



*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 APPEALS

SEPTEMBER 2007

CONTENTS:

- 1. INTRODUCTION**
- 2. DEFINITIONS**
- 3. PURPOSE**
- 4. APPEAL APPLICATIONS**
 - 4.1 Types of appeal applications**
 - 4.1.1 Decision by the Department to grant or refuse environmental authorisation
 - 4.1.2 Decision by the Department to authorise or refuse exemption applications
 - 4.1.3 Decision by the Department to withdrawal an environmental authorisation
 - 4.1.4 Decision by the Department to amendment an environmental authorisation
 - 4.1.5 Decision by the Department to disqualify an Environmental Assessment Practitioner
 - 4.2 Notification of a decision made by the Department**
 - 4.3 Lodging a Notice of Intention to appeal**
 - 4.4 Submitting an appeal**
 - 4.5 Responding and Answering Statements**
 - 4.6 Processing of Appeals**
 - 4.7 The Appeal Panel**
 - 4.8 Validity of an Appeal**
 - 4.9 Commencement with or suspension of an environmental authorisation or an exemption notice**
 - 4.10 Pending applications and Appeals**
- 5. REFERENCES**

APPENDICES

- A Flow diagram of the appeal application and processing process**
- B Notice of Intention to Appeal Form**
- C Appeal Form**

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)
MEC	Provincial Minister for Environment, Planning and Economic Development

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 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 Appeals as described in Chapter 7 of the EIA Regulations. It provides guidance on the application procedure, criteria for consideration of such applications, review of appeals, the minimum legal requirements for appeal applications and the minimum legal requirements for public participation related to appeals, and the decisions on appeal applications. 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;

“**application**” means an application as defined in Chapter 1 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;

“**exemption**”, means a process contemplated in Chapter 5 of the NEMA EIA Regulations;

“**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).

“registered 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 in (a) and (b) above must provide their names and postal addresses to the EAP managing the application process. Registered I&APs must ensure that they notify the EAP if their address change during the application process.

3. PURPOSE

The purpose of this document is to provide guidance on the procedure to be followed when lodging an appeal with the Provincial Minister for Environment, Planning and Economic Development (“MEC”) in terms of Chapter 7 of the NEMA EIA Regulations.

The Guideline is designed to provide clarity to all parties involved in the appeal process as to their roles, rights and responsibilities including the MEC, appellants, applicants, interested and affected parties, registered interested and affected parties, review consultants and appeal review panel members; and

Note: This guideline does not deal with appeals submitted against directives issued in terms of Section 24G of NEMA.

4. APPEAL APPLICATIONS (Refer to Appendix A)

4.1 Types of appeal applications

The provisions of Chapter 7 of the NEMA EIA Regulations give effect to the appeal right afforded by the provisions of section 43 of NEMA. As such, an appeal may be lodged with the MEC against a decision taken by the Department on an application. These may include:

4.1.1 Decision by the Department to grant or refuse environmental authorisation

Any affected person may appeal the decision taken by the Department to authorize or refuse an application to undertake a listed activity in terms of the NEMA EIA Regulations.

4.1.2 Decision by the Department on exemption applications

The NEMA EIA Regulations allows an applicant to apply for exemption from any provision of the NEMA EIA Regulations. Any affected person may appeal the decision taken by the Department to grant the exemption applied for.

4.1.3 Decision by the Department to withdraw an environmental authorisation

In terms of regulation 47 of the NEMA EIA Regulations, a competent authority may withdraw an environmental authorization. This decision may be appealed if such appeal is available in the circumstances of the decision¹.

4.1.4 Decision by the Department to amend an environmental authorisation

In terms of regulation 40 and 44 of the NEMA EIA regulations either an applicant may apply to- or the Department on its own initiative may amend an environmental authorization. The decision taken by the Department may be appealed.

¹ An appeal cannot be submitted if the Minister was the decision-maker in the first instance.

4.1.5 Decision by the Department to disqualify an Environmental Assessment Practitioner

In terms of regulation 19 of the NEMA EIA Regulations, if the competent authority at any stage of considering an application has reason to believe that an EAP managing an application may not be independent in respect of the application, the competent authority may disqualify the EAP. This decision may be appealed if such appeal is available in the circumstances of the decision.

4.2 Notification of a decision made by the Department

The applicant must, in writing, **within 10 days after having been notified of the decision of the Department**, 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 (the date of “having been notified” means the date the decision was issued by the competent authority). Proof of notification must be given to the Department. Therefore such notice to Registered I&APs must, as a minimum, be served via the I&AP’s indicated preferred method of notification and registered mail or facsimile or email.

