environmentally sensitive area or kind of environmentally

sensitive areas, or environmentally sensitive areas in general;



- (b) any particular environmental impact or kind of environmental impact, or environmental impacts in general;
- (c) any particular activity or kind of activities, or activities in general;  
**[and]**
- (d) the process and criteria for the development of new or adoption of existing norms or standards; and
- (e) any particular process contemplated in these Regulations.

(2) A **[delegated]** designated organ of state may, in consultation with the Minister, by notice in the Government Gazette issue guidelines, which must be consistent with any national guidelines issued in terms of regulation 73, on the implementation of these Regulations, including guidelines with regard to the matters set out in 73(1)(b), (c), (d) or any matter incidental thereto, in relation to activities in respect of which the organ of state is the competent authority.

#### **Provincial guidelines**

74. (1) An MEC may by notice in the official Gazette of the province issue provincial guidelines, as contemplated in section 24J of the Act, on the implementation of these Regulations, including guidelines with regard to the matters set out in regulation 73(a), (b), (c), **[or]** (d) and (e) in relation to applications in respect of which the MEC is the competent authority.

(2) Provincial guidelines issued in terms of subregulation (1) must be consistent with any national guidelines issued in terms of regulation 73.

#### **Legal status of guidelines**

75. Guidelines issued in terms of regulation 73 or 74 are not binding but must be taken into account when preparing, submitting, processing or considering any application in terms of these Regulations.

**Draft guidelines to be published for public comment**

76. Before issuing any guidelines in terms of regulation 73 or 74, the Minister or MEC must publish the draft guidelines in the relevant *Gazette* for public comment.

**76A “Procedures for prescribing or adopting Norms or Standards**

Norms or standards developed or adopted in terms of section 24(10) of the Act, are legally binding after approval by the Minister or MEC, as the case may be.”

***Part 3: Other matters*****Failure to comply with requirements for consideration of applications and appeals**

77. (1) An application or appeal in terms of these Regulations lapses if the applicant or appellant after having submitted the application or appeal fails for a period of six months to comply with a requirement in terms of these Regulations relating to the consideration of the application or appeal.

(2) Subregulation (1) does not apply where reasons for failure has been communicated to and accepted by the competent authority.

**Resubmission of similar applications**

78. No applicant may submit an application which is substantially similar to a previous application by the applicant which has been refused, unless –

- (a) the new application contains new or material information not previously submitted to the competent authority; or
- (b) a period of three years has elapsed since the refusal.

**Compliance monitoring**

79. (1) If a competent authority reasonably suspects that the person who holds an environmental authorisation or who has been granted an

exemption in terms of Chapter 5 of these Regulations has contravened or failed to comply with a condition of the authorisation or exemption, the competent authority may request that person, in writing, to submit an explanation for the alleged contravention or non-compliance.

(2) If the competent authority reasonably suspects that the alleged contravention or failure has caused, or may cause, harm to the environment, the competent authority may request the person concerned, in writing, to submit an environmental audit report on the harm or suspected harm to the environment or on any specific matter determined by the competent authority.

(3) An explanation and environmental audit report requested in terms of subregulation (1) must be submitted in a form and within a period determined by the competent authority.

(4) The competent authority may require a person contemplated in subregulation (1) to appoint an independent person approved by the competent authority to perform the environmental audit.

(5) A person contemplated in subregulation (1) is liable for all costs in connection with the environmental audit, including the preparation and submission of the audit report.

(6) If a person contemplated in subregulation (2) is requested to submit an environmental audit report and fails to submit the report within the period determined in terms of subregulation (3), the competent authority may –

- (a) appoint an independent person to perform the audit; and
- (b) recover the cost of the audit from that person.

(7) Sub regulations (1) to (6) must be read together with the provisions of chapter 7 of the Act.

(8) Every holder of an environmental authorisation must conduct such monitoring and such performance assessment of the approved environmental authorization and environmental management programme as may be prescribed through conditions of the environmental authorisation.

### **Assistance to people with special needs**

80. The competent authority processing an application or the Minister, [or] MEC or Minister of Minerals and Energy processing an appeal in terms of these Regulations must give reasonable assistance to a person desiring to object against the application or to lodge an appeal against a decision in respect of the application if that person is unable to comply with a requirement of these Regulations due to –

- (a) a lack of skills to read or write;
- (b) disability; or
- (c) any other disadvantage.

### **Offences**

81. (1) In addition to section 24F of the Act, a [A] person is guilty of an offence if that person –

- (a) provides incorrect or misleading information in any document submitted in terms of these Regulations to a competent authority;
- (b) fails to comply with regulation 7(2);
- (c) fails to comply with a request in terms of regulation 79(2);
- (d) contravenes or fails to comply with a condition subject to which an exemption in terms of Chapter 5 of these Regulations has been granted or
- (e) continues with an activity where the environmental authorisation was withdrawn in terms of regulation 50 or suspended in terms of regulation 49.

(2) A person is liable on conviction of an offence in terms of subregulation (1) to imprisonment for a period not exceeding two years or

to a fine not exceeding an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

## CHAPTER 9 TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT

### Definition

82. In this Chapter –

“previous regulations” as contemplated in these transitional arrangements, means the regulations published in terms of sections 26 and 28 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) (ECA), by Government Notice R. 1183 of 5 September 1997, as amended by Government Notice R. 1355 of 17 October 1997, Government Notice R. 448 of 27 March 1998 and Government Notice R. 670 of 10 May 2002 or the Environmental Impact Assessment Regulations in terms of the National Environmental Management Act (Act No. 107 of 1998) (Government Notice No. R. 385, R. 386, and R. 387 in the Government Gazette of 21 April 2006 refer) (“NEMA”).

### Continuation of things done authorisations issued under previous regulations

83. (1) Anything done in terms of the previous regulations and which can be done in terms of a provision of these Regulations must be regarded as having been done in terms of the provision of these Regulations.

(2) Any authorisation or exemption notice issued in terms of the ECA [previous] regulations [and which is in force when these Regulations take effect], must be regarded to be an environmental authorisation issued in terms of these Regulations or an exemption notice issued in terms of these Regulations.

(3) Any authorisation issued in terms of the NEMA Regulations must be regarded to be an environmental authorisation issued in terms of

these Regulations.

(4) Any environmental management programme or environmental management plan approved in terms of the Mineral and Petroleum Resources Development Act prior to any provision relating to prospecting, mining, exploration and production coming into effect in terms of the Act shall be deemed to be an environmental authorisation in terms of these Regulations.

#### **Pending applications and appeals**

84. (1) An application for authorisation of an activity submitted in terms of the previous regulations and which is pending when these Regulations take effect, must despite the repeal of the previous regulations be dispensed with in terms of the previous regulations as if the previous regulations were not repealed.

(2) An appeal lodged in terms of the previous regulations which is pending when these Regulations take effect or an appeal lodged against a decision taken by virtue of the application of subregulation (1), must despite the repeal of the previous regulations be dispensed with in terms of the previous regulations as if the previous regulations were not repealed.

(3) Any authorisation issued following an application in terms of subregulation (1) **[or an appeal in terms of subregulation (2)]** must be regarded to be an environmental authorisation issued in terms of these Regulations.

(4) Any decision taken on an application in terms of the previous regulations that is still in force when these regulations come into effect and which was issued for an activity that was listed in the previous regulations and which is listed in terms of these regulations remains in force as if the previous regulations were not repealed.

(5) If a situation arises where activities listed under the previous regulations are not listed similarly under these regulations, and where a decision on an application submitted under the previous regulations is still pending, the competent authority will consider such application to be withdrawn.

(6) An activity that is not listed in terms of the previous regulations but which is listed in terms of these regulations, must obtain prior written environmental authorisation in terms of these regulations prior to commencement of such activity.

(7) Where an application submitted in terms of the previous regulations is pending and any component of the same activity which were not listed under the previous regulations is now listed in terms of section 24(2) of the Act, the competent authority must dispense of such application in terms of those previous regulations and may authorise the activity listed in terms of 24(2) as if it was applied for, on condition that all impacts of the newly listed activity and requirements of these regulations have also been considered and adequately addressed by the applicant.

(8) Where an application submitted under the previous regulations has been finalised and any component of the same activity which were not listed under the previous regulations are now listed in terms of section 24C(2) of the Act, and where that new component of the activity will commence after these regulations come into effect, the competent authority must consider whether the new component was satisfactorily assessed as part of the application under the previous regulations and issue an amendment to the environmental authorisation to that effect.

(9) In considering an application for environmental authorisation or exemption, the competent authority must consider any relevant information generated during a process followed in terms of the previous regulations or any other legislation and which information has been

submitted as part of the application for environmental authorisation or exemption when making a decision.

#### **Existing policies and guidelines**

85. Guidelines adopted by the Minister, Minister of Minerals and Energy or MEC before these Regulations took effect for the purpose of facilitating the implementation of the previous regulations, must to the extent compatible with the Act and these Regulations be regarded to be national or provincial guidelines issued in terms of Part 2 of Chapter 8 of these Regulations.

#### **Continuation of regulations regulating authorisations for activities in certain coastal areas**

86. These Regulations do not affect the continued application of the regulations published in terms of sections 26 and 28 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), by Government Notice R. 1528 of 27 November 1998.

#### **Short title and commencement**

87. These Regulations may be cited as the Environmental Impact Assessment Amendment Regulations, 200[6]8, and take effect on a date determined by the Minister by notice in the Government Gazette.



**No. R. 660****13 June 2008**

The Minister of Environmental Affairs and Tourism hereby publishes the second amendment draft to Listing Notice 1 of the List of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 386 of 21 April 2006, which provides for activities 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.

