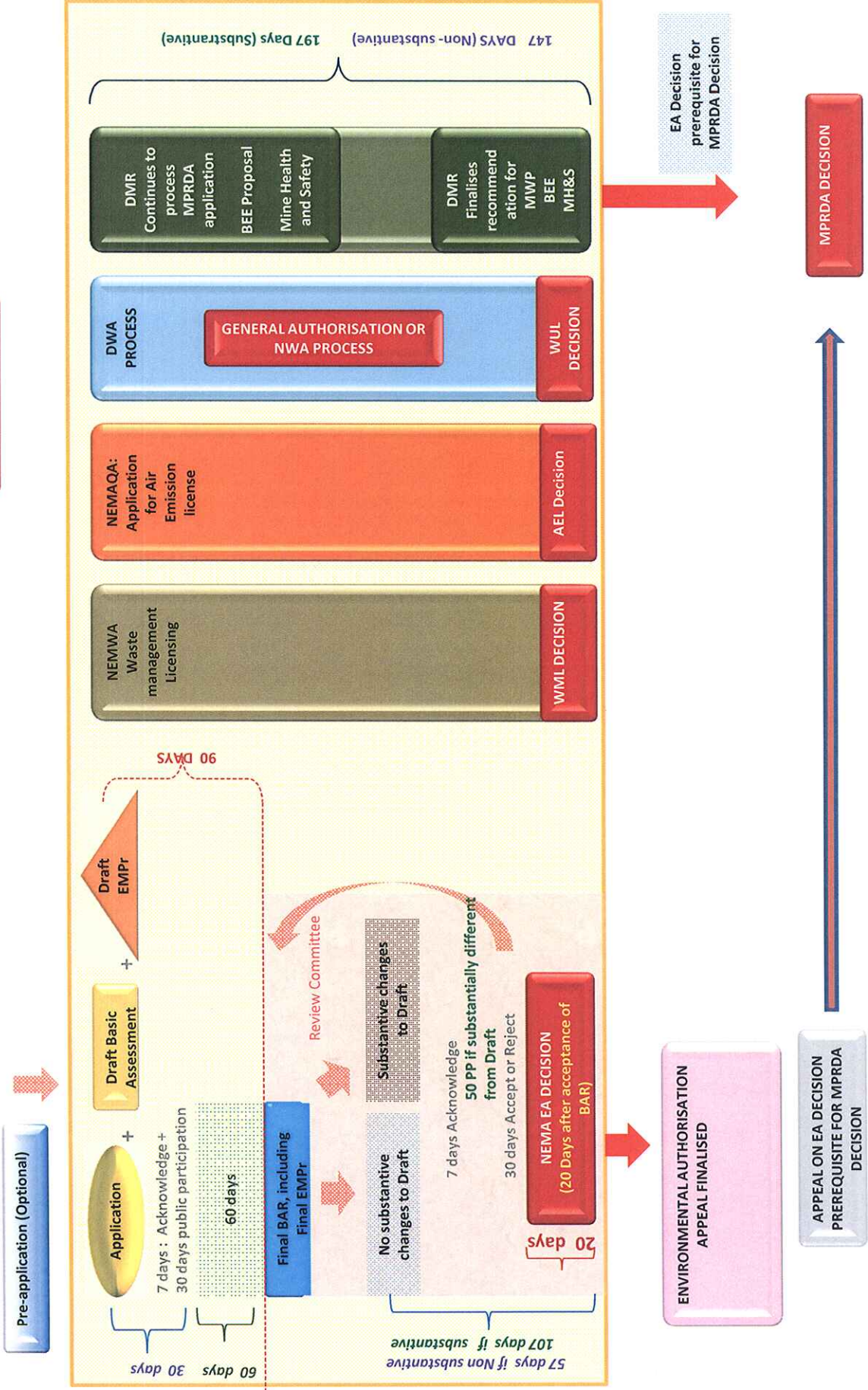
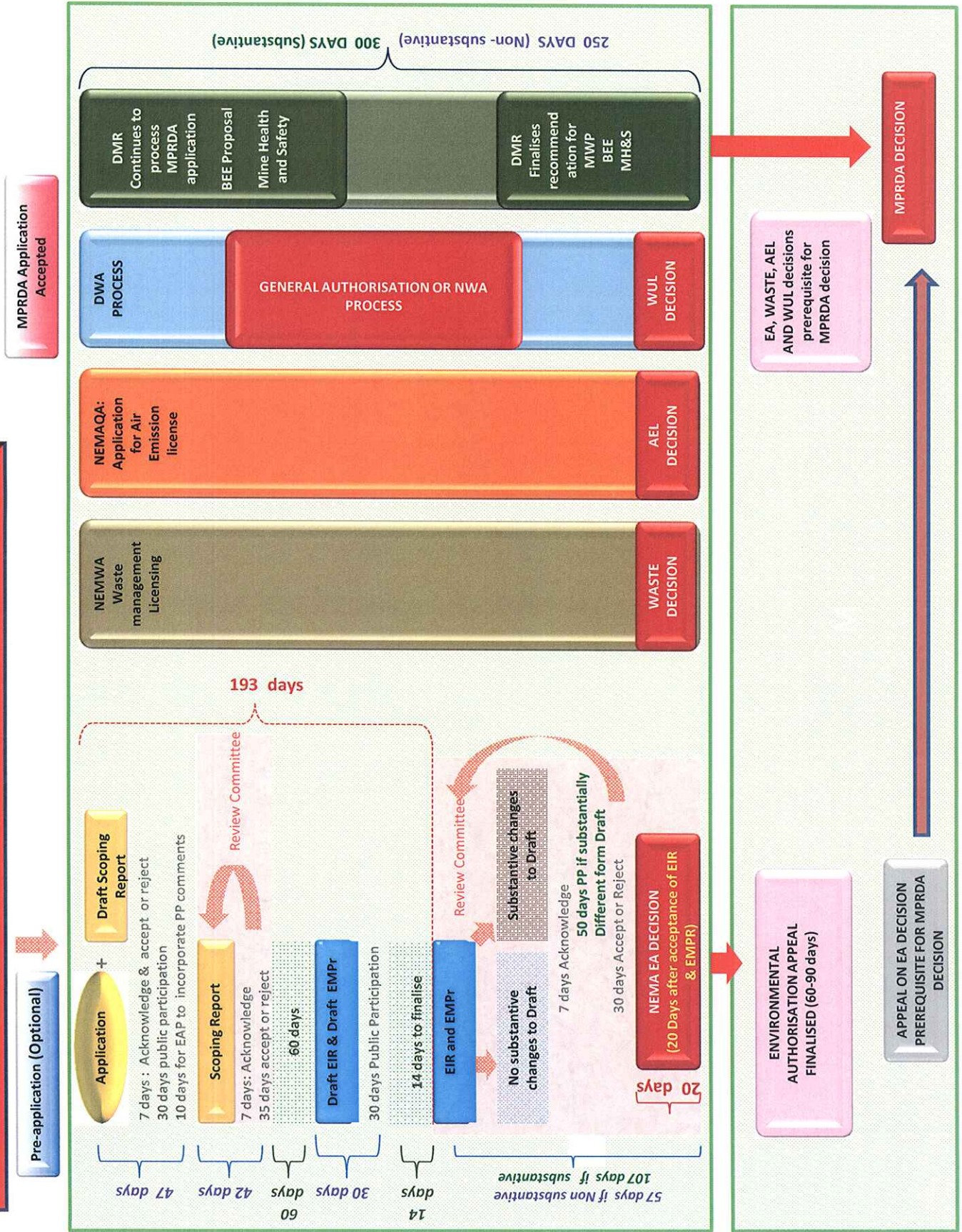


