



# 2014 NEMA EIA REGULATIONS

## OPEN DAY INFORMATION SEMINAR

•KZN 18 November 2014

# PROGRAMME

- 9: 00 - 9:15 Opening & Welcome  
IAIAsa (John Richardson) & EDTEA (Dr Timothy Fasheun)
- 9:15 – 11:00: 2014 NEMA EIA Regulations  
Questions & Answers
- 11:00 – 11:30: Tea
- 11:30 – 13:15: 2014 NEMA Listing Notices  
Questions & Answers
- 13:15 – 13:30: Closure  
IAIAsa (Sue George) EDTEA
- Light Lunch – Foyer below

# OUTLINE

- ❑ **“Single Environmental System”**
  
- ❑ **The Purpose Of The New EIA Regulations**
  - ❑ **Why New EIA Regulations?**
  - ❑ **What Drove The New EIA Regulations?**
  
- ❑ **Within The New EIA Regime:**
  - ❑ **What Should Developers/Proponents and EAPs Know?**
  - ❑ **What Should The Public/I&APs Know?**
  - ❑ **What Are The Roles of The Competent Authorities?**

# The Purpose Of The New EIA Regulations

- Ministers agreed to a “Single Environmental System” under NEMA, including mining:
  - ❑ Minister responsible for environment sets the regulatory framework
  - ❑ Minister responsible for mineral resources will become a competent authority for implementing that regulatory framework in terms of NEMA for mining activities
  - ❑ the Minister responsible for environment will be the appeal authority;
  - ❑ Ministers agreed to align timeframes for regulated processes
- This agreement was captured in amendments to NEMA, the MPRDA & National Water Act.
- The Infrastructure Development Act (Act No. 23 of 2014) enforces the timeframes for Strategic Integrated Projects (SIPs)
- The New EIA Regulations give effect the Single Environmental System.

# THE PRINCIPLES

- Consistency of implementation among all CAs for processing, review and decision making:
  - Risk based
  - Certainty in terms of process and appeals
- Clearer balance of responsibility between parties:
  - environmental audits of EMPs ensure responsibility for compliance monitoring responsibility of applicant/EA holder
- Providing flexibility e.g. multiple interrelated activities may conduct consolidated assessment with ability to issue single or multiple EAs, depending on requirements
- Moving to greater transparency (Documents to be available on site and website)
- Outcomes based EMP (methodology vs outcome)

# The New EIA Regulations

- The 2010 EIA Regulations consist of:
  - EIA Process Regulations (incl. Exemptions & Appeals) (GN No. R. 543)
  - Listing Notice 1 (GN No. R. 544)
  - Listing Notice 2 (GN No. R. 545)
  - Listing Notice 3 (GN No. R. 546)
  - EMF Regulations (GN No. R. 547)
  
- The 2014 EIA Regulations, which will repeal & replace the 2010 EIA Regulations, will consist of:
  - EIA Process Regulations (excluding Exemptions & Appeals)
  - Exemption Regulations
  - Appeal Regulations
  - Listing Notice 1
  - Listing Notice 2
  - Listing Notice 3
  - Listing Notice 4
  - EMF Regulations

# The New EIA Regime

- Still 2 possible EIA processes:

**BA Process**

**S&EIR Process**

- Previously only steps of authorities were time bound. As from 8 December 2014 timeframes for all the steps in the EIA process are as follows:
  - Basic Assessment: 197 or 247 days
  - Scoping & EIR: 300 or 350 days
- An application for an environmental authorisation (EA) may (where applicable) :
  - only be submitted after the acceptance of an application for any right or permit in terms of the MPRDA; and
  - where section 24L NEMA applies, in the manner as agreed to by the relevant authorities

