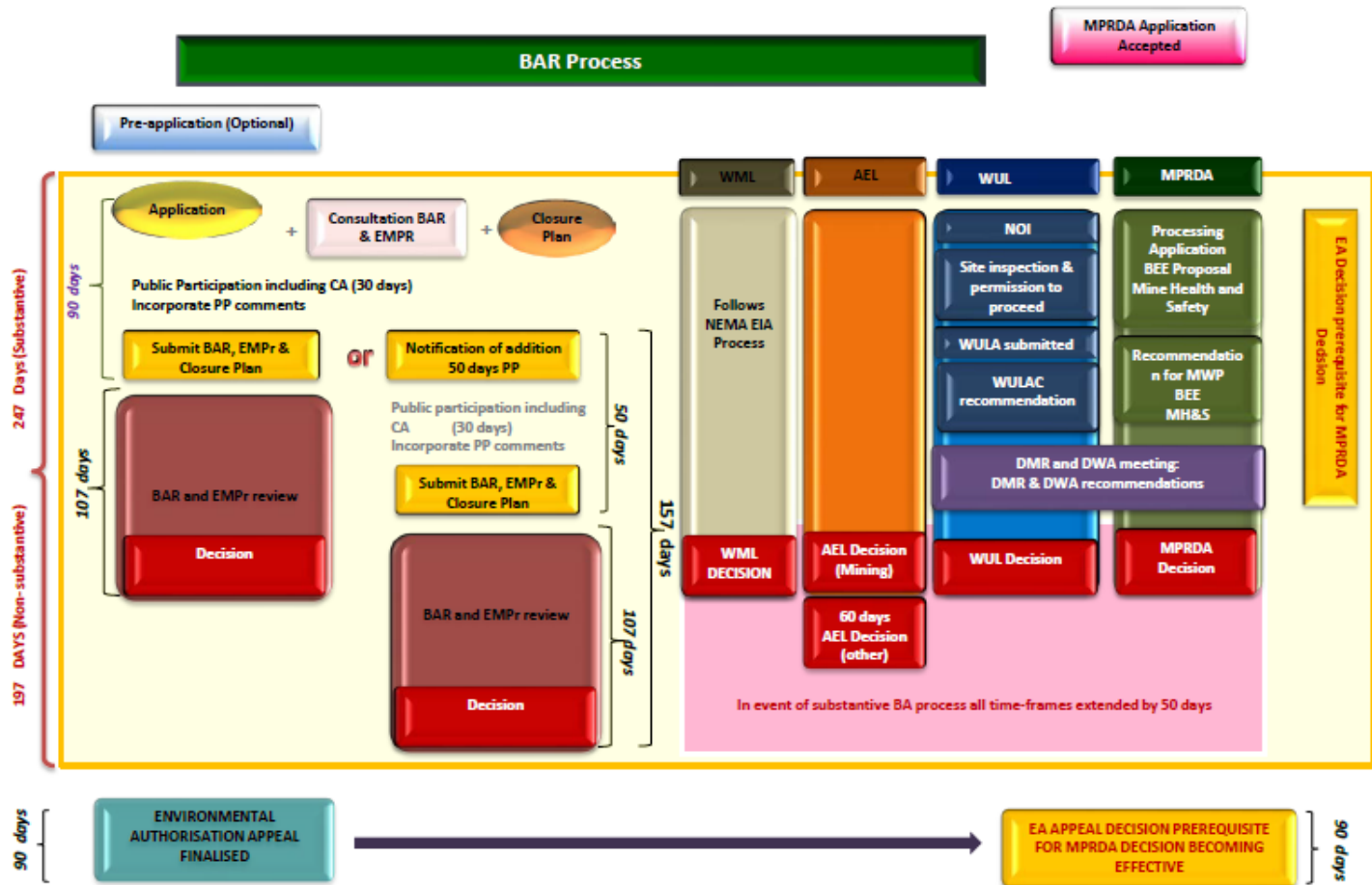


4 The Basic Assessment Report Process

The BA process should be undertaken for project activities that are included under Listing Notices 1 and 3. Impacts of these activities are more generally known and can often be mitigated or easily managed. The BA process is generally shorter and less onerous than the S&EIR process. The BA process must follow the procedure as prescribed in Regulations 19 to 20. The following diagram outlines the steps that should be followed in undertaking a BA process. Additional information on each of the steps can be accessed by clicking on the associated information links.



("% Submitting an application

For BA applications, the applicant or EAP must submit an application form, including a declaration of interest by the EAP, to the CA before conducting a BA.

"& Applying for Environmental Authorisation

Having identified the activities for which environmental authorisation is required and the relevant process to be followed, the environmental assessment process can commence. In many cases, the EIA is viewed as a lengthy process as the applicant has not yet made the necessary decisions before commencing the process. It is vital that the applicant seek guidance from the EAP to ensure that all necessary information is available prior to submitting an application. In this way, unnecessary delays can be avoided. The first step in the environmental assessment process entails the submission of an application form.

Box 1. Key issues identified in respect of applications

The environmental assessment process commences with the submission of an application form. Often these applications contain minimal or incorrect information and the applications have to be returned for corrections. In other instances, the applications are submitted late. This creates delays from the outset of the project which can easily be overcome if the application is completed fully and submitted on time.

Where do I obtain an application form?

An application form must always be submitted before undertaking an environmental authorisation process. Application forms can be accessed from the adjacent links. Applications forms vary between the different provinces and may also be updated from time to time. It is therefore vital that you contact the relevant CA to ensure that you obtain the correct application form.

Regulation 50 provides for an exemption which releases an applicant from their obligations in terms of all or part of the EIA process. An exemption will only be granted if the CA considers that there are good grounds to do so. The applicant should discuss the possibility of an exemption with the CA before submitting an application. If the CA agrees that an exemption is feasible then an application for exemption should be made in writing to the relevant CA and should include the following:

- an explanation of the reasons for the application;
- any applicable supporting documents; and
- the prescribed application fee, if any.

Application for exemption may still require a public participation process as set out in Regulation 51. The required process should also be discussed with the relevant CA.

How do I prepare and submit the application?

The applicant or the EAP may prepare the application form. The application must:

- be made on the official application form (see above)
- be properly completed and contain the correct information
- be accompanied by the prescribed application fee
- take into account any guideline applicable to the submission of applications.

