



Department of Environmental Affairs and Development Planning
Departement van Omgewingsake en Ontwikkelingsbeplanning
ISebe leMicimbi yeNdalo esiNgqongileyo noCwangciso loPhuhliso



Chief Directorate : Environmental and Land Management

**NEMA ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS
GUIDELINE AND INFORMATION DOCUMENT SERIES**

GUIDELINE ON PUBLIC PARTICIPATION

JULY 2006

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ABBREVIATIONS

DEA&DP	Department of Environmental Affairs and Development Planning
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
I&APs	Interested and affected parties
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)

1. INTRODUCTION

On 21 April 2006 the Minister of Environmental Affairs and Tourism promulgated regulations in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”) (Government Notice No. R. 385, R. 386, and R. 387 in Government Gazette No. 28753 of 21 April 2006 refer). The regulations replace the environmental impact assessment (“EIA”) regulations that were promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) in 1997 and introduce new provisions regarding environmental impact assessment.

This guideline forms part of this *Department’s NEMA Environmental Impact Assessment Regulations Guideline and Information Document Series* and provides information and guidance for applicants, authorities and interested and affected parties (“I&APs”) on the public participation requirements of this Department and as required by the regulations described in Chapter 6 of the NEMA EIA regulations. This guideline should be read in conjunction with NEMA and the regulations and is not intended to be a substitute for the provisions of NEMA or the regulations in any way.

2. DEFINITIONS

“applicant” means a person who has submitted or intends to submit an application to the Department in compliance with the provisions of the NEMA EIA Regulations;

“competent authority” means the authority indicated in regulation 3 of the NEMA EIA Regulations as the competent authority for the application

“days” means calendar days.

Note: 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.

“Department” means the Western Cape Department of Environmental Affairs and Development Planning;

“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 –

- any person, group of persons or organizations interested in or affected by an activity; and
- any organ of state that may have jurisdiction over any aspect of the activity;

“NEMA EIA Regulations” means the Environmental Impact Assessment Regulations in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (Government Notice No. R. 385, R. 386, and R. 387 in the Government Gazette of 21 April 2006 refer).

“public participation process” means a process in which the public, including 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 60;

3. PURPOSE

The purpose of this document is to provide guidance on the procedure to be followed when conducting the public participation process in terms of Chapter 6 of the NEMA EIA Regulations.

The guideline is designed to:

- Provide clarity to all parties involved in the public participation process as to their roles, rights and responsibilities including the applicants, interested and affected parties, and registered interested and affected parties; and
- Ensure mutual understanding between all parties involved in the public participation process and the Department.

4. WHEN TO CONDUCT THE PUBLIC PARTICIPATION PROCESS

The NEMA EIA Regulations differentiate between the public participation requirements to be undertaken in Basic Assessment and Scoping and EIA as follows:

4.1 Public participation in Basic Assessment

For applications subject to Basic Assessment, the EAP must conduct at least a public participation process as before submission of the application.

4.2 Public participation in Scoping and EIA

An EAP managing an application subject to Scoping and EIA, must conduct at least a public participation process after an application has been submitted. It is important to note that a public participation process must be followed during the Scoping phase as well as during the EIA phase.

5. NOTIFICATION OF I&APs

The regulations defines “*interested and affected party*” as-

“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;”*

A person conducting the public participation process must give notice to all potential I&APs of the application.

5.1 Method of notification

Notice must be given by:

- (a) fixing a notice board on the site where the activity to is to be undertaken as well as on any alternative sites being considered (see 5.6 below);
- (b) giving written notice to:
 - (i) land owners and occupiers adjacent to and within 100 metres of the boundary of the site as well as alternative sites being considered;
 - (ii) the municipal councillor of the ward in which the site as well as alternative sites being considered are situated and any organisation of ratepayers that represents the community in the area, the municipality which has jurisdiction in the area; and
 - (iii) any organ of state having jurisdiction in respect of any aspect of the activity (e.g. Department of Water Affairs and Forestry for dam applications; the Department of Agriculture for agricultural activities);

- (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 (i.e. a *Gazette* that is specifically concerned with publications with respect to the NEMA EIA regulations); and

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

5.2 Format of notice

The following format should be used for the introductory section of a notice:

Heading: Public Participation Process

Notice No: *##/20## and DEA&DP ref no: #####*

Description of the proposed development.

