



DEPARTMENT of
ENVIRONMENTAL AFFAIRS
& DEVELOPMENT PLANNING
Provincial Government of the Western Cape

EIA GUIDELINE AND INFORMATION DOCUMENT SERIES

INFORMATION DOCUMENT ON GENERIC TERMS OF REFERENCE FOR EAPS AND PROJECT SCHEDULES

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Private Bag X9086, Cape Town, 8000, South Africa.

EIA Guideline & Information Document Series: This guideline forms part of the DEA&DP's *Environmental Impact Assessment Guideline and Information Document Series*. The latest versions of the documents available in this series consist of the following –

- *Guideline on Transitional Arrangements (August 2010)*
- *Guideline on Alternatives (August 2010)*
- *Guideline on Public Participation (August 2010)*
- *Guideline on Exemption Applications (August 2010)*
- *Guideline on Appeals (August 2010)*
- *Guideline on Need and Desirability (August 2010)*
- *Information Document on the Interpretation of the Listed Activities (August 2010)*
- *Information Document on Generic Terms of Reference for EAPs and Project Schedules (August 2010)*

Please note: The above versions of the guidelines are all in draft form. The final versions of the guidelines will be formally published later this year.

The EIA Guideline & Information Document Series, the relevant legislation and DEA&DP's applications forms are available on the DEA&DP website: <http://www.capecgateway.gov.za/eadp>

Please note: This guideline must be read together with the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), the EIA Regulations, the relevant Specific Environmental Management Act(s) ("SEMA") (e.g. Environment Conservation Act, 1989 – Act No. 73 of 1998, National Environmental Management: Air Quality Act, 2004 – Act No. 39 of 2004, the National Environmental Management: Integrated Coastal Management Act, 2008 – Act No. 24 of 2008, and the National Environmental Management: Waste Act, 2008 – Act No. 59 of 2008) and its Regulations, and is not intended to be a substitute for the provisions of the NEMA, the SEMAs or the Regulations, in any way. Adherence to the requirements in terms of the NEMA and the EIA Regulations, the SEMAs and its Regulations does, however, not absolve the applicant from also adhering to the requirements of any other legislation applicable to the undertaking of the activity.

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ANNEXURE

Generic Project Schedules for Basic Assessment and Scoping-EIA

ACRONYMS

DEA&DP	Western Cape Department of Environmental Affairs and Development Planning
EAP	Environmental Assessment Practitioner
ECA	Environment Conservation Act, 1989 (Act No. 73 of 1989)
EIA	Environmental Impact Assessment
I&AP	Interested and Affected Party
LUPO	Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985)
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)
NEMAA	National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008)
NEM: AQA	National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)
NEM: WA	National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)
NHRA	National Heritage Resources Act, 1999 (Act No. 25 of 1999)
SEMA	Specific Environmental Management Act

1. INTRODUCTION

On 21 April 2006 the Minister responsible for Environmental Affairs promulgated Regulations in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA")¹. When these Regulations came into effect on 3 July 2006² they replaced the Environmental Impact Assessment ("EIA") Regulations that were promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) ("ECA") in 1997³, and introduced new provisions for EIAs. Subsequently, the National Environmental Management Amendment Act, 2008 (Act 62 of 2008) ("NEMAA"), was promulgated on 9 January 2009⁴ and came into effect on 1 May 2009⁵. The NEMAA made a number of significant amendments to the general provisions applicable to EIAs. On 18 June 2010 the Minister responsible for Environmental Affairs promulgated amended EIA Regulations in terms of Chapter 5 of NEMA⁶. From the date of effect of these amended EIA Regulations, 2 August 2010, these amended EIA Regulations replaced the previous EIA Regulations that were promulgated on 21 April 2006.

It must also be noted that the definition of "Environmental Authorisation" in terms of NEMA has been amended and now reads "*when used in Chapter 5 means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a specific environmental management Act*". In other words, *inter alia*, the following are all considered to be an "Environmental Authorisation": an Environmental Authorisation issued for an activity listed in Listing Notice 1, 2 or 3⁷; an atmospheric emissions licence in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) ("NEM: AQA"); and a waste management licence in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) ("NEM: WA"). As such the general provisions of NEMA that applies to an application for and consideration of an application for environmental authorisation applies to all of these applications.