The Regulations requires that an EAP is appointed to manage the BA or Scoping and EIR process. The EAP is required to complete a declaration of interest which must be submitted together with the application. The declaration of interest

Application for Environmental Authorisation	Declaration of Interest Forms for completion by EAP
Eastern Cape ⓘ	Eastern Cape ⓘ
Free State ⓘ	Free State ⓘ
Gauteng ⓘ	Gauteng ⓘ
KwaZulu-Natal ⓘ	KwaZulu-Natal ⓘ
Limpopo ⓘ	Limpopo ⓘ
Mpumalanga ⓘ	Mpumalanga ⓘ
North West ⓘ	North West ⓘ
Northern Cape ⓘ	Northern Cape ⓘ
Western Cape ⓘ	Western Cape ⓘ
National ⓘ	National ⓘ

requires the EAP to declare that he is independent and does not have any vested interest in the project. If at any stage, the independence of the EAP is called into question, then the Competent Authority may suspend the application, refuse to accept any reports from the EAP, request the applicant to appoint an independent person to review the work done by the EAP and may also require certain aspects of the work to be redone. These measures have considerable time and cost implications to the applicant.

Links to the relevant “Declaration of Interest” forms are provided above. In addition, if the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the applicant must provide written notice of the proposed activity to the owner or person in control of the land. A copy of this written notice must be submitted with the application.

In addition to the declaration of interest by the EAP, other information may also need to be submitted with the application. For example, the Western Cape require the submission of a project programme which outlines the timeframes associated with the proposed project. This is useful in that it enables the CA to explore opportunities to streamline the project. It is advisable that the applicant contact the CA to ensure that all required documents are included with the submission of the application.

Regulation 14 enables the submission of combined applications. In the case where more than one activity requires authorisation and all the activities form part of the same development, a single application should be submitted. For example, if you wish to undertake a low cost housing development but also need to develop a large landfill site and waste water treatment works associated with this development, then all the activities can be considered together on one application form. If the activities are to be undertaken at different locations within the area of jurisdiction of the CA, then separate applications are generally required. However, the CA may, at the written request of the applicant, grant permission for the submission of a single application where the applicant undertakes more than one activity of the same type at different locations within the area of jurisdiction of the same CA.

The submission of a single application has a number of benefits. Firstly, it enables a consolidated process to be conducted, including a public participation process, which provides a significant cost saving to the applicant. It also facilitates the assessment of the cumulative impacts of the development. In addition, the CA only has to review one set of documents thereby streamlining the process.

Once the application form has been completed, it is advisable for the applicant to go through the form with the EAP to ensure that the information is accurate. It is important to remember that although the EAP is appointed to carry out the EIA work, the ultimate responsibility to ensure that the information is correct and that the relevant laws are complied with rests with the applicant in respect of their project. The application should then be submitted to the relevant CA (see the section on “Identifying the CA” for contact details).

What happens after I have submitted the application?

Regulation 13 requires the CA to check the application to ensure that it has been properly completed on the appropriate application form and that it contains all the relevant information and associated documents. The CA must within 14 days of receiving the application, acknowledge receipt of the application and accept or reject the application (in writing). Any application that has been rejected may be corrected and re-submitted. If the applicant has not heard from the CA within 14 days, they should follow up with the CA, either directly or via their appointed EAP, to gauge where their application is in the process.

Regulation 67 stipulates that an application lapses, if the applicant, after having submitted the application fails, for a period of six months, to comply with a requirement in terms of the Regulations. It is therefore essential that once the CA has accepted the application, that the applicant commence with the appropriate process. The lapsing of applications is not desirable as it is costly for the applicant, delays the project and creates unnecessary work for the CA.

(" ' Public participation

One of the general objectives of integrated environmental management set out in Section 23(2) of NEMA is to ensure the “adequate and appropriate opportunity for public participation in decisions that may affect the environment”. To provide for effective involvement, the Public Participation Process (PPP) must ensure the participation of vulnerable and disadvantaged persons and also that “people have the opportunity to develop the understanding, skills and capacity to achieve equitable and effective participation”. Public participation is therefore central to the EIA process. It runs throughout each phase and the outputs have significant bearing on the issues and alternatives considered in the assessment. An ineffective PPP can result in delays or failure of the EIA process. These issues affecting the PPP are discussed in more detail in Box 1 and guidance on how to overcome them has been provided in this section.

Box 1. Key Issues affecting the efficiency and effectiveness of the Public Participation Process

Time and budgetary pressures, particularly in respect of SI projects, often result in only the minimum legal requirements of PPP being undertaken. The consequence of this is often delays, frustrated I&APs and even appeal on procedural grounds where essential activities have not been completed. The most common issues affecting the PPP process are discussed in more detail below.

- Lack of participation

Lack of participation by interested and affected parties in the Public Participation Process often arises from a failure by the EAP, at the outset of the project, to establish a comprehensive understanding of the socio-economic systems that will be affected. The full range of I&APs are consequently not engaged early in the process which in turn requires that certain aspects of the process are repeated. This causes frustration and often results in delays. In the case of SI, the failure to identify and involve other service departments and local government, who are responsible for the construction and management of different infrastructure types, has been identified as a critical issue. This failure leads to either negative impacts on different infrastructure types (e.g. a water pipeline project digging up telecommunication cables), or loss of opportunities to improve planning (e.g. registering a new servitude when one could be shared).

- Inappropriate/inconsistent consultation methods

Different consultation methods are required in different social contexts. These methods should account for different languages, varying levels of access to technology (e.g. e-mail and internet), different levels of understanding of technical information, diverse social structures and protocols, and different political contexts. The need for on-going communication (even just to advise that there is a delay in terms of timeframes, and why) and consistency in the mechanisms and who is engaged are basic factors that are often not met.

- Community involvement in the process

Most SI projects are directed at improving the lives of impoverished communities. In most cases, the community as a whole will benefit from improved service delivery. However, in certain instances, some members of the community may be negatively impacted by the proposed project. For example the construction of a road in a rural area may result in the destruction of certain plants which are used by natural healers. Early and effective involvement of community members is therefore key in effective SI planning.

- Abuse of the Process by I&APs


Where I&APs oppose a development, they may attempt to frustrate the process by disrupting consultation activities and raising irrelevant issues. Alternatively some I&APs may try to use the process to further their own agenda, or oppose an application on the basis of financial competition. The EIA regulations have established requirements that aim to address such abuse and should be adhered to by EAPs.

- Inadequate public participation process

Public meetings are a common mechanism for consultation as many people can be engaged in a single event and there is the opportunity for all stakeholders to hear and understand each other's views. Such meetings have their limitations, as minorities or sections of a community often do not participate effectively. For example, a “community” may include various sub groupings such as traditional healers, women, cattle or water committees, youth and the elderly. All these sub-groups have different and sometimes conflicting needs. It is often necessary to meet with these different groups separately to understand their issues. This cannot be achieved in a public or general community meeting.

