

**TABLE 1A:
SUMMARY OF THE CURRENT SOUTH AFRICAN REQUIREMENTS FOR ENVIRONMENTAL IMPACT ASSESSMENT (NEMA)**

Introduction

G NR 385 dated 21 April 2006, which came into effect on 3 July 2006 and was promulgated in terms of NEMA (as amended) sets out the substantive rules of process for undertaking EIA in South Africa and underpins the "new" EIA regime in the country. Whereas the NEMA EIA regime previously utilised a subject test, relating to the perceived potential impact of a proposed activity on the environment, the EIA regime provided for by NEMA (as amended) and associated EIA regulations (see below), now utilises a "listed activity" approach similar to that adopted by the previous EIA regime, i.e., that provided for by the ECA and the previous EIA regulations. For more information on the previous EIA regime please refer to Table 1 in the first report. Regulations G NR 386 and G NR 387, also dated 21 April 2006, contain the list of activities that trigger the EIA requirement under the NEMA EIA regime. These three sets of regulations, read together, comprise the new EIA regulations. For the purposes of brevity this report and Table 1A reports only on **process and procedural matters** provided for by the new EIA regulations.

The objectives of the EIA provisions of the NEMA are *inter alia*:

- to identify, predict and evaluate the actual and potential impact on the environment, socio-economic considerations and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising
- benefits, and promoting compliance with the principles of environmental management as set out in section 2 on NEMA;
- to ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them; and,
- to ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment.

Categorisation of Projects

Reg. 386: Project activities falling into a clearly defined list requiring only basic assessment.

Reg. 387: Project activities falling into a clearly defined list requiring scoping and environmental impact assessment.

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Process General Outline

The following are the main stages in the Basic Assessment process:

- The appointment by the applicant of an independent consultant who must comply with the regulations on behalf of the applicant.
- Notice to be given in writing of the proposed application to the competent authority.
- The submission of the application on the prescribed form to the relevant authority.
- The conduction of a public participation process as set out in Regulation 56.
- A register of all interested and affected parties must be opened and maintained.
- If the relevant authority is unable to decide the application on the basic assessment, additional information, specialists study or specialized process, as may be required must be submitted.

The following are the main stages in the Scoping and Environmental Impact Assessment process:

1. Scoping:

- The appointment by the applicant of an independent consultant who must comply with the regulations on behalf of the applicant.
- The submission of the application on the prescribed form to the relevant authority.
- The conduction of a public participation process as set out in Regulation 56, including the opening and maintaining of a register of all interested and affected parties. Notice must be given to any organ of state which has jurisdiction in respect of any aspect of the activity.
- The scoping report must contain a plan of study for environmental impact assessment which must set out the proposed approach to the environmental impact assessment and must include:

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- a description of tasks that will be undertaken, including any specialist reports or specialized processes, and the manner in which such tasks will be undertaken;
 - an indication of the stages at which the competent authority will be consulted; a description of the proposed method of assessing the environmental issues and alternatives, including the option of not proceeding with the activity;
 - particulars of the public participation process that will be conducted during the environmental impact assessment process; and any other specific information required by the competent authority.
 - any guidelines applicable to the kind of activity which is the subject of the application.
- The relevant authority must consider the scoping report and the plan of study for environmental impact assessment and either accept, reject or request the Environmental Assessment Practitioner (EAP) to make amendments to the report.

2. Environmental impact assessment reports:

Should the competent authority accept the scoping report, the EAP must proceed with the tasks contemplated in the plan of study for environmental impact assessment, including the public participation process and the preparation of an environmental impact assessment report.

Responsibilities of various Parties

The applicant is responsible for complying with the requirements of the EIA regulations.

Independent Consultants: The Applicant must appoint an independent consultant at his own cost and must:

- Take all reasonable steps to verify whether the EAP to be appointed complies with the independence requirement and the requirement that the EAP has expertise in conducting EIAs;
- Provide the EAP with access to all information at his disposal regarding the application, whether or not such information is favourable to the applicant

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Other responsibilities of the Applicant include:

- To be responsible for all processes, information, plans and reports produced in complying with the EIA Regulations.
- To ensure that the consultant has no financial or other interest in the undertaking of the project, except from complying with the requirements of the Regulations, and to ensure that the independent consultant provides the relevant authority access to all pertinent information.
- To be responsible for all costs incurred in complying with the Regulations.

Independent Consultants: An Environmental Assessment Practitioner (EAP) must:

- Be independent
- Have expertise in conducting environmental impact assessments, including knowledge of NEMA, the Regulations and any guidelines;
- Must perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;
- Comply with the Act, the Regulations and all other applicable legislation;
- Disclose to the applicant and the competent authority all material information in his possession that reasonably has or may have the potential of influencing any decision by the competent authority or the objectivity of any report, plan or document.

Interested Parties:

- Are responsible to provide input and comment during various stages of the EIA process.
- Must disclose any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

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Public Consultation

Input and comments of interested and affected parties must be obtained during the following stages:

Basic assessment- identify issues and alternatives to be considered

Scoping- identify issues and alternatives to be considered

Assessing and mitigating impacts

Disclosure

The ethos of the South African EIA process is that the relevant information pertaining to the particular activity should be revealed during the EIA process.

In particular:

The Applicant must disclose all information at his disposal regarding the application, whether or not such information is favourable.

The EAP must disclose to the applicant and the competent authority all material information in the possession of the EAP that reasonably has or may have the potential of influencing the decision of the competent authority, or the objectivity of any report, plan or document prepared by the EAP.

All Interested and Affected parties must disclose any direct business, financial, personal or other interest

The **Promotion of Access to Information Act** (No. 2 of 2000) and the **Promotion of Administrative Justice Act** (No. 3 of 2000) also require that full disclosure be made in these instances.

Contents of Final Reports

An EIR must contain the following:

- Details of the EAP who compiled the report and of the EAP's expertise to carry out an environmental impact assessment
- A detailed description of the proposed activity

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- A description of the property on which the activity is to be undertaken and the location of the activity on the property
- A description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity
- Details of the public participation process, including
 - steps undertaken in accordance with the plan of study;
 - a list of all registered interested and affected parties (I&AP);
 - a summary of comments received from I&APs,
 - a summary of issues raised, the date of receipt of those comments and the response of the EAP;
 - copies of any representations, objections and comments received from I&APs
- A description of the need and desirability of the proposed activity and identified potential alternatives, including advantages and disadvantages that the proposed activity or alternatives may have on the environment and the community that may be affected
- An indication of the methodology used in determining the significance of potential environmental impacts
- A description and comparative assessment of all alternatives
- A summary of the findings and recommendations of any specialist report or report on a specialised process
- A description of all environmental issues that were identified during the environmental impact assessment process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures
- An assessment of each identified potentially significant impact; including
 - cumulative impacts;
 - the nature of the impact;
 - the extent and duration of the impact;

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the probability of the impact occurring;
the degree to which the impact can be reversed;
the degree to which the impact may cause irreplaceable loss of resources;
the degree to which the impact can be mitigated

- A description of any assumptions, uncertainties and gaps in knowledge
- An opinion as to whether the activity should or should not be authorised and if it should be authorised, a list of any conditions
- An environmental impact statement which contains a summary of key findings of the EIA; and a comparative assessment of the positive and negative implications of the proposed activity and identified alternatives
- A draft environmental management plan that complies with regulation 34
- Copies of any specialist reports and reports on specialised processes
- Any specific information that may be required by the competent authority

ENDS