**DRAFT AMENDMENT REGULATIONS**

To amend Listing Notice 1 of the List of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 386 of 21 April 2006, so as to provide for certain textual alterations, the insertion of new definitions and substitution of others; and augmenting definitions to 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 and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

## 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.

## SCHEDULE

### Definitions

1. In this Notice, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates -

**“agri-industrial”** means an undertaking involving the beneficiation of primary agricultural produce; **[production, processing, manufacture, packaging or storage of agricultural produce and includes battery farm operations that are under roof]**

**[“asbestos”** means any fibrous mineral silicates, including actinolite, amosite, anthophyllite, chrysotile, crococolite or tremolite;]

**“associated structures or infrastructure”** means any building or infrastructure that is necessary for the functioning of a facility or activity or that is used for an ancillary service or use from the facility;

**“canal”** means an open structure, that is lined or reinforced, for the conveying of a liquid or that serves as an artificial watercourse;

**“channel”** means an excavated hollow bed for running water or an artificial underwater depression to make a water body navigable [or to improve the flow of water] in a natural watercourse, river or the sea;

**“concentration of animals”** means the keeping of animals in a confined space or structure, including a feedlot, where they are fed in order to prepare them for slaughter or to produce secondary products such as milk or eggs;

**“construction”** means the building, erection or establishment of a facility, structure or infrastructure that is necessary for the undertaking of a listed or specified activity but excludes any modification, alteration or expansion of such a facility, structure or infrastructure; [building, erection or expansion of a facility, structure or infrastructure that is necessary for the undertaking of an activity, but excludes any modification, alteration or upgrading of such facility, structure or infrastructure that does not result in a change to the nature of the activity being undertaken or an increase in the production, storage or transportation capacity of that facility, structure or infrastructure]

**“dam”** when used in these Regulations means any barrier dam and any other form of impoundment used for the storage of water;

**“dangerous goods”** means goods as contemplated in the Schedule hereto [that are capable of posing a significant risk to the health and safety of people or the environment and which are listed in South African National Standard No.10228: 2003, Edition 3, excluding ammonium nitrate to be used solely for the purpose of fertilizer; [, designated “The identification and classification of dangerous goods for transport”, SANS 10228:2003, edition 3, published by Standards South Africa, ISBN 0-626-14417-5, as may be amended from time to time]

“decommissioning” means to take out of active service permanently or dismantle partly or wholly, or closure of a facility to the extent that it can not be readily re-commissioned;

“derelict land” means abandoned land or property where the lawful/legal land use right has not been exercised during the preceding ten year period;

“development footprint”, in respect of land, means any evidence of physical transformation as a result of the undertaking of any activity;”

“development setback” means a setback line in terms of zoning scheme regulations or a setback line determined in terms of development approval conditions or a setback line determined in terms of approval conditions included in previous authorisations, rezoning or subdivision approvals spatial development tools and which must, where appropriate, be scientifically motivated;

“effluent” means wastewater from any source;

“expansion” means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which an activity takes place in such a manner that the [production, treatment, storage or] capacity of the facility or the scale of the activity is increased;

“filling station” means a site where petrol, diesel, liquid petroleum gas or paraffin is offered for sale, and includes shops and car-washing facilities that are located on the same property or form part of the same development but excludes retail shops that sell gas or paraffin in small containers;

**["floodplain" means the 1:10 year flood line, a discernable flat landscape feature next to a river or stream that was created by weathering and sedimentation over time]**

**"indigenous vegetation" means vegetation consisting mostly of indigenous plant species occurring naturally in an area; [where the topsoil has not been disturbed during the preceding ten years];**

**"industrial area" means an area used for bulk storage, manufacturing, processing or packaging purposes;**

**["infill development" means urban development, including residential, commercial, retail, institutional, educational and mixed use development, but excluding industrial development, in a built up area which is at least 50 percent abutted by urban development and which can be readily connected to municipal bulk infrastructure services;]**

**["mariculture" means the culture or husbandry of fish in sea water;]**

**"marina" means a constructed waterway that is normally associated with residential or commercial use and that could include mooring facilities;**

**"maintenance dredging" when used in this Regulation means a dredging activity which reoccurs on a regular basis for operational purposes in ports, marinas or harbours;**

**"mixed use", with regard to an activity, means the presence of two or more types of land use in an area;**

**“petroleum”** means any liquid, solid hydrocarbon or combustible gas as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended;

**“phased activities”** means an activity that is developed in phases over time on the same or adjacent properties to create a single or linked entity through interconnected internal vehicular or pedestrian circulation, sharing of infrastructure, or the continuum of design, style or concept by the same proponent or his or her successors.

**“resort”** means facilities for overnight tourism accommodation which sleeps more than 15 people;

**“sewage”** means effluent from a domestic source which is conveyed by sewer to a wastewater treatment plant;

**“slaughter unit”** in relation to a quantity standard for determining throughput, means the definition as defined in Regulation 1028 of the Animal Slaughter, Meat and Animal Product Hygiene Act, 1967;

**“South African Manual for Outdoor Advertising Control”** means the Department of Environmental Affairs and Tourism and the Department of Transport publication titled “South African Manual for Outdoor Advertising Control”, published by the Department of Environmental Affairs and Tourism, April 1998, ISBN: 0-621-27343-0;]

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

**“the Regulations”** means the Environmental Impact Assessment Regulations, 2006;

“transformation” means the physical or legal alteration of the land use as a result of the undertaking of any activity;

“undeveloped” means that no facilities, structures or infrastructure have previously been effected upon the land or property, either above or below ground, to give effect to the lawful land use right of the land or property;

“urban areas” means areas situated within the urban edge (as defined or adopted by the competent authority), or in instances where no urban edge or boundary has been defined or adopted, it refers to areas situated within the edge of built-up areas;

“vacant” means not occupied for the purpose of its lawful land use right namely residential, mixed, retail, commercial, industrial or institutional use during the preceding ten year period;

“watercourse” means -

(a) a river or spring;

(b) a natural channel in which water flows regularly or intermittently;

(c) a wetland, lake or dam into which, or from which, water flows; and

(d) any collection of water which the Minister may, by notice in the Gazette, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks; and

“wetland” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

2. In this Notice, the following words relevant to aquaculture activities will have the meaning so assigned hereunder:

“aquaculture” means the farming [animals or plants in an aquatic environment]of aquatic organisms including fish, molluscs, crustaceans and plants in controlled or selective aquatic environments, with some form of intervention in the rearing process to enhance production, such as regular stocking, feeding and protection from natural predators;

“cage culture” means the practice of aquaculture within a defined pen or net cage or structure that is contained within a larger water body.

“exotic” means all species not naturally found in South Africa or which has been introduced into South Africa by human intervention;

“extralimital” means species that occur within South Africa but which have been introduced into areas where they do not occur naturally; i.e. outside of their natural distribution range;

“finfish” means an aquatic vertebrate of the super-class Pisces;

“naturalized distribution range” means the distribution range occupied by an exotic or extralimital species in which it has established a reproducing population.



3. In this Notice, the following words will have the meaning so assigned hereunder; until such time as the national legislation providing for waste management has come into effect, where after the definitions will be substituted by the applicable definitions of the national legislation governing waste management in the Republic of South Africa -

“hazardous waste” means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;

“temporary storage of hazardous waste” means the storage of hazardous waste for a period of 90 days or less;

“waste” means any substance, whether or not that substance can be reduced, reused, recycled and recovered, that –

- (i) is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (ii) the generator has no further use of for the purposes of production, reprocessing or consumption;
- (iii) that must be treated or disposed of; or
- (iv) is identified as a waste by the Minister:

Provided that a by-product shall not be considered to be waste and provided further that any portion of waste once reduced, reused, recycled or recovered ceases to be waste;

4. In this Notice, the following words will have the meaning so assigned in terms of section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended -

“mine”; “mineral”, “mining permit”; “prospecting”; “prospecting right”  
“prospecting area”.

5. In this Notice, the following words will have the meaning so assigned hereunder; until such time as the national legislation governing coastal management in the Republic of South Africa has come into effect, where after the definitions will be substituted by the applicable definitions of the national legislation governing coastal management in the Republic of South Africa -

“coastal protection zone” consists of –

(a) an area declared in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) as a sensitive coastal area within which activities identified in terms of section 17(1) of that Act may not be undertaken without an authorisation;

(b) any part of the littoral active zone that is not coastal public property;

(c) any coastal protected area, or part of such area, which is not coastal public property;

(d) any area situated wholly or partially within one kilometre of the high water mark which –

(i) is zoned for agricultural or undetermined use; or

(ii) is not zoned nor part of a lawfully established township, urban area or other human settlement;

(e) any area not referred to in paragraph (d) that is situated wholly or partially within 100 metres inland of the high water mark;

**“coastal public property”** consists of –

- (a) State-owned land located adjacent to and inland of the sea-shore;
- (b) the sea-shore; and
- (c) the sea between the low water mark and the territorial waters as defined in the Maritime Zones Act, 1994 (Act 15 of 1994);

**“estuary”** means a body of surface water that –

- (a) is part of a water course that is permanently or periodically open to the sea;  
and
- (b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the sea; or
- (c) the salinity is measurably higher as a result of the influence of the sea;

**“high-water mark”** means the highest line reached by coastal waters but excluding any line reached as a result of –

- (a) exceptional or abnormal floods or storms that occur no more than once in ten years; or
- (b) an estuary being closed to the sea;

**[the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;]**

**“littoral active zone”** means any land forming part of, or adjacent to, the seashore that is –

- (a) unstable and dynamic as a result of natural processes; and
- (b) characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated;

**“low-water mark”** means the lowest line to which coastal waters recede during spring tides;

“**sea**” means all marine waters, including –

(a) the high seas;

(b) all marine waters under the jurisdiction of any state; and

(c) the bed, subsoil and substrata beneath those waters,

but does not include estuaries;

**[means the water and the bed of the sea and the subsoil thereof, below the high-water mark, including the water and the bed of any tidal river and tidal lagoon]**

“**seashore**” means the area between the low-water mark and the high-water mark.