- Comments from stakeholders

In some cases, the EAP fails to adequately understand and respond to comments raised by I&APs. This usually stems from inadequate engagement and a failure by the EAP to gain clarity on the issues raised. For example, if an I&AP raises a concern about pollution, are they referring to the generation of dust during construction or fumes from traffic once a road is in place?

Chapter six of the EIA regulations governs the undertaking of the PPP, of which regulation 54 (2) requires that the person running the PPP take into account all applicable guidelines. Accordingly, the person responsible for managing the public participation process must consider the official guideline published by the DEA. It is important to note, that the current document does not intend to replace the official guideline, but rather to draw on and add value to the guidance given in the official guideline. The current document is also directed specifically at SI projects. A copy of the official guideline can be accessed through the following link. 

Chapter six of the EIA regulations applies to both the BA and the S&EIR process. It details specific requirements which must be met and which constitute the minimum legal requirement. However, the context for each development project is different and affects different people and natural systems in different ways. These impacts depend on the nature, scale and types of output from the project as well as the sensitivity of the affected social and natural systems, and the links between them. Guidance is therefore provided on how to:

- Improve the efficiency and accuracy with which the minimum legal requirements are met, but also to
- Develop and run a PPP that is appropriate to the specific context of each project.

Scoping for Public Participation

Running an effective PPP requires that it is designed in line with the range of different I&APs and the variation between them in terms of technical understanding, language, access to types of communication and so on. This requires that the person running the PPP establish a comprehensive understanding of potential I&APs as early as possible in the process. This is best achieved through a scoping process. While not a legal requirement it is a relatively simple undertaking and will assist in avoiding many of the issues that commonly cause delays in the PPP. Establishing an understanding of who may be impacted requires that the following aspects are considered:

- **Spatial influence of the project**

The impacts of a project change in relation to the distance from the project site. As indicated in Figure 1, people living immediately adjacent to a project site will be directly impacted by construction impacts of noise and dust. For SI projects these impacts are commonly only felt at local level and not further away.

- **Nature of the impact**

There are direct impacts, such as the loss of topsoil which reduces the productive capacity of land. A secondary impact would be siltation of dams downstream. One needs to consider the knock on (secondary) effects of the obvious impacts as they may affect different stakeholders.

- **Impacts associated with different phases of the project**

Impacts vary with the project life cycle. In the case of a power line, the visual impact on an important cultural site is only felt once the power line is in place i.e. in the operational phase. Similarly, the impact on traffic volumes from the development of a large housing project in a suburb will only be felt once the project is completed and the housing is inhabited.

- **Types of impact**

Certain I&APs will be directly impacted by a project, while others may be affected by secondary impacts. As an example, a reduction in water quality from sewage disposal from a large housing development may negatively impact a tourism activity downstream that relies on good quality water.

- **Different components of the receiving environment**

Consideration should be given to I&APs associated with each component of the receiving environment, these being the social, cultural, economic, biophysical environments. It needs to be considered whether there are sensitive natural features (protected areas, nest sites, threatened habitats), social facilities (schools, hospitals, recreational areas/sites) or cultural sites (graveyards, ancestral, historic sites, archaeological features) that will be impacted by different impacts in different phase within the spatial influence of the project.

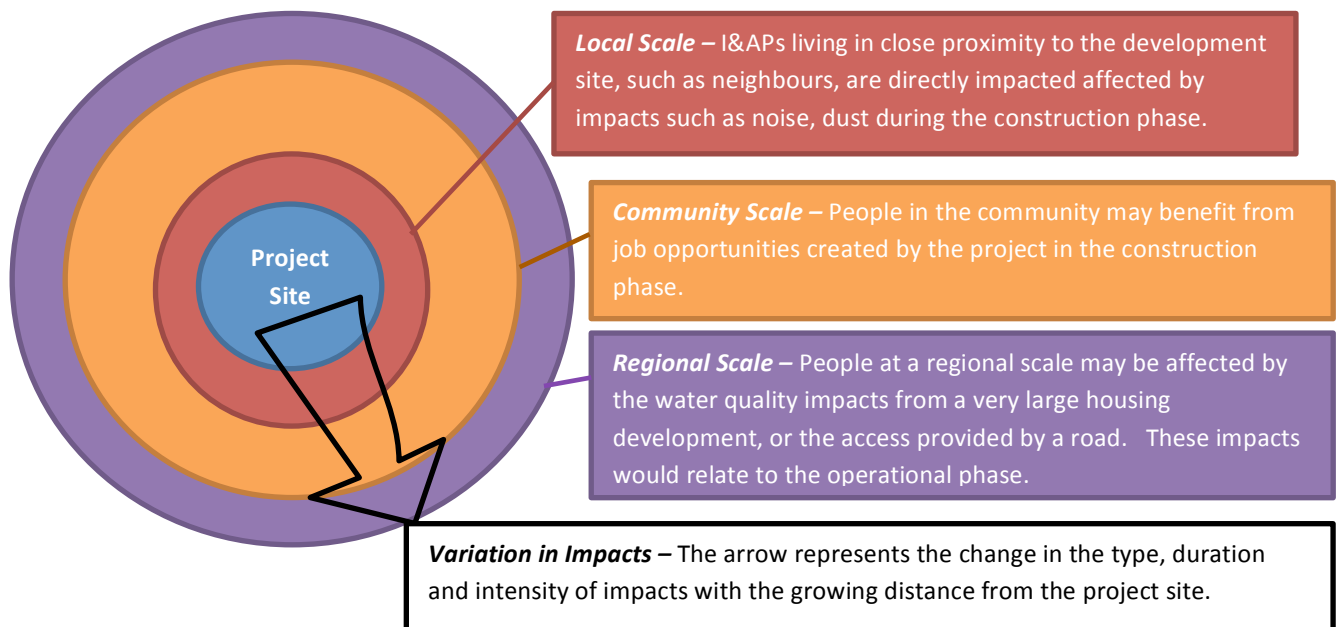


Figure 1. Aspects to consider in identifying the range if I&APs

By reviewing the likely impacts of the project against maps (indicating the location) and information for the area (indicating the sensitivity) of the environmental components it is possible to get an understanding of the different I&APs who should be included in the PPP. The examples of given in Table 5 below are not exhaustive but are included to provide an idea of the range of stakeholders who may be relevant depending on the project context. These I&APs can then be identified and included in the I&AP database from the outset. There are also specific IA&Ps that the EIA regulations require the EAP to consult. These are government agencies responsible for other regulatory processes such as Water Affairs (water use licence), Agriculture (CARA permit), Conservation Agencies (TOPS permits), Local Government (Planning authorisation). The sooner these “essential I&APs” and appropriate contacts for each are identified the better as they will often have set processes that govern how the EAP should interact with them, which will inform the manner and structure of the PPP. This includes information requirements.

