



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

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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 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

“**Commence**” means the lawful and substantive start of any physical activity on the site in furtherance of a listed activity.

“**Listed activity**” means an activity identified in Government Notice No. R. 386 or No. R. 387 of 21 April 2006 as a listed activity.

“**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.

“**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). Four different scenarios in terms of the transitional arrangements are discussed below.

4.1 Authorisation 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 effect remains in force as if the previous regulations were not repealed. Anything done in terms of the previous regulations and which can be done in terms of a provision of NEMA EIA Regulations is regarded as having been done in terms of the provision of the NEMA EIA Regulations. If a development has therefore already been authorised in terms of the previous regulations, and the authorisation is still in force, a new application in terms of the NEMA EIA Regulations will not be required.

Note: It must be noted that the holder of an authorisation in terms of the previous regulations, may apply for amendment of the authorisation in terms of the NEMA EIA Regulations, if the application for amendment is submitted while the authorisation is still in force.

4.2 Lapsed authorisation granted in terms of the previous regulations

Any activity authorised 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, and that are listed in GN No. R. 386 of R. 387 must apply for and obtain written environmental authorisation in terms of the NEMA EIA regulations.

4.3 Applications pending in terms of the previous 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, with all the impacts associated with the proposed development to be assessed.

Note: It must be noted that where an application in terms of the previous regulations was pending when the NEMA EIA Regulations came into effect on 3 July 2006, but the development does not include activities listed under the NEMA EIA Regulations, the applicant has the option to withdraw his/her pending application.

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

A development that includes an activity that was 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.

Note: It must be noted that the above is true even if:

- an application in terms of the Land Use Planning Ordinance (Ordinance No. 15 of 1985) (“LUPO”) or any other law was lodged prior to the NEMA EIA Regulations coming into effect on 3 July 2006; or
- an application in terms of LUPO or any other law was decided prior to the NEMA EIA Regulations coming into effect on 3 July 2006.

If the development include one or more listed activities and the development did not commence prior to 3 July 2006, authorisation must (also) be applied for and obtained in terms of the NEMA EIA Regulations before the activity can lawfully be commenced with.

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.

Note: In the Western Cape the Outeniqua Sensitive Coastal Area Regulations (“OSCA”) (GN No. R. 879, R. 880 and R. 881 in *Government Gazette* 17213 of 31 May 1996 (as amended), refer) are the only set of regulations “regulating authorisations 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).