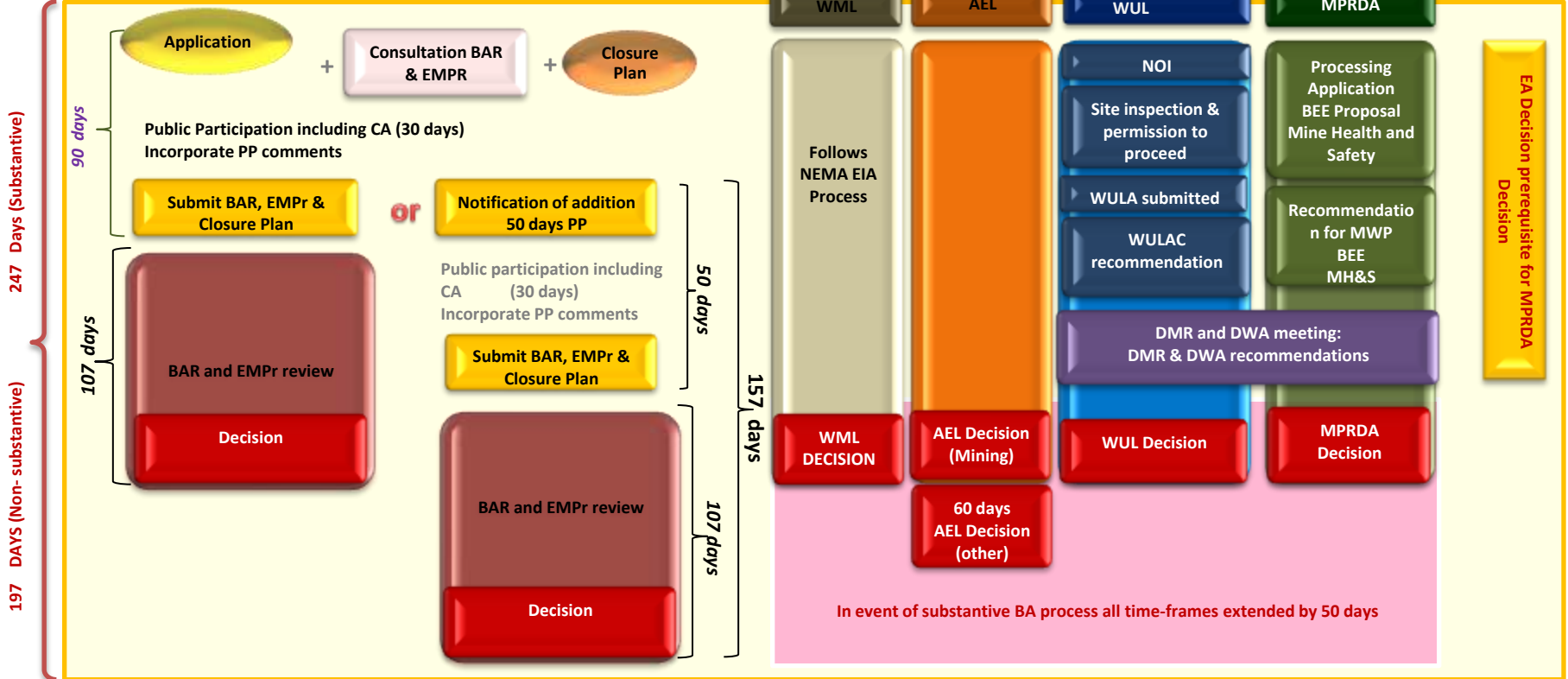
# BASIC ASSESSMENT PROCESS



# BA Process

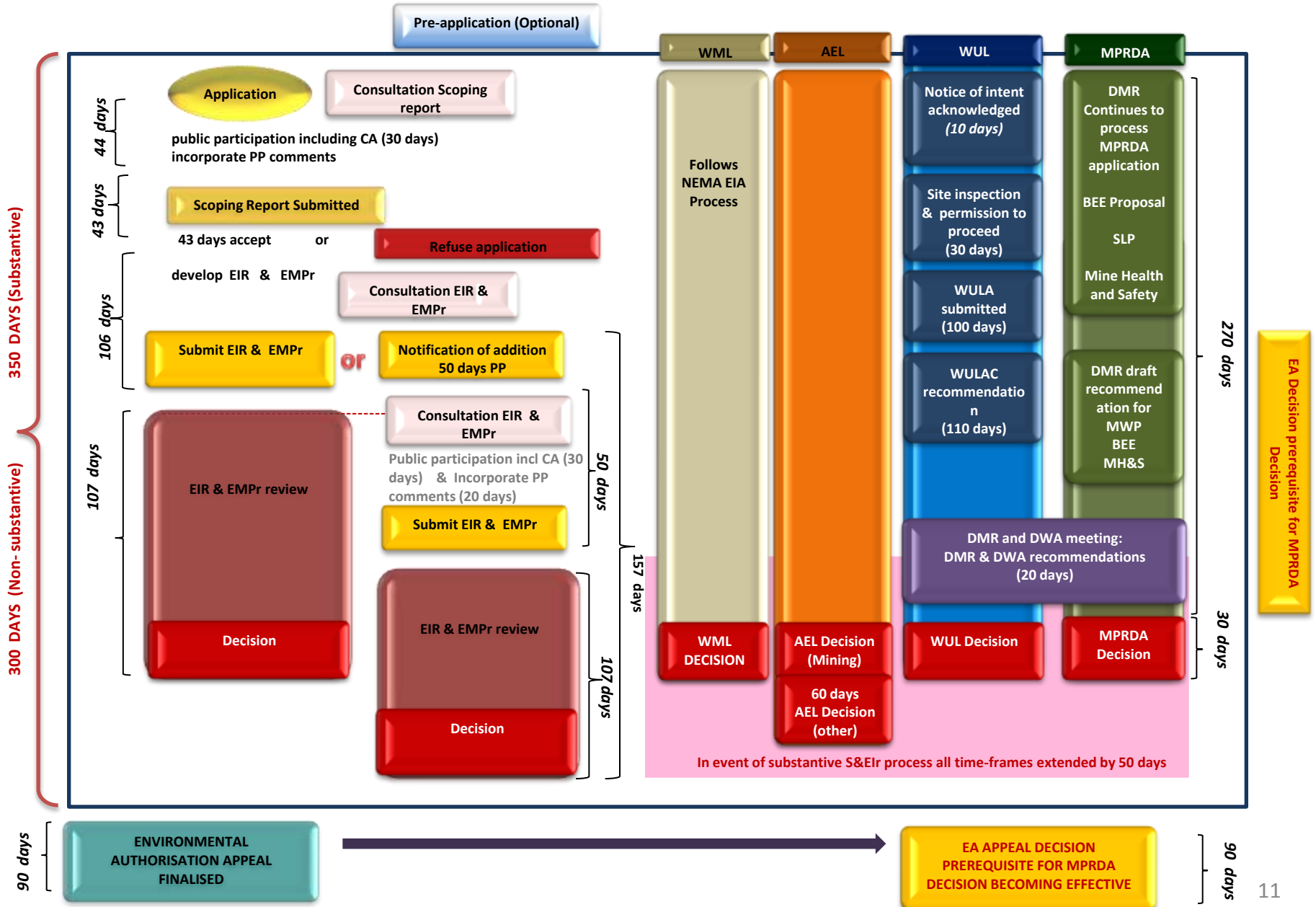
MPRDA Application Accepted

Pre-application (Optional)



**SCOPING &  
ENVIRONMENTAL IMPACT REPORTING  
PROCESS**

# S&EIR Process



# REARRANGEMENT OF CHAPTERS

## CHAPTER 1: INTERPRETATION AND PURPOSE OF THESE REGULATIONS

- **Definitions clarified:**
  - Receipt
  - Proponent & Applicant
  - Mitigation
  - Environmental audit report
  - Specialist