Proposed Process: BAR Process

MPRDA Application Accepted



Proposed Process: S&EIR Process



GENERAL NOTICE

NOTICE OF 2013

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)**

DRAFT NATIONAL EXEMPTION REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby give notice of my intention to make regulations pertaining to the process to be followed for the lodging and processing of an application for exemption, under section 44(1)(a) read with section 24M(3) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 (thirty) days after the publication of the notice in the *Gazette*, written comments or inputs to the following addresses:

By post to: The Director-General
 Department of Environmental Affairs
 Attention: Ms. Nomsa Mahlale
 Private Bag X447
 Pretoria
 0001

By hand at: 2nd Floor (Reception), Fedsure Forum Building, 315 Corner Pretorius and Lillian Ngoyi Streets, Pretoria.

By e-mail: nmahlale@environment.gov.za, or by fax to: (012) 320 7561.

Any inquiries in connection with the draft regulations can be directed to Mr. S Shabalala at (012) 310 3449.

Comments received after the closing date may not be considered.

**BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

SCHEDULE

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2. Purpose of Regulations
3. Application for exemption
4. Submission of application
5. Consideration of application
6. Decision on application
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9. Transitional arrangements
10. Short title and commencement

Interpretation

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, unless the context requires otherwise—

“environmental impact assessment” has the meaning assigned to it in regulation 1 of the Environmental Impact Assessment Regulations;

“Environmental Impact Assessment Regulations” means the regulations pertaining to environmental impact assessments developed in terms of section 24 of the National Environmental Management Act, 1998;

“MEC” has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998;

“Minister” has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998;

“Minister responsible for mineral resources” has the meaning assigned it in section 1 of the National Environmental Management Act, 1998;

“the Act” means the National Environmental Management Act, 1998.

Purpose of Regulations

2. The purpose of these Regulations is to regulate the process contemplated in section 24M(3) of the Act relating to the lodging and processing of an application for exemption in terms of the Act.

Application for exemption

3. Subject to section 24M(1) of the Act, a person may apply in writing for exemption from the application of a provision of the Act to the Minister, the Minister responsible for mineral resources, or the MEC, as the case may be.

Submission of application

4. (1) A written application contemplated in regulation 3 must be accompanied by—
 - (a) the name, address and telephone number of the person applying for the exemption;
 - (b) an explanation of the reasons for the application;
 - (c) details of the specific provision from which the person is requesting exemption;
 - (d) any applicable supporting documents; and
 - (e) the prescribed application fee, if any.

- (2) The Minister, Minister responsible for mineral resources or MEC must, within 14 days of receipt of the application for exemption, acknowledge receipt in writing.
- (3) A person applying for an exemption from the provisions of the Act as it relates to environmental impact assessment or from the provisions of the Environmental Impact Assessment Regulations must communicate his or her notice of intention to apply for exemption by giving written notice in the manner prescribed in regulation 54(2)(a), (b), (c) or (d) of the Environmental Impact Assessment Regulations or a combination thereof which is appropriate in the circumstances and as agreed to with the Minister, Minister responsible for mineral resources or MEC.
- (4) The written notice contemplated in subregulation (3) must contain the following information—
 - (a) the name, address and telephone number of the person applying for the exemption;
 - (b) the provisions from which the exemption is applied for;
 - (c) an explanation of the reasons for the application;
 - (d) the postal address, e-mail address, fax number, contact details of the person applying for the exemption to whom comments must be submitted; and
 - (e) the date on which comments on the exemption application must be submitted, provided that a minimum of 30 days must be allowed for the submission of comments.
- (5) A person applying for an exemption from the provisions of this Act, other than the provisions relating to environmental impact assessment, must communicate his or her notice of intention to apply for exemption by placing an advertisement in one provincial newspaper and one national newspaper.
- (6) The advertisement contemplated in subregulation (5) must contain the information set out in subregulation (4).

Consideration of application

5. (1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may upon receipt of the application for exemption, request the person applying for an exemption to furnish additional information where such information is necessary for the purposes of informing the Minister, Minister responsible for mineral resources or MEC's decision.

- (2) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may in appropriate circumstances, allow a member of the public to present oral representation to the Minister, Minister responsible for mineral resources or MEC, or to a person designated by the Minister, Minister responsible for mineral resources or MEC.
- (3) The Minister, Minister responsible for mineral resources or MEC, as the case may be, must consider all comments received, objections received or oral representations presented to the Minister, Minister responsible for mineral resources or MEC, or to a person designated by the Minister, Minister responsible for mineral resources or MEC before a decision is taken on the exemption application by the Minister, Minister responsible for mineral resources or MEC, as the case may be.
- (4) The Minister, Minister responsible for mineral resources or MEC must consider the application for exemption, additional information, if such information was submitted in terms of subregulation (1), and any comments, objections or oral representations and reach a decision within 30 days of receipt of all the information.

