

181113, SC LANO

INSTRUMENT REGULATIONS
PRESENTATION TO THE SELECT COMMITTEE ON LAND AND
MINERAL RESOURCES

13 NOVEMBER 2018

Background

- NEMA introduced environmental authorisation as a means to ensure sustainable development –
 - A list of development activities which could have a detrimental impact on the environment was identified and require authorisation after an environmental impact assessment has been undertaken
- 2011 - the NDP called for regulatory requirements to be addressed more rigorously and systematically – reduce red tape and the costs of compliance with the environmental legislative framework
- The Department is improving efficiency by excluding some activities based on the proactive development of environmental instruments

Background

- NEMA section 24(2) (c) and (d) allows for the Minister or MEC with the concurrence of the Minister to identify activities or the geographical areas and the activity, which can be excluded for the EA requirement based on an environmental management instrument adopted in the prescribed manner
- Instruments are spatial or non-spatial assessments or procedures which proactively identify environmental sensitivities, or requirements which should be followed to ensure sustainable development
- Instruments include:
 - Environmental management frameworks
 - Strategic environmental assessments
 - Environmental Management Plans
 - Risk assessments
 - Standards
- NEMA Chapter 5 Section 24 (5)(bA) – Minister is empowered to prepare regulations for the preparation, evaluation and adoption of the instruments

Instrument Regulations – Scope

- Instrument Regulations prescribe the process for the adoption of instruments contemplated in section 24(2)(c) and (e)
 - Instruments can be used to exclude from the requirement to obtain environmental authorisation
 - Instrument can also be used to inform the EA application process in terms of NEMA 24(5)(a) and (b)

Instrument Regulations - Content

- Preparation requirements – when developing the instrument must identify the purpose for which the instrument is intended to be developed
- Adoption requirements by Minister
 - proposed adoption must be published for public notification by Minister
 - Government Gazette
 - National newspaper
 - where deemed appropriate, geographical region in which the instrument was prepared
 - Departmental website

Instrument Regulations – Content

- Adoption requirements by MEC in concurrence with the Minister
 - proposed adoption must be published for public notification by Minister
 - Provincial Gazette
 - Provincial newspaper
 - where deemed appropriate, a regional newspaper circulating in the geographical area for which the instrument was prepared.
 - Departmental website

Instrument Regulations – Content

- The notifications must indicate where the instrument can be accessed
- Notice must invite comments over a period not shorter than 30 days
- Comments must be considered
- Minister must keep register of all adopted instruments and keep it available on the departmental website

Process followed with Regulations

- Draft Regulation published for comment in 2017
 - Comments received considered
 - Content revised where necessary
- Revised Regulations recommended by relevant fora
- Regulations approved by late Minister Molewa and signed on 27 August 2018
- Tabling in Parliament in terms of section 47(2) of NEMA on 4 September 2018
- Regulations to be published under signature of acting Minister