- **Timeframes are based on calendar days**
  - ❑ 15 December to 5 January excluded from any timeframes
  - ❑ No public participation between 15 December and 5 January unless justified by exceptional circumstances as agreed by the CA
  - ❑ Receipt, and not acknowledgement, is the trigger of time frame, but term clarified
  - ❑ Organs of State to comment within thirty (30) days from the date on which it was requested to submit comments and no longer 40 days (NEMA also amended)
  - ❑ For both BA & S&EIR: The competent authority must within 107 days issue a decision
  - ❑ Notification of decision by competent authority to occur within five (5) days of date of decision; in the previous regulations it used to be within 2 days
  - ❑ The applicant must in writing within fourteen (14) days of the date of the decision on the application; in the previous regulations it used to be within 12 days

## CHAPTER 3: GENERAL APPLICATION REQUIREMENTS

- Difference between Listed activities (LN1, LN2, LN3)
- NEAS is legislated: For the recording of applications for EAs, must be used by all CAs to keep the records
- When providing coordinates as part of the information submitted: must be provided in degrees, minutes and seconds using the Hartebeesthoek 94; WGS84 coordinate system.
- Inclusion of DMR as competent authority
- Screening tool is regulated, once established
- Reference to minimum information requirements added, provided for in NEMA

## CHAPTER 3: GENERAL APPLICATION REQUIREMENTS

- Combination of applications still provided for
  - ❑ Still need to apply for all activities
  - ❑ Provide for one consolidated assessment for interrelated developments, should developers choose to do this.

## CHAPTER 3: GENERAL APPLICATION REQUIREMENTS

- EAP criteria
  - ❑ Criteria prescribed
  - ❑ Ability to use inhouse EAP provided for
    - ✓ Such EAP does not meet independence criteria
    - ✓ Must appoint 2<sup>nd</sup> EAP, meeting independence criteria, to externally review work of first EAP
  - ❑ Must be appointed before conducting PPP



## CHAPTER 4: APPLICATION FOR ENVIRONMENTAL AUTHORISATION

- Application to be accompanied by certain information
- Where applicable, application only be submitted after the acceptance of an application for any right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002
- Closure Plan required where applicable
  - ❑ Will be applicable to activities related to decommissioning and closure
- Compliance to financial provisioning regulations provided where applicable
- Accessibility of EA, EMPr, closure plan, environmental audit reports: to be available on site and on website where available
- Ability inserted that CA may revise or replace existing EA when issuing EA i.t.o these Regulations
  - ❑ either for a new application or amendment application
  - ❑ EA, if replaced, must indicate extent of replacement

## CHAPTER 4: APPLICATION FOR ENVIRONMENTAL AUTHORISATION

### ○ **S&EIR:**

- Ability to submit EIR directly as first step based on accepted SR retained, criteria added to indicate:
  - ✓ it must be same applicant and same application;
  - ✓ SR accepted as part of previous application, EA refused based on insufficient information;
  - ✓ New application must be lodged
  - ✓ EIR to be submitted within 2 years from acceptance of SR

This provides ability for applicant to pick up where they left off the previous application and ensures sufficient time to draft EIR, etc. and assumption is that environmental context still similar (2 years later) to when initial applications was submitted.

## CHAPTER 4: APPLICATION FOR ENVIRONMENTAL AUTHORISATION

- **S&EIR:**

- Now possible to refuse an application at Scoping Report stage in 2 cases, namely:
  - ✓ Proposed application is in conflict with prohibition contained in legislation; or
  - ✓ SR doesn't meet Appendix 2 content requirements and there is inability/unwillingness to comply with this within prescribed timeframe

## CHAPTER 5: AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING

### ○ **3 possibilities to amend provided for:**

- ❑ Section 47A(1) of NEMA: no process required if correcting an error and no material change to rights/duties
- ❑ Application to amend but no process prescribed if amendment:
  - ✓ will not be a change of scope of existing EA nor increase level or nature of impact initially assessed; or
  - ✓ Will be change of ownership

Such an amendment application must be submitted 3 months prior to lapsing of the authorisation.