Decision on application

6. (1) Subject to section 24M(4) of the Act, the Minister, Minister responsible for mineral resources or MEC, as case may be, may grant or refuse to grant an exemption.
- (2) If an application for exemption is granted, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must issue a written exemption notice to the person applying for exemption stating the—
 - (a) name, address and telephone number of the person to whom the exemption is granted;
 - (b) provision of this Act from which exemption is granted;
 - (c) conditions subject to which exemption is granted, including conditions relating to the transfer of the written exemption notice; and
 - (d) period for which exemption is granted, if the exemption is granted for a period.
- (3) After the Minister, Minister responsible for mineral resources or MEC has reached a decision on an application for exemption, the Minister, Minister responsible for mineral resources or MEC must, in writing and within 2 days—

- (a) notify the person that applied for exemption; and
 - (b) give written reasons for the decision.
- (4) The person that applied for an exemption must, in writing and within 12 days of the decision notify any person that submitted comments or objections or oral submissions of—
- (a) the outcome of the application and the reasons for the decision; and
 - (b) draw the attention of any person that submitted comments or objections or oral submissions to the fact that an appeal may be lodged against the decision in terms of section 43 of the Act, if such appeal is available in the circumstances of the decision.

Review of exemption

7. (1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may—
- (a) from time to time review any exemption notice granted in terms of these Regulations; and
 - (b) on good grounds suspend or withdraw or amend the exemption notice, or any part thereof.
- (2) Before suspending or withdrawing or amending an exemption notice granted in terms of these Regulations, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must give the person to whom the exemption notice was granted an opportunity to comment, in writing and within a reasonable period in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 after such notification, on the reasons for the proposed suspension or withdrawal or amendment.
- (3) The Minister, Minister responsible for mineral resources or MEC must consider any comments submitted in terms of subregulation (2) before making a decision on the suspension or withdrawal or amendment of any exemption granted in terms of these Regulations.
- (4) The Minister, Minister responsible for mineral resources or MEC must reach a decision on the suspension or withdrawal or amendment of any exemption granted in terms of these Regulations within 30 days of receipt of any comments submitted in terms of subregulation (2).

Repeal of regulations

8. The regulations mentioned in the Table in Annexure 1 to these Regulations are hereby repealed or amended to the extent set out in the third column of the Table.

Transitional arrangements

9. An application for exemption submitted in terms of chapter 5 of the Environmental Impact Assessment Regulations, 2010, and which is pending when these Regulations take effect, must despite the repeal of chapter 5 of the Environmental Impact Assessment Regulations, 2010, be dispensed with in terms of those regulations as if those regulations were not repealed and a decision taken in terms of chapter 5 of the Environmental Impact Assessment Regulations, 2010 must be deemed as a decision taken in terms of these Regulations.

Short title and commencement

10. These Regulations are called the National Exemption Regulations, 2013, and take effect on the date of publication in the *Gazette*.

ANNEXURE 1

REGULATIONS REPEALED		
Date and year of publication	Short title	Extent of repeal
Government Notice No. R.543, <i>Gazette No. 33306</i> of 18 June 2010.	Environmental Impact Assessment Regulations, 2010.	Chapter 5.

DEPARTMENT OF WATER AFFAIRS

NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998)

WATER USE AUTHORIZATION REGULATIONS

REGULATIONS ON USE OF WATER IN TERMS OF SECTION 26(1) (k) OF THE NWA PRESCRIBING PROCEDURAL REQUIREMENTS FOR LICENCE APPLICATIONS

The Minister of Water Affairs has, under the powers vested in her by section 26(1) (k), of the National Water Act, (Act No. 36 of 1998), made the regulations contained in this Schedule in respect of procedural requirements for water use authorisation applications.

Explanatory Note

National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest.

A person may only use water if the use is permissible under the National Water Act, 1998. In general, a water use must be Licensed unless it is listed in Schedule 1, is an existing lawful use, is permissible under a general authorisation or if a responsible authority dispenses with the requirement for a licence.

1 INTERPRETATION AND PURPOSE OF THESE REGULATIONS

1.1 Interpretation

In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise;

“application” means an application for—

- (a) a water use authorisation in terms of Chapter 3 of these Regulations;
- (b) an amendment to a water use authorisation in terms of Chapter 4 of these Regulations
- (c) ..

Water use activity

Integrated water use licence

“the Act” means the National Water Act, 1998 (Act No. 36 Of 1998)

“Timeframes” - for the purpose of the Regulations-

- a) 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.

- b) For any action contemplated in terms of these regulations for which a timeframe is prescribed, the period of 15 December to 2 January must be excluded in the reckoning of days.
- c) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.

2 Purpose of these Regulations

The purpose of these Regulations is to regulate the procedure and criteria in Chapter 4 of the National Water Act relating to the submission, processing and consideration of, and decision on applications for water use authorisations in order to avoid or minimize detrimental impacts on the water resources.

3 DELEGATED AUTHORITY

3.1 Identification of delegated authority

All applications in terms of these Regulations must be decided upon by a delegated authority

The delegated authority who must consider and decide upon an application in respect of a specific activity, must be determined with reference

3.2 Where to submit application

The application for a water use authorization shall be submitted to

- (a) the respective Regional Office of the Department of Water Affairs
- (b) the Catchment Management Agency where the water resource duties have been devolved to the CMA

3.3 Assistance by delegated authority to applicant

3.4 Consultation between delegated authority and State departments administering a law relating to a matter affecting water uses

3.5 Delegated authority’s right of access to information

3.6 Criteria to be taken into account by delegated authority when considering a water use authorization application

3.7 Timeframes for delegated authority

The delegated authority shall assess and review the application within the stipulated timeframe as in Table 1 and make a decision in writing, in line with coordinated timeframes of other Departments

Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days)			Timeframe for General Authorisation (days)		
	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA
Acknowledge receipt of application	14	14	14	14	14	14
Assess application and make a decision to grant authorisation						
Extension if decision-making timeframe is missed						
Review additional information (if required) and make a decision						
Notify the applicant of the decision						
Minimum days required (if all						

Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days)			Timeframe for General Authorisation (days)		
	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA
information is provided first time, the delegated authority meets the timeframe and no review is required)						

3.8 Notification of decision on application

3.9 Commencement of water use charges

3.10 Registry of applications and record of decisions

4 APPLICATIONS FOR WATER USE AUTHORISATION

4.1 Application

An application for the commencement of a water use activity must be made to the delegated authority. An application must

- (a) be made on official application forms obtainable from the relevant delegated authority; and
- (b) be accompanied by the prescribed application fee.