It must further be noted that as part of an application for a waste management licence or an atmospheric emissions licence the application must also be subjected to the EIA process as stipulated in the EIA Regulations promulgated in terms of NEMA. While a number of different authorisations might therefore be required (an Environmental Authorisation, a waste management licence and/or an atmospheric emissions licence), one integrated EIA process must be followed in accordance with the requirements as stipulated in the EIA Regulations, with the specific requirements of the relevant specific environmental management Act ("SEMA(s)") to also be adhered to over and above the requirements of the EIA Regulations⁸.

¹ Government Notice No. R. 385, R. 386, and R. 387 in Government Gazette No. 28753 of 21 April 2006 refer.

² Government Notice No. R. 612, R. 613, R. 614, R. 615, and R. 616 in Government Gazette No. 28938 of 23 June 2006 refer.

³ Government Notice No. R. 1182 and R. 1183 in Government Gazette No. 18261 of 5 September 1997 refer.

⁴ Government Notice No. 22 in Government Gazette No. 31789 on 9 January 2009 refers.

⁵ Government No. 27 in Government Gazette No. 32156 of 21 April 2009 refers.

⁶ Government Notice No. R. 543, R. 544, R. 545, R. 546 and R. 547 in Government Gazette No. 33306 of 18 June 2010 refer.

⁷ Government Notice No. R. 544, R. 545, and R. 546 in Government Gazette No. 33306 of 18 June 2010 refer.

⁸ Section 24(4)(b)(vii) of NEMA refers.

This guideline must be read together with the NEMA, the EIA Regulations, the relevant SEMA(s) and its Regulations, and is not intended to be a substitute for the provisions of the NEMA, the SEMAs or the Regulations, in any way. Adherence to the requirements in terms of the NEMA and the EIA Regulations, the SEMAs and its Regulations does, however, not absolve the applicant from also adhering to the requirements of any other legislation applicable to the undertaking of the activity.

2. PURPOSE

This information document forms part of this Department's *Environmental Impact Assessment Guideline and Information Document Series* (available on the Department's website at <http://www.capegateway.gov.za/eadp>) and provides a generic terms of reference for an Environmental Assessment Practitioner ("EAP") for both Basic Assessment and Scoping and Environmental Impact Reporting, as well as for Basic Assessment and Scoping and Environmental Impact Reporting where an atmospheric emission licence in terms of the NEM: AQA and/or waste management licence in terms of the NEM: WA are also required. Appended to this document is generic project schedule for the different processes.

While the requirements of each EIA might be different, this generic terms of reference and generic project schedules are of general application and are based on the minimum legislative requirements and legislated timeframes. Based on the specific requirements of each EIA, it might be necessary to add to the generic terms of reference and generic project schedules.

Note: The generic project schedules reflect the schedule as per a well run EIA process. Unnecessary delays caused by Application Forms or Reports being rejected or requests for additional information is therefore not provided for. It must further be noted that the authority might also decide that an appeal suspends an Environmental Authorisation, and as such the time necessary to decide an appeal must also be considered. A separate schedule which indicates the time necessary to consider appeals is therefore also included. If it is anticipated that a proposed EIA process will be more complicated than the generic EIA process, it is, however, always advisable to arrange for a pre-application meeting with the Department to clarify process requirements.

3. GENERIC REQUIREMENTS FOR EAPS

An EAP appointed in terms of the NEMA EIA Regulations to manage an EIA application process, *inter alia*, must⁹ –

- be independent;
- have expertise in conducting EIAs, including knowledge of the NEMA, the EIA Regulations and any guidelines that have relevance to the proposed activity; and once the registration authority for EAPs have been legislated, be registered.

Note: “Expertise” means¹⁰ “*expert knowledge and skill in a particular subject*”. “Knowledge” in turn means¹¹ “*the information, understanding and skills that you gain through education or experience*”. A combination of relevant education and experience in EIA is therefore required. The requirements for registration of an EAP will also require the EAP to meet the registration requirements in terms of a combination of education and experience.

- 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 NEMA, the EIA Regulations and all other applicable legislation;
- disclose to the applicant and the Department all material information in the possession of the EAP that reasonably has or may have the potential of influencing –
 - (i) any decision to be taken with respect to the application by the competent authority in terms of the NEMA EIA Regulations; or
 - (ii) the objectivity of any report, plan or document to be prepared by the EAP in terms of the NEMA EIA Regulations for submission to the competent authority.

