

South Africa

Country: [South Africa](#) [1]

EIA Law: National Environmental Management Act of 1998 (NEMA) & Amendments

Law Link: [Link](#) [2]

EIA Regulations: Environmental Impact Assessment Regulations (Government Notice No. R.543 of June 18, 2010 – corrected by Government Notice No. R.660 of July 30, 2010 and Government Notice No. R.1159 of December 10, 2010)

Regulations Link: [Link](#) [3]

EIA Guidelines or Other Guidance: Various sectoral guidelines (e.g., mining, renewable energy)

Guidance Link: [Link](#) [4]

Projects Requiring EIA: Government projects

Private Projects

Assessment Detail: Basic assessments may be prepared for certain activities. The content of basic assessment reports is described in section 22 of the EIA Regulations and the process requires an opportunity for public participation in accordance with section 21(2), a draft environmental management plan, an alternatives analysis, and a description of any assumptions, uncertainties and gaps in knowledge. See generally Chapter 3, Part 2 of the EIA Regulations.

Best Practices in Lieu of EIA: No

Who Conducts Screening: Developer

Who Conducts Screening Detail: Screening is conducted by the environmental assessment practitioner (EIA contractor) to determine whether a basic assessment or a scoping and environmental impact reporting process (S&EIR) is warranted, taking into account applicable guidelines and any advice provided by the competent authority. EIA Regulations, sec. 19.

Criteria for Screening: List or appendix of project or activity types

Criteria for Screening Detail: See Environmental Impact Assessment Regulations, 2010: Listing Notice 1: List of activities and competent authorities identified in terms of sections 24(2) and 24D (activities for which a basic assessment process must be conducted)(Government Notice No. R. 544 of 2010); Listing Notice 2: List of activities and competent authorities identified in terms of sections 24(2) and 24D (activities for which an S&EIR process must be conducted) (Government Notice No. R. 545 of 2010); Listing Notice 3: List of activities and competent authorities identified in terms of sections 24(2), 24(5) and 24D (activities and sensitive areas per province, for which a basic assessment process must be conducted) (Government Notice No. R. 546).

Who Prepares EIA: Project Proponent (with or without contractor)

Who Prepares EIA Detail: An applicant must appoint an environmental assessment practitioner (EAP) to manage the application and prepare the basic assessment report or S&EIR report. EIA Regulations, sec. 16(1). The project proponent may apply for an exemption from this requirement. NEMA, sec. 24M(1); EIA Regulations, sec. 50. "If an exemption from the appointment of an EAP has been applied for, the applicant must perform the tasks required of an EAP as indicated in this guideline." Guideline on Public Participation, EIA Guideline and Information Document Series (March 2013) at 5, <http://eadp.westerncape.gov.za/sites/default/files/your-resource-library/EIA%20Guidelines%20%26%20Info%20Doc%20Series%20March%202013.pdf> (accessed June 26, 2013).

Who Pays for EIA: Project Proponent

Who Pays for EIA Detail: "Before conducting basic assessment or S&EIR, an applicant must appoint an EAP at own cost to manage the application." EIA Regulations, sec. 16(1).

EIA Contractor Qualifications: Yes

EIA Contractor Qualification Detail: An environmental assessment practitioner (EAP) must be independent, have expertise in conducting environmental impact assessment, comply with regulations, and disclose potential conflicts. EIA Regulations, sec. 17. The project proponent must "take all reasonable steps to verify the EAP to be appointed complies with regulation 17." EIA Regulations, sec. 16(2)(a).

Conflict of Interest: Yes

Conflict of Interest Detail: When an EAP submits an application for environmental authorization under the basic assessment process or the S&EIR process, the EAP must submit a declaration of interest along with the completed application. EIA Regulations, secs. 21(1) and 26(b)(i). If the competent authority has reason to believe that an EAP or contracted specialist is not complying with the regulations or is not acting independently, it may refuse to accept further reports or input from the contractor and may request the project proponent to commission an external review of the reports prepared by the contractor, redo any specific aspects of the work, or complete any unfinished work. EIA Regulations, sec. 18. An interested and affected party may notify the competent authority of suspected non-compliance on the part of an EAP. EIA Regulations, sec. 18(2). The competent authority must investigate the

allegation. EIA Regulations, sec. 18(3).