4.2 Checking of application for compliance with formal requirements

Upon receipt of an application, the delegated authority to which the application is submitted must check whether the application and confirm that

- (a) it is properly completed and that it contains the information required in the application form; and
- (b) is accompanied by any reports, other documents and fees as required in terms of these Regulations; and
- (c) has taken into account any guideline applicable to the submission of applications.

4.3 Content of the water use authorization application

4.3.1 Mining and industry water use authorisation application

4.3.2 Agriculture water use authorisation application

4.3.3 Infrastructure water use authorisation application

4.3.4 Water and wastewater treatment plants water use authorisation application

4.4 Activity on land owned by person other than the applicant

4.5 Appointment of Professional Person to manage the application

4.6 General requirements for a person compiling a specialist report or undertaking a specialised process

4.6.1 Submission of application to delegated authority

Once the application has been completed, the Professional Person managing the application should complete the application forms for water use authorisations and submit it to the delegated authority, together with the prescribed fee, and at least five copies of:

- a) The IWWMP;
- b) Any representations and comments received in connection with the application
- c) The minutes of any meetings the applicant held with interested and affected parties and other role players, which record the views of the participants; and
- d) Any responses by the applicant to those representations, comments and views.

4.6.2 Application fee

Fees must be paid to the delegated authority before an application for a water use authorization is considered. The fee scale is set out in Table 1.

Fees for consideration of water use authorization application

Application fee description	Fee
Water use licence application	114.00
Application for amendment of a water use licence	
Application for renewal of a water use licence	

4.6.3 Checking of applications for compliance with formal requirements on submission

4.7 Public Participation Process

4.7.1 Public participation process

4.7.2 Register of interested and affected parties

4.7.3 Registered interested and affected parties entitled to comment on submissions

4.7.4 Comments of interested and affected parties to be recorded in reports submitted to delegated authority

5 ASSESSMENT OF APPLICATIONS

5.1 Assessment process

5.2 Parties and structures undertaking the water use authorization assessment

5.2.1 Assessor

5.2.2 Specialists

5.2.2.1 Specialists to comment on applications

5.2.2.2 Timeframes for specialists inputs

5.2.3 Water Use Authorisations Assessment Advisory Committee (WUAAAC)

The purpose of the WUAAAC shall be to provide an independent advisory body for recommendation of water use authorizations to the delegated authority.

5.2.3.1 Functions of WUAAAC

1. The functions of WUAAAC are;
 - a) To provide a platform for the coordinated and timely consideration, assessment, review and recommendations on water use authorization applications
 - b) To consider the administrative, legal and technical merits of water use authorization applications and make recommendations to the delegated authority
 - c) To periodically review rules or procedures and guidelines of WULAs processing including the business process
 - d) To ensure consistent application of rules and guidelines in processing of WULAs

- e) To disseminate updated rules and guidelines among all officials dealing with WULAs, including recommendations made by the delegated authorities
 - f) To take note and record decisions made by the delegated authority
 - g) To receive and consider rulings of the courts of law in regard to water use authorisation, from the Water Tribunal, High Court, Supreme Court and the Constitutional Court, and integrate the legal precedents into the rules and guidelines for processing of WULAs in the department
 - h) To provide critical interventions where challenges are identified, which may include sourcing additional information on WULAs, referring WULAs for further technical inputs etc.
 - i) To ensure coordinated and alignment of authorizations recommended with the authorizations of other Government Departments
 - j) To support Regional WUAAACs through relevant Regional co-ordination units
 - k) To undertake any other functions as are prescribed by the delegated authority
2. The WUAAAC may establish such sub-committees as are necessary to provide advice or to assist it in the performance of its functions.
3. The WUAAAC may delegate any of its functions to a subcommittee established under section (4), subsection (2).

5.2.3.2 Composition/ MEMBERSHIP

- a) **Chief Directorate: Water Use**, represented by Deputy Director: Strategic Support.
- b) **Directorate: Resource Protection and Waste (RPW)** - Presents applications from the directorate and provides technical inputs, represented;
 - Director: Resource Protection and Waste (RPW) - Participates in the functions of the WUAAAC
 - Deputy Director: Mines - Supports the Director
 - Deputy Director: Industries - Supports the Director
 - Deputy Director: Agriculture - Supports the Director
 - Deputy Director: Local Government & Water Services Institution - Supports the Director
 - Deputy Director: Source Co-ordination - Supports the Director
- c) **Directorate: Water Abstraction and Instream Use (WAIU)** - presents applications from the directorate and provides technical inputs, represented by;
 - Deputy Director: Abstraction and Storage - Supports the Director
 - Deputy Director: Stream Flow Reduction - Supports the Director

- Deputy Director: Environment & Recreation - Supports the Director
- d) **Directorate: Water Allocation (WA)** - Ensure compliance to Water Allocation Reform imperatives including compliance to BBBEE aspects, represented by;
 - Director: Water Allocation - Participates in the functions of the WUAAAC
 - Deputy Director: Authorisation Administration - Supports the Director and provides administrative support and guidance on the applications presented including statistics on authorisations required from time to time
- e) **Directorate: Resource Directed Measures (RDM)** - shall be represented as and when required to give advice on issues related to reserve determination
- f) **Directorate: Water Resource Management Support (WRMS)** shall be represented as and when required to facilitate Regional Co-ordination
- g) **DD's: Policy & Procedure – Internal Guidelines/Strategy/Water Sector Charter, Allocation Equity - BBBEE Policy Implementation, and Compulsory Licencing – WAR** shall be called upon as and when the need arises.