Note: If the Department at any stage of considering an application has reason to believe that the EAP does not comply with any of the abovementioned requirements and the Department, after having investigating the matter, remains unconvinced of the EAP’s compliance with the requirements, the Department will disqualify the EAP¹².

An EAP must manage the EIA process, including –

- giving advice on whether or not the Department would be able to reach a decision on the basis of information provided in a Basic Assessment Report or whether permission should be applied for to apply Scoping-EIR instead of Basic Assessment to the application¹³;
- ensuring that the requirements in terms of the EIA Regulations are met and that the application does not lapse¹⁴;
- coordinate and integrate any specialist inputs or studies that might be required, and also ensure that the specialists appointed meet the requirements in terms of independence, objectivity and expertise¹⁵;
- managing and ensuring the integrity of the public participation process;

⁹ Regulation 17 of GN No. R. 543 of 18 June 2010 refers.

¹⁰ Ordinary dictionary meaning.

¹¹ Ordinary dictionary meaning.

¹² Regulations 18 of GN No. R. 543 of 18 June 2010 refers.

¹³ Regulation 20(3) of GN No. R. 543 of 18 June 2010 refers.

¹⁴ Regulation 67 of GN No. R. 543 of 18 June 2010 refers.

¹⁵ Regulation 17 of GN No. R. 543 of 18 June 2010 refers.

- ensuring EIA best practice and clearly communicate the methodologies used, and the assumptions, uncertainties and gaps in knowledge¹⁶; and
- adhering to the National Environmental Management Principles contained in Section 2 of NEMA and the general objectives of Integrated Environmental Management contained in Section 23 of NEMA.

4. GENERAL REQUIREMENTS FOR PERSONS COMPILING A SPECIALIST REPORT OR UNDERTAKING A SPECIALISED PROCESS

A person appointed in terms of the NEMA EIA Regulations to compile a specialist report or undertake a specialised process, *inter alia*, must¹⁷ –

- be independent;
- have the required expertise, including knowledge of the NEMA, the EIA Regulations and any guidelines that have relevance to the proposed activity and specialist input or study;
- 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 NEMA, the EIA Regulations and all other applicable legislation; and
- disclose to the applicant, EAP and the Department all material information in the possession of the person that reasonably has or may have the potential of influencing –
 - (i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or
 - (ii) the objectivity of any report, plan or document to be prepared by the person in terms of these Regulations for submission to the competent authority;

Note: If the Department at any stage of considering an application has reason to believe that the specialist does not comply with any of the abovementioned requirements and the Department, after having investigated the matter, remains unconvinced of the specialist's compliance with the requirements, the Department will disqualify the specialist¹⁸.

The specialist must also –

- ensure EIA best practice and clear communication on the methodologies used, and the assumptions, uncertainties and gaps in knowledge; and
- adhere to the National Environmental Management Principles contained in Section 2 of NEMA and the general objectives of Integrated Environmental Management contained in Section 23 of NEMA.

¹⁶ Section 24(4)(b)(iv) of NEMA and Regulations 22(2)(m), 28(1)(n)(iii) and 31(2)(h) and (m) of GN No. R. 543 of 18 June 2010 refer.

¹⁷ Regulation 17 of GN No. R. 543 of 18 June 2010 refers.

¹⁸ Regulations 18 of GN No. R. 543 of 18 June 2010 refers.

5. SCOPE OF WORK

While the requirements in terms of NEMA, the EIA Regulations, the relevant SEMA(s) and the relevant guidelines must be met, the following specifically must also be included in the Scope of Work:

5.1 Project Description

A detailed project description must be provided. The description must, *inter alia*, provide details about:

- the specific activities that require Environmental Authorisation that are to be applied for (note: the activities that will ultimately form part of the application will be informed by the outcome of the EIA process);
- the details of the property on which the project is to be undertaken (including the zoning, servitude details, availability of services, possible environmentally sensitive attributes, existing infrastructure) and including a locality map and site map (note: the final layout should be informed by the outcome of the EIA process); and
- the specific aspects that form part of the application (e.g. that exemption from certain provisions of the public participation requirements should be applied for, or that a public meeting will specifically be required, or that specific stakeholders must be consulted with, etc.).