### SCHEDULE

**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 -**

Activity number	Activity description	Identification of competent authority
1	<p>The construction of <b>[facilities or infrastructure, including associated structures or infrastructure, for ]</b>–</p> <p>(a) <u>facilities or infrastructure for the generation of electricity where:</u></p> <p style="padding-left: 40px;">(i) <u>the electricity output is more than 10 megawatts but less than 20 megawatts;</u></p> <p style="padding-left: 40px;">(ii) <u>the output is less than 10 megawatts but the total extent of the facility covers an area in excess of 1ha;</u></p> <p>(b) <u>facilities or infrastructure for the above ground storage of 1 000 tons or more but less than 100 000 tons of ore;</u></p> <p>(c) <u>facilities or infrastructure for the storage of 250 tons or more but less than 100 000</u></p>	<p>The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless: (a) it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent</p>

	<p>tons of coal;</p> <p>(d) resorts, lodges, hotels or other tourism and hospitality facilities <u>of any size</u> in a protected area contemplated in the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) regardless of the location of such protected area, <u>but excluding conversion of existing structures to resorts, lodges, hotels or other tourism and hospitality facilities;</u></p> <p>(e) <u>resorts, excluding:</u></p> <p style="padding-left: 2em;">(i) <u>where such resorts are located in urban areas, or</u></p> <p style="padding-left: 2em;">(ii) <u>conversion of existing structures to resorts;</u></p> <p><b>[(f) any purpose where lawns, playing fields or sports tracks covering an area of more than three hectares, but less than 10 hectares, will be established;]</b></p> <p>(f) <u>facilities or infrastructure for sport spectator purposes</u> with the capacity to hold 8 000 spectators or more;</p> <p>(g) <u>facilities or infrastructure for the slaughter [of animals with a product throughput of 10 000 kilograms or more per year] of:</u></p>	<p>authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended; or</p> <p>(b) the activity is to be conducted in or on a mining area or is to transform the area where the activity is to be conducted into a mining area</p>
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	<p>(i) <u>poultry exceeding 50 poultry per day</u></p> <p>(ii) <u>game and red meat exceeding 6 slaughter units per day;</u></p> <p>(h) <u>facilities or infrastructure for the concentration of animals for the purpose of commercial production in densities that exceed -</u></p> <p>(i) 20 square metres per head of cattle and more than 500 head of cattle per facility;<b>[per year;]</b></p> <p>(ii) eight square meters per sheep and more than 1 000 sheep per facility <b>[per year;]</b>;</p> <p>(iii) eight square metres per pig and more than 250 pigs per facility <b>[per year;]</b>excluding piglets that are not yet weaned;</p> <p>(iv) 30 square metres per crocodile at any level of production, excluding crocodiles younger than 6 months;</p> <p>(v)(aa) <u>more than 1000 poultry per facility, excluding chicks younger than 20 days, where the facility is situated inside an urban area;</u></p> <p>(bb) <u>more than 5000 chickens or poultry, excluding chicks younger than 20 days, where the facility is situated outside an urban area;</u></p> <p><b>[three square metres per head of poultry and more than 250 poultry</b></p>	
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	<p><b>per facility at any time, excluding chicks younger than 20 days;]</b></p> <p>(v) three square metre per rabbit <b>[at]</b> and more than 250 rabbits per facility <b>[at any time; ]</b>or</p> <p>(vi) <u>250 [100]</u> square metres per ostrich <u>or emu</u> and more than 50 ostriches or emus per facility <b>[per year]</b>or 2500 square metres per breeding pair;</p> <p>(i) <u>facilities or infrastructure for aquaculture of -</u></p> <p>i) <u>any size in an estuary or protected area contemplated in the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) regardless of the location of such protected area;</u></p> <p>ii) <u>finfish, crustaceans, reptiles or amphibians, including exotic or extralimital species with a production output exceeding 20 000 kg but less than 200 000 kg per annum (live round weight) with the exception of rainbow trout (<i>Oncorhynchus mykiss</i>) farmed within its naturalized distribution range and with a production output lower than 20 000 kg per annum (live round weight) and with the exception of offshore cage culture where 1(i)(v)</u></p>	
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	<p><u>below will apply:</u></p> <p>iii) <u>molluscs including exotic or extralimital species with a production output exceeding 30 000 kg but less than 200 000 kg per annum (live round weight) with the exception of off shore cage culture where 1(i)(v) below will apply:</u></p> <p>iv) <u>aquatic plants including exotic or extralimital species with a production output exceeding 60 000 kg but less than 200 000 kg per annum (live round weight) with the exception of off shore cage culture where 1(i)(v) below will apply:</u></p> <p>v) <u>offshore cage culture of finfish, crustaceans, reptiles, amphibians, molluscs and aquatic plants including exotic or extralimital species with a production output exceeding 50000 kg but less than 100 000 kg per annum (live round weight).</u></p> <p><b>[aquaculture production, including mariculture and algae farms, with a product throughput of 10 000 kilograms, or more per year;]</b></p> <p>(j) <u>facilities or infrastructure for agri-industrial purposes relating to beneficiation of produce, outside industrial areas [with</u></p>	
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	<p><b>an existing land use zoning for industrial purposes],</b> that cover an area of 1 000 square metres or more;</p> <p>(k) <u>facilities or infrastructure for the bulk transportation of <del>water</del>, sewage [and <b>water, including]</b> and storm water, in pipelines <u>exceeding 1000 metres in length, situated outside urban areas, with -</u></u></p> <ul style="list-style-type: none"><li>(i) an internal diameter of 0,36 metres or more; or</li><li>(ii) a peak throughput of 120 litres per second or more;</li></ul> <p><u>excluding where such construction relates to storm water drainage inside a road reserve;</u></p> <p>(l) <u>facilities or infrastructure for the transmission and distribution of electricity [above ground]</u></p> <ul style="list-style-type: none"><li>(i) with a capacity of <u>more than 33 but less [more] than [33] 220 kilovolts</u> excluding in a urban, industrial area or</li><li>(ii) <u>with a capacity of more than 220 kilovolts in urban or industrial areas; [and less than 120 kilovolts];</u></li></ul> <p>(m) <u>facilities or infrastructure for any purpose in the one in ten year flood line of a [river or stream]watercourse or wetland, or within 32 metres, whichever is the greater, from the</u></p>	
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	<p>bank of a <b>[river or stream]</b>watercourse <u>or edge of a wetland [where the flood line is unknown]</u>, excluding purposes associated with existing residential use, but including -</p> <ul style="list-style-type: none"><li>(i) canals;</li><li>(ii) channels;</li><li>(iii) bridges;</li><li>(iv) dams; <b>[and]</b></li><li>(v) weirs; <u>and</u></li><li>(vi) <u>storm water outlet structures;</u></li></ul> <p>(n) <u>facilities or infrastructure for the off-stream storage of water, including dams, with a capacity of 50 000 cubic metres or more, unless such storage falls within the ambit of the activity listed in item 6 of <u>Government Notice 387 of 2006 as amended or item ?? of Government Notice ?? of 2008, 5[6];</u></u></p> <p>(o) <u>facilities or infrastructure for the recycling, re-use, handling, temporary storage or treatment of general waste with a throughput capacity of 20 cubic metres or more daily average measured over a period of 30 days, but less than 50 tons daily average measured over a period of 30 days;</u></p> <p>(p) <u>facilities or infrastructure for the temporary storage of hazardous waste at quantities exceeding the minimum</u></p>	
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	<p>requirements as provided in the Department of Water Affairs and Forestry's Waste Management Series - Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste, 1998, Edition 2, as may be amended from time to time;</p> <p>(q) <b>[the landing, parking and maintenance of aircraft including -] <u>helicopter landing pads or aircraft landing strips shorter than 1,4km, [helicopter landing pads, excluding helicopter landing facilities and stops used exclusively by emergency services;</u></b></p> <ul style="list-style-type: none"><li>(i) <b>unpaved aircraft landing strips shorter than 1,4km;</b></li><li>(ii) <b>structures for equipment and aircraft storage;</b></li><li>(iii) <b>structures for maintenance and repair;</b></li><li>(iv) <b>structures for fuelling and fuel storage; and</b></li><li>(v) <b>structures for air cargo handling;];</b></li></ul> <p>(r) <b><u>facilities or infrastructure for the recreational use and outdoor racing, excluding on temporary tracks, of motor powered vehicles [outdoor racing of motor powered vehicles] including -</u></b></p>	
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	<p>(i) motorcars;</p> <p>(ii) trucks;</p> <p>(iii) motorcycles; <u>and</u></p> <p>(iv) quad bikes;</p> <p>(v) <b>[boats; and</b></p> <p>(vi) <b>jet skis;]</b></p> <p>;</p> <p>(s) <u>facilities or infrastructure for the treatment of effluent [wastewater] or sewage with an annual throughput capacity of more than [2] 5000 cubic metres but less than [15] 50000 cubic metres;</u></p> <p>(t) marinas, and structures for the launching of watercraft on inland fresh water systems;</p> <p>(u) above ground cableways and funiculars;</p> <p>(v) <u>billboards exceeding 18 square metres in size outside urban, mining or industrial areas; [advertisements as defined in classes 1(a), 1(b), 1(c), 3(a), 3(b), 3(l) of the South African Manual for Outdoor Advertising Control;]</u></p> <p>(w) <u>facilities or infrastructure for the aboveground storage of a dangerous good, including petrol, diesel, liquid</u></p>	
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	<p><u>petroleum gas or paraffin, where such storage occurs in containers with a combined capacity of more than 30 but less than a 1000 cubic metres;</u></p> <p>(x) <u>filling stations, including associated structures or infrastructure, or any other facility for the underground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, where such storage occurs in containers with a combined capacity of more than 30 but less than a 1000 cubic;</u></p> <p>(y) <u>permanent structures of any size in the coastal public property;</u></p> <p>(z) <u>reservoirs for bulk water supply with a capacity of more than 250 cubic metres;</u></p> <p>(aa) <u>facilities for desalination of sea water supply with an annual daily average production of more than 250 cubic metres;</u></p> <p>(bb) <u>facilities or infrastructure for the extraction and / or processing of gas from landfill sites.</u></p>	
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2	<p>Construction or earth moving activities in the sea, <u>an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea</u>, whichever is the greater, in respect of –</p> <ul style="list-style-type: none"><li>(a) facilities for the storage of material and the maintenance of vessels;</li><li>(b) fixed or floating jetties and slipways;</li><li>(c) tidal pools;</li><li>(d) embankments;</li><li>(e) <u>rock revetments or stabilising structures including stabilising walls</u>;</li><li>(f) buildings; or</li><li>(g) infrastructure,</li></ul> <p><u>but excluding</u></p> <ul style="list-style-type: none"><li>(i) <u>on erven within existing urban areas if such construction will occur behind a development setback line or</u></li><li>(ii) <u>where such construction will occur in existing ports.</u></li></ul>
3	<p>The prevention of the free movement of sand, <b>[including] erosion [and] or accretion</b>, by means of planting vegetation <u>or</u> placing synthetic material on dunes and exposed sand surfaces within <u>the littoral active zone [a distance of 100 metres inland of the high-water mark of the sea]</u>.</p>