5.2.3.3 Quorum

At least 7 members must be present for a meeting to proceed. In the event of lack of a quorum, the members present can call off a meeting. The delegated authority can consent to call off a meeting at any stage.

5.2.3.4 Chairperson

The **Chairperson** shall be Chief Director. The chairperson shall be responsible for;

- a) Scheduling meetings and notifying committee members;
- b) Inviting specialists to attend meetings when required by the committee;
- c) Guiding the meeting according to the agenda and time available;
- d) Ensuring all discussion items end with a decision, action or definite outcome; and
- e) Review and approve the draft minutes of previous committee sittings before distribution;

5.2.3.5 Secretariat

The **Secretariat** services shall be provided by D: WA - Authorisation Administration. The secretariat shall be responsible for:

- a) Preparing the agenda of the meetings, including drawing up the schedule of WULAs to be considered
- b) Issuing notices for meetings, to assessors, committee members, specialists, and any other persons who maybe invited to the meetings

- c) Ensuring all necessary documents requiring discussion or comment are attached and circulated with the agenda.
- d) Taking notes of proceedings and preparing the minutes of meetings.
- e) Distributing the Agenda and Minutes of the previous meeting within three working days of a meeting

5.2.3.6 Meetings

- National WUAAAC meetings shall be held every **Monday**. Regional WUAAAC meetings shall be held every 2 weeks.
- The Chairperson shall appoint an Acting Chairperson in absence of chairperson for the chairing the meetings

5.2.3.7 Operations

Presentation of WULAs at the WUAAAC meeting, admin processes and procedure

- All WULAs received in the department shall be presented to the WUAAAC
- The presentation shall be made by the respective assessor who analysed and synthesised the information in the water use authorization documents into a Record of Recommendation (RoR) and draft decision documents
- All WULAs with court orders may be finalized by the CD: WU but records should be sent to WUAAAC
- Presentation of WULAs in the WUAAAC shall be done under the auspices of the Directorate which considered and assessed the application
- Upon WUAAAC recommending the application, the enquiry official shall ensure that the application is corrected, updated and processed to its final stage reflecting the recommendation of the WUAAAC

5.3 Review of water use authorization applications

6 AMENDMENT OF WULAS

7 RENEWAL OF WATER USE AUTHORISATIONS

8 APPEALS

9 SHORT TITLE AND COMMENCEMENT

These Regulations are called the Water use authorization Regulations, 2013, and take effect on a date determined by the Minister by notice in the Gazette.

DEPARTMENT OF WATER AFFAIRS

NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998)

WATER USE AUTHORIZATION REGULATIONS

REGULATIONS ON USE OF WATER IN TERMS OF SECTION 26(1) (k) OF THE NWA PRESCRIBING PROCEDURAL REQUIREMENTS FOR LICENCE APPLICATIONS

The Minister of Water Affairs has, under the powers vested in her by section 26(1) (k), of the National Water Act, (Act No. 36 of 1998), made the regulations contained in this Schedule in respect of procedural requirements for water use authorisation applications.

Explanatory Note

National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest.

A person may only use water if the use is permissible under the National Water Act, 1998. In general, a water use must be Licensed unless it is listed in Schedule 1, is an existing lawful use, is permissible under a general authorisation or if a responsible authority dispenses with the requirement for a licence.

1 INTERPRETATION AND PURPOSE OF THESE REGULATIONS

1.1 Interpretation

In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise;

“application” means an application for—

- (a) a water use authorisation in terms of Chapter 3 of these Regulations;
- (b) an amendment to a water use authorisation in terms of Chapter 4 of these Regulations
- (c) ..

Water use activity

Integrated water use licence

“the Act” means the National Water Act, 1998 (Act No. 36 Of 1998)

“Timeframes” - for the purpose of the Regulations-

- a) 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.

- b) For any action contemplated in terms of these regulations for which a timeframe is prescribed, the period of 15 December to 2 January must be excluded in the reckoning of days.
- c) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.

2 Purpose of these Regulations

The purpose of these Regulations is to regulate the procedure and criteria in Chapter 4 of the National Water Act relating to the submission, processing and consideration of, and decision on applications for water use authorisations in order to avoid or minimize detrimental impacts on the water resources.

3 DELEGATED AUTHORITY

3.1 Identification of delegated authority

All applications in terms of these Regulations must be decided upon by a delegated authority

The delegated authority who must consider and decide upon an application in respect of a specific activity, must be determined with reference

3.2 Where to submit application

The application for a water use authorization shall be submitted to

- (a) the respective Regional Office of the Department of Water Affairs
- (b) the Catchment Management Agency where the water resource duties have been devolved to the CMA

3.3 Assistance by delegated authority to applicant

3.4 Consultation between delegated authority and State departments administering a law relating to a matter affecting water uses

3.5 Delegated authority’s right of access to information

3.6 Criteria to be taken into account by delegated authority when considering a water use authorization application

3.7 Timeframes for delegated authority

The delegated authority shall assess and review the application within the stipulated timeframe as in Table 1 and make a decision in writing, in line with coordinated timeframes of other Departments

Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days)			Timeframe for General Authorisation (days)		
	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA
Acknowledge receipt of application	14	14	14	14	14	14
Assess application and make a decision to grant authorisation						
Extension if decision-making timeframe is missed						
Review additional information (if required) and make a decision						
Notify the applicant of the decision						
Minimum days required (if all)						

Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days)			Timeframe for General Authorisation (days)		
	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA
information is provided first time, the delegated authority meets the timeframe and no review is required)						

3.8 Notification of decision on application

3.9 Commencement of water use charges

3.10 Registry of applications and record of decisions

4 APPLICATIONS FOR WATER USE AUTHORISATION

4.1 Application

An application for the commencement of a water use activity must be made to the delegated authority. An application must

- (a) be made on official application forms obtainable from the relevant delegated authority; and
- (b) be accompanied by the prescribed application fee.

4.2 Checking of application for compliance with formal requirements

Upon receipt of an application, the delegated authority to which the application is submitted must check whether the application and confirm that

- (a) it is properly completed and that it contains the information required in the application form; and
- (b) is accompanied by any reports, other documents and fees as required in terms of these Regulations; and
- (c) has taken into account any guideline applicable to the submission of applications.