- ❑ Application to amend and process prescribed if amendment will be a change of scope of valid EA resulting in increased level or nature of impact:
  - ✓ Public participation required as appropriate and as agreed with CA
  - ✓ Same timeframes as for BA: 90 days to submit report & 107 days to decide
  - ✓ Report focusing on assessment of impacts related to proposed change, advantages and disadvantages of the proposed change and measures to ensure avoidance and mitigation of such impacts.

## CHAPTER 5: AMENDMENT, SUSPENSION, WITHDRAWAL AND AUDITING

### Validity period of EAs:

- Retained but limited to EAs issued i.t.o. 2014 EIA Regulations:
- Necessary as result of introduced audit requirement
- Regulations to specify that commencement must occur within 10 years and no extension of this period possible without following prescribed amendment process (change of scope of EA)
- EA must distinguish between construction only and operational conditions and indicate validity period for construction portion of EA
- If EA deals with construction only, EA to have validity period which may be extended once by 5 years maximum
  - Lapsing of EA activity added, requiring Basic Assessment, in cases where such EA needs to be extended further

## CHAPTER 5: CONTINUE...

- **Audit requirements:**

- Only to be applicable to EAs issued i.t.o. 2014 EIA Regulations
- Audit requirement will need to be met for any valid EA, making validity period of EA critical
- Audit frequency will not be regulated but is to be determined by CA in EA
- Process to audit is prescribed in Regulations

## CHAPTER 5: CONTINUE...

- **Auditing and amendments of EMPr and where applicable Closure Plan**
  - Amendments to EMPr / closure plan as result of audit:
    - ✓ Process to be followed where audit indicates insufficient compliance with EA or mitigation measures
    - ✓ Holder of EA to make recommendations on amendments to EMPr/closure plan as result of audit
    - ✓ Provide for consultation as appropriate on proposed recommendations.
    - ✓ Recommended amended EMPr / closure plan to be submitted to CA for approval

## CHAPTER 5: CONTINUE...

- **Other amendments of EMPr and where applicable Closure Plan (not based on audit)**
  - ❑ Impact management actions of an approved EMPr / closure plan before the audit may be amended without seeking CA approval, but must be reflected in audit and CA must be notified of such changes.
  - ❑ Amendments to impact management outcomes and objectives of EMPr / closure plan:
    - ❑ notify the competent authority of its intention to amend the EMPr or closure plan at least 60 days prior to submitting such amendments to CA for approval
    - ❑ Holder must invite comments from I&APs on proposed amendments
    - ❑ Invitation to comment within 30 days
    - ❑ If comments are received, holder may amend EMPr/closure plan outcomes/objectives for approval within 60 days of inviting comments.
    - ❑ Holder must submit comments received to CA with indication of responses to them
    - ❑ CA to decide whether to approve amended EMPr/closure plan within 30 days



## CHAPTER 5: CONTINUE...

- **Suspension and Withdrawal**

- ❑ If EA was obtained through misrepresentation, non-disclosure of material information or other fraudulent means;
- ❑ CA may suspend or partially suspend, with immediate effect, the environmental authorisation and direct the holder of EA to cease any activities that have been commenced or to refrain from commencing any activities, pending a decision to withdraw the environmental authorisation.

# CHAPTER 5: CONTINUE...

## ○ Suspension and Withdrawal

- Holder to make representations within 10 days of suspension
- CA to, within 14 days of receipt of representations:
  - ✓ request additional information;
  - ✓ lift suspension; or
  - ✓ withdraw EA.
  - ✓ If additional information was requested, CA has 14 days from receipt of such information to make decision to lift suspension or withdraw EA.
- If EA is withdrawn and activities have been commenced, CA may instruct holder to rehabilitate the effects of the activity on the environment