Table 1. Examples of types of different I&APs per environmental component

Environmental Component	Potential Types of I&APs
Biophysical	<ul style="list-style-type: none"> - NGOs. - Conservancies. - Protected area managers. - Conservation agencies.
Social	<ul style="list-style-type: none"> - Individuals. - Households. - Traditional authorities. - Civic associations – clubs, associations, ratepayers.
Cultural	<ul style="list-style-type: none"> - Religious groups. - Heritage sites - managers. - Heritage Resources agencies. - Indigenous Communities.
Economic	<ul style="list-style-type: none"> - Organisations representing economic sectors – tourism, agriculture, mining. - Associations (chamber of business).

The above steps in the PPP scoping process is supplemented by:

- Engaging the CA who should have a good understanding of the I&APs in the area, what methods work best for consultation, what publications are used.
- Reviewing the process and outcomes of other EIAs run in an area to access information on I&APs and methods employed.
- Meeting with the Ward councillors to understand the social context including structures, existing forums and acceptable methods for engagement. The lack of understanding among ward councillors regarding the purpose and structure of the EIA process is a major challenge given the importance of community level participation for SI projects. The EAP should include additional time and budget for working with the councillors to ensure the level of understanding is appropriate for ensuring effective participation and inputs.

Undertaking scoping assists in designing the PPP correctly for the local context, thereby ensuring that the correct I&APs are engaged in the most efficient and appropriate way possible from the outset. It helps the EA to plan the PPP so that they meet the legal requirements discussed below, but also get the most out of the process by using the most appropriate mediums for notifying/advertising the project, circulating information and obtaining comment. This process also aids I&APs feeling part of the process from the outset and contributing positively, rather than being alienated through limited engagement in which case there is often opposition to the process and project. The remainder of the section covers the PPP activities and steps required in the regulations. Guidance is provided [in brackets] on how to improve the way these are undertaken.

Box 2. Options for Exemption

It is important to note upfront that because NEMA requires public information and participation for every application; it is therefore **NOT POSSIBLE** to apply for **COMPLETE EXEMPTION** from having to undertake Public Participation. It is however **possible to apply for exemption from or deviation from the legal requirements for certain aspects** of the PPP. This is done via a formal process and it is suggested recommended that the CA is consulted to establish the likelihood of the request being accepted.

Notifying Interested and Affected Parties

The PPP commences once an application has been submitted, with the first step being the notification of I&APs. The regulations require that notification is undertaken through three formal activities. These include a) notice board; b) written notification to a set list of I&APs; c) a public notice placed in local/regional newspaper, or government gazette. It is through this combination of mechanisms that the project is advertised and the EAP is able to establish their I&AP database. It is necessary that the application number is included in all forms of communication with I&APs throughout the process, starting with the initial notification and BID.

Details of the legal requirements pertaining to these mechanisms and additional guidance is provided below, along with insight into other options and tools, such as the background information document (BID), websites and radio adverts. While not a legal requirement, these are very useful mechanisms for generating understanding about the project, the process and how I&APs can engage. The options used depend on the

a) Notice Board

A notice board should be fixed at an 'eye catching' place (such as the entrance of the proposed and any alternative sites), for the duration of the process. [Notices are commonly laminated or placed in sites which afford some level of protection from the weather. To increase awareness, notices should also be placed at other public sites in the area such as libraries, post offices, local supermarkets and pension pay points.] The notice board must meet the minimum size (60cm x 42cm) and must provide the following information:

- (i) That an application for environmental authorisation has been submitted to the CA.
- (ii) Whether the BA or full EIA process is being applied to the application.

- (iii) A description of the project that provides an understating of all the elements of the project. For example, if a tourism development is proposed, it should indicate the full range of complimentary activities to the accommodation such as 4x4 trails, golf course as these may have impacts of their own. Similarly a new industrial complex may require a new major access road. The location and layout of the various elements and boundaries of the properties involved should be indicated on the notice i.e. it must include a map.
- (iv) Where further information on the activity or the application can be obtained.
- (v) The manner in which I&APs can submit comments and the contact details of the person to whom they should be submitted.

b) Written Notification

The Regulations require that the following I&APs are sent written notice:

- (vi) The owner or person in control of the land, if they are not the applicant
- (vii) The occupiers of the proposed and any alternative sites
- (viii) Owners or occupiers of the land adjacent to the proposed or alternative sites
- (ix) The councillor of the ward within which the proposed or alternative sites are located, and any organisation of ratepayers in these areas. [In addition to ratepayers, there are often a range of different civic organisations that will have interest in projects such a chamber of commerce, or business. It is good practice to meet with the ward councillor at the outset to establish:
 - What organisations exist, their contact details, and
 - Whether communication will be best achieved by engaging directly with these organisations, or via the councillor's office,
 - Suitable venues for meetings and what are the usual/acceptable times in the community for holding public meetings should also be established].
- (x) The relevant municipality

[There may be several departments within a municipality that will need to comment on an application - particularly larger municipalities and metros. These include technical departments that deal with roads, water, sanitation and those concerned with health, safety and security and community liaison. It is important that all relevant sections are included. Some municipalities have a single contact and processes set up to co-ordinate involvement in EIAs. Where this is not the case the EAP will need to ensure that they engage all relevant departments directly.]
- (xi) Any organ of state having jurisdiction in respect of any aspect of the activity

These include organs of state from which authorisation is required in terms of other legislation. Guidance is provided in section 8 of this document for each of the different types of SI.
- (xii) Or any other party as required by the CA

[The relevant authority (DEA or provincial department) will have a good understanding of the I&APs within their jurisdiction and in relation to type of project being considered. The EAP or public participation specialist should consult the case officer to get insights into the relevant I&APs. The case officer can also direct them to other EAPs who have worked in the area who will have databases of stakeholders for similar projects].

c) Placing an advert in:


- (i) One local newspaper [There are a growing number of free publications that cover very localised areas linked to residential areas or communities. These are often well read and a very good medium for notifying local communities of SI projects], or
- (ii) Any official Gazette that is published for the purposes of providing public notices in respect of the EIA regulations. [No such gazette exists as yet].
- (iii) Placing and advert in at least one provincial or national newspaper if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality [Because no gazette exists for these purposes, adverts must be placed in provincial newspapers where the impact will extend beyond the borders of the municipality -DEA 2010].

d) *Other Mechanisms*

It is useful and common practice to include a Background Information Document (BID) with the written notice required above. The BID is normally no more than 4 pages and provides basic information about the project including nature and range of associated activities, the purpose, who the applicant is and the location (including maps and a layout plan at the proposed and any alternative sites) – it effectively expands the information provided in the site notice. An important objective of the site notice and BID is to help potential I&APs to consider whether they are interested in the project. It should also indicate clearly how they can participate in the process in terms of opportunities to attend meetings, receive documents throughout the process and submit comments. The EAP can also use the BID to obtain information about I&APs that will assist them in running an appropriate and efficient PPP. This is done by asking the reader of the notice or BID to confirm their preferred time for public meetings or medium for review of documentation (electronic or hardcopy), and request that they circulate the BID to other I&APs who they consider may be interested or affected. Importantly, it should also indicate the responsibility of I&APs when engaging in the process and the difference between I&APs and ‘registered I&APs’ (explained later in this section).

