

## **New Environmental Impact Assessment (EIA) regulations come into effect 02 August 2010**

### **Department of Environmental Affairs**

South Africa's new Environmental Impact Assessment (EIA) regulations came into effect on 02 August 2010, signalling the start of the official implementation process of a new regime aimed at improving the efficiency and effectiveness of EIA.

EIA is a pro-active and systematic process where potential environmental impacts both positive and negative associated with certain activities are assessed, investigated and reported. The process contributes to giving effect to the objectives of integrated environmental management as decision makers are informed of the desirability of such activities and on the conditions which authorisation of the activity should be subject to, where relevant.

The new revised regulations are the result of a substantial consultative process and were published by Minister of Water and Environmental Affairs, Buyelwa Sonjica in Government Gazette 33306 of 18 June 2010. The NEMA EIA 2010 regulations and the listing notices thereto replace the National Environmental Management Act (NEMA) EIA regulations of 2006 and its associated listing notices.

These regulations signify an important step towards a more efficient and effective EIA system, in that apart from aligning the 2006 regulations with the new and improved Act, the 2010 EIA Regulations seeks to streamline the EIA process. It also introduces an approach where impacts associated with the sensitivity of the receiving environment are treated with more care - this is achieved through the introduction of a listing notice dedicated to activities planned for predefined sensitive areas.

The lists of activities requiring environmental authorization prior to commencement have also been revised. This was a major focus of the amendment process as the EIA system was inter alia overburdened by large numbers of applications associated with insignificant activities; the comprehensive scoping and EIR process with its associated substantial costs was in some instances unjustifiably required for activities for which the impacts were known and thereby potential entrepreneurs could be excluded from the economy; and some critical activities were omitted.

Three listing notices have been published in conjunction with the new regulations.

Listing notice one (1) stipulates the activities requiring a basic assessment report (BAR). These are typically activities that have the potential to impact negatively on the environment but due to the nature and scale of such activities, these impacts are generally known.

Listing notice two (2) identifies the activities requiring both scoping and an Environmental Impact Report (EIR) these are typically large scale or highly polluting activities and the full range of potential impacts need to be established through a scoping exercise prior to it being assessed.

The construction of facilities for the storage, or storage and handling of dangerous goods with a combined capacity of 500m<sup>3</sup> or more both above and underground storage will require Scoping and an EIR and not a BAR.

Listing notice three (3) contains activities that will only require an environmental authorisation through a basic assessment process if the activity is undertaken in one of the specified

geographical areas indicated in that listing notice. Geographical areas differ from province to province. An example of such a listing will be cell phone masts.

In terms of timeframes for handling EIAs, where there previously was no consequence for the authority when it does not meet the regulatory time frames, it is now compelled to reach a decision on the information it has after a reasonable prescribed extension to the regulated time frames have lapsed. It should however be emphasized that the regulated time frames have not been extended and it will be indicated that the time frame has not been met even if the decision is forth coming in the extension automatically obtained.

In terms of public consultation amendments have been effected to ensure a fair process. For example, the period from 15 December to 2 January has been excluded from public consultation processes and in the counting of days for both decisions and lodging of appeals, etc. Another example of an amendment aimed at improving public consultation and access to the EIA processes is that a provision has been added requiring that a decision to grant or refuse an application must be published in the same newspaper as was used during the public participation process. The new regulations now take into account the amendments made to NEMA and provide for section 24O of NEMA (40 days for organs of state to comment) and 60 days for Water Affairs if the application is for a waste activity. In addition land owner consent has been replaced with land owner notification.

The regulations also contain very clear transitional arrangements that address all potential scenarios both in terms of decisions reached in terms of the EIA Regulations of 1997 and that of 2006, pending applications from either these regimes that are no longer listed, pending applications that remain listed either in the exact same format or that are similar to newly listed activities etc. These transitional arrangements clearly spell out the status of authorisations received prior to the coming into effect of the 2010 Regulations as well as processes for withdrawing applications for activities no longer listed.

Although mining activities have been listed and certain powers given to the Minister of Mineral Resources, these provisions and listings have not been brought into effect as it is not yet empowered by either the National Environmental Management Act or the Mineral Petroleum Resources Development Act.

In terms of the Environmental Management Framework provisions that previously formed part of the 2006 EIA Regulations, the amendment to the Act that now recognise EMFs as an environmental instrument in its own right has resulted in standalone EMF regulations which have been published on 18 June and which will also come into effect on 2 August 2010

To access the new regulations visit:

[http://www.environment.gov.za/EIM%20WEBSITE/eim\\_page.html](http://www.environment.gov.za/EIM%20WEBSITE/eim_page.html)

Part 1 - (pages 1-50) <http://www.environment.gov.za/EIM%20WEBSITE/NEMAp1.pdf>

Part 2 - (pages 50-100) <http://www.environment.gov.za/EIM%20WEBSITE/page2.pdf>

Part 3 (pages 100-150) <http://www.environment.gov.za/EIM%20WEBSITE/page3.pdf>

Part 4 (pages 150-200) <http://www.environment.gov.za/EIM%20WEBSITE/page4.pdf>