4.3 Content of the water use authorization application

4.3.1 Mining and industry water use authorisation application

4.3.2 Agriculture water use authorisation application

4.3.3 Infrastructure water use authorisation application

4.3.4 Water and wastewater treatment plants water use authorisation application

4.4 Activity on land owned by person other than the applicant

4.5 Appointment of Professional Person to manage the application

4.6 General requirements for a person compiling a specialist report or undertaking a specialised process

4.6.1 Submission of application to delegated authority

Once the application has been completed, the Professional Person managing the application should complete the application forms for water use authorisations and submit it to the delegated authority, together with the prescribed fee, and at least five copies of:

- a) The IWWMP;
- b) Any representations and comments received in connection with the application
- c) The minutes of any meetings the applicant held with interested and affected parties and other role players, which record the views of the participants; and
- d) Any responses by the applicant to those representations, comments and views.

4.6.2 Application fee

Fees must be paid to the delegated authority before an application for a water use authorization is considered. The fee scale is set out in Table 1.

Fees for consideration of water use authorization application

Application fee description	Fee
Water use licence application	114.00
Application for amendment of a water use licence	
Application for renewal of a water use licence	

4.6.3 Checking of applications for compliance with formal requirements on submission

4.7 Public Participation Process

4.7.1 Public participation process

4.7.2 Register of interested and affected parties

4.7.3 Registered interested and affected parties entitled to comment on submissions

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5.2 Parties and structures undertaking the water use authorization assessment

5.2.1 Assessor

5.2.2 Specialists

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The purpose of the WUAAAC shall be to provide an independent advisory body for recommendation of water use authorizations to the delegated authority.

5.2.3.1 Functions of WUAAAC

1. The functions of WUAAAC are;
 - a) To provide a platform for the coordinated and timely consideration, assessment, review and recommendations on water use authorization applications
 - b) To consider the administrative, legal and technical merits of water use authorization applications and make recommendations to the delegated authority
 - c) To periodically review rules or procedures and guidelines of WULAs processing including the business process
 - d) To ensure consistent application of rules and guidelines in processing of WULAs

- e) To disseminate updated rules and guidelines among all officials dealing with WULAs, including recommendations made by the delegated authorities
 - f) To take note and record decisions made by the delegated authority
 - g) To receive and consider rulings of the courts of law in regard to water use authorisation, from the Water Tribunal, High Court, Supreme Court and the Constitutional Court, and integrate the legal precedents into the rules and guidelines for processing of WULAs in the department
 - h) To provide critical interventions where challenges are identified, which may include sourcing additional information on WULAs, referring WULAs for further technical inputs etc.
 - i) To ensure coordinated and alignment of authorizations recommended with the authorizations of other Government Departments
 - j) To support Regional WUAAACs through relevant Regional co-ordination units
 - k) To undertake any other functions as are prescribed by the delegated authority
2. The WUAAAC may establish such sub-committees as are necessary to provide advice or to assist it in the performance of its functions.
3. The WUAAAC may delegate any of its functions to a subcommittee established under section (4), subsection (2).

5.2.3.2 Composition/ MEMBERSHIP

- a) **Chief Directorate: Water Use**, represented by Deputy Director: Strategic Support.
- b) **Directorate: Resource Protection and Waste (RPW)** - Presents applications from the directorate and provides technical inputs, represented;
 - Director: Resource Protection and Waste (RPW) - Participates in the functions of the WUAAAC
 - Deputy Director: Mines - Supports the Director
 - Deputy Director: Industries - Supports the Director
 - Deputy Director: Agriculture - Supports the Director
 - Deputy Director: Local Government & Water Services Institution - Supports the Director
 - Deputy Director: Source Co-ordination - Supports the Director
- c) **Directorate: Water Abstraction and Instream Use (WAIU)** - presents applications from the directorate and provides technical inputs, represented by;
 - Deputy Director: Abstraction and Storage - Supports the Director
 - Deputy Director: Stream Flow Reduction - Supports the Director

- Deputy Director: Environment & Recreation - Supports the Director
- d) **Directorate: Water Allocation (WA)** - Ensure compliance to Water Allocation Reform imperatives including compliance to BBBEE aspects, represented by;
 - Director: Water Allocation - Participates in the functions of the WUAAAC
 - Deputy Director: Authorisation Administration - Supports the Director and provides administrative support and guidance on the applications presented including statistics on authorisations required from time to time
- e) **Directorate: Resource Directed Measures (RDM)** - shall be represented as and when required to give advice on issues related to reserve determination
- f) **Directorate: Water Resource Management Support (WRMS)** shall be represented as and when required to facilitate Regional Co-ordination
- g) **DD's: Policy & Procedure – Internal Guidelines/Strategy/Water Sector Charter, Allocation Equity - BBBEE Policy Implementation, and Compulsory Licencing – WAR** shall be called upon as and when the need arises.

5.2.3.3 Quorum

At least 7 members must be present for a meeting to proceed. In the event of lack of a quorum, the members present can call off a meeting. The delegated authority can consent to call off a meeting at any stage.

5.2.3.4 Chairperson

The **Chairperson** shall be Chief Director. The chairperson shall be responsible for;

- a) Scheduling meetings and notifying committee members;
- b) Inviting specialists to attend meetings when required by the committee;
- c) Guiding the meeting according to the agenda and time available;
- d) Ensuring all discussion items end with a decision, action or definite outcome; and
- e) Review and approve the draft minutes of previous committee sittings before distribution;

5.2.3.5 Secretariat

The **Secretariat** services shall be provided by D: WA - Authorisation Administration. The secretariat shall be responsible for:

- a) Preparing the agenda of the meetings, including drawing up the schedule of WULAs to be considered
- b) Issuing notices for meetings, to assessors, committee members, specialists, and any other persons who maybe invited to the meetings

- c) Ensuring all necessary documents requiring discussion or comment are attached and circulated with the agenda.
- d) Taking notes of proceedings and preparing the minutes of meetings.
- e) Distributing the Agenda and Minutes of the previous meeting within three working days of a meeting