Terms of Reference: Yes

Terms of Reference Detail: The terms of reference are embodied in a "scoping report" prepared by the EIA contractor and submitted to the competent authority for review and approval. "If the competent authority accepts a scoping report and advises the EAP . . . to proceed with the tasks contemplated in the plan of study for environmental impact assessment, the EAP must proceed with those tasks . . ." EIA Regulations, sec. 31(1). The plan of study for environmental impact assessment is a document that forms part of a scoping report and sets out how an environmental impact assessment must be conducted. EIA Regulations, secs. 1(1) and 28(1)(n).

Days for Decision Maker Review: 60 (accept/reject EIA) + 45 (decision)

Automatic Approval: No

Automatic Approval Detail: If the decisionmaking timeframe (including automatic extension of 60 days) expires, the project proponent may seek judicial review under sections 6(2)(g) and (3) of the Promotion of Administrative Justice Act, 2000 (agency failure to take decision). EIA Regulations, secs. 9(3)-(4)).

Written Decision: Yes

Written Decision Detail: After the competent authority has reached a decision, it must within two days notify the applicant of its decision – and, if available, the opportunity to appeal the decision – in writing and provide reasons for the decision. EIA Regulations, sec. 10(1). See also section 37 of the EIA Regulations (describing required content of environmental authorisation)

Authority to Impose Conditions: Yes

Authority to Impose Conditions Details: The environmental authorization must specify the conditions under which the activity can be undertaken. EIA Regulations, sec. 37(1)(d). An environmental authorization may provide that the authorized activity may not commence before specified conditions are complied with, may require the holder of an authorization to furnish environmental audit reports on the impacts of the authorized activity on the environment, and may "include any other condition that the competent authority considers necessary for the protection of the environment." EIA Regulations, secs. 37(2)(a)-(f).

Expiry of Decision: Indefinite unless specified in authorisation

Expiry of Decision Detail: EIA Regulations, sec. 37(d)(1)

Financial Assurances or Bond: Sometimes

Financial Assurances Detail: "An applicant for an environmental authorisation relating to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area must make the prescribed financial provision for the rehabilitation, management and closure of environmental impacts, before the Minister of Minerals and Energy issues the environmental authorisation." NEMA, sec. 24P(1). The Minister may make the financial provision applicable to other applications. NEMA, sec. 24P(7). See also NEMA, secs. 24(5)(b) and (d), 24P, and 24R; EIA Regulations, secs. 33(g)(v) and 37(1)(d).

Interdisciplinary Team: No

Range of Alternatives: Yes

Range of Alternatives Detail: EIA procedures must include "investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity[.]" NEMA (as amended), sec. 24(4)(b)(i); see also EIA Regulations, sec. 31(2)(g), (i). If no reasonable or feasible alternatives exist, "[t]he EAP managing the application must provide the competent authority with detailed, written proof of an investigation as required by section 24(4)(b)(i) of the Act and motivation if no reasonable or feasible alternatives, as contemplated in subregulation 31(2)(g), exist." EIA Regulations, sec. 31(3).

No Action Alternative: Yes

No Action Alternative Detail: EIA procedures must include "investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity[.]" NEMA (as amended), sec. 24(4)(b)(i)

Type(s) of Impact Analysis: Direct environmental impacts

Cumulative environmental impacts

Social impacts

Cultural impacts

Economic impacts

Mitigation: Yes

Mitigation Detail: NEMA (as amended), secs. 24(4)(b)(ii), 24N. More detail is provided in the EIA Regulations (2010), sections. 22(i)(vii), 31(2)(l)(vii) and 33 (describing contents of draft environmental management programme)

Monitoring Plans: Yes

Monitoring Plans Detail: NEMA (as amended), secs. 24(4)(b)(v) and 24N. Procedures for the assessment of potential impacts of activities on the environment must include "investigation and formulation of arrangements for

the monitoring and management of consequences for or impacts on the environment, and the assessment of the effectiveness of such arrangements after their implementation." NEMA, sec. 24(4)(b)(v). More detail is provided in the EIA Regulations (2010), section 33(e), which requires the draft environmental management programme to include "proposed mechanisms for monitoring compliance with and performance assessment against the environmental management programme and reporting thereon[.]"

Public Notice of Draft EIA: Yes

Draft EIA Available: Yes

Draft EIA Locations: Agency or ministry office

Other

Public Notice of Final EIA: Yes

Final EIA Available: Yes

Final EIA Locations: Agency or ministry office

Other

Fee to View EIA Documents: No

Fee to Obtain EIA Documents: No

Public Notice of Final Decision: Yes

Public Notice of Final Decision Detail: The project proponent must within 12 days of the decision on the application "notify all registered and affected parties of (i) the outcome of the application; and (ii) the reasons for the decision[.]" EIA Regulations, sec. 10(2)(a). The project proponent is also required to notify all registered interested and affected parties how they can access the decision and, if available, that an appeal may be lodged against the decision, as well as to publish a notice of the decision, of access to the decision, and of the opportunity to appeal (if available) in newspapers. EIA Regulations, secs. 10(2)(b)-(d).