# CHAPTER 6: Public Participation

- **Public participation requirements set.**
  - ❑ PPP not allowed between 15 December and 5 January unless justifiable
  - ❑ Organs of State to provide comments within 30 days (no longer 40 days)
- Written consent of land owner required if applicant is not landowner and no longer just issuing written notice as it was before.
- Exceptions:
  - ❑ linear activities;
  - ❑ MPRDA related;
  - ❑ Strategic Integrated Projects (SIPs) in terms of the Infrastructure Development Act, 2014.
- Potential or registered interested and affected parties, including the competent authority, may be provided with an opportunity to comment on reports and plans prior to submission of an application but must be provided an opportunity to comment on such reports once an application has been submitted to the competent authority.

# CHAPTER 7: General Matters

- **Lapsing of application**

- An application lapses if the applicant fails to meet any of the prescribed time-frames, unless regulation 3(7) applies. *(In the event where the scope of work must be expanded based on the outcome of an assessment done in accordance with these Regulations, which outcome could not be anticipated prior to the undertaking of the assessment, or in the event where the applicant can demonstrate exceptional circumstances, the CA may, prior to the lapsing of the relevant prescribed timeframe, in writing, extend the relevant prescribed timeframe & agree with the applicant on the length of such extension.)*

- **Resubmission of a refused application** possible:

- only once the appeal, if any, has been finalised; or
- the timeframe for submission of an appeal has lapsed.

- A few **additional offences** listed: providing incorrect or misleading info; fails to provide the CA with all the relevant info; fails to comply with the auditing requirements; failing to give 60 days prior notice to CA of intention to amend EMPr & related PP requirements; commencing if the EA has been suspended.

## CHAPTER 8: TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT

- **Transitional Provisions (pending applications and appeals)**
  - Pending applications & appeal (ECA, NEMA 2006, NEMA 2010) in terms of activities still similarly listed under the 2014 Listing Notices, to be finalised in terms of the previous regulations as if new Regulations were not in effect.
  - In term of pending applications & appeals (ECA, NEMA 2006, NEMA 2010) in terms of activities not similarly listed under the 2014 Listing Notices, the application will be considered withdrawn.

## DEVELOPERS/PROPONENTS & EAPS SHOULD KNOW THAT:

- Read and understand the regulations
- Pre-application consultation option to be used to the advantage of applicant
- Do not use the EIA process to formulate the project
- Receipt starts the time frame
  - Departmental Stamp
  - Registered Mail
  - Signature
- Apply 3 months prior to the lapsing of validity of the EA (where no process for amendment is required)

## DEVELOPERS/PROPONENTS AND EAPS SHOULD KNOW THAT: CONTINUE...

- Applicant must appoint a competent **EAP**
- EAP may also be a specialist
- The applicant must take all reasonable steps to verify whether the EAP and specialist complies with regulation 13(1)(a) and (b); and (a) be independent; (b); have expertise in ensuring compliance to these Regulations
  - ❑ EAP Disqualification based on any of the regulatory requirements, not limited to independence only.
  - ❑ if EAP is not independent (in- house person is used) a second EAP, who meets the independence requirements, must be appointed to externally review the work.
  - ❑ If EAP did not meet independence criteria but another independent EAP reviewed that work externally, disqualification of initial EAP not possible based on lack of independence.
- Do work when ready and before submission of application
- Proper planning required (Don't start with the process if you not ready)
- Compliance and enforcement implications
- Unrealistic expectations

## DEVELOPERS/PROPONENTS AND EAPS SHOULD KNOW THAT: CONTINUE...

- Failure to meet time-frames – application will lapse
- Clarify development (operational /construction) to ensure audit requirement can be met
- outcomes based **EMPr**
- Concentrate on providing and identifying realistic dates for the conclusion of EAs
- Spend more attention on the scope of the project (what is not in the scope wont be authorised)
- **Landowner consent:**
  - written consent of land owner required if applicant is not landowner.
  - Exception when the development is a linear activity, MPRDA related or a Strategic Integrated Project (SIP) in terms of the Infrastructure Development Act, 2014.