Other mechanisms used to advertise the project, register I&APs and obtain initial comment are:

- Open Days – were the EAP make themselves available at locations accessible to the public – such as schools and town halls, and have a range of information and large scale maps available for people to review and ask questions. The open days can be advertised in the written notification, notice boards newspaper advertisements.
- Radio adverts – these are used in areas where there is limited access to print media and electronic mediums such as email and the internet.
- Websites: It is also useful for projects where the large majority of I&APs have access to the internet to establish a project website. This provides a very useful mechanism for the transfer of information and cuts down on the volumes of hardcopy material that is generated as I&APs can download, and the logistical issues of distributing information where there are a large number of spatially fragmented I&APs .

Contact details for regional, provincial and national newspapers in South Africa can be accessed at the adjacent link. 

The regulations require that proof of notification is provided to the CA for each aspect of notification. This includes copies original copies of the newspaper adverts, photos of the site notices which show the detail and the context within which the notice was displayed (GPS points would also be useful), and copies of all other documentation such as the BID, written notification and the list of people that it was sent to. Further guidance is provided by the DEA (2010) on what form this proof should take in respect of each type of notice. In addition the Applicant must consult with the relevant Provincial Guidelines for the specific requirements in terms of proof of notification.

It worth noting again at this point, that the regulations set out the minimum requirements for public participation and in many cases just following the minimum requirements will not be adequate. A robust public participation process is a worthwhile investment, which if done according to best practice (rather than just the minimum legal requirement) then the PPP will contribute significantly to the sustainability of the project (e.g. reduced delays due to stakeholder concerns not being considered or adequately addressed). As an example, other forms of notification may be necessary. A thorough scoping process will assist in running an effective and efficient PPP.

Register of Interested and Affected Parties

Regulation 55 requires an EAP to open and maintain a register which contains the names, contact details and addresses of all persons who have submitted written comments or attended meetings,

- a) all persons who have, after the completion of the PPP, asked the EAP for their names to be placed on the register, and
- b) all organs of state which have jurisdiction in respect of the activity.

The EAP is required to make the register available to anyone who requests access to it. This regulation is best adhered to by developing an I&AP database in an electronic format. MS excel and other database software is often used for this purposes. Some EAPs and particularly specialist public participation practitioners have developed specific software to run the process. Use of such systems indicates a level of experience and competency in running the PPP as it requires very good organisation and management of stakeholder information and engagement. In addition to basic contact information, the following information can be recorded in the database:

- Method through which the I&AP requested registration (email, fax, telephone and post). This assists the EAP in maintaining a record of I&AP engagement and compiling the final PPP documentation. The date of registration should also be recorded so that it is clear when the person entered the process.
- Whether the I&AP attended public and /or other meetings.
- Date of correspondence and whether it was in response to written notification, provided as comment on the draft report or input made at a public meeting.
- What medium was used to respond to comments submitted by I&APs were dealt with. For example, through e-mail or in the formal comments and response document.

A well maintained database with a chronological record of participation by each I&AP and links to the related documentation assists in meeting the reporting requirements for the PPP. It also assists the EAP to check that they have responded to all input received. For the applicant, who can and should request to review the database at any time, it provides a tool for checking that the EAP is responding to all I&AP queries in an appropriate and timeously manner.

Box 3. Distinguishing Between I&APs and Registered I&APs

The regulations distinguish between these two as defined below:

- I&APs include a) any person or group of persons or organisation interested in or affected by an activity; and b) any organ of state that may have jurisdiction over any aspect of the activity.
- Registered I&APs – means any I&AP whose name is recorded in the register opened for that application. Relevant organs of state are automatically included as registered I&APs.

Only registered I&APs will be notified of:

- The availability of reports and other written submissions made to the CA by the applicant, and be entitled to comment on these reports,
- The outcome of the application, the reasons for the decision, and that an appeal may be lodged against the decision,
- The applicant’s intention to appeal the decision, together with an indication of where and for what period the appeal submission will be available for

Given the above, it is important in the initial consultation to make I&APs aware that they need to be registered in order to be able to participate as above and to then confirm whether I&APs wish to be registered.

Commenting - submitting, recording and responding

Regulation 56 states that all registered I&APs are entitled to comment, in writing, on all submissions including draft reports made to the CA. A registered I&AP may comment provided that:

- a) Comments are submitted within:
 - (i) The timeframes set, or approved by the CA.
 - (ii) Any extension of a timeframe agreed to by the applicant or EAP.
- b) A copy of comments submitted directly to the CA is also provided to the EAP.
- c) The I&AP discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

Before an EAP submits a final report they must have given registered I&APs access to, and an opportunity to comment on all reports produced in terms of the regulations including the specialist reports and the PPP report (which is important for I&APs to verify that their input has been considered and responded to).

The regulations also require that:

- **Draft versions** of any reports are submitted to the CA before providing registered I&APs an opportunity to comment. Importantly, as per 56 (3), I&APs must be notified of and have the opportunity to comment on any amendments made to draft reports.
- Registered I&APs must **submit comments** on any **draft reports to the EAP** who needs to record receipt of the comments.
- Registered I&APs must **submit comments** on any **final reports to the CA** and provide a copy to the applicant or EAP.
- The CA is required to request any state department that administers a law relating to the matter affecting the environment to comment within 40 days, and 60 days in the case of waste management activities contemplated under the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) on which the relevant Minister must concur and issue an EA in terms of that Act. While not a legal requirement, I&APs other than state departments are also usually given 40 days to comment.
- Where state departments fail to provide comment within the 40 and 60 day periods, it will be regarded that there are no comment. The EAP is responsible for ensuring that all comments received are recorded and copies are attached to the report.

A minimum of 40 days must be allowed for registered I&APs, including all relevant state departments to make representations on draft BA Reports, draft Scoping Reports and draft EIA Reports¹. These 40 days must be read as 60 days in a case of waste management activities. It should be noted that:

- Applicants may make draft reports available on first notification of all I&APs. In such instances the notice to I&APs must also clearly indicate that a draft report is available for comment and indicate when, where and for how long the report will be available for comment.
- Days mean calendar days.
- The period of 15 December to 2 January must be excluded from the reckoning of days, and the period extended by the number of days falling within this period.
- When a timeframe includes a public holiday, the time frame must be extended by the number of public holidays occurring within the period.