5.2 Primary Responsibility

The primary responsibilities of the selected EAP will include:

- To ensure that the provisions of the NEMA and the EIA Regulations, the NHRA (if applicable), and NEMWA (if applicable) are adhered to. This will include ensuring that the relevant statutory procedures are followed and to apply for the required authorisations in terms of the aforementioned legislation.
- To liaise with, and co-ordinate the activities and inputs of any other consultants appointed to the project team, insofar as their inputs may have a bearing on the application(s) to be managed by the EAP. This would include ensuring the coordination of relevant procedures such as advertising and public participation with the requirements of LUPO and any other relevant legislation, wherever possible.
- To provide environmental input to the planning and design process such that sustainability principles are recognized and employed as appropriate. This would include relevant features of the proposed site and surroundings which create both opportunities and constraints to development, as well as promoting a sustainable development model appropriate to the receiving environment, incorporating key energy, water, waste, public space, mobility and biodiversity design features.

Any specialist input or specialist studies proposed must be specifically mentioned in the proposal submitted by the EAP.

5.3 Anticipated Inputs

The EAP's input to the project would include:

- Attending all scheduled project meetings and site visits as may be necessary.
- Preparing and placing notices in the press about the proposed project to satisfy the requirements of the EIA Regulations.
- Coordination of all public participation required in terms of the EIA and HIA regulations, including notification of interested and affected parties (including the organs of state), preparing press notices (in the required languages), placing reports in all relevant libraries, facilitating meetings, producing minutes and tracking all correspondence.
- Preparing all documentation necessary in terms of the NEMA EIA Regulations, waste management activities (if applicable) and heritage requirements to be submitted to the public, Heritage Western Cape (HWC) (if applicable), South Africa Heritage resource Agency (SAHRA) (if applicable), DEA&DP, or Department of Environmental Affairs (DEA), as appropriate.
- Attending all scheduled project team meetings, and any other meetings with third parties, as may be necessary.
- Liaison with the public and other stakeholders (note: a preliminary list of the relevant stakeholders and reason for their involvement should be specified in the scope of work), including the media, for the duration of the EIA process (note: media liaison will however be subject to the relevant policies and media procedures of the relevant municipality). The appointed service provider must make themselves available to answer questions of direct relevance to the EIA process.
- Making all relevant reports available to the public and stakeholders, including placing these reports as electronic documents on an accessible web site. Two copies of each report must be placed in all relevant libraries as identified by the applicant in consultation with the appointed service provider.

5.4 Key steps in the process

The procedures required for an Application for Authorisation to DEA&DP would involve the following key steps -

- site visit(s) and the collection of relevant site information needed for the Application;
- coordination of pre-application meetings with relevant authorities, including DEA&DP and HWC (if applicable), in order to establish their requirements;
- public participation, including advertising, the erection of notice boards and the notification of adjacent and/or directly affected property owners;
- coordination of specialists' input or studies required;
- submission of relevant completed application forms;

- completion of draft reports including draft Environmental Management Programmes for public review;
- completion of final reports (including a Comments – Response Report) for public review;
- submission of the reports to the relevant authorities for consideration;
- notification of all I&APs of the outcome of the application.

5.5 Timeframes

The generic project schedules for Basic Assessment, Scoping-EIR, Basic Assessment where a Waste Management Licence and/or Atmospheric Emission Licence is also required, Scoping-EIR where a Waste Management Licence and/or Atmospheric Emission Licence is also required, as well as a schedule indicating the timeframe to consider appeals are attached herewith as an **Annexure**.

While the EAP must ensure that best practice and due process is followed, that must, inter alia, allow for a reasonable opportunity for participation by the interested and affected parties, the EAP must complete the above scope of work in the shortest time possible within the ambit of NEMA and the EIA regulations.

6. PROPOSALS BY EAPS

Proposals by EAPs must therefore include:

- A description of the EAP's understanding of the Terms of Reference/ Scope of Work.
- A declaration that the requirements of the NEMA EIA Regulations in terms of independence, objectivity, expertise and knowledge of the legislation and relevant guidelines are met.
- Qualifications and professional registration details of EAP.
- Previous experience in similar projects and processes of a similar nature carried out by the EAP (Provide client contact details for each of the projects listed).
- Any special input or expertise that the EAP may offer (i.e in-house specialist services).
- Details (qualifications and relevant experience, activities to be performed, percentage of project work to be undertaken by specific team member, etc.) of all team members that the EAP will use in providing the service.
- A detailed outline of the EAPs proposed methodology.
- A flow chart and project schedule of all aspects of work to be undertaken and associated deliverables.
- Timeframe and cost estimate for each of the deliverables as well as a total cost for all the deliverables.