



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 TRANSITIONAL ARRANGEMENTS

JULY 2006

CONTENTS:

- 1. INTRODUCTION**
- 2. DEFINITIONS**
- 3. PURPOSE**
- 4. ECA APPLICATIONS RECEIVED BY THE DEPARTMENT BEFORE THE DATE OF COMMENCEMENT OF THE NEMA EIA REGULATIONS**
 - 4.1 Authorization in terms of previous regulations still in force.
 - 4.2 Lapsed authorization granted under the previous regulations.
 - 4.3 Activities listed under the previous regulations but no longer listed in terms of the NEMA EIA regulations.
 - 4.4 Activities not listed under the previous regulations but now listed in terms of the NEMA EIA regulations.
 - 4.5 Where an ECA application is pending and the same components of the development (that were listed under ECA) are now also listed under the NEMA EIA regulations
 - 4.6 Where an ECA application is pending and other components of the same development (that were not listed under ECA) are now listed under the NEMA EIA regulations.
 - 4.7 Where an authorization in terms of the previous regulations is still in force and other components of the same development (that were not listed under ECA) are now listed under the NEMA EIA regulations
- 5. APPLICATIONS IN TERMS OF THE PREVIOUS REGULATIONS RECEIVED AFTER THE DATE OF COMMENCEMENT OF THE NEMA EIA REGULATIONS**
- 6. APPEALS**
- 7. EXISTING POLICIES AND GUIDELINES**
- 8. COASTAL AREAS**
- 9. REFERENCES**

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 assessments.

This guideline forms part of this Departments’ *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 transitional arrangements for applications received under the Environment Conservation Act, 1989 (Act No. 73 of 1989) (“ECA”). It is intended to provide guidance on the procedures and consideration of such applications and the processes to be followed. 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

“Previous regulations” 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.

“NEMA EIA Regulations” means 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).

3. PURPOSE

This guideline is designed to:

- Provide clarity to all parties involved in ECA applications submitted to the Department that are still pending when the NEMA EIA Regulations are implemented;
- Provide clarity to all parties involved in ECA applications that have been authorized /refused but are still in force when the NEMA EIA Regulations are implemented; and
- Ensure mutual understanding and co-ordination between all parties involved.

4. DIFFERENT SCENARIOS

Applications that have been submitted under the previous regulations which are pending on the date of effect of the NEMA EIA Regulations will be processed as if the previous regulations were not repealed. Therefore appeals lodged in terms of decisions made in terms of the previous regulations will be processed as if the previous regulations were not repealed (i.e. decisions in terms of the previous regulations must be appealed in terms of the previous regulations, while decisions in terms of the NEMA EIA Regulations must be appealed in terms of the NEMA EIA Regulations). Seven different scenarios in terms of the transitional arrangements are discussed below.

4.1 Authorization in terms of previous regulations still in force

Any decision taken on an application in terms of the previous regulations that is still in force when the NEMA EIA regulations come into affect remains in force as if the previous regulations were not repealed.

4.2 Lapsed authorization granted in terms of the previous regulations

Any activity authorized in terms of the previous regulations that has not commenced within the specified validity period in the Record of Decision issued in terms of the previous regulations i.e. that has lapsed, must obtain written environmental authorization in terms of the NEMA EIA regulations.

4.3 Activities listed under the previous regulations but no longer listed in terms of the NEMA EIA regulations

A situation may arise where activities listed under Section 21 of the previous regulations are not listed under the NEMA EIA Regulations. In these instances (where a decision on these applications submitted under the previous regulations is still pending), the applicant has the option to withdraw his/her application.

4.4 Activities not listed under the previous regulations but now listed in terms of the NEMA EIA regulations

A development that has an activity that is not listed in terms of the previous regulations (for which no environmental authorization was necessary and that has not commenced by the date of effect of the NEMA EIA Regulations) but is listed in terms of the NEMA EIA regulations, must obtain prior written environmental authorization in terms of the NEMA EIA regulations before commencement.

4.5 Where an ECA application is pending and the same components of the development (that were listed under ECA) are now also listed under the NEMA EIA regulations

An application for authorisation of an activity submitted in terms of the previous regulations and which is pending when the NEMA EIA 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. Authorisations issued for applications that were pending in terms of the previous regulations when the NEMA EIA Regulations take effect, will be regarded to be environmental authorisations issued in terms of NEMA EIA Regulations. Anything done in terms of the previous regulations and which can be done in terms of a provision of NEMA EIA Regulations must be regarded as having been done in terms of the provision of the NEMA EIA Regulations. Therefore where an ECA application is pending and the same components of the development that were listed under ECA are now also listed under the NEMA EIA regulations, it will be assumed that the impacts associated with the entire development (and therefore also the impacts associated with the activities in terms of the NEMA EIA Regulations) were considered in the EIA process undertaken in terms of the ECA, and therefore a new application in terms of NEMA will not be required.

4.6 Where an ECA application is pending and other components of the same development (that were not listed under ECA) are now listed under the NEMA EIA regulations

Technically the Department would have to issue 2 Records of Decision for the development, i.e. 1 in terms of the previous regulations and 1 in terms of the NEMA EIA Regulations. However, in order to remedy this situation, which may result in duplication (e.g. public participation), the Department recommends that the applicant withdraws the ECA application and submits a new application for the development in terms of the NEMA EIA regulations. In considering the granting of possible exemptions, the Department will consider the previous process followed and the information generated under the previous regulations when making a decision.

4.7 Where an authorization in terms of the previous regulations is still in force and other components of the same development (that were not listed under ECA) are now listed under the NEMA EIA regulations

Any decision taken on an application in terms of the previous regulations that is still in force when the NEMA EIA regulations come into affect remains in force as if the previous regulations were not repealed. In the situation where other components of the same development are now listed in terms of the NEMA EIA regulations, it will be assumed that the impacts associated with the entire development (and therefore also the NEMA EIA activities) were also considered in the EIA process for the ECA application. As such, a new application for the activities listed in terms of the NEMA EIA regulations will not be required.

5. APPLICATIONS IN TERMS OF THE PREVIOUS REGULATIONS RECEIVED AFTER THE DATE OF COMMENCEMENT OF THE NEMA EIA REGULATIONS

All applications in terms of the previous regulations received after the date of commencement of the NEMA EIA regulations, where the activities applied for are

listed in terms of the NEMA EIA regulations, will need to be processed under the provisions of the NEMA EIA regulations. These applications will have to be resubmitted on the appropriate application forms in terms of the new NEMA EIA regulations. Applications that do not comply with the NEMA EIA requirements will be rejected and returned to the applicant.

6. APPEALS

The NEMA EIA Regulations prescribe that all appeals against decisions taken under the previous regulations will be processed as if the previous regulations were not repealed. These appeals will therefore be dispensed with according to the procedures prescribed by the previous regulations.

7. EXISTING POLICIES AND GUIDELINES

In accordance with regulation 85 of the NEMA EIA Regulations, guidelines adopted by the Minister or MEC before these take effect must, to the extent compatible with the Act and the NEMA EIA regulations, be regarded to be provincial guidelines issued in terms of Part 2 of Chapter 8 of the NEMA EIA Regulations. Such guidelines need not be published in the gazette for public comment in terms of regulation 74 and 76 of these regulations.

8. COASTAL AREAS

It must be noted that the NEMA EIA Regulations do not affect the continued application of the regulations published in terms of Sections 26 and 28 of the ECA, by Government Notice R. 1528 of 27 November 1998, as regards authorizations for activities in certain coastal areas.

9. REFERENCES

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 28753 of 21 April 2006 refer).