The activities and time frames should be included in the overall project and specific PPP plan developed by the EAP at the outset, based on the scoping undertaken upfront. Such a project plan provides the basis against which the applicant can monitor the EAPs progress and should be a requirement of the applicant from the EAP. The EAP should provide regular/monthly updates on progress against the project programme and inform the applicant where issues are affecting the programme and proposed steps for dealing with these – particularly where they have budgetary implications (for example, where an I&AP requests additional meetings or a department requires additional specialist investigation).

There are a variety of mechanisms for I&APs to present information to and provide I&APs with an opportunity to comment. This includes public, focus group or one-on-one meetings, written comment and open days. In most instances a mix of mechanisms is necessary to account for the variation in technical understanding, knowledge, logistics and spatial orientation amongst the range of I&APs. The selection of mechanisms is informed by the understanding of the I&APs established in the PPP scoping process.

It is worth understanding the benefits and limitations of different methods for engagement. A standard method is public meetings. They are often held because they enable the engagement of a wide range of stakeholders in one event. However large public meetings are not always appropriate because they may be dominated by stronger, empowered I&APs with a result that less vocal and informed I&APs are marginalised. In the case of SI projects it is

¹ These 40 days must be read as 60 days in a case of waste management activities

always important to engage local communities, who are often both the beneficiaries and negatively impacted. Again, a single 'community meeting' may be inappropriate because it may be dominated by powerful members of the community. Communities comprise of sub groupings that may include among others; traditional healers, livestock and water committees, women and youth. Depending on the nature of the project these groups will be affected in different ways and it may be important to meet with them separately. The EAP needs to select appropriate mechanisms based on their experience of what is appropriate for different I&APs. Such engagement will invariably require a level of capacity building and need to be run in the appropriate language to ensure the understanding is transferred.

The EAP must ensure that comments of I&APs, including those made at public meetings are attached to the BA or EIA reports that are submitted to the CA in a formal comments and response document (C&RD). Where a person wishes to comment but is unable to due to factors such as a lack of skills to read or write reasonable alternatives methods of recording comments must be provided for.

The ***C&RD is an essential and important component of the PPP and the EIA documentation*** as it summarises the issues raised and how they have been dealt with. It is as important for the applicant as it is for the I&APs, because it shows how the EAP has responded to the queries received. Where EAPs respond in a superficial manner and do not either take the time to understand or reply appropriately, the risk to the applicant is that this will alienate and frustrate I&APs, with the potential for delays. The responses vary from providing additional information, to amending the report or amending the way in which I&APs are engaged. Applicants should therefore review the C&R carefully before it is finalised to ensure they are happy that the EAP has responded appropriately. It also provides the applicant with insight about people's perceptions about the project. . It is also common that several queries are of technical natures which require a response for the applicants development team e.g. engineer. In view of the discussion above, a good EAP will insist on a review by the applicant.

The CA has the authority to request additional information and investigation. Such requests are often based on a review of the C&R, where it is easiest for the CA to assess whether the EAP has dealt with comments effectively and appropriately. Comments can relate to process e.g. a request for additional consultation, or content e.g. more information regarding an impact and even a request for additional specialist investigations. It may require that the EAP consult their specialist and/or even the CA to be clear on a response relating to technical issues.

Notifying I&APs of the Departments decision

The applicant must, within 12 days of the date of the decision on the application, notify all registered I&APs of the following:

- The outcome of the application ,
- The reasons for the decision,
- The opportunity to appeal the decision,
- The manner in which they can access the decision.

This should be done via written notice. The applicant is also required to advertise the decision and the opportunity to access and appeal the decision via a public notice placed in the same newspapers that have been used throughout the process.

(" (' Preparing the Basic Assessment Report











Basic Assessment Report templates

The EAP managing the process is responsible for preparing the BA Report. This Report must follow the format prescribed by the CA. Most provinces have prepared a template which should be used. These templates can be accessed from the adjacent links.

Contents of the Basic Assessment Report

The Regulations require that a BA Report contain all the information which is necessary for the CA to consider the application and reach a decision. This information includes:

- Details and expertise of the EAP who prepared the report
- A description of the proposed activity
- A description and map of the property on which the activity is to be undertaken or if it is a linear activity then a description of the route
- A description of the environment that may be affected by the proposed activity and the manner in which the various aspects of the environment (physical, biological, cultural, economic and cultural) may be impacted.
- All legislation and guidelines that have been considered in the preparation of the report
- Details of the public participation process that has been conducted including:
 - the steps taken to notify I&APs
 - proof of noticeboards, advertisements and notices notifying I&APs
 - a list of all persons, organisations and organs of state who were registered as I&APs in relation to the application
 - A summary of the issues raised by the I&APs and the responses of the EAP
- A description of the need and desirability of the proposed activity
- A description of feasible and reasonable alternatives
- Consideration of the significance of any environmental impacts including an assessment and description of the nature, extent, duration and probability of the impact as well as the degree to which it can be reversed or mitigated. Cumulative impacts must also be considered.
- Any environmental management and mitigation measures proposed by the EAP
- Any inputs and recommendations made by specialists
- A draft EMPR
- A description of any assumptions, uncertainties and gaps in knowledge
- A reasoned opinion as to whether the activity should be authorised or not
- Any representations or comments received in respect of the BA Report
- The minutes of any meetings held by the EAP with I&APs and other role-players which record the views of the participants and the associated responses of the EAP
- Any specific information required by the CA

Basic Assessment Report templates	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

In addition, a BA Report must consider any other relevant guidelines and/or departmental policies, environmental management instruments and other decision-making instruments that have been developed or adopted by the CA.

Box 1. Key issues affecting the completion and submission of BA Reports

A number of issues associated with BA reports which cause delays to SI projects have been identified. The most critical issue relates to the submission of BA reports which are either incomplete or do not contain sufficient information to enable the authorities to adequately assess the proposed development. It is vital that the applicant provide the EAP with comprehensive information about the proposed activity and equally, that the EAP include detailed information in respect of the receiving environment, impacts, management and mitigation as well as proposed alternatives. If the required information is insufficient, the report has to be returned to the applicant for the inclusion of this information. This causes unnecessary delays to the project.

(") Submission and review of the Basic Assessment Report

Submitting the BA Report

The EAP managing the process is responsible for submitting the BA Report to the CA. The submission must include at least 5 copies of:

- The BA Report
- Any representations and comments received in connection with the application or BA Report
- The minutes of any meetings held by the EAP with I&APs and other role-players which record the views of the participants and the associated responses of the EAP

What happens after the BA Report has been submitted?