4	<p>(a) The infilling or depositing of any material of more than 5 cubic metres into <u>a watercourse, estuary, lake, in-stream dam or wetland; or</u></p> <p>(b) the dredging, excavation, <b>[infilling]</b> removal or moving of soil, sand or rock exceeding 5 cubic metres <b>-[from a river, tidal lagoon, tidal river, lake, in-stream dam, floodplain or wetland] from within</b></p> <p><u>(i) the one in ten year flood line of a watercourse, estuary, lake, in-stream dam or within 32 metres, whichever is the greater, from the bank of a watercourse;</u></p> <p><u>(ii) the one in ten year flood line of a wetland, or within 32 metres, whichever is the greater, from the edge of a wetland;</u></p> <p><u>(iii) the sea or the seashore</u></p> <p><u>but excluding where such dredging, excavation, infilling, removal or moving of soil, sand or rock is for maintenance dredging purposes.</u></p>	
5	<p><u>The reclamation or destruction of a wetland or any portion thereof.</u></p>	



6[5]	<p>The removal or damaging of indigenous vegetation of more than <u>50 [10] square metres within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea, whichever distance is the greater but excluding where such removal or damage will occur on vacant erven within existing urban areas behind the development setback line.</u></p>	
7[6]	<p>The excavation, moving, removal <u>or</u> depositing of soil, sand, rock or rubble covering an area exceeding <u>50 [10] square metres or the compacting of soil, sand, rock or rubble covering an area exceeding 50 [10] square metres, within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea, whichever distance is the greater, but excluding where such excavation, moving, removal, depositing or compacting will occur on erven within existing urban areas behind the development setback line.</u></p>	
[7]	<p><b>[The above ground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of more than 30 cubic metres but less than 1 000 cubic metres at any one location or site.]</b></p>	

8	<p><b>[Reconnaissance, prospecting, mining or retention operations as provided for in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in respect of such permissions, rights, permits and renewals thereof.]</b></p> <p><u>Any activity which requires a prospecting right in terms of section 16 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u></p>	<p>The competent authority for this part of the schedule is the Minister of the Department of Minerals and Energy [or an organ of state with delegated</p>
9	<p><b>[In relation to permissions, rights, permits and renewals granted in terms of 8 above, or any other similar right granted in terms of previous mineral or mining legislation, the undertaking of any prospecting or mining related activity or operation within a prospecting, retention or mining area, as defined in terms of section of 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).]</b></p> <p><u>Any activity requiring a mining permit in terms of section 27 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) where such an activity occurs directly adjacent to an existing or approved mining area.</u></p>	<p>powers in terms of section 42(1) of the Act, as amended.]</p>
10	<p>The establishment of cemeteries of <u>1000 square metres or more in size.</u></p>	<p>The competent authority in</p>

11	The decommissioning of a dam, where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of more than 10 hectares.	respect of the activities listed in this part of the schedule is 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 is the, Minister or an organ of state with delegated powers in terms of section 42(1) of the Act as amended.
12	The transformation or removal of indigenous vegetation of (i) <u>5 [3] hectares or more anywhere</u> <u>or</u> (ii) of any size where the transformation or removal would occur within a critically endangered or an endangered ecosystem listed in terms of section 52 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) <u>or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;</u> (iii) <u>1 hectare or more in Protected Areas as per NEMPA</u>	
<u>13</u>	Afforestation of 5 hectares or more anywhere.	
<u>14 [13]</u>	The abstraction of groundwater at a volume where any general authorisation issued in terms of the National Water Act, 1998 (Act No. 36 of 1998) will be exceeded.	

15 [14]	<p>The construction of masts of any material or type <u>used [and of any height, including those used]</u> for telecommunication broadcasting <u>or [and]</u> radio transmission purposes where the mast: <b>[, but excluding - ]</b></p> <p>(a) <u>is to be placed on a site not previously used for this purpose, and</u></p> <p>(b) <u>will exceed 15 metres in height, [masts of 15 metres and lower exclusively used by radio amateurs; or for lighting purposes</u></p> <p>(c) <b>flag poles; and</b></p> <p>(d) <b>lightning conductor poles].</b></p> <p><u>but excluding</u></p> <p>(i) <u>attachments to existing buildings or;</u></p> <p>(ii) <u>masts on rooftops; or</u></p> <p>(iii) <u>masts that fall inside industrial areas.</u></p>	
16	<p>The construction of a road <u>with a reserve wider than 13,5 meters but less than 30 meters, and the construction of roads for which an environmental authorisation was obtained in terms of activity 5 in Government Notice 387 of 2006 or activity number 4 in Government Notice ?? of 2008[5], excluding roads situated within urban. [that is wider than 4 metres or that has a reserve wider than 6 metres, that fall within the ambit of another listed activity or which are access roads of less than 30 metres long.]</u></p>	

17	<p>The transformation of undeveloped, vacant or derelict land to –</p> <p>(a) <u>residential, mixed, retail, commercial, recreational, industrial or institutional use, inside an urban area, and where the total area to be transformed is 5 hectares or more, but less than 20 hectares, [establish infill development covering an area of 5 hectares or more, but less than 20 hectares; or] or</u></p> <p>(b) <u>residential, mixed, retail, commercial, recreational, industrial or institutional use, outside an urban area, [where such development does not constitute infill]</u> and where the total area to be transformed is bigger than 1 hectare <u>but less than 20 hectares;</u></p> <p>(c) <u>agriculture or silviculture use where the total area to be transformed is more than 10 but less than 100 hectares</u></p> <p><u>except where such transformation relates to linear development activities.</u></p>	
[16]	<p><u>[The cultivation of virgin soil where the total area to be cultivated is bigger than 10[5] but less than 100 hectares.]</u></p>	

18	<p>Phased activities, <u>which commenced after 3 July 2006 but excluding activities 1(d); 1(m); 1(p); 1(q)(i),(iii) – (iv); 1(r); 1(t) – (v); 2; 3; 7 – 11; 17 – 25 of Government Notice 386 of 2006 and activities 1(d)-(e); 1(m); 1(p); 1(r); 1(t); 1(u); 1(v); 1(z); 2; 3; 5; 8; 10; 16 – 18 and 20 - 33 of Government Notice ?? of 2007/2008, or where such activity was authorised in terms of Regulation Government Notice 385 of 2006,</u> where any one phase of the activity may be below a threshold [<b>specified in this Schedule</b>] but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.</p>	
[18]	<p>[Subdivision of portions of land 9 hectares or larger into portions of 5 hectares or less,]</p>	
[19]	<p>[The development of a new facility or the transformation of an existing facility for the conducting of manufacturing processes, warehousing, bottling, packaging, or storage, which, including associated structures or infrastructure, occupies an area of 1 000 square metres or more outside an existing area zoned for industrial purposes <u>but excluding where the development or transformation takes place within a mining area.</u>]</p>	
19[20]	<p>The transformation of an area zoned for use as [public] open space or for a conservation purpose to another use.</p>	

<u>20 [21]</u>	The release of genetically modified organisms into the environment in instances where <u>assessment for such release is specifically</u> required by the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997) or the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).
<u>21 [22]</u>	The release of any organism outside its natural area of distribution that is to be used for biological pest control.
<u>22</u>	<u>Any process or activity identified in terms of section 53(1) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).</u>
<u>23</u>	<u>The commencement with any activity listed in Category A of Schedule 1 to the National Environmental Management: Waste Management Act, 2007.</u>

<u>24</u>	<p>The decommissioning of existing facilities or infrastructure, other than facilities or infrastructure that commenced under an environmental authorisation issued in terms of the Environmental Impact Assessment Regulations, 2006 made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, for -</p> <ul style="list-style-type: none"><li>(a) <u>electricity generation with a threshold of more than 10MW;</u></li><li>(b) <u>electricity transmission and distribution with a threshold of more than 132kV;</u></li><li>(c) (b) nuclear reactors and storage of nuclear fuel;</li><li>(d) industrial activities, where the facility or the land on which it is located is contaminated or has the potential to be contaminated by any material which may place a restriction on the potential to re-use the site for a different purpose;</li><li>(e) the disposal of waste;</li><li>(f) the treatment of effluent[<b>wastewater</b>] and sewage with an annual throughput capacity of [<b>15000</b>]<u>50000</u> cubic metres or more;</li><li>(g) the recycling, handling, temporary storage or treatment of general waste with a daily throughput capacity of 20 cubic metres or more; or</li><li>(h) the recycling, handling, temporary storage or treatment of hazardous waste; <u>or storage of dangerous goods.</u></li></ul>	
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<u>25</u>	<p>The recommissioning or use of any facility or infrastructure, excluding any facility or infrastructure that commenced under an environmental authorisation issued in terms of the Environmental Impact Assessment Regulations, 2006, <u>as amended</u>, made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, after a period of two years from closure or temporary closure, for -</p> <ul style="list-style-type: none"><li>(a) electricity generation;</li><li>(b) nuclear reactors and nuclear fuel storage; or</li><li>(c) facilities for any process or activity, which require permission, authorisation, or further authorisation, in terms of <u>national and provincial</u> legislation governing the release of emissions, pollution, effluent or waste prior to the facility being recommissioned.</li></ul>
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<b>26</b>	<p><u>The expansion of or changes to existing facilities for any process or activity, which requires an amendment of an existing permit or license required in terms of national or provincial legislation governing the release of emissions, pollution, effluent.</u></p> <p><b>[The expansion of or changes to existing facilities for any process or activity, which requires an amendment of an existing permit or license or a new permit or license in terms of legislation governing the release of emissions, pollution, effluent.]</b></p>
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27	<p><u>The expansion of facilities for:-</u></p> <p><u>(a) aquaculture of –</u></p> <p>(i) <u>finfish, crustaceans, reptiles or amphibians, including exotic or extralimital species where the expanded production output will exceed 60000 kg per annum (live round weight) with the exception of rainbow trout (<i>Oncorhynchus mykiss</i>) farmed within its naturalized distribution range where the expanded production output will exceed 20 000 kg per annum (live round weight);</u></p> <p>(ii) <u>molluscs including exotic or extralimital species where the expanded production output will exceed 30000 kg per annum (live round weight);</u></p> <p>(iii) <u>aquatic plants including exotic or extralimital species where the expanded production output will exceed 60000 kg per annum (live round weight)</u></p> <p>(iv) <u>offshore cage culture of finfish, crustaceans, reptiles, amphibians, molluscs and aquatic plants including exotic or extralimital species where the expanded production output will exceed 60000 kg per annum (live round weight).</u></p>	
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	<p><u>(b) the generation of electricity where:</u></p> <p><u>(i) the electricity output of the original facility was more than 10 but less than 20 megawatts, excluding where such expansion takes place on the original development footprint;</u></p> <p><u>(ii) the output of the original facility was less than 10 megawatts but the facility covered an area in excess of 1ha, excluding expansion of facilities on the original development footprint.</u></p> <p><u>(c) the above ground storage of ore where the expansion will increase the total storage capacity by more than 1000 tons;</u></p> <p><u>(d) the above ground storage of coal where the expansion will increase the total storage capacity by more than 250 tons;</u></p>	
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(e) agri-industrial purposes, outside industrial areas, where the facility after expansion will cover an area in excess of 1500 square metres;

(f) the treatment of effluent or sewage where the expansion will increase the annual throughput capacity by more than 50000 cubic metres;

(g) the aboveground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, where original storage occurred in containers with a combined capacity of more than 30 but less than a 1000 cubic metres and the expansion of such storage facility will exceed a 1000 cubic metres.

	<p><u>(h) the refining of gas, oil and petroleum products where the design capacity of the facility is increased by 25% or more;</u></p> <p><u>(i) the recycling, re-use, handling, temporary storage or treatment of general waste where the expansion will increase the throughput capacity with more than 50 tons or more daily average measured over a period of 30 days;</u></p> <p><u>(j) the use, recycling, handling, treatment, storage beyond 90 days or final disposal of hazardous waste;</u></p> <p><u>(k) the manufacturing, storage or testing of explosives, including ammunition, but excluding:</u></p> <ul style="list-style-type: none"><li><u>(i) licensed retail outlets and</u></li><li><u>(ii) temporary storage associated with legal end use of the explosives;</u></li></ul> <p><u>(l) the extraction or processing of natural gas or gas from landfill sites;</u></p>	
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(m) the landing, parking and maintenance of aircraft, excluding helicopter landing pads, but including -

- (i) airports;
- (ii) runways;
- (iii) structures for engine testing; or
- (iv) unpaved landing strips which were originally longer than 1,4 kilometres in length;

(n) the transmission and distribution of electricity where the original capacity exceeded 220 kilovolts, and where:

- (i) the total existing development footprint will be expanded; and
- (ii) the voltage will be increased;

(o) the final disposal of general waste where the expansion will cover an area of 100 square metres or more, or 200 cubic metres or more of airspace;

(p) the incineration, burning, evaporation, thermal treatment, roasting or heat sterilisation of waste or effluent, including the cremation of human or animal tissue;

	<p><u>(g) the microbial deactivation, chemical sterilisation or non-thermal treatment of waste or effluent where such expansion would require a new permit or license in terms of the specific environmental management act governing waste management.</u></p> <p><u>(r) rail transportation including -</u></p> <ul style="list-style-type: none"><li><u>(i) railway lines;</u></li><li><u>(ii) stations; or</u></li><li><u>(iii) shunting yards.</u></li></ul>	
<u>28</u>	<p><u>The expansion of filling stations, including associated structures or infrastructure, or any other facility for the underground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, where the expansion exceeds 30 cubic metres, but excluding where such expansion takes place in a mining area.</u></p>	



<u>29</u>	<u>The expansion of canals, channels, bridges, dams, weirs and storm water outlet structures in the one in ten year flood line of a river, lake, stream, in-stream dam or wetland, or within 32 metres, whichever is the greater, or from the edge of a wetland, excluding where such expansion will take place in a mining area.</u>
<u>30</u>	<u>The expansion of cemeteries by more than a 1000 square metres.</u>
<u>31</u>	<u>The expansion of a road where the original reserve was wider than 13.5 meters and such expansion extends the reserve by more than 6 meters, excluding where such expansion takes place in a mining area.</u>
<u>32</u>	<u>The expansion of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, was originally 5 metres or higher or where the high-water mark of the dam originally covered an area of 10 hectares or more, excluding where such expansion takes place in a mining area.</u>

<u>33</u>	<u>The expansion of resorts, lodges, hotels or other tourism and hospitality facilities in a protected area contemplated in the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), where the total existing development footprint will be expanded.</u>
<u>34</u>	<u>The expansion of resorts outside urban areas where the existing total development footprint is expanded and the expansion will result in accommodation for 15 additional people or more.</u>

35

The expansion of earth moving activities in the sea, an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea, whichever distance is the greater, excluding an activity listed in item 2 of Government Notice No. 386 of 2006 or item 2 of Government Notice ?? of 2007/2008 but including the expansion of –

- (i) facilities associated with the arrival and departure of vessels and the handling of cargo;
- (ii) piers;
- (iii) inter- and sub-tidal structures for entrapment of sand;
- (iv) breakwater structures;
- (v) coastal marinas;
- (vi) coastal harbours;
- (vii) structures for draining parts of the sea or estuary;
- (viii) tunnels; or
- (ix) underwater channels.

but excluding construction on erven within existing urban areas if such construction will occur behind the development setback line.

36	<p><u>The expansion of facilities by more than 25% of the installed capacity, for-</u></p> <p><u>(i) the bulk transportation of dangerous goods in gas form, outside an industrial complex or zone, using pipelines, with a throughput capacity of 700 tons or more per day by more than 100m in length.</u></p> <p><u>(ii) the bulk transportation of dangerous goods in liquid form, outside an industrial complex or zone, using pipelines, with a throughput capacity 50 cubic metres or more per day by more than 100m in length.</u></p> <p><u>(iii) the bulk transportation of dangerous goods in solid form, outside an industrial complex or zone, using funiculars or conveyors with a throughput capacity of 50 tons or more per day by more than 100m in length.</u></p> <p><u>excluding where such expansion takes place in a mining area.</u></p>	
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No. R. 661

13 June 2008

**AMENDMENT OF LIST OF ACTIVITIES AND COMPETENT AUTHORITIES  
IDENTIFIED IN TERMS OF SECTIONS 24(2) AND 24D OF THE  
NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

The Minister of Environmental Affairs and Tourism hereby publishes the second amendment draft to Listing Notice 2 of the List of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 387 of 21 April 2006, which provides for activities 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.

**DRAFT AMENDMENT REGULATIONS**

To amend Listing Notice 2 of the List of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 387 of 21 April 2006, so as to provide for certain textual alterations, the insertion of new definitions and substitution of others; and augmenting definitions to amendments to certain listed activities in order to clarify which activities should be included to undergo a scoping and environmental impact assessment process or the exclusion of certain listed activities which should not undergo an assessment process and to provide for incidental matters.

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

## 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.

## SCHEDULE

### Definitions

In this Notice, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates -

**[“asbestos” means any fibrous mineral silicates, including actinolite, amosite, anthophyllite, chrysotile, crococolite or tremolite;]**

**“associated structures or infrastructure”** means any building or infrastructure that is necessary for the functioning of a facility or activity or that is used for an ancillary service or use from the facility;

**“construction”** means the building, erection or establishment of a facility, structure or infrastructure that is necessary for the undertaking of a listed or specified activity but excludes any modification, alteration or expansion of such a facility, structure or infrastructure; **[building, erection or expansion of a facility, structure or infrastructure that is necessary for the undertaking of an activity, but excludes any modification, alteration or upgrading of such facility, structure or infrastructure that does not result in a change to the**

**nature of the activity being undertaken or an increase in the production, storage or transportation capacity of that facility, structure or infrastructure]**

**“dam”** when used in these Regulations means any barrier dam and any other form of impoundment used for the storage of water;

**“dangerous goods”** means goods as contemplated in the Schedule hereto [that are capable of posing a significant risk to the health and safety of people or the environment and which are listed in South African National Standard No.10228: 2003, Edition 3, excluding ammonium nitrate to be used solely for the purpose of fertilizer; [, designated “The identification and classification of dangerous goods for transport”, SANS 10228:2003, edition 3, published by Standards South Africa, ISBN 0-626-14417-5, as may be amended from time to time]

**“derelict land”** means abandoned land or property where the lawful/legal land use right has not been exercised during the preceding ten year period;

**“development footprint”**, in respect of land, means any evidence of physical transformation as a result of the undertaking of any activity;”

**“development activity”** means a setback line in terms of zoning scheme regulations or a setback line determined in terms of development approval conditions or a setback line determined in terms of approval conditions included in previous authorisations, rezoning or subdivision approvals spatial development tools and which must, were appropriate, be scientifically motivated;

**“effluent”** means wastewater from any source;

**“expansion”** means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which an activity takes place in such a manner that the [production, treatment, storage or] capacity of the facility or the scale of the activity is increased[, **but excludes regular or routine maintenance and the replacement of inefficient or old equipment, plant or machinery where such does not result in an increase in the capacity of the facility, structure or infrastructure**];

**“filling station”** means a site where petrol, diesel, liquid petroleum gas or paraffin is offered for sale, and includes shops and car-washing facilities that are located on the same property or form part of the same development, but excludes retail shops that sell gas or paraffin in small containers;

**[“floodplain” means the 1:10 year flood line, a discernable flat landscape feature next to a river or stream that was created by weathering and sedimentation over time]**

**“marina”** means a constructed waterway that is normally associated with residential or commercial use and that could include mooring facilities;

**“peat”** in relation to the undertaking of an activity means extraction of peat or peat soils for sale or consumption or the disturbance of vegetation or soils in anticipation of the extraction of peat or peat soils for sale or consumption, including the removal of peat or peat soils for construction activities or the removal of overburden for mining activities;

**“petroleum”** means any liquid, solid hydrocarbon or combustible gas as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended;



**“sewage”** means effluent from a domestic source which is conveyed by sewer to a wastewater treatment plant;

**“the Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998); [and]

**“the regulations”** means [he] the Environmental Impact Assessment Regulations, 2006;

**[“virgin soil”** means any land excluding land outside industrial areas, which has at no time during the preceding ten years been cultivated.]

**“undeveloped”** means that no facilities, structures or infrastructure have previously been effected upon the land or property, either above or below ground, to give effect to the lawful land use right of the land or property;

**“urban areas”** means areas situated within the urban edge (as defined or adopted by the competent authority), or in instances where no urban edge or boundary has been defined or adopted, it refers to areas situated within the edge of built-up areas;

**“vacant”** means not occupied for the purpose of its lawful land use right namely residential, mixed, retail, commercial, industrial or institutional use during the preceding ten year period;

**2. In this Notice, the following words relevant to aquaculture activities will have the meaning so assigned hereunder;**

**“aquaculture”** means the farming [animals or plants in an aquatic environment]of aquatic organisms including fish, molluscs, crustaceans and

plants in controlled or selective aquatic environments, with some form of intervention in the rearing process to enhance production, such as regular stocking, feeding and protection from natural predators;

**“cage culture”** means- the practice of aquaculture within a defined pen or net cage or structure that is contained within a larger water body;

**“exotic”** means all species not naturally found in South Africa or which has been introduced into South Africa by human intervention;

**“extralimital”** means species that occur within South Africa but which have been introduced into areas where they do not occur naturally; i.e. outside of their natural distribution range;

**“finfish”** means- an aquatic vertebrate of the super-class Pisces.

**“naturalized distribution range”** means the distribution range occupied by an exotic or extralimital species in which it has established a reproducing population.