Location(s): *Erf/Farm No. ##, Town, Municipality¹*

Notice is hereby given of a public participation process in terms of the NEMA Environmental Impact Assessment Regulations 2006.

The minimum information to be provided in the notice (see 5.4 below) must then be included below the above introductory section.

¹ All alternatives to be highlighted.

5.3 Format of notice for a joint public participation process

In certain instances an application in respect of any activity requiring environmental authorisation in terms of the NEMA EIA Regulations might also require approvals in terms of other legislation. In the spirit of co-operative governance² and in order to avoid duplication it is suggested that a joint public participation process be followed that meets the regulatory requirements of all the authorities concerned. If a joint process is proposed, prior consultation with the relevant authorities is however important.

The following format should be used for the introductory section of a combined notice:

Heading: Public Participation Process

Notice No:##/20##

Location(s): *Erf/Farm No. ##, Town, Municipality*³

Description of the proposed development.

Notice is hereby given of a joint public participation process in terms of:

- the Environmental Impact Assessment (“EIA”) Regulations promulgated in terms of section 24(5) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”);
- the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985) (“LUPO”);
- the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (“CARA”);

² To give effect to Chapter 3 of the Constitution, section 24(4)(g) of NEMA and Regulation 6 of the EIA Regulations.

³ All locational alternatives to be highlighted.

- the National Heritage Resources Act, 1999 (Act No. 25 of 1999) (“NHRA”); and
 - the Mineral and Petroleum Resources Development Regulations promulgated in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (“MPRDA”).
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The minimum information to be provided in the notice (see 5.4 below) must then be included below the above introductory section.

5.4 Minimum information to be provided in a notice

A notice must contain the following minimum information:

- the Department’s reference number for the application; details of the application (description of activity(ies) as scheduled);
- whether Basic Assessment or Scoping and EIA procedures are to be followed;
- information on the nature (e.g. resort consisting of 100 units clumped into 5 nodes, etc) and location of the activity (all alternative locations to be highlighted);
- where further information on the application or activity can be obtained;
- reasonable timeframes for responses to notice (see 5.5 below);
- the contact details of the person(s) to whom representations may be made;
- how to register as an interested and affected party; and
- the manner in which representations on the application may be made.

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

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

5.5 Specification of commenting period

In accordance with the EIA Regulations I&APs must be provided with an opportunity to make representations on proposed applications. In this regard it is important that notices to I&APs explicitly indicate the duration of the commenting period. In accordance with the requirements of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (“PAJA”), I&APs must be provided with a reasonable opportunity to make representations. A minimum of 30 (thirty) days must be allowed for I&APs to make representations, with a minimum notice of 14 (fourteen) days to be given of a public meeting.

Notification periods running into or over a holiday period (e.g. December holidays) might have to be extended in order to provide reasonable opportunity for interested and affected parties to make representation.

5.6 Minimum size of notice boards and newspaper notices

The EIA Regulations specifies the minimum size in terms of notice boards (at least 60cm by 42cm, in lettering with a format that may be indicated by the competent authority). It is recommended that consideration be given to the sensitivities of the project. The greater the sensitivity, the larger and more prominent the notices should be.

For activities whose extent of impact will be site specific or of local significance a notice in a newspaper must as a minimum be 2 columns wide and 5cm long. For activities whose extent of impact will be regional or national/international a notice in a newspaper must as a minimum be 2 columns wide and 10cm long.

5.7 Identifying and approaching specific stakeholders

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

- Social profiles or probes provide a comprehensive summary of the key characteristics of the people of a community or area and can serve as a starting point for identifying stakeholders.
- Brainstorming sessions with the proponent and/or authorities, based on previous experience, to identify key stakeholders who may be interested or affected by the proposal.
- Established lists and databases, held by consultancies, authorities or research institutions, may hold additional contact details of residents, Non-Government Organisations, Community Based Organisations or constituents.
- Network or chain referral systems according to which key stakeholders are asked to assist in identifying other stakeholders.