Once the BA Report has been submitted, the CA has 14 days to acknowledge receipt of the report and a further 30 days to either accept or reject it. In the case where the activity applied for is a disposal site, the Department will have 60 days to accept or reject a report. If the report is rejected, then the CA must request the EAP to:


- Submit additional information
- Submit a report on any specialised study or process as deemed necessary by the CA
- Suggest, consider or comment on feasible and reasonable alternatives
- Undertake a S&EIR

Any BA Report which has been rejected may be amended and re-submitted for re-consideration by the CA.

The CA must within 30 days of accepting the BA Report (or within 30 days of the lapsing of the 60 day extension period) either grant or refuse the authorisation in respect of all or part of the activity. Once a decision has been reached, the CA must notify the applicant and give reasons for the decision within 2 days. The applicant, in turn, must notify all registered I&APs of the outcome and reasons for the decision within 12 days. Such notification must also be placed by way of a notice in the relevant newspaper (as used in the public participation process).

(* Environmental authorisations

Undertaking a BA or S&EIR process does not automatically mean that authorisation for the development will be granted. The CA has the right not to authorise a development but must provide reasons for such a decision. The CA may also only authorise certain aspects of the development. If the CA decides to grant authorisation to the project, then an EA is issued in the name of the applicant. In making the decision on the application, the CA will consider:

- Whether the activity complies with NEMA, the Regulations and all other applicable legislation. This includes the principles of NEMA, a description of which is available at the following link. 
- What the environmental impacts are likely to be if the application is granted or refused.
- What measures could be implemented to mitigate any environmental impacts.
- Whether the applicant is able to implement these mitigation measures and comply with the conditions imposed on the project.
- What reasonable modifications could be made to the activity to minimise any negative impacts.
- Any other relevant information contained in the reports or documents submitted to the CA.
- Any comments obtained from other organs of state that have jurisdiction over any aspect of the activity.
- Any relevant national and/or provincial policies.

Part 4 of the Environmental Impact Regulations outline the content of EAs and specify that the authorisation must include the following information:

- The name, address and telephone number of the person to whom the authorisation is issued.
- A description of the activity which is authorised.
- A description of the property on which the activity is to be undertaken as well as the location of the activity on the property.
- The conditions subject to which the activity may be undertaken including the period for which the EA is valid; the requirements for management, monitoring and reporting the impacts of the activity throughout the lifecycle of the activity; and the transfer of rights and obligations if there is a change of ownership in the property on which the activity is taking place.
- Where appropriate, the EA may also indicate the manner in which and when the CA may approve the EMPR and the manner and frequency with which the EMP will be amended or updated.

The EA may also:

- Stipulate that the activity may not commence before specific conditions are met.
- Require the holder of the authorisation to provide reports to the CA, at specified intervals, indicating the extent to which the conditions of authorisation are being met; providing details and reasons for any non-compliance; and describing any actions taken to mitigate the non-compliance.
- Require the holder of the authorisation to provide the CA, at specified intervals, with environmental audit reports on the impacts of the activity on the environment.
- Where applicable, require the holder of the authorisation to provide the CA with proof of compliance with the applicable requirements regarding closure.
- Include any other condition that the CA considers necessary for the protection of the environment.

It is important that the applicant thoroughly review the EA and check that they are able to comply with the conditions therein. If the applicant is unable to comply with the EA, due to technical, financial or other reasons, then they should consider an appeal. The applicant must not proceed with construction if they know that they are unable to comply with the EA. The costs of delays once the project has commenced (construction penalties and or fines) may be far greater than those associated with the delay due to an appeal.

Box 1. Key issues in respect of Environmental Authorisations


Two key issues were identified by stakeholders during preliminary consultation in respect of EAs. It was noted that a significant number of EAs are allowed to lapse by SI developers, even if a commencement period of four years is stipulated. This problem was attributed to the extremely low capacity in local authorities rather than as a result of problems with the EIA process. Many municipalities do not even have the capacity to manage their own land-use functions such as land-use and subdivisions let alone comply with additional regulatory requirements. This issue is a serious obstacle to the implementation of SI projects.

The second issue relates to the non-compliance with the conditions of the EA. In some cases, implementing agents simply proceed without authorisation while in other cases Environmental Control Officers fail to debrief construction teams about the terms of EAs. This in turn leads to a Section 24G application and even stronger enforcement actions which causes serious delays to SI projects., In addition, the situation can and often does lead to very strong social and political pressures. Such cases could be avoided if the environmental assessment process was properly adhered to.

("+ 'Specialist studies

Preparing for specialist studies

Specialist studies are a key component of EIAs and provide valuable information which assists the CA to make a decision on whether the proposed development may proceed or not. The EAP managing the process should consider a number of key aspects to ensure that quality information is obtained from specialist studies. These include:


- Drafting and clarifying the Terms of Reference. The following link provides a model "Terms of Reference" for specialist input. 
- Outlining the approach to the specialist study.
- Defining the reporting requirements for the specialist.
- Selecting the right specialist.
- Ensuring interdisciplinary interaction between specialists.
- Review of the study by the right reviewer.

It is important to note that specialist studies may also delay the timeframes of a project as sampling may need to be undertaken at specific times of the year. For example, it may only be possible to sample vegetation during the flowering season. It is therefore important that the applicant discuss the potential need for specialist input at the outset of the project to ensure that adequate time is built in to the planning process.

Types of specialist studies

The EAP may request a range of specialist studies depending on the nature and location of the proposed development. Specialist studies may relate to various subjects including:











- Socio-economic
- Biodiversity
- Air quality
- Visual and aesthetic
- Hydrology
- Heritage

A number of guidelines in respect of these subjects can be accessed at the following link. 

Contents of specialist studies

The Regulations require that a specialist report include the following information:

- Details and expertise of the person who prepared the report.
- A declaration that the person is independent.
- An indication of the scope and purpose of the report.
- Description of the methodology adopted in preparing the report.
- Description of any assumptions or data gaps.
- Description of the findings and their potential implications for the proposed activity. These should also consider any alternatives.
- Recommendations for any mitigation measures that should be considered by the applicant and the CA.
- A description of the consultation process that was undertaken during the course of the study.
- A summary and copies of any comments received during consultation.
- Any other information requested by the CA.

Details of specialists and Declaration of Interest	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

(" , ' Amendments

The Regulations do enable EAs to be amended and sets out a specific process which should be followed to do this. If the amendment is likely to be substantive, then an additional public participation process will be required. Although in some instances amendments may be necessary, they are generally not desirable as they add additional costs and delays to the process. Many amendments could be avoided if the initial information included in the reports is correct.