## DEVELOPERS/PROPONENTS AND EAPS SHOULD KNOW THAT: CONTINUE...

### ○ **EMPRs**

- Approved EMPr, including any amendments that are approved, must be available on site and where the holder of the EA has a website, make it available on the website.

### ○ **Environmental Authorisations**

- Provide for ability to update existing EA or replace existing EA with new one. *Cases may exist where new activity is triggered but development already has an existing EA. Decision on BA/S&EIR must be able to amend existing EA or to replace existing EA.*
- EA will specify two dates: one for commencement and the other for the validity of the EA. Where the EA does not include operational aspects, the period for which the EA is granted and the date on which the activity is deemed to have been concluded must be included.

# EXEMPTION REGULATIONS

- Subject to section 24M(1) & (2) of NEMA, a person may apply in writing to the relevant authority for exemption from a provision of the NEMA, the regulations and any notice issued under NEMA.
- Exemptions only possible from steps / requirements in the process, not from the requirement to obtain environmental authorisation.
- A person applying for an exemption from a provision of NEMA:
  - that relates to the application for an EA or from a provision of the EIA Regulations must communicate his or her notice of intention to apply for exemption by conducting a PPP in the manner prescribed in the EIA Regulations;
  - that does not relate to the application for an EA or from a provision of the EIA Regulations, must communicate his or her notice of intention to apply for exemption by—
    - ✓ placing an advertisement in one national newspaper and provincial newspaper of the province, which would potentially be affected by the exemption; and
    - ✓ using reasonable alternative methods, as agreed to by the Minister, the Minister responsible for mineral resources or the MEC.

## EXEMPTION REGULATIONS: CONTINUE...

- Authority may ask for additional information that must be submitted within 15 days.
- Authority must decide Exemption within 30 days of receiving all info.
- Notice of Exemption granted to any person that submitted comments, objections or oral submissions in relation to the exemption application & right of appeal.
- Authority, may—
  - from time to time review any exemption notice granted in terms of these Regulations; and
  - on good grounds suspend, withdraw or amend the exemption notice, or any part thereof.

# APPEAL REGULATIONS

- Appeal Regulations are applicable to an appeal i.t.o.:
  - Environment Conservation Act, 1989 (Act No. 73 of 1989);
  - National Environmental Management Act, 1998 (Act No. 107 of 1998);
  - NEM: Biodiversity Act, 2004 (Act No. 10 of 2004);
  - NEM: Air Quality Act, 2004 (Act No. 39 of 2004); or
  - NEM: Waste Act, 2008 (Act No. 59 of 2008),

and includes subordinate legislation made in terms of any of those laws.
- An appeal against a decision by an official or Municipal Manager at a metropolitan, district or local municipality must be submitted, processed and considered in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

# APPEAL REGULATIONS: CONTINUE...

- An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any I&APs and any organ of state within 20 days from:
  - the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or
  - the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to above.
  
- Responding statement: The applicant, the decision-maker, I&APs and organ of state must submit their written response, if any, to the appeal authority and the appellant within 20 days from the date of receipt of the appeal submission.

## APPEAL REGULATIONS: CONTINUE...

- The Appeal Authority may seek expert advice and/or may appoint an appeal panel.
- The Appeal Administrator must make a recommendation on the appeal to the Appeal Authority:
  - ✓ if no expert advice was sought or no appeal panel appointed, within 30 days of receipt of the Responding Statements;
  - ✓ if expert advice was sought or appeal panel appointed, within 10 days of receipt of the recommendations of the expert or appeal panel.
- The Appeal Authority must reach a decision on an appeal, and notify the appellant, applicant, and any registered interested and affected party, within 20 days of the recommendation on the appeal by the Appeal Administrator.



# Thank You



**environmental affairs**

Department:  
Environmental Affairs  
**REPUBLIC OF SOUTH AFRICA**

