

(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 apply for an exemption from such provision 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.

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

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.

(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.

(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 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 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 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 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 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;

- (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;
 - (iii) 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;
 - (iv) the municipality which has jurisdiction in the area; and
 - (v) any organ of state having jurisdiction in respect of any aspect of the activity;
- (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).

(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, 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.

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.

(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 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.

Jurisdiction of Minister and MEC to decide appeals

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

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 a notice of intention to appeal with the Minister, MEC, or delegated organ of state, as the case may be, within 10 days after that person has been notified in terms of these Regulations of the decision.

(2) If the appellant is an applicant, the appellant must serve on each person and organ of state which was a registered interested and affected party in relation to the applicant's application –

- (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 the applicant –

- (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 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 –

- (a) the Minister must be submitted to the Department of Environmental Affairs and Tourism;
- (b) the MEC must be submitted to the provincial department responsible for environmental affairs in the relevant province or
- (c) the delegated organ of state, where relevant, must be submitted to that delegated organ of state.

(2) An appeal must be –

- (a) 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 or delegated 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, the appellant must take into account any guidelines applicable to appeals.

Time within which appeals must be lodged

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

(2) The Minister, MEC or delegated 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 or delegated 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 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 or delegated organ of state, as the case may be, within 30 days of receipt of the responding statement.

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

(3) The Minister, MEC or delegated 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 or delegated 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 or delegated organ of state, as the case may be, appoints an appeal panel for purposes of the appeal.

(3) The Minister, MEC or delegated 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 or delegated organ of state, as the case may be, appoints an appeal panel, the Minister, MEC or delegated 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 or delegated 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 or delegated organ of state, as the case may be, in writing.

Decision on appeals

68. (1) When the Minister, MEC or delegated 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) 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.

Part 2: National and provincial guidelines

National guidelines

73. (1) The Minister may by notice in the Government Gazette issue national guidelines 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) any particular process contemplated in these Regulations.

(2) A delegated 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 on the implementation of these Regulations, including guidelines with regard to the matters set out in regulation 73(a), (b), (c) or (d), 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.

Part 3: Other matters

Failure to comply with requirements for consideration of applications and appeals

77. 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.

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.

Assistance to people with special needs

80. The competent authority processing an application or the Minister or MEC 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) 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” means 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. 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.

Continuation of things done and 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 issued in terms of the 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.

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.

Existing policies and guidelines

85. Guidelines adopted by the Minister 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 Regulations, 2006, and take effect on a date determined by the Minister by notice in the Government Gazette.