5.8 Broadening participation, capacity building & special needs

Appropriate participation measures can be put in place to deal with the range of cultural and language requirements of I&APs. The language used by the I&APs must be taken into account when serving a notice and when selecting a newspaper. Where I&APs include rural or historically disadvantaged communities or people with special needs (e.g. a lack of skills to read or write, disability, or any other disadvantage), the following could, *inter alia*, be considered:

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

6. GUIDANCE ON THE LEVEL OF PUBLIC PARTICIPATION

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

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

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

The following aspects need to be considered in this regard:

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

Based on the above, the use of the following public participation mechanisms, over and above the requirements, should also be considered (see 5.8 above):

- Public meetings and open days
- Conferences
- Press releases
- Questionnaires or opinion surveys
- Information desks and/or infolines (helplines)
- Meetings/workshops with constituencies (e.g. National Standing Committees, Non-Government Organisations / Community Based Organisations)

7. INTERESTED AND AFFECTED PARTIES (“I&APs”)

7.1 Distinction between I&APs and Registered I&APs

The Regulations distinguish between I&APs and Registered I&APs. I&APs includes: (a) any person, group of persons or organisation interested in or affected by an activity; and (b) any organ of state that may have jurisdiction over any aspect of the activity. Registered I&APs refer to only those I&APs whose name is recorded in the register opened for an application.

Only those I&APs that submitted written comments and/or attended public participation meetings or has requested in writing for their names to be added to the register, will be recorded in the register. All organs of state, which have jurisdiction in respect of the activity to which the application relates, must also be recorded in the register. 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.

In terms of the regulations “**register of interested and affected parties**” means: (a) all persons who, as a consequence of the public participation process conducted in respect of an application, have submitted written comments or attended meetings with the applicant or EAP;

- (b) all persons who, after completion of the public participation process, 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.

Note: To be registered as an interested and affected party the persons referred to (a) and (b) above must provide their **names and addresses** (postal, including facsimile and email) to the EAP managing the application process. The preferred method of notification must be indicated. Registered I&APs must ensure that they notify the EAP if their address change during the application process.

7.2 Access and opportunity to comment on all written submissions

Before the EAP submits a Basic Assessment Report, Scoping Report and Environmental Impact Assessment Report to the competent authority, the EAP must give Registered I&APs access to, and an opportunity to comment on the report in writing. A Registered I&AP is entitled to comment on all written submissions made to the competent authority by the applicant or the EAP managing an application, and to bring to the attention of the competent authority any issues which the Registered I&AP believe may be of significance to the consideration of the application. Comments must be submitted within the specified timeframes. As such, Registered I&APs must be informed when, where and for how long reports will be available for comment by registered I&APs. I&APs must also be informed that any comments submitted directly to the Department must quote the Department's reference number and that a copy of the comments submitted directly to the Department must also be served on the applicant or EAP.

Only Registered I&APs will be notified of:

- the outcome of the application, the reasons for the decision, and that an appeal may be lodged against a decision; and

- the applicant's intention to appeal the decision of the competent authority, together with an indication of where and for what period the appeal submission will be available for inspection.

7.3 Disclosure of I&APs' interests

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

7.4 Notifying I&APs of the Department's Decision

The applicant must, in writing, **within 10 days** after having received written notice from the Department of the decision, notify all Registered I&APs of the outcome of the application and the reasons for the decision, and draw their attention to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of the regulations. Such notice to registered I&APs must, as a minimum, be served via facsimile and registered mail. The applicant must also provide proof of this notification to the Department.

8. REPORTING ON THE PUBLIC PARTICIPATION PROCESS CONDUCTED

A Basic Assessment Report, Scoping Report and Environmental Impact Assessment Report must include details of the public participation process conducted (during the Basic Assessment, Scoping phase and Environmental Impact Assessment phase respectively) including –

- the steps that were taken to notify potentially interested and affected parties;
- proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the application have been displayed, placed or given;
- a list of all persons, organisations and organs of state that were registered as interested and affected parties in relation to the application;

- a comments-response report containing 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; and
- copies of any comments received from interested and affected parties.

Note: The EAP must ensure that the comments of I&APs are recorded in reports submitted to the Department. Any comments by I&APs 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.