The CA or the holder of the EA may initiate an amendment to the EA. There are a variety of ways in which the EA may be amended including:

- Attaching an additional condition or requirement.
- Substituting, removing or changing a condition or requirement.
- Updating or changing any detail on the authorisation.
- Correcting a technical or editorial error.

Amendment of authorisations by applicant











The holder of the authorisation may apply at any time to the CA for an amendment to the authorisation. Such applications will be considered where there has been a change in circumstances from the time when the authorisation was granted; there has been a change of ownership; or any detail within the authorisation requires amending, adding, substituting, correcting, removing or updating. The application must be submitted in writing and be accompanied by the motivation for the amendment.

The CA has 14 days to acknowledge receipt of the application and a further 30 days to make a decision on the application if there are no-substantive amendments or if the environment or the rights or interests of other parties are not likely to be adversely affected. If this is not the case, the CA may require the applicant to undertake a public participation process and/or to conduct specific investigations or assessments. The CA is then required to make a decision on the application within 30 days of this process being completed.

Amendment of authorisations on initiative of the CA

The relevant CA may also amend an EA on their own initiative in order to prevent deterioration of the environment; to achieve prescribed environmental standards; or to accommodate demands brought about by impacts on socio-economic circumstances where the demands are in the public interest. If the CA intends amending an authorisation, then they must notify the holder in writing of the proposed amendment and give the holder an opportunity to submit representations regarding the proposed amendment. An additional public participation exercise will need to be conducted unless the amendment is considered not to be substantive.

Within 30 days of completing this process, the CA must reach a decision as to whether to amend the authorisation or not. If the decision is to amend the authorisation, then the CA must issue an amendment to the authorisation either by way of a new authorisation or an addendum to the existing authorisation. Once the CA has reached a decision, they must notify and provide reasons to the holder within 2 days and interested and affected parties within 12 days.

Forms to amend Environmental Authorisations	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

Amending Environmental Management Programmes

An EMPR may be amended either through an application by the holder of an EA or on the own initiative of the CA. Such amendments may be desirable or necessary in order to:

- Prevent environmental deterioration.
- Achieve prescribed environmental standards.
- Accommodate demands brought about by impacts on socio-economic circumstances where the demands are in the public interest.
- Ensure compliance with the conditions of EA.
- Assess the continued appropriateness and adequacy of the EMPR.
- Address any conflict between the EMPR and principles set out in NEMA.

If the CA initiates the amendment of an EMPR they must first notify the holder of the proposed amendment and give the holder of the authorisation an opportunity to submit representations regarding the proposed amendments. If necessary, they may also need to conduct a public participation exercise.

If the holder of an authorisation wishes to amend an EMPR, they must submit an application to the relevant CA, who in turn must acknowledge receipt of the application within 14 days. The holder may be required to conduct a public participation exercise. Within 30 days of receiving all information, the CA must either refuse the application or approve the application by issuing an addendum to the relevant authorisation. Once the CA has reached a decision, the applicant must notify and provide reasons for the amendment to any interested and affected parties within 12 days. Similarly, if the CA initiated the amendment, then they must notify and provide reasons for the amendment to the holder within 2 days and to interested and affected parties within 12 days.

("- 'Suspensions

The CA has the ability to suspend an EA. Such suspension may occur if:

- There are reasonable grounds for believing that the contravention or non-compliance with a condition is causing harm to the environment.
- Suspension is necessary to prevent deterioration of the environment.
- A condition of the authorisation has been contravened or is not being complied with.
- The authorisation was obtained through fraudulent means or misrepresentation or non-disclosure of material information.
- The activity has permanently or indefinitely been discontinued.
- Unforeseen circumstances lead to potential significant detrimental effects on the environment or on human rights.

If the CA considers the suspension of an authorisation, they must notify the holder of the proposed suspension and give the holder of the authorisation an opportunity to submit representations regarding the proposed suspension. Once the CA has reached a decision regarding the proposed suspension, they must notify the holder of the decision and provide reasons.

("%\$ ' The appeal process

A person affected by a decision in terms of the EIA regulations may appeal against the decision. No appeal is available however if the decision was taken by the Minister or the MEC themselves in their capacity as the CA. The person who wishes to appeal against the decision must submit a notice of intention to appeal with the Minister, MEC or delegated organ of state within 20 days after the date of the decision. If the appellant is the applicant, they must provide all registered interested and affected parties with the following information within 10 days of lodging the notice:

- A copy of the notice of intention to appeal
- A notice indicating the day on which the appeal will be lodged and where and for what period the appeal submission will be available for inspection.

If the appellant is a person other than the applicant, they need to provide the same information to the applicant only, within 10 days of lodging the notice.

The appeal must be submitted in writing within 30 days after the lapsing of the 20 day period provided for the submission of the intention to appeal. The appeal must take into account any guidelines applicable to appeals and be accompanied by the following information:

- A statement setting out the grounds of appeal
- Supporting documentation which is referred to in the appeal
- A statement by the appellant that the holder/interested and affected parties have been provided with the notices listed above as well as copies of these notices
- The prescribed appeal fee.





















The Minister, MEC or designated organ of state must acknowledge receipt of the appeal within 10 days of receiving it.

The person or organ of state that receives a notice of appeal may submit a responding statement within 30 days from the date that the appeal was lodged. Within 10 days of lodging the responding statement, they must serve a copy of the statement on the appellant. If the responding statement introduces new information which was not previously dealt with, the appellant may submit an answering statement to such new information to the Minister, MEC or designated organ of state within 30 days of being served a copy of the responding statement. Within 10 days of submitting the answering statement, the appellant must serve a copy of the new information on the respondent.

If the Minister, MEC or designated organ of state appoints an appeal panel, they must provide the panel with written instructions regarding:

- The issues in respect of which the panel must make recommendations
- The period within which the recommendations must be submitted.

These recommendations must then be submitted in writing to the Minister or MEC.

Notice of intent to lodge an Appeal	Submission of appeal forms
Eastern Cape 	Eastern Cape 
Free State 	Free State 
Gauteng 	Gauteng 
KwaZulu-Natal 	KwaZulu-Natal 
Limpopo 	Limpopo 
Mpumalanga 	Mpumalanga 
North West 	North West 
Northern Cape 	Northern Cape 
Western Cape 	Western Cape 
National 	National 

The Minister, MEC or CA must reach a decision on an appeal within 90 days of receipt of all information. Once a decision has been reached, the Minister, MEC or CA must notify and provide reasons for the decision to the appellant and each respondent within 10 days.

The appeal process is summarised in the diagram below.