Public Scoping: Yes

Public Scoping Detail: The environmental assessment practitioner conducts scoping by providing public notice of the application and seeking comments. The practitioner prepares a scoping report that is submitted to the competent authority along with copies of all representation

Public Review of TOR: Yes

Public Review of TOR Detail: The EAP must "give all registered interested and affected parties an opportunity to comment on the scoping report in accordance with regulation 56. . . ." EIA Regulations, sec. 27(g).

Public Participation Opportunities: Scoping

Terms of reference

Review of draft EIA

Public Meetings and/or public hearings

Review of final EIA

Public Meetings: Sometimes

Public Meetings Detail: Public meetings are not mandatory as long as "participation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application." EIA Regulations, sec. 54(7).

Public Input at Meeting: Yes

Public Input at Meeting Detail: Although the law and regulations do not specifically declare that members of the public are entitled to present information at public hearings, this right is implied by the fact that the EAP "must ensure that the comments of interested and affected parties are recorded in reports and that such written comments, including records of meetings, are attached to the report, submitted to the competent authority. . . ." EIA Regulations, sec. 57(1).

Criteria to Hold Public Meeting: Other

Days for Public to Review Final EIA: variable

Public Comments on Draft EIA: Yes

Public Comments on Draft EIA Detail: "A registered interested and affected party is entitled to comment, in writing, on all written submissions, including draft reports made to the competent authority by the applicant or the EAP managing an application," and an EAP "must give access to the register to any person who submits a request for access to the register." EIA Regulations, secs. 56(1) and 55(2).

Public Comments on Final EIA: Yes

Public Comments on Final EIA Detail: Before the environmental assessment practitioner submits a final report to the competent authority, the EAP must give registered interested and affected parties access to and an opportunity to comment on the report in writing. EIA Regulations, sec. 56(2).

Response to Public Comments: Yes

Response to Public Comments Detail: Comments must be recorded and included in EIA reports. EIA Regulations, sec. 57(1)

Facilitation of Public Participation: Yes

Facilitation of Public Participation Detail: A person conducting public participation must ensure that "participation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application." EIA Regulations, sec. 54(7). The person must use "reasonable alternative methods" (as agreed to by the competent authority) to accommodate illiteracy, disability or any other disadvantages. EIA Regulations, sec. 54(e). If a person cannot provide written comments due to lack of literacy, disability or other disadvantage, reasonable alternative methods of recording comments must be provided for. EIA Regulations, sec. 57(2)

Citizen Administrative Review: Yes

Citizen Administrative Review Detail: Any juristic person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under NEMA. NEMA, secs. 43(1), 1(1). Notice of intent to appeal must be filed within 20 days after the date of the decision. EIA Regulations, sec. 60.

Citizen Judicial Review: Yes

Citizen Judicial Review Detail: Yes, although not de novo. NEMA, sec. 32; see also Muckleneuk/Lukasrand Prop. Owners & Residents Ass. v. MEC Dep. of Ag. Conserv. and Env. Gauteng Prov. Gov. (Consolidated Cases) 28192/04 & 12137/06 (2006) ZAGPHC 86; (2007) 4 All SA 1265 (T) (2006) at www.saflii.org.

Project Monitoring: Yes

Project Monitoring Detail: The Environmental Management Framework must be monitored on a regular basis. Procedures for the assessment of potential impacts of activities on the environment must include "investigation and formulation of arrangements for the monitoring and management of consequences for or impacts on the environment, and the assessment of the effectiveness of such arrangements after their implementation." NEMA, sec. 24(4)(b)(v). See also EIA Regulations, section 69 (requiring an audit in cases where competent authority reasonably suspects that the project proponent has failed to comply with a condition of the environmental authorization and that the failure to comply has caused, or may cause, harm to the environment.)

Days for Public to Review Draft EIA: variable

Modified: June 8th, 2020

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Links

[1] <https://elaw.org/countries-and-regions/south-africa>

[2] https://cer.org.za/wp-content/uploads/2010/03/107-of-1998-National-Environmental-Management-Act_18-Dec-2014-to-date.pdf

[3] <https://cer.org.za/wp-content/uploads/1999/01/EIA-Regulations.pdf>

[4] <https://www.environment.gov.za/legislation/guidelines>