9. APPLYING FOR EXEMPTION(S)

The fact that an applicant has applied for or is to apply for exemption(s) must be clearly communicated during the public participation process to be followed during the Basic Assessment or Scoping and EIA process. See section 5.4 above. The consideration of exemptions will depend on the degree to which the rights or interests of interested and affected parties might be adversely affected by the granting of the exemption. A more detailed explanation of the exemption application process is provided in the Department's Guideline on Exemption Applications which forms part of the Department's *NEMA Environmental Impact Assessment Regulations Guideline and Information Document Series*.

10. AMENDMENTS AND WITHDRAWALS OF ENVIRONMENTAL AUTHORISATIONS

10.1 Amendments

If a holder of an environmental authorisation requests a substantive amendment of an authorisation or if the proposed amendment is likely to adversely affect the environment or the rights or interests of other parties, the applicant must, to the extent indicated by the Department, conduct a public participation process, compile a register of I&APs, and give registered I&APs an opportunity to submit

comments on any reports prepared on the investigations and assessments undertaken for the proposed amendment .

If the competent authority on its own initiative intends to substantively amend an environmental authorisation, the competent authority will notify, in writing, the holder of the authorisation and give him/her an opportunity to comment on the proposed amendment. The Department will conduct a public participation process and give interested and affected parties an opportunity to comment on the proposed amendment.

10.2 Withdrawals

If the competent authority on its own initiative intends to withdraw an environmental authorisation, the competent authority will notify, in writing, the holder of the authorisation and give him/her notice of such intent, provide the reasons why, and give the holder an opportunity to submit representations in writing. If the proposed withdrawal is likely to adversely affect the environment or rights or interests of other parties, the competent authority will conduct an appropriate public participation process to bring the proposed withdrawal to the attention of interested and affected parties.

11. Appeals

A person affected by a decision who wishes to appeal against the decision, must lodge a written notice of intention to appeal with the MEC **within 10 days of being notified of the decision** taken by the Department. This notice must also provide information indicating where and for what period the appeal submission will be available for inspection.

Note:

- **“notified of the decision” refers to the date on which the applicant informed the registered interested and affected parties or the Department informed the applicant; and**

- **the appeal submission must be made available for inspection on or before the date of lodging the appeal with the MEC.**

If the person appealing (the appellant) is the applicant, the appellant must provide a copy of the notice to all registered I&APs. If the appellant is someone other than the applicant, the appellant must provide a copy of the notice to the applicant.

Please note that a more detailed explanation of the appeal process is provided in the Department's Guideline on Appeals which form part of the Department's *NEMA Environmental Impact Assessment Regulations Guideline and Information Document Series*.

An appeal lodged with the MEC must be submitted to the Department **within 30 days after the notice of intention to appeal has been lodged**. In accordance with the prescription in the NEMA EIA Regulations an appeal must be submitted on an official appeal form and must be accompanied by a statement setting out the grounds of the appeal, supporting documentation that is referred to in the appeal but is not in the possession of the MEC, copies of the notices of intent to appeal served on each Registered I&AP (if appellant is the applicant) or on the applicant (if the appellant is an I&AP), and the prescribed application fee.

12. REFERENCES

DEAT (2002). *Integrated Environmental Management Information Series 3: Stakeholder Engagement*. Department of Environmental Affairs and Tourism (DEAT), Pretoria.

DEAT (2005) *Guideline 4: Public Participation, in terms of the EIA Regulations, 2005, Integrated Environmental Management Guideline Series*, Department of Environmental Affairs and Tourism (DEAT), Pretoria.

DEAT (2006) *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 Government Gazette No. 28753 of 21 April 2006 refer).

DECAS (2001) *Guideline for the Public Participation for the EIA Process*. EIA Guideline Series. Western Cape Department of Environment and Cultural Affairs and Sport (DECAS), Cape Town.

DLGH (2003) *Informal Settlements Handbook*. Western Cape Department of Local Government and Housing (DLGH), Cape Town.

SAIEA (2005a) *A One Stop Participation Guide – A Handbook for Public Participation in Environmental Assessment in Southern Africa*. Calabach Project. Prepared by CommonGround for the Southern African Institute for Environmental Assessment (SAIEA), Cape Town.

SAIEA (2005b) *Public Participation Rights – A Guide to Opportunities for Public Participation in Environmental Assessment Processes in the Southern African Development Community*. Calabash Project. Prepared by EnAct International for the Southern African Institute for Environmental Assessment (SAIEA), Cape Town.