5.2.3.6 Meetings

- National WUAAAC meetings shall be held every **Monday**. Regional WUAAAC meetings shall be held every 2 weeks.
- The Chairperson shall appoint an Acting Chairperson in absence of chairperson for the chairing the meetings

5.2.3.7 Operations

Presentation of WULAs at the WUAAAC meeting, admin processes and procedure

- All WULAs received in the department shall be presented to the WUAAAC
- The presentation shall be made by the respective assessor who analysed and synthesised the information in the water use authorization documents into a Record of Recommendation (RoR) and draft decision documents
- All WULAs with court orders may be finalized by the CD: WU but records should be sent to WUAAAC
- Presentation of WULAs in the WUAAAC shall be done under the auspices of the Directorate which considered and assessed the application
- Upon WUAAAC recommending the application, the enquiry official shall ensure that the application is corrected, updated and processed to its final stage reflecting the recommendation of the WUAAAC

5.3 Review of water use authorization applications

6 AMENDMENT OF WULAS

7 RENEWAL OF WATER USE AUTHORISATIONS

8 APPEALS

9 SHORT TITLE AND COMMENCEMENT

These Regulations are called the Water use authorization Regulations, 2013, and take effect on a date determined by the Minister by notice in the Gazette.

GENERAL NOTICE

NOTICE OF 2013

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

DRAFT NATIONAL APPEAL REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby give notice of my intention to make the regulations pertaining to the process to be followed on the processing and consideration of, and decision on appeals, under section 44(1)(a) read with section 43(4) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 (thirty) days after the publication of the notice in the *Gazette*, written comments or inputs to the following addresses:

By post to: The Director-General: Department of Environmental Affairs
 Attention: Ms. Nomsa Mahlale
 Private Bag X447
 Pretoria
 0001

By hand at: 2nd Floor (Reception), Fedsure Forum Building, 315 Corner Pretorius and Lillian Ngoyi streets, Pretoria.

By e-mail: nmahlale@environment.gov.za, or by fax to: (012) 320 7561.

Any enquiries in connection with the draft regulations can be directed to Mr. S Shabalala at (012) 310 3449.

Comments received after the closing date may not be considered.

BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

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CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

Interpretation

1. In these Regulations any word or expression to which a meaning has been assigned in the Act or specific environmental management Act has that meaning, unless the context requires otherwise—

“appeal administrator” is the unit or person that administers the appeals on behalf of the appeal authority;

“appeal authority” is the Minister, the MEC or the person delegated the power to decide on appeals by the Minister or MEC, as the case may be;

“appellant” means the person contemplated in regulation 5(1);

“applicant” means a person in who applied for a decision in terms of chapter 5 of the Act or the National Environmental Management: Waste Act, 2008 and the National Environmental Management: Air Quality Act, 2004 or any regulations made in terms of these Acts;

“competent authority” has the meaning assigned to it in section 1 of the Act;

“days” means working days, excluding period beginning 15 December 2013 and ending 2 January, during which period the days may not be calculated;

“decision has been issued” means the date on which the decision has been sent by electronic mail to the interested and affected parties or has been posted on the website of the decision-maker, whichever is the later date;

“independent”, in relation to a person appointed as a member of an appeal panel, means—

- (a) that such a person has no business, financial, personal or other interest in the appeal in respect of which that person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that appeal; or
- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work;

“MEC” has the meaning assigned to it in section 1 of the Act;

“Minister” has the meaning assigned to it in section 1 of the Act;

“original decision” means the decision made by the original decision-maker;

“original decision-maker” means the Minister of Mineral Resources or a person delegated the power under this Act, the National Environmental Management: Waste Act, 2008 or the National Environmental Management: Air Quality Act, 2004 for decisions relating to mining activities;

“mining activities” means activities that relates to prospecting, mining, reconnaissance, exploration, production and closure;

“person” has the meaning assigned to it in section 1 of the Act and includes an organ of state;

“the Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Purpose of Regulations

2. The purpose of these Regulations is to regulate the procedure contemplated in section 43(4) of the Act relating to the submission, processing and consideration of, and decision on an appeal.

Application of Regulations

3. (1) These Regulations are applicable to an appeal against a decision made in terms of chapter 5 of the National Environmental Management Act, 1998, the National environmental Management: Waste Act, 2008 and the National Environmental Management: Air Quality Act, 2004.

CHAPTER 2

ADMINISTRATION AND PROCESSING OF APPEALS

Categories of Appeals

4. (1) For the purpose of these Regulations there are three different categories of appeals, which are as follows:
- (a) A Category 1 appeal is an Appeal where the appellant and the applicant are the same person and the issue raised in the grounds of appeal, if decided upon by the appeal authority, affects the applicant only.
 - (b) A Category 2 appeal is:
 - (i) An appeal, where the appellant and the applicant are the same person and where no new issues that have not been considered by the original decision-maker are raised;
 - (ii) An appeal that is technical in nature, but the necessary expertise to consider and adequately respond to the issues raised is available within the Department;
 - (iii) An appeal that is based on legal arguments related to general administrative law or general legal principles; or
 - (iv) An appeal, with not more than five appellants and where no new issues that have not been considered by the original decision-maker are raised.
 - (c) A category 3 appeal is:
 - (i) An appeal, which involves complex legal or technical issues and voluminous documentation;
 - (ii) An appeal with more than five appellants, of which one is not the applicant;

- (iii) An appeal which contains new information, which were not previously considered during the original decision; or
 - (iv) An appeal which in the view of the appeal authority requires the advice of an appeal panel or expert advice
- (2) The process and time frames for the appeal are determined on the category of appeal.

Notice of Intention to Appeal

5. (1) A person contemplated in section 43(1), (1A) and (2) of the Act, who wishes to appeal, must submit a notice of intention to appeal in the form of Annexure 3 to these Regulations to the Appeal Administrator within 5 days that the decision has been issued.
- (2) A short summary of -
- (a) the issues that will be raised during the appeal process and whether these issues were raised during the original decision-making process; and
 - (b) new information that will be raised in the appeal submission, which must be attached to this document.
- (3) The appeal administrator must within two days of receipt of the notice of intention to appeal acknowledged receipt of the notice of intention to appeal and indicate the category of appeal to the appellant.
- (4) The appeal administrator must at the same time as contemplated in regulation (3) notify the original decision-maker and the applicant, if the applicant and the appellant are not the same person, of the notice of intention to appeal and the category of appeal.