3. In this Notice, the following words will have the meaning so assigned hereunder; until such time as the national legislation providing for waste management has come into effect, where after the definitions will be substituted by the applicable definitions of the national legislation governing waste management in the Republic of South Africa -

**“hazardous waste”** means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment;

**“temporary storage of hazardous waste”** means the storage of hazardous waste for a period of 90 days or less;

**“waste”** means any substance, whether or not that substance can be reduced, reused, recycled and recovered, that –

- (i) is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (ii) the generator has no further use of for the purposes of production, reprocessing or consumption;
- (iii) that must be treated or disposed of; or
- (iv) is identified as a waste by the Minister:

Provided that a by-product shall not be considered to be waste and provided further that any portion of waste once reduced, reused, recycled or recovered ceases to be waste;

4. In this Notice, the following words will have the meaning so assigned in terms of section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended -

**“mine”; “mineral”, “mining permit”; “reconnaissance permit”; “retention area” and “retention permit”**

5. In this Notice, the following words will have the meaning so assigned hereunder; until such time as the national legislation governing coastal management in the Republic of South Africa has come into effect, where after the definitions will be substituted by the applicable definitions of the national legislation governing coastal management in the Republic of South Africa -

“coastal protection zone” consists of –

(a) an area declared in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) as a sensitive coastal area within which activities identified in terms of section 17(1) of that Act may not be undertaken without an authorisation;

(b) any part of the littoral active zone that is not coastal public property;

(c) any coastal protected area, or part of such area, which is not coastal public property;

(d) any area situated wholly or partially within one kilometre of the high water mark which –

(i) is zoned for agricultural or undetermined use; or

(ii) is not zoned nor part of a lawfully established township, urban area or other human settlement;

(e) any area not referred to in paragraph (d) that is situated wholly or partially within 100 metres inland of the high water mark;

“coastal public property” consists of –

(a) State-owned land located adjacent to and inland of the sea-shore;

(b) the sea-shore; and

(c) the sea between the low water mark and the territorial waters as defined in the Maritime Zones Act, 1994 (Act 15 of 1994);

“estuary” means a body of surface water that –

(a) is part of a water course that is permanently or periodically open to the sea; and

(b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the sea; or

(c) the salinity is measurably higher as a result of the influence of the sea;

“high-water mark” means the highest line reached by coastal waters but excluding any line reached as a result of –

- (a) exceptional or abnormal floods or storms that occur no more than once in ten years; or
- (b) an estuary being closed to the sea;

[the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;]

“littoral active zone” means any land forming part of, or adjacent to, the seashore that is –

- (a) unstable and dynamic as a result of natural processes; and
- (b) characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated;

“low-water mark” means the lowest line to which coastal waters recede during spring tides;

“sea” means all marine waters, including –

- (a) the high seas;
- (b) all marine waters under the jurisdiction of any state; and
- (c) the bed, subsoil and substrata beneath those waters,

but does not include estuaries;

**[means the water and the bed of the sea and the subsoil thereof, below the high-water mark, including the water and the bed of any tidal river and tidal lagoon]**

**“seashore” means the area between the low-water mark and the high-water mark.**

## SCHEDULE

**ACTIVITIES IDENTIFIED IN TERMS OF SECTION 24(2)(a) 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**

Activity number	Activity description	Identification of competent authority
1	<p>The construction of <b>-[facilities or infrastructure, including associated structures or infrastructure, for -]</b></p> <p style="padding-left: 40px;"><u>(a) facilities or infrastructure for the generation of electricity where –</u></p> <p style="padding-left: 80px;">(i) the electricity output is 20 megawatts or more; <b>[or</b></p> <p style="padding-left: 80px;">(ii) <b>[the elements of the facility cover a combined area in excess of 1 hectare;]</b></p> <p style="padding-left: 40px;"><u>(b) facilities or infrastructure for nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of</u></p>	<p>The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless: (a) it is an application for an activity contemplated in section 24C(2) of</p>

	<p>nuclear fuels, radioactive products <u>and nuclear and radioactive waste</u>;</p> <p>(c) <u>facilities or infrastructure for the aboveground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, where such storage occurs in containers with a combined capacity of more than a 1000 cubic metres</u>;</p> <p>(d) <u>filling stations, and facilities or infrastructure for the underground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, where such storage occurs in containers with a combined capacity of more than a 1000 cubic metres</u>;</p> <p><b>[the above ground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of 1 000 cubic metres or more at any one location or site including the storage of one or more dangerous goods, in a tank farm;]</b></p> <p>(e) <u>facilities or infrastructure for the refining of gas, oil and petroleum products</u>;</p>	<p>the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended; or</p> <p>(b) the activity is to be conducted in or on a mining area or is to transform the area where the activity is to be conducted into a mining area.</p>
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(f) facilities or infrastructure for any process or activity which requires a permit or license in terms of national or provincial legislation governing the generation or release of emissions, pollution, effluent or waste and which is not identified in Government Notice No. R. 386 of 2006;

(g) facilities or infrastructure for the recycling, re-use, handling, temporary storage or treatment of general waste with a throughput capacity of 50 tons or more daily average measured over a period of 30 days;

(h) facilities or infrastructure for the use, recycling, handling, treatment, storage beyond 90 days or final disposal of hazardous waste;

(i) facilities or infrastructure for the manufacturing, storage or testing of explosives, including ammunition, but excluding licensed retail outlets and the temporary storage for the legal end use of such explosives and temporary structures used as targets or for data capturing during testing;

	<p><u>(j) facilities or infrastructure for the extraction or processing of natural gas [including gas from landfill sites];</u></p> <p><u>(k) facilities or infrastructure for the bulk transportation of dangerous goods-</u></p> <p><u>(i) in gas form, outside an industrial complex or zone, using pipelines, exceeding 1000 m in length, with a throughput capacity of more than 700 tons per day;</u></p> <p><u>(ii) in liquid form, outside an industrial complex or zone, using pipelines, exceeding 1000 m in length, with a throughput capacity more than 50 cubic metres per day; or</u></p> <p><u>(iii) in solid form, outside an industrial complex or zone, using funiculars or conveyors with a throughput capacity of more than 50 tons day;</u></p> <p><b>[the bulk transportation of dangerous goods using pipelines, funiculars or conveyors with a throughput capacity of 50 tons or 50 cubic metres or more per day;]</b></p> <p><u>(l) facilities or infrastructure for the landing, parking and maintenance of aircraft, excluding helicopter landing pads</u></p> <p><b>[unpaved landing strips shorter than 1,4 kilometres in length], but including -</b></p>	
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	<p>(i) airports;</p> <p>(ii) runways;</p> <p><b>[(iii) water ways; or]</b></p> <p>(iii) structures for engine testing; <u>or</u></p> <p><u>(iv) landing strips longer than 1,4 kilometres in length;</u></p> <p>(m) <u>facilities or infrastructure for the transmission and distribution of [above ground] electricity with a capacity of [120] 220 kilovolts or more, outside urban, mining or industrial areas;</u></p> <p>(n) <u>facilities or infrastructure for marine telecommunications;</u></p> <p>(o) <u>facilities or infrastructure for the transfer of [20]50 000 cubic metres or more water between water catchments, water treatment works or impoundments per day, excluding treatment plants for drinking purposes;</u></p> <p>(p) <u>facilities or infrastructure for the final disposal of general waste covering an area of 100 square metres or more or 200 cubic metres or more of airspace;</u></p> <p>(q) <u>facilities or infrastructure for the treatment of effluent or sewage with an annual throughput capacity of [15 000] 50</u></p>	
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	<p><u>000</u> cubic metres or more;</p> <p>(r) <u>facilities or infrastructure for the incineration, burning, evaporation, thermal treatment, roasting or heat sterilisation of waste or effluent, including the cremation of human or animal tissue;</u></p> <p>(s) <u>facilities or infrastructure for the microbial deactivation, chemical sterilisation or non-thermal treatment of waste or effluent;</u></p> <p>(t) <u>facilities or infrastructure for rail transportation, excluding railway lines and sidings in industrial <u>areas</u> and underground railway lines in mines, but including -</u></p> <ul style="list-style-type: none"><li>(i) railway lines;</li><li>(ii) stations; or</li><li>(iii) shunting yards.</li></ul> <p><b>[(t) any purpose where lawns, playing fields or sports tracks covering an area of 10 hectares or more, will be established.]</b></p> <p>(u) <u>facilities or infrastructure for aquaculture of-</u></p> <ul style="list-style-type: none"><li>i) <u>finfish, crustaceans, reptiles or amphibians, including offshore cage culture with a production output</u></li></ul>	
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	<p><u>exceeding 150 000 kg per annum (live round weight):</u></p> <p>ii) <u>molluscs with a production output exceeding 150 000 kg per annum (live round weight):</u></p> <p>iii) <u>aquatic plants with a production output exceeding 150 000 kg per annum (live round weight).</u></p> <p>iv) <u>exotic or extralimital species with a production output exceeding 150 000 kg per annum (live round weight, with the exception of Rainbow Trout (<i>Oncorhynchus mykiss</i>) farmed within its naturalized distribution range, with a production output which does not exceed 20 000 kg per annum (live round weight).</u></p>	
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2	<p><u>Transformation of undeveloped, vacant, derelict land for</u></p> <p>(a) <u>residential, mixed, retail, commercial, recreational, industrial or institutional use where the total area to be transformed is 20 hectares or more;</u></p> <p>(b) <u>agriculture or silviculture use where the total area to be transformed is 100 hectares or more</u></p> <p><u>except where such transformation relates to linear development activities listed in GN R. 386. [Any development activity, including associated structures and infrastructure, where the total area of the developed area is, or is intended to be, 20 hectares or more.]</u></p>
[3]	<p><b>[The construction of filling stations, including associated structures and infrastructure,] [or any other facility for the underground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin.]</b></p>
3 [4]	<p>The extraction of peat.</p>

<b>4 [5]</b>	<p>The route determination of roads and design of associated physical infrastructure, including roads that have not yet been built for which routes have been determined before the publication of this notice and which have not been authorised by a competent authority in terms of the Environmental Impact Assessment Regulations, 2006 <u>or</u> 2007, made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, where</p> <p>—</p> <ul style="list-style-type: none"><li>(i) it is a national road as defined in section 40 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);</li><li>(ii) it is a road administered by a provincial authority;</li><li>(iii) the road reserve is wider than 30 metres;</li></ul> <p>or</p> <ul style="list-style-type: none"><li>(iv) the road will cater for more than one lane of traffic in both directions.</li></ul>	
<b>5 [6]</b>	<p>The construction of a dam, where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.</p>	

6 [7]	<p><u>Any activity which requires a mining right or renewal thereof as contemplated in sections 22 and 24 respectively of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u></p> <p><u>[Reconnaissance, exploration and mining, as provided for in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended in respect of such permits and rights.]</u></p>	<p>The competent authority for this part of the schedule is the Minister of ??? [or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended.]</p>
7[8]	<p><b>[In relation to permits and rights granted in terms of 6[7] above, or any other right granted in terms of previous mineral legislation, the undertaking of any reconnaissance exploration, production or mining related activity or operation within a exploration, production or mining area, as defined in terms of section of 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).]</b></p> <p><u>Any activity which requires an exploration right or renewal thereof as contemplated in sections 79 and 81 respectively of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u></p>	
8	<p><u>Any activity which requires a production right or renewal thereof as contemplated in sections 83 and 85 respectively of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u></p>	



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<u>9</u>	<u>Any activity which requires a reconnaissance permit as contemplated in section 74 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).</u>	
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<p><b>10 [9]</b></p>	<p>Construction or earth moving activities in the sea, <u>an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea, whichever distance is the greater</u>, excluding an activity listed in item 2 of Government Notice No. R386 of 2006 and item 2 of Government Notice No. ?? of 2008 but including construction or earth moving activities in respect of –</p> <ul style="list-style-type: none"> <li>(a) facilities associated with the arrival and departure of vessels and the handling of cargo;</li> <li>(b) piers;</li> <li>(c) inter- and sub-tidal structures for entrapment of sand;</li> <li>(d) breakwater structures;</li> <li>(e) <b>[rock revetments and other stabilising structures];</b></li> <li>(f) coastal marinas;</li> <li>(g) coastal harbours;</li> <li>(h) structures for <u>reclaiming</u> <b>[draining]</b> parts of the sea;</li> <li>(i) tunnels; or</li> <li>(j) underwater channels</li> </ul> <p><b>[occur behind an approved development setback line.]</b> .</p>	<p>The competent authority in respect of the activities listed in this part of the schedule is 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 is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended.</p>
<p><b>[10]</b></p>	<p><b>[Any process or activity identified in terms of section 53(1) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).]</b></p>	

<u>11</u>	<p><u>The expansion of facilities for -</u></p> <p><u>(a) the generation of electricity where the electricity output exceeds 20 megawatts or more;</u></p> <p><u>(b) nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and nuclear and radioactive waste.</u></p>
<u>12</u>	<p><u>Any activity listed in Category B of Schedule 1 to the National Environmental Management: Waste Management Act, 2007.</u></p>

No. R. 662

13 June 2008

**AMENDMENT OF LIST OF ACTIVITIES AND COMPETENT AUTHORITIES IDENTIFIED  
IN TERMS OF SECTIONS 24(2) AND 24D OF THE  
NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

The Minister of Environmental Affairs and Tourism hereby publishes a draft addendum to the Lists of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 386 and R. 387 of 21 April 2006, which provides a definition for the term "dangerous goods" as contemplated in Government Notice No. R. 386 and R. 387 of 21 April 2006.

**DRAFT AMENDMENT REGULATIONS**

To add a definition of dangerous goods as contemplated in Listing Notices 1 and 2 of the Lists of Activities and Competent Authorities Identified in terms of Sections 24(2) and 24D of the National Environmental Management Act, 1998 published in Government Notice No. R. 386 and R. 387 of 21 April 2006, so as to provide for the insertion of new definitions and substitution of others.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

<b>Schedule 3: Generic List of Dangerous Goods*</b>
<b>Classification and description</b>
<b>CLASS 1: Explosives</b>
<b>Note:</b> Explosives are not controlled under the EIA regulations but by the Explosives and Occupational Health and Safety Acts and their regulations
<b>CLASS 2: Gasses</b>
<b>Class 2.1: Flammable gasses</b>
INSECTICIDE GAS - FLAMMABLE
HYDROCARBON GAS MIXTURE - COMPRESSED or LIQUIFIED
LIQUEFIED or COMPRESSED GAS - FLAMMABLE
GAS - REFRIGERATED LIQUID, FLAMMABLE
<b>Class 2.2: Non-flammable, non-toxic gasses</b>
REFRIGERANT GAS
INSECTICIDE GAS
<b>Note:</b> The other types of non-flammable and non-toxic gasses are not regulated.
<b>Class 2.3: Toxic gasses</b>
INSECTICIDE GAS - TOXIC
COMPRESSED GAS - TOXIC
LIQUEFIED GAS - TOXIC
<b>CLASS 3: Flammable liquids</b>
ALDEHYDES
HYDROCARBONS, LIQUID
ALCOHOLS, FLAMMABLE
ALDEHYDES, FLAMMABLE,
ISOCYANATES, FLAMMABLE, TOXIC
ETHERS
AMINES, FLAMMABLE, CORROSIVE
POLYAMINES, FLAMMABLE, CORROSIVE
MERCAPTANS, LIQUID, FLAMMABLE or TOXIC,
ESTERS
ALCOHOLS
PETROLEUM DISTILLATES or PETROLEUM PRODUCTS
CHLOROSILANES. FLAMMABLE, CORROSIVE
NITROGLYCERIN MIXTURE, DESENSITIZED, LIQUID
TERPENE HYDROCARBONS
NITRILES, FLAMMABLE, TOXIC

KETONES, LIQUID
PESTICIDES
ELEVATED TEMPERATURE LIQUID, FLAMMABLE with flash point above 60C
FLAMMABLE LIQUID
<b>CLASS 4: Flammable solids</b>
<b>Class 4.1: Flammable solids</b>
METAL POWDER, FLAMMABLE.
SELF-REACTIVE LIQUID or SOLID
NITROGLYCERIN MIXTURE, DESENSITIZED, SOLID
PENTAERYTHRIT TETRANITRATE MIXTURE, DESENSITIZED, SOLID
FIBRES IMPREGNATED WITH WEAKLY NITRATED NITROCELLULOSE,
METAL HYDRIDES, FLAMMABLE
FLAMMABLE SOLID
SOLIDS CONTAINING FLAMMABLE LIQUID
METAL SALTS OF ORGANIC COMPOUNDS, FLAMMABLE
<b>Class 4.2: Substances liable to spontaneous combustion</b>
METAL ALKYL HALIDES, WATER-REACTIVE
METAL ARYL HALIDES, WATER-REACTIVE
ALKALINE EARTH METAL ALCOHOLATES
ALKALI METAL ALCOHOLATES, SELF-HEATING, CORROSIVE
PLASTICS, NITROCELLULOSE-BASED, SELF-HEATING,
METAL CATALYST, WETTED
METAL ALKYL HYDRIDES, WATER-REACTIVE
METAL ARYL HYDRIDES, WATER-REACTIVE,
METAL ALKYLs, WATER-REACTIVE
METAL ARYLs, WATER-REACTIVE,
ORGANIC PIGMENTS, SELF-HEATING'
PYROPHORIC ALLOY or METAL
XANTHATES
METAL CATALYST, DRY
METAL POWDER, SELF-HEATING
SELF-HEATING LIQUID, CORROSIVE or TOXIC
SELF-HEATING SOLID, TOXIC or CORROSIVE
PYROPHORIC LIQUID or SOLID
PYROPHORIC ORGANOMETALLIC COMPOUND, WATER-REACTIVE
<b>Class 4.3: Substances liable to spontaneous combustion</b>
ALKALI METAL AMALGAM, ALLOY or DISPERSION
ALKALINE EARTH METAL AMALGAM, ALLOY or DISPERSION
ALKALI METAL AMIDES
CHLOROSILANES, WATER-REACTIVE, FLAMMABLE, CORROSIVE
METALLIC SUBSTANCE. WATER-REACTIVE
METAL HYDRIDES, WATER-REACTIVE
WATER-REACTIVE SOLID, SELF-HEATING
WATER-REACTIVE LIQUID or SOLID, CORROSIVE OR TOXIC

ORGANOMETALLIC COMPOUND, SOLUTION or DISPERSION, WATER-REACTIVE. FLAMMABLE
<b>CLASS 5: Oxidising Substances and Organic peroxides</b>
<b>Class 5.1: Oxidising Substances</b>
PERSULPHATES, INORGANIC
BROMATES, INORGANIC,
PERMANGANATES, INORGANIC
HYPOCHLORITES, INORGANIC
NITRITES, INORGANIC
CHLORITES, INORGANIC
CHLORATES, INORGANIC
NITRATES, INORGANIC
PEROXIDES, INORGANIC
OXIDIZING SOLID or LIQUID, WATER-REACTIVE, CORROSIVE, FLAMMABLE or TOXIC
<b>Class 5.2: Organic peroxides</b>
ORGANIC PEROXIDE LIQUID or SOLID
<b>CLASS 6: Toxic and Infectious substances</b>
<b>Class 6.1: Toxic substances</b>
ANTIMONY COMPOUND, INORGANIC
CHLOROSILANES, TOXIC, CORROSIVE,
CHLOROFORMATES, TOXIC, CORROSIVE
CHLOROPICRIN MIXTURE
DISINFECTANT, SOLID or LIQUID, TOXIC
DYE, LIQUID or SOLID, TOXIC
PHENYLMERCURIC COMPOUND
BARIUM COMPOUND
ARSENIC COMPOUND, LIQUID or SOLID
NICOTINE and NICOTINE COMPOUND, LIQUID
THALLIUM COMPOUND
TEAR GAS SUBSTANCE, LIQUID or SOLID
LEAD COMPOUND, SOLUBLE
ISOCYANATES and SOLUTIONS, TOXIC, FLAMMABLE
FLUROSILICATES
MERCAPTANS, LIQUID, TOXIC, FLAMMABLE
MERCURY COMPOUND, LIQUID or SOLID
BERYLLIUM COMPOUND
ORGANOARSENIC COMPOUND
NITRILES, TOXIC
ORGANOMETALLIC COMPOUND, TOXIC,
ISOCYANATES, TOXIC
METAL CARBONYLS
TELLURIUM COMPOUND
ORGANOPHOSPHORUS COMPOUND, TOXIC, FLAMMABLE
CYANIDES, INORGANIC. SOLID or SOLUTIONS
ALKALOIDS, SOLID, LIQUID and SALTS
CADMIUM COMPOUND
SELENIUM COMPOUND
VANADIUM COMPOUND