Note: The activity, including site preparation, may not commence until expiry of the statutory 10 (ten) day appeal notice period and then only on condition that no appeal notice is lodged within this period. Your attention is drawn to the fact that you must notify all registered interested and affected parties in writing of this decision within 10 (ten) calendar days of receiving this decision and that the statutory 10 (ten) day appeal notice period will only commence upon expiry of the aforesaid environmental authorisation notice period. The effect of the above is that the activity, including site preparation, may not commence within the 20 (twenty) days after having received this environmental authorisation. In the event that an appeal notice and subsequent appeal is lodged with the competent authority, the effect of this environmental authorisation will be suspended until such time as the appeal is decided.

4.3 Lodging a Notice of intention to appeal (Refer to Appendix B)

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 (the date of “being notified” means the date that the notification was sent by the applicant). This notice must also provide information indicating where and for what period the appeal submission will be available for inspection. The Notice of Intention to Appeal must be **lodged with the MEC by day 10**.

Note: The appeal submission must be made available for inspection on or before the date of lodging the appeal with the MEC (i.e. “lodging” means handing in at the office of the MEC or reaching the Department).

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.

4.4 Submitting an appeal

An appeal lodged with the MEC must be submitted, on the official appeal form (refer to **Appendix C**), to the Office of the MEC (see the address in the Appeal Form attached as Appendix C) **within the 30 days after the notice of intention to appeal has been submitted**.

In accordance with the NEMA EIA Regulations an appeal 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 (new information), a statement by the appellant that copy(ies) of the notice has been served on the relevant parties and provide proof thereof.

In addition, Regulation 77 of the NEMA EIA Regulations stipulates that an appeal will lapse if an appellant, after having submitted the appeal, fails to comply with a requirement in terms of the NEMA EIA Regulations relating to the consideration of the

appeal (for example, if additional information requested by the MEC is not provided within a period of 6 months).

4.5 Responding and Answering Statements

A person who has received a notice of intention to appeal from an appellant may make a submission called a responding statement to the MEC, and must serve a copy on the appellant, **within 30 days** from the date the appeal submission was made available for inspection.

Where new information is introduced in a responding statement, the appellant is entitled to submit an answering statement to the MEC **within 30 days** of the responding statement being received. A copy of the answering statement must be submitted to the respondent.

4.6 Processing of appeals

- Receipt of an appeal, responding or answering statements will be acknowledged within 10 days of receipt.
- After receiving an appeal as well as any responding and answering statements the appeal will be processed.
- An appeal panel may be appointed to assist with the consideration of the appeal.
- Once a decision is reached, the appellant and any respondents will be notified, in writing, of the appeal decision. On written request, reasons for the appeal decision will be provided.

4.7 The appeal panel

An appeal panel may be appointed by the MEC (in accordance with regulation 67 of the NEMA EIA Regulations) to assist with the decision to be taken on the appeal. In this instance, the panel will be furnished with a written instruction concerning the issues in respect of which the panel must make recommendations and, the period within which the panels' recommendations must be submitted (Regulation 67(1) of the NEMA EIA Regulations). 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. Recommendations made by the panel will be submitted to the MEC in writing.

4.8 Validity of Appeals

According to Regulation 77 of the NEMA EIA Regulations, an appeal lapses if the appellant after having submitted the appeal fails for a period of six months to comply with a requirement in terms of the provisions relating to the consideration of the appeal.

Further, an appeal is invalid if:

- the notice of intention to appeal is not lodged with the MEC within 10 days of being notified of the decision that is to be appealed; or
- the appeal is not submitted to the Department within 30 days (refer to 4.4 above) after having submitted the notice of intention to appeal, or
- the appeal is not submitted within the extended period allowed by the MEC in terms of Regulation 64(2) of the NEMA EIA regulations.

4.9 Commencement with or suspension of an environmental authorisation or an exemption notice

In terms of section 43(7) of the Act the MEC, or delegated official, may direct that an appeal against an environmental authorisation suspends an environmental authorisation until such time that a decision has been taken on the appeal by the MEC. The authorisation is suspended from the date the notice of intent to appeal is lodged with the MEC until the date that a written notification of the decision on the appeal is issued by the MEC.

Note: An appeal against an exemption notice may suspend an EIA application process until such time that a decision has been taken on the appeal by the MEC.