Appeal Process - Category 1 Appeal

6. (1) An appellant, whose appeal has been categorized by the Appeal Authority as a Category 1 Appeal, must submit the appeal submission, to the Appeal Administrator of the Minister or MEC, as the case may be, within 5 days after receipt of the acknowledgment of receipt and classification as contemplated in regulation 5.

- (2) The Appeal Administrator must within 5 days of receipt of the appeal submission, submit the appeal, the original decision, all relevant documentation and a recommendation to the appeal authority.
- (3) The appeal authority must take a decision within 10 days of receipt of the documents of the Appeal Administrator.

Appeal Process - Category 2 appeal

7. (1) An appellant, whose appeal has been categorized by the Appeal Authority as a Category 2 Appeal, must submit the appeal submission, to the Appeal Administrator within 10 days after receipt of the acknowledgment of receipt and classification as contemplated in regulation 5.
- (2) If the appellant is not the applicant, the appeal administrator must submit the appeal submission to the applicant and the original decision-maker within 2 days from receipt of the appeal submission.
- (3) The applicant and the original decision-maker must submit their response to the appeal authority within 10 days from the date of receipt of the appeal submission.
- (4) The Appeal Administrator must within 10 days of receipt of the response to the appeal, submit the appeal, the original decision, the appeals response report, all relevant documentation and a recommendation to the appeal authority.
- (5) The appeal authority must take a decision within 10 days of the receipt of the documents from the appeal administrator.

Appeal Process - Category 3 appeal

8. (1) An appellant, whose appeal has been categorized by the Appeal Authority as a Category 2 Appeal, must submit the appeal submission, to the Appeal Administrator of the Minister or MEC, as the case may be, within 10 days after receipt of the acknowledgment of receipt and classification as contemplated in regulation 5.

- (2) If the appellant is not the applicant, the appeal administrator, must submit the appeal submission to the applicant within 2 days to the applicant, interested and affected parties, any organ of state that will be affected by the decision and the original decision-maker.
- (3) The applicant, the original decision-maker, interested and affected parties and organs of state must submit their response to the appeal authority within 15 days from the dated of receipt of the appeal submission.
- (4) The Appeal Administrator must within 10 days of receipt of the response contemplated in subregulation (3) or (5), submit the appeal, the decision of the original decision-maker, the appeals response report, all relevant documentation and a recommendation to the appeal authority.
- (5) If the appeal authority is of the view that expert advice must be sought or that an appeal panel must be appointed, the Appeal Administrator must source the expert advice or constitute the appeal panel within 10 days from the date the of receipt of an instruction from the appeal authority.
- (6) The expert or the appeal panel must provide advice to the appeal administrator within 10 days from the receipt of the instruction from the appeal administrator.
- (7) The appeal authority must take a decision within 15 days of receipt of the documents from the appeal administrator.

Appeal submission

9. An appeal submission must be—
 - (a) submitted in writing; and
 - (b) accompanied by—
 - (i) a statement setting out the grounds of appeal;
 - (ii) supporting documentation which is referred to in the appeal submission and which did not form part of the documentation considered when the original decision was decided by the licensing authority;
 - (v) the non-refundable appeal fee set out in Annexure 1 to these Regulations.

Communication

10. Communication in terms of these regulations may be by means of electronic mail, facsimile message or hand delivered as preferred by the appellant.

CHAPTER 3

GENERAL MATTERS

Assistance to people with special needs

11. The Appeal Administrator must give reasonable assistance to people with—
- (a) illiteracy;
 - (b) a disability; or
 - (c) any other disadvantage
- who cannot, but desire to, comply with these Regulations.

Repeal of regulations

12. The regulations mentioned in the Table in Annexure 2 to these Regulations are hereby repealed or amended to the extent set out in the third column of the Table.

Transitional arrangements

13. An appeal lodged chapter 7 of the Environmental Impact Assessment Regulations, 2010, and which is pending when these Regulations take effect must despite the repeal of those regulations be dispensed with in terms of those regulations as if those regulations were not repealed.

Short title and commencement

14. These Regulations are called the National Appeal Regulations, 2013, and take effect on the date of publication in the *Gazette*.

ANNEXURE 1

APPEALS PRESCRIBED FEES	
Environmental authorisations appeals	R50-00
Waste management licences appeals	R50-00
Atmospheric emission licence appeal	R50-00

ANNEXURE 2

REGULATIONS REPEALED		
Date and year of publication	Short title	Extent of repeal
Government Notice No. R.543, <i>Gazette No. 33306</i> of 18 June 2010.	Environmental Impact Assessment Regulations, 2010.	Chapter 7.

ANNEXURE 3

Name and address of prospective appellant

Code _____

E-mail _____

Fax _____

Date _____ 20__

Name and address of relevant appeal authority (Minister or MEC)

Attention: _____, Fax No.: _____ or E-mail: _____

Dear Minister or MEC

NOTICE OF INTENTION TO APPEAL AGAINST ENVIRONMENTAL AUTHORISATION (EA) / ENVIRONMENTAL MANAGEMENT PROGRAMME (EMP) WASTE MANAGEMENT LICENCE (WML) / THREATENED OR PROTECTED SPECIES PERMIT OR REGISTRATION CERTIFICATE (TOPS PERMIT) / BIOPROSPECTING PERMIT (BIO PERMIT) [Delete throughout which is not applicable]

I hereby give notice of my intention to appeal against the EA/EMP/WML/TOPS PERMIT/BIO PERMIT issued by the Department, the particulars of which are as follows:

Reference No.: _____.

Name of Project: _____

_____.

Date of issue of EA/EMP/WML: _____ 20__.

I received notification of the decision on _____ 20__.

(A short summary of the issues-

- (c) that will be raised during the appeal process and whether these issues were raised during the original decision process; and*
- (d) whether new information will be raised in the appeal submission, which new information must be attached to this document.)*

Yours sincerely

Signature