PESTICIDE, SOLID or LIQUID, TOXIC
TOXIC SOLID - INORGANIC or ORGANIC
TOXIC LIQUID - INORGANIC or ORGANIC
<b>Class 6.2: Infectious substances</b>
<b>Regulated by the National Environmental Management: Waste Act, The Health Act and the Occupational Health and Safety Act.</b>
<b>CLASS 7: Radioactive substances</b>
<b>Regulated by the Hazardous Substances Act and the Nuclear Energy Act</b>
<b>CLASS 8: Corrosive substances</b>
POLYAMINES, SOLID or LIQUID, CORROSIVE.
AMINES, SOLID or LIQUID, CORROSIVE
ALKYLPHENOLS, LIQUID
DYE, SOLID or LIQUID, CORROSIVE
DISINFECTANT, LIQUID, CORROSIVE
HYDROGEN FLUORIDES.
CHLOROSILANES, CORROSIVE
BISULPHATES AQUEOUS SOLUTION
BISULPHITES, AQUEOUS SOLUTION
ALKYLPHENOLS, SOLID
CAUSTIC ALKALI LIQUID,
CORROSIVE LIQUID or SOLID, WATER-REACTIVE
CORROSIVE LIQUID or SOLID, BASIC, INORGANIC or ORGANIC
CORROSIVE SOLID or LIQUID, ACIDIC, INORGANIC or ORGANIC
CORROSIVE LIQUID or SOLID, OXIDIZING
CORROSIVE LIQUID or SOLID SELF-HEATING
SOLIDS CONTAINING CORROSIVE LIQUID,
<b>CLASS 9: Miscellaneous dangerous goods and articles</b>
AVIATION REGULATED LIQUID or SOLID
ELEVATED TEMPERATURE SOLID or LIQUID at or above 100C
ENVIRONMENTALLY HAZARDOUS SUBSTANCE LIQUID or SOLID

\*For a detailed description, see the South African National Standards - SANS 10228:2003 and SANS 10234:2007 Globally Harmonized System of classification and labelling of chemicals (GHS), published by Standards South Africa as may be amended from time to time.



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land affairs

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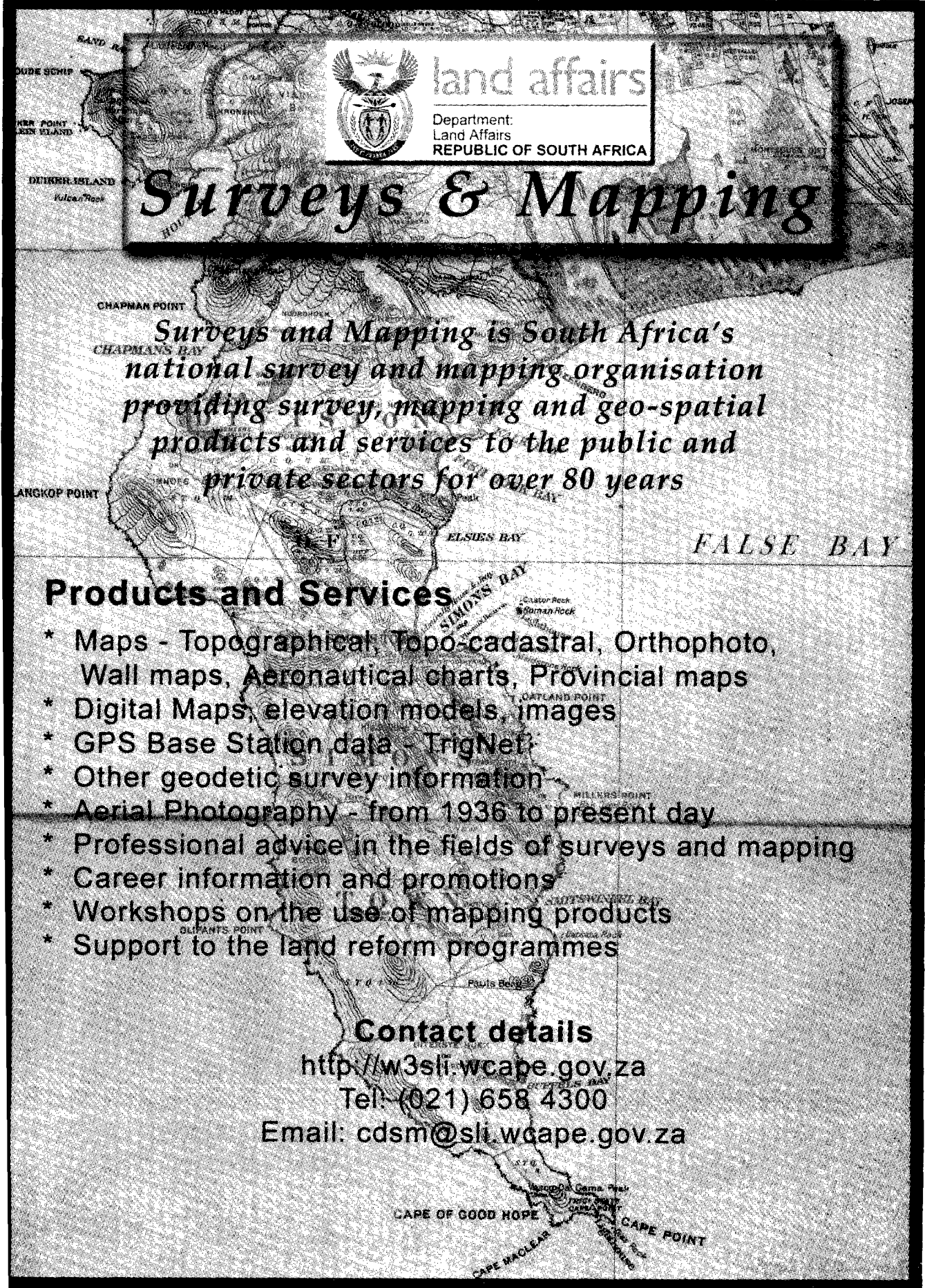
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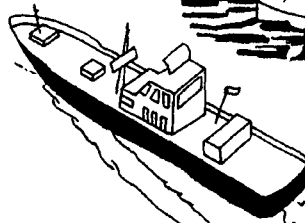
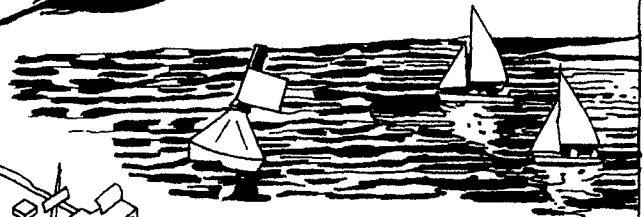
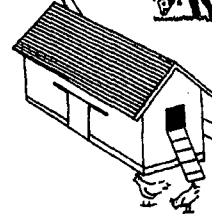
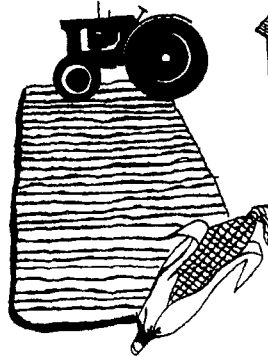
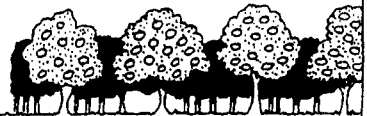
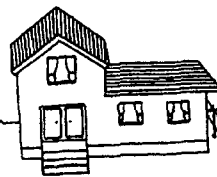
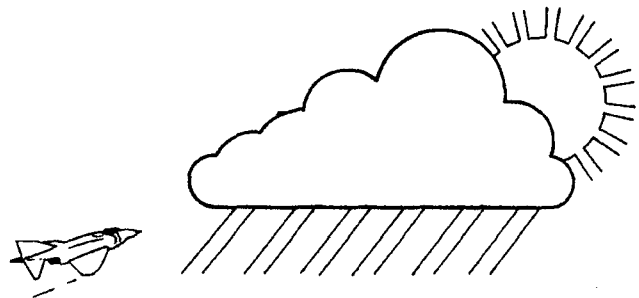
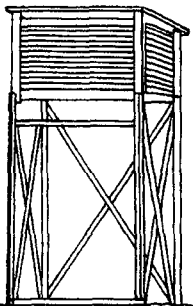
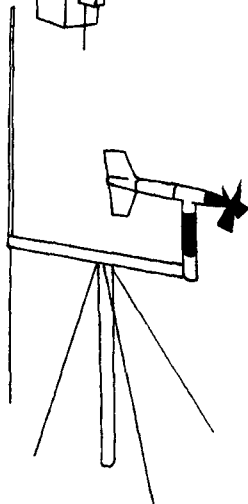
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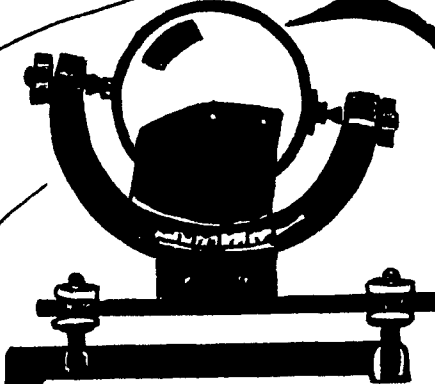
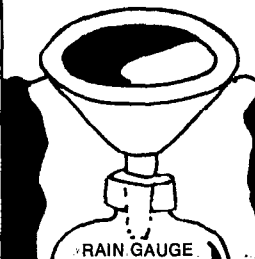
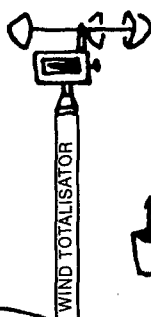
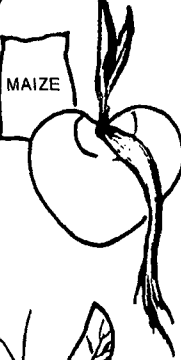
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