
GOVERNMENT NOTICES
GOEWERMENSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
DEPARTEMENT VAN OMGEWINGSAKE EN TOERISME

No. R. 385

21 April 2006

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

The Minister of Environmental Affairs and Tourism has in terms of section 24(5) read with section 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), made the regulations set out in the Schedule hereto.

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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 plan" means an environmental management plan 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;

"ocean-based activity" means an activity in the territorial waters of the Republic;

"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;

"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;

“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. 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.

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 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.

Assistance by competent authorities to applicants

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

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

Consultation between competent authorities and other organs of state having jurisdiction

6. 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) 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.

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 or environmental degradation likely to be caused if the application is approved or refused;
 - (ii) 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) measures that could be taken –
 - (aa) to protect the environment from harm as a result of the activity which is the subject of the application; and
 - (bb) to prevent, control, abate or mitigate any pollution, environmental impacts or environmental degradation;
 - (iv) the ability of the applicant to implement mitigation measures and to comply with any conditions subject to which the application may be granted;
 - (v) 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;
 - (vi) 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;
 - (vii) 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) 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) any guidelines that are relevant to the application.

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.

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 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 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.

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).

Combination of applications

15. (1) If an applicant intends undertaking two or more activities as part of the same development, a single application on one application form must be submitted in respect of all those activities.

(2) If an applicant intends undertaking more than one activity of the same type at different locations in the same province, different applications in respect of the different locations must be submitted, but the competent authority may, at the written request of the applicant, grant permission for the submission of a single application in respect of all those activities, whether or not the application is submitted on one or more application forms.

(3) If the competent authority grants permission in terms of 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 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.

(2) A written consent contemplated in subregulation (1) must be in a form agreed to or determined by the competent authority.

(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. If basic assessment must be applied to an application, the EAP managing the application must before submitting the application to the competent authority –

- (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;
- (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 conducted in terms of paragraph (a), and subject the proposed application to basic assessment by assessing –
 - (i) the potential impacts of the activity on the environment;
 - (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) prepare a basic assessment report in accordance with regulation 23; and
- (f) give all registered interested and affected parties an opportunity to comment on the basic assessment report in accordance with regulation 58.

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;