4.10 Pending Applications and Appeals

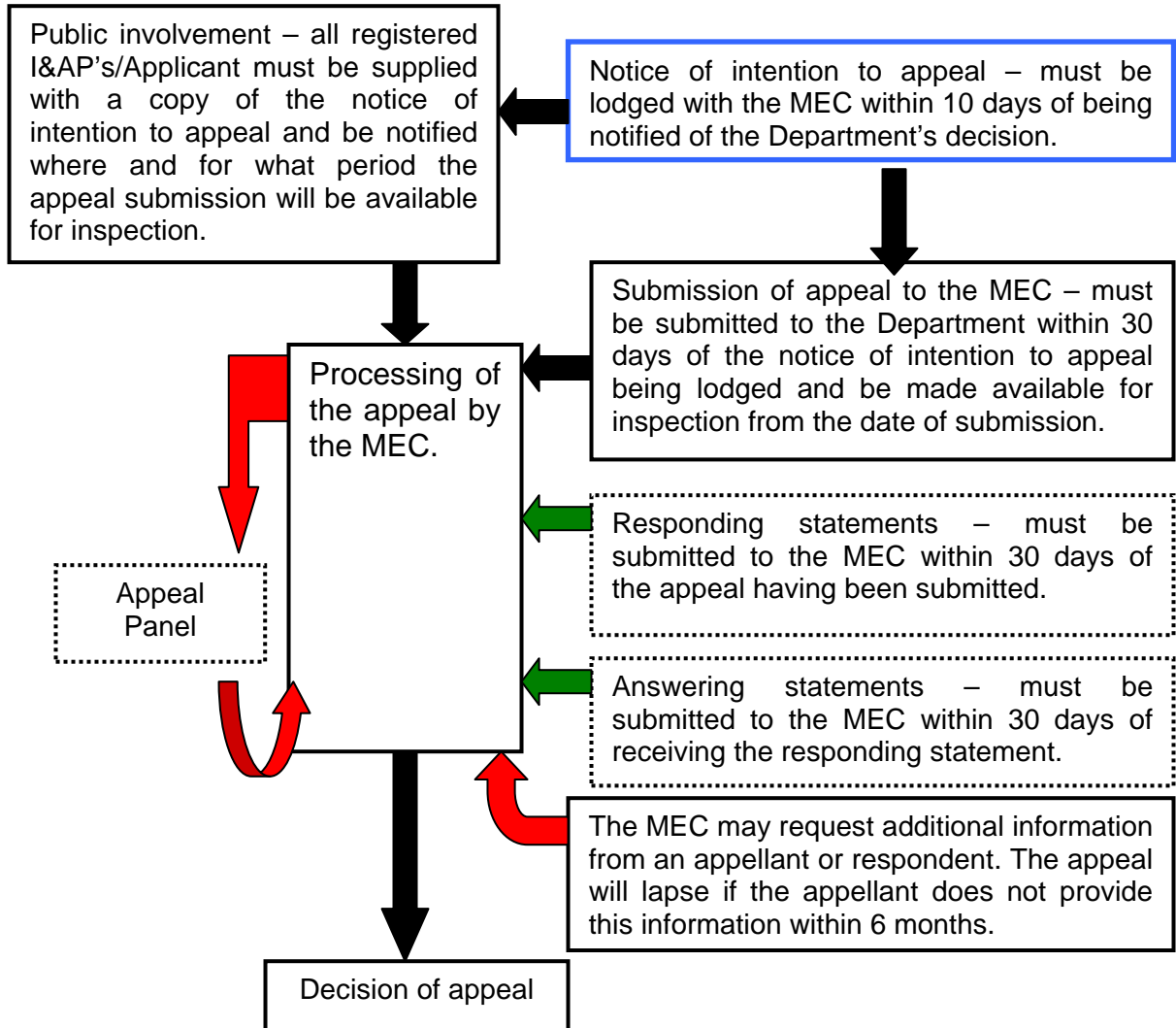
Applications that have been submitted under the previous regulations which are pending on the date of effect of the NEMA EIA Regulations will be processed as if the previous regulations were not repealed. Therefore appeals lodged in terms of decisions made in terms of the previous regulations will be 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).

A further explanation of the transitional arrangements to be adopted by the Department (in accordance with Chapter 9 of the NEMA EIA Regulations) is available in the guideline document on Transitional Arrangements which forms part of the Departments' *NEMA Environmental Impact Assessment Regulations Guideline and Information Document Series*.

5. 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 the Government Gazette of 21 April 2006 refer).

Appendix A: Flow diagram of the appeal application and processing process



Appendix B:

NOTICE OF INTENTION TO APPEAL FORM

(A digital copy of this form may be obtained from the Department's website at <http://www.capegateway.gov.za/eadp>).

DEA&DP Reference Number:

Brief Project Description:

Date of granting or refusal of environmental authorisation: _____

Date of being notified of the Decision: _____

I as the appellant am: (Please tick the appropriate box below)

the applicant	a registered interested and affected party	other (please specify)
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Appellant's information:

Name:

Address:

Tel.

Fax.

Email.

Cell.

Availability of appeal submission for inspection:

Where will the appeal submission be available for inspection?

When will the appeal submission be available for inspection?

From: _____ **To:** _____

APPELLANT SIGNATURE

Date

Please note: In accordance with regulation 62 of the NEMA EIA regulations, a copy of this notice must be served on each person or organ of state which was a registered interested and affected party (if the appellant is the applicant) or the applicant (if the appellant is a person other than an applicant).

This notice must be lodged with the MEC at the address listed below within 10 days of being notified of the decision:

Provincial Minister for Environment, Planning and Economic Development

Private Bag X9186

Cape Town

8000

Fax: (021) 483-4174

Note: Appeal notices not submitted to the above address will not be regarded as valid.

Appendix C:

APPEAL FORM IN TERMS OF THE NEMA EIA REGULATIONS

(A digital copy of this form may be obtained from the Department's website at <http://www.capegateway.gov.za/eadp>).

Please address your completed appeal to:

**Provincial Minister for Environment, Planning and Economic Development
Private Bag X9186
CAPE TOWN
8000**

Fax: (021) 483-4174

NOTE:

1. Appeals not submitted to the above address will not be regarded as valid;
2. Information requested must be provided in the spaces allocated therefore. Additional pages may be attached if the allocated space is insufficient;
3. Your appeal submission should be brief, clearly explained and to the point;
4. A copy of your Notice of Intention to Appeal must be attached to this document when submitted to the Department; and
5. This form must be duly signed by the appellant and witnessed.

A. PROJECT INFORMATION

DEA&DP Reference Number:

Project Description:

Date of issue of the Decision:

Type of Appeal (please circle the appropriate options):

Environmental Authorisation	Refusal	Disqualification of EAP	Amendment	Withdrawal	Exemption
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B. APPELLANT'S INFORMATION

I as the appellant am: (Please tick the appropriate box below)

the applicant	a registered interested and affected party	other (please specify)
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Name: _____

Address: _____

Tel: _____ Cell: _____

Fax: _____

Email: _____

C. APPEAL NOTICE INFORMATION:

1. Please indicate the date you were notified of the Department's decision.

2. Are you a registered Interested & Affected Party (I&AP) or the applicant?

3. Have you lodged a Notice of Intention to Appeal within 10 days of being notified of the decision taken by the Department? **Yes** / **No**

4. Please indicate the date your Notice of Intention to Appeal was lodged with the MEC. _____

5. Has this Notice of Intention to appeal been served on the Applicant/ all Registered I&AP's? _____

6. Please indicate the dates on which this was done. _____

7. Did the Notice indicate where and for what period the appeal submission will be available for inspection? **Yes** / **No**

8. Please indicate where and for what period the appeal submission has been made available for inspection./ Explain why this was not done.

9. Has the relevant application fee been paid? (please attach proof of payment)

D. GROUNDS FOR APPEAL

10. Provide a statement setting out the grounds of your appeal.

11. Is your appeal based on factors associated with the process that was followed by the applicant/EAP/the Department in obtaining/issuing authorization or/ refusal or/ amendment or /withdrawal or/ disqualification?

Yes / No (Circle the appropriate response). Please provide details.

12. Is your appeal based on factors associated with matters of unacceptable environmental impacts/extenuating circumstances not taken into account by the competent authority?

Yes / No / Not applicable (Circle the appropriate response). Please provide details.

13. Have your appeal issues been raised previously in the public participation process?

Yes / No (Circle the appropriate response). Please provide details.

14. Are you fundamentally opposed to any development activity on the site?

Yes / No / Not applicable (Circle the appropriate response). Please provide details.

15. Are you in favour of the decision of the Department if your concerns can be remedied by rectifying the process or by mitigating or eliminating the impacts of the activity?

Yes / No / Not applicable (Circle the appropriate response)

16. Please indicate what measures you propose to have your concerns remedied.

17. Does your appeal contain any new information that was not submitted to the Environmental Assessment Practitioner (EAP) /or registered I&AP's/ or the Department prior to the Department's decision?

Yes / No (Circle the appropriate response)

If the answer above is "Yes" please explain what this information is and why it should be considered by the MEC and why it was not made available to the EAP/ or I&AP/ or the

20. Please provide details of how you will be or have been affected by each issue listed under 18 above.

Appellant's Signature
(or duly appointed representative)

Place

Date

Witness